

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

1992/HP/2699

BETWEEN:

TALLFELLOW HURTON WISHIMANGA APPELLANT

AND

NIEC LIMITED



RESPONDENT

Before Hon Mr. Justice Mathew L. Zulu the ^{21st} day
of June 2018

For the Appellant: Mr. S Musonda of A.M. Wood and Company.

For the Respondent: Mr. I.M. Mabbolobolo of Makala and
Company.

JUDGMENT

Cases referred to:

1. Wilson Masauso Zulu v. Avondale Housing Project Limited (1982) ZR 172 (SC)
2. Kingfarm Products Limited, Mwanamuto Investments Limited v. Dipiti Rani Sen (Executrix and Administratrix of the Estate of Ajit Barab Sen) (2008) 2 ZR 72.

Legislation referred to:

1. The High Court Rules, Chapter 27 of the Laws of Zambia. Order 3 Rule 2.

This is an appeal from the decision of the Registrar on an application for determination of interest payable to the Appellant by the Respondent.

The brief facts of the matter are that the Appellant was employed by the Respondent in various capacities until he rose to the position of General Manager. His contract of employment was terminated in 1991 and paid three (3) months' salary in lieu of notice.

In 1992, the Appellant took out this action in the High Court for an order, among other things, damages for breach of contract. Judgment was delivered in his favour in 1994. In the Judgment, the learned trial Judge found that the three months' salary, paid to the Appellant in lieu of notice, was in line with the terms and conditions of the contract. The trial judge awarded the Appellant gratuity, calculated at the rate of 25% of his total basic salary, earned during the period of his employment without deduction of tax. The trial judge did not award any interest on the amount found owing.

The Appellant appealed against that Judgment to the Supreme Court on three grounds. In the first ground of appeal, the

Appellant was challenging the finding of the trial Judge that the payment of the three months' salary in lieu of notice was in line with the terms of the contract of employment. The second ground of appeal was challenging the trial Judge's refusal to grant him an order for payment of the allowances he enjoyed in lieu of notice. The third ground of appeal challenged the failure by the trial Judge to award him interest on his gratuity.

In its Judgment delivered on the 4th of February, 2015, the Supreme Court dismissed two of the grounds of appeal. It however upheld the ground of appeal relating to payment of interest.

After the Supreme Court Judgment was delivered, the Appellant took out summons returnable before the Registrar for the determination of the principal and interest due and payable by the Respondent to the Appellant. This application was made pursuant to **Order 3 rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.**

The Appellant's case was to the effect that the interest rate payable to the Appellant was supposed to take into account other factors such as inflation. The Appellant computed the principal at

K606,868.48 and the interest at K1,535,048.99. He argued that the total owing by the Respondent as at 31st December, 2015, was K2,141,917.47.

The Respondent opposed the computation exhibited by the Appellant. The Respondent argued that the principal amount fixed as at the date of the application at K20,861.68 and remains the same throughout the period. It computed the principal at K20,861.68 and the interest at K156,832.51.

After hearing this matter, the learned Registrar refused the application. She held that-

“This Court has no jurisdiction to determine the principal and interest due and payable by the Defendant to the Plaintiff by way of the formula suggested by the Plaintiff as there was no such direction to this Court by the Supreme Court. The parties are therefore directed to comply with the judgment of the Supreme Court on computation of interest on the principal amount awarded by the High Court...”

The Appellant has now appealed to this Court against the decision of the learned Registrar on the ground that she misdirected herself when she failed to make a determination as to

what amounts were due to the Appellant as principal and interest.

On behalf of the Appellant, Mr. Musonda filed submissions. He submitted that the Registrar was asked to make a determination as to the interest rates that were due to the Appellant but that she shunned the path. That by proceeding in this manner, the Registrar offended the principles set out in **Wilson Masauso Zulu v. Avondale Housing Project Limited**⁽¹⁾ where it was held that-

“the trial Court has a duty to adjudicate upon every aspect of the suit between the parties so that every matter in controversy is determined in finality.”

He argued that the parties had made computations as regards what amounts were due to the Appellant. That the Registrar was bound to ensure that she made a determination as to what amounts were due as interest. Counsel went on to state that the Registrar should have made a determination as to the interest rates that were due. He added that she should have taken into account the principles regarding inflation as guided by the Supreme Court. He urged this Court to interpret the authorities cited by the Appellant and make a finding as to whether or not

the amounts due to the Appellant ought to be paid in accordance with the said principles of inflation.

Mr Mabbolobbolo filed submissions on behalf of the Respondent. He submitted that the learned Registrar was on firm grounds when she ruled that she had no jurisdiction to determine the principal and interest due and payable by the Respondent to the Appellant by way of the formula suggested by the Appellant as there was no such direction by the Supreme Court. He cited the case of **Kingfarm Products Limited, Mwanamuto Investments Limited v. Dipiti Rani Sen (Executrix and Administratrix of the Estate of Ajit Barab Sen)**⁽²⁾, to support his argument.

He stated that the Registrar had no power to re-open a matter which was already determined by the Supreme Court. That the amount awarded by the High Court and upheld by the Supreme Court was K20,861.68 and it is on this amount that the interest ought to be applied. Mr. Mabbolobbolo stated that the net result of the Ruling of the Registrar, by implication, is that the parties ought to proceed by way of the computations furnished by the Respondent and not those by the Appellant.

I have considered the evidence on record. I have also considered the parties' submissions and the authorities cited. I have also considered the Judgment of the Supreme Court and the Ruling delivered by the learned Registrar.

In my view, the starting point in this appeal is the judgment of Supreme Court. In its Judgment, the Court stated that-

“Our deduction from the above stated provisions governing the award of interest is that the above said provisions empower all Courts of record to make awards of interest. It was mandatory for the trial Court to order payment of interest on the sum awarded in accordance with the law highlighted above. The trial Judge erred in not doing so. We order that interest be paid by the Respondent at the average of the short-term deposit rate per annum prevailing from the date of the cause of action or writ to the date of judgment and thereafter at the current lending rate as determined by the Bank of Zambia from the date of the Judgment, until the same shall be satisfied...”

From the above order by the Supreme Court, it is clear that the only issue for determination by the Supreme Court was whether interest was payable on the amount payable as gratuity. It is also clear that the Supreme Court held that interest was payable and

further that the rate of interest should be the short term deposit rate per annum from the date of the Writ to date of judgment and at current lending rate from date of judgment to date of payment. The judgment was very clear as to how the interest on the principal amount was to be computed.

After this judgment, the Appellant computed what he thought was due to him. His computations were rejected by the Respondent. As a result of the failure by both parties to agree on the amount, the Appellant made an application pursuant to Order 3 rule 2 of the High Court Rules for determination of the amount due. This Order says the following:

“Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.”

In my view, the above order gives the ‘Court’, which term includes the Registrar and Deputy Registrar, power to make orders in the interest of justice. In the present case, the Supreme Court was making a determination on interest. It further gave guidance as

to how the interest is to be computed. The parties failed to agree on the computations hence the application before the Registrar by the Appellant.

I note that the Supreme Court did not specifically order the Registrar to compute the amount. However, in light of the fact that the parties failed to agree, coupled with the application before the Registrar and the powers given by Order 3 rule 2 to the Registrar, I hold the view that the Registrar was within her jurisdiction to make a determination.

The Respondent, in its arguments, submitted that the Registrar was on firm ground to reject the Appellant's application and order the parties to compute the amount on their own as she had no power to change the order of the Supreme Court. In my view, the Supreme Court already gave an order regarding how the amount due ought to be computed. It also determined the rights and obligations of the parties in this matter. All that is needed is for the Court to assist the parties with the computation of the figures as a result of their failure to agree. In my view, this is one situation that is envisaged by Order 3 rule 2 of the High Court Rules.

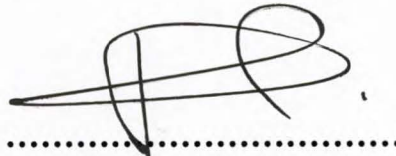
In any case, if the Registrar was to make such a determination and compute the amount due, the Registrar will not be altering the Judgment of the Supreme Court as the computations will be done in accordance with that Judgment. In short, there will be no departure from the order of the Supreme Court.

I now wish to address the Appellant's submission that inflation ought to be taken into account when computing the amount. I note that the Judgment of the Supreme Court only granted gratuity with interest at the rates specified. This entails that the Appellant ought to produce evidence before the Registrar as regards the principal and the rate of interest from the date of the action as ordered by the Supreme Court. The Supreme Court did not order that inflation ought to be taken into account. In my view, the learned Registrar, having found that she could not compute the amount in the manner the Appellant was proposing, ought to have computed the amount in accordance with the Order of the Supreme Court. As a consequence, by stating that the parties compute the amount due on their own when they had failed to agree, the Registrar was not only delaying the matter but was not serving the interest of justice.

Accordingly, I find merit in the Appellant's ground of appeal and I allow it. I order that the application for determination of interest be made before another Registrar. The amounts should be computed in accordance with the Judgment of the Supreme Court.

I award costs of this appeal to the Appellant, to be taxed in default of agreement.

Dated the 21st day of June 2018


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M. L. ZULU

HIGH COURT JUDGE

