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IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 06/2012**
HOLDEN AT NDOLA **SCZ/8/168/2011**
(Civil Jurisdiction)

BETWEEN:

FRANK MUMBA,

MORGAN MUMBA AND 74 OTHERS **APPLICANTS**

AND

CHRISTOPHER MULENGA *(Sued as Receiver of*
Roan Antelope Mining Corporation (Z) PLC
(In receivership) **1ST RESPONDENT**

ZCCM INVESTMENTS HOLDINGS PLC **2ND RESPONDENT**

CORAM: Mwanamwambwa, Ag/DCJ, Wanki, and Musonda J.J.S.

On 18th April, 2012 and 30th July 2014

For the Applicants: *Prof. M. P. Mvunga, S.C.,–Messrs. Mvunga Associates.*
For the 1st Respondent: *No appearance.*
For the 2nd Respondent: *Mr. J. K. Kaite, Legal Manager*

RULING

Mwanamwambwa Ag/DCJ, delivered the Judgment of the Court.

LEGISLATION REFERRED TO:

(1) **RULE 48 OF THE SUPREME COURT RULES CHAPTER 25 OF THE LAWS OF ZAMBIA**

(2) **ORDER 36 RULE 8 OF THE HIGH COURT RULES**

WORK REFERRED TO:

1) **BRYAN A. GARNER, (2004), BLACK'S LAW DICTIONARY, (8TH EDITION), UNITED STATES: THOMPSON WEST. PAGES 933, 972 AND 973**

This is an application by notice of motion supported by the affidavit which was made pursuant to **Rule 48 of the Supreme Court Rules Chapter 25 of the Laws of Zambia**. The Applicant is seeking an order to recover from any of the Respondents, the whole judgment debt with interest at the current lending rate. According to the Applicants, the other Respondent would only contribute since the 1st and 2nd Respondents were held to be severally and jointly liable. They have argued that, two interest rates were applicable to the Respondents. The current lending rate applied to the 1st Respondent while the average short term deposit rate applied the 2nd Respondent. The reason for this disparity was attributable to the following turn of events.

In a ruling dated 20th July 2005, the High Court awarded interest against the 1st and 2nd Respondents at the current lending rate. This was after the parties executed a consent order but requested the court to determine the issue of interest and costs. Both Respondents decided to appeal to the Supreme Court against the decision of the High Court on the issue. However on application by the Applicants, the 1st Respondent's appeal was dismissed for want of prosecution. The 2nd Respondent's appeal proceeded. In rendering its judgment, this Court noted that both Respondents were severally and jointly liable to the Appellants for costs and interest. The Court further noted that, the Applicants had

conceded the current lending rate awarded by the court below was wrong in principle and the appropriate interest rate was the short term fixed deposit rate, as stipulated under **Order 36 rule 8** of **the High Court Rules**. To this effect, the 2nd Respondent's appeal with regard to interest was allowed.

In enforcing the judgment of this Court, the Applicant wanted to apply the current lending rate against 1st Respondent and the short term fixed deposit rate against the 2nd Respondent. The 1st Respondent had paid through the 2nd Respondent. However, the 2nd Respondent argued that the short term fixed deposit rate should also apply to the 1st Respondent. The 2nd Respondent insisted on the short term fixed deposit rate and advised the Applicants to seek interpretation of this Court's judgment if they did not agree with that rate. The parties had tried to settle out of court but this proved futile.

The Applicants deposed in their affidavit in support of the motion, that they were seeking for the interpretation of the judgment by the court. The Applicants also filed two further affidavits in support, the gist of which was that the 2nd Respondent had refused to pay the Applicants despite receiving money from the 1st Respondent.

An affidavit in opposition filed by the 2nd Respondent deposed that the judgment of this Court which reduced the interest rate also applied to the 1st Respondent, since the 1st and 2nd Respondents were severally and jointly liable. The manner in which the judgment sum was to be apportioned for payment was a matter between the Respondents. The Respondents had paid the Applicants a sum of K1, 276, 329, 303.03, as full and final settlement of the debt in accordance with the judgment of the Supreme Court. The Applicants' interest lay in the settlement of the judgment sum and not in the proportions of the Respondents' contributions.

The Applicants and the 2nd Respondents filed written heads of arguments which they relied on. Counsel for the Applicants submitted that the Applicants were at liberty to recover the full judgment sum from any of the Respondents since they were jointly and severally liable. He referred to the definition of joint and several as defined by **Black's Law Dictionary, Revised Fourth Edition**, which states as follows at pages 972 and 973 respectively:

> **"Joint and Several. A liability is said to be joint and several when the creditor may sue one or more of the parties to such liability separately, or all of them together at his option."**

"Joint liability. One wherein joint obligor has right to insist that co-obligor be joined as co-defendant with him, that is, that they be sued jointly."

In view of the above, it was submitted that the Applicants were at liberty to recover the amount due from both or any one of the Respondents. Since there were two amounts, the Applicants could recover the high amount from the 1st Respondent who could in turn ask for contribution from the 2nd Respondent.

Professor Mvunga, State Counsel, further submitted that the 1st Respondent and the Applicants were bound by the interest rate ordered by the High Court, since the 1st Respondent's appeal was dismissed. He stated that the parties were bound by the doctrine of res-judicata as it is a strict rule of law. State Counsel went at length to cite a number of authorities on the doctrine of res judicata. The gist of his argument was that a decision of a competent court was binding upon the parties unless it is appealed against. In this regard, the interest rate awarded by the High Court was applicable to the 1st Respondent. He concluded by asking this court to interpret the judgment of the Supreme Court and the order of the High Court.

On the other hand, counsel for the 2nd Respondent submitted that the interest rate awarded by the Supreme Court was a result of the successful portion of the appeal against the judgment of the High Court. He quoted the following sentence in the judgment of the Supreme Court:

> **"Both appellants and now the only appellant are severally and jointly liable to the Respondents for costs and interest."**

Counsel also referred us to the definition of joint and several liabilities as defined by **Black's Law Dictionary, Eighth Edition**, which states at page 933:

> **"Liability that may be apportioned either among two or more parties or to only one or a few select members of the group at the adversary's discretion. Thus each liable party is individually responsible for the entire obligation, but a paying party may have a right of contribution and indemnity for non-paying parties."**

He stated that the Supreme Court judgment overruled the decision of the High Court on the issue of interest. Counsel stated that his understanding of that judgment as well as the use of the words 'severally and jointly liable' was that interest would only be paid once on the principle sum. He argued that the interpretation given by the Applicants countered the decision of the Supreme Court because interest would be paid twice on the same principle sum. Then that would not be in

line with the phrase 'jointly and severally liable'. This would in effect be unjust enrichment on the part of the Applicants. Counsel stressed that the 2nd Respondent paid the interest in line with the judgment of the Supreme Court. The interest rate on the judgment sum had been reduced by the Supreme Court for both the 1st and 2nd Respondents and the principle of res judicata did not arise.

We have scrutinized the notice of motion before us, the ruling of the High Court, as well as the judgment of this court. We have also considered the affidavits from both sides and the written heads of arguments presented before us. The Applicants are seeking the interpretation of the judgment of this court pursuant to **Rule 48** of **the Supreme Court Rules** **Chapter 25** of the Laws of Zambia.

We note that the parties have failed to agree on effecting our decision and that of the High Court, after the 1st Respondent's appeal was dismissed for want of prosecution. Our view is that it is only the 2nd Respondent which is entitled to pay interest at the short term deposit rate because its appeal on interest succeeded. The 1st Respondent cannot ride on the success of the 2nd Respondent's appeal on interest. The 1st Respondent is obliged to pay interest at the current rate, as ruled by the High Court, since its appeal on interest was dismissed, for want of prosecution. A party to an action is

bound by a decision of a competent Court, even though such a decision is considered erroneous, for as long as the decision is not set aside. In keeping with this principle, the parties to this case should resolve the issue of quantum or the proportions to be borne by each of the Respondents.

For the foregoing reasons, we allow the motion. And we order that each party bears its own costs.

M. S. Mwanamwambwa
ACTING DEPUTY CHIEF JUSTICE

M. E. Wanki
SUPREME COURT JUDGE

P. Musonda
SUPREME COURT JUDGE (RTD.)