

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

APPEAL NO. 46/2011

BETWEEN:

KUHOMA INVESTMENTS LIMITED

APPELLANT

AND

KILIMANJARO CARGO SERVICES
NANUWAR MOHAMMAD ALI RASHID

RESPONDENT
Interested Party

Coram: Hamaundu, Kabuka and Chinyama, JJS

On 1st October, 2019 and 4th October, 2019

For the appellant : Mr C. Sianondo, Messrs Malambo & Co
(standing in for Messrs Kitwe Chambers)

For the Interested party: Mr E. Chulu, Messrs Enias Chulu – Legal
Practitioners

JUDGMENT

Hamaundu, JS delivered the Judgment of the court

Rules referred to:

The Rules of the Supreme Court (White Book), Order 62/8

We must at the outset state that we have had to hear this appeal *de novo*. Indeed this is regrettable. However, it was necessitated by the fact that the panel that initially heard the appeal has been depleted.

When we heard this appeal on 1st October, 2019, we dismissed it, there and then, and awarded costs to the interested party. We now give reasons for our decision.

On 20th March, 2009, the appellant sued Kilimanjaro Cargo Services, the respondent herein, in the High Court at Kitwe for a sum of US\$69,992.45. The appellant then immediately obtained an order attaching a truck and its trailer, together with the container thereon.

Aggrieved by that order, Manuwar Mohammad Ali Rashid applied to be, and was, joined to the action as an interested party. It was clear that his only interest in the matter was to set aside the order of attachment. He immediately applied to set aside the order. The same was, however, only set aside with finality by the judge in chambers, who also awarded costs to the interested party.

The interested party applied before the Deputy Registrar for his costs to be taxed. The appellant filed its objections to the items in the bill of costs, but raised a preliminary issue. The issue was that the

interested party's application to tax costs was premature. The appellant based its objection on **Order 62 rule 8** which states:

"8-(1) subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.

(2) if it appears to the court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may, except in a case to which paragraph 3 applies, order accordingly"

The Deputy Registrar rejected the application for being misconceived. In his view, the costs for the interest party had not been ordered to be in the cause; but had been ordered to be taxed in default of agreement.

The appellant appealed to a judge in chambers whose view was that the wording of the order that his colleague had made was very clear; and that it referred to the application for the release of the motor vehicle. In his opinion, the interest party intervened solely to secure the release of the truck; and that, that purpose having been achieved, the intervening party's application was settled in full and finality. So, on those grounds, the interested party was entitled to his costs, there and then. The judge too rejected the application.

The appellant appealed to this court on two grounds, couched as follows:

“(a) The Honourable trial judge erred in law and fact where he held that the wording of the Honourable Mr Justice Siame meant that the respondent was entitled to his costs there and then.

(b) The Honourable trial judge erred in law and fact in not applying the rules on costs payable immediately as provided by the law (*White Book*)”

The appellant’s argument before us is on three limbs: First, that in his order, Mr Justice Siame did not state that the costs should be taxed forthwith; as such the condition precedent for costs to be taxed before the conclusion of the proceedings, as provided in **Order 62/8 paragraph (2)** of the **White Book** has not been satisfied. Secondly, that the interested party became a permanent party to the proceedings when he joined; so that he was caught up by the provision which provides that taxation should be at the conclusion of the proceedings. Thirdly, that the appellant had made an application to join other parties, who included the interested party; this too meant that the interested party was to be made a defendant to the proceedings and, therefore, not entitled to tax costs on

interlocutory proceedings until after the conclusion of the main proceedings.

We think that the appellant misunderstood the purpose for which the learned judge referred to the wording of Mr Justice Siame's order: It was not to show that Mr Justice Siame had said that the costs should be taxed forthwith; it was to show that the order referred to proceedings relating to the release of the truck, which proceedings the judge found to have come to an end. That is the reason why the judge said that the interested party was entitled to the costs there and then.

We find no reason to fault the learned judge for his view, for there is support for the position that he took in the form of **Order 62, rule 8 paragraph (9)** which states:


"Where it appears to a taxing officer on application that there is no likelihood of any further order being made in a cause or matter, he may tax forthwith the costs of any interlocutory proceedings which have taken place"

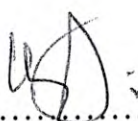
This was the case here. The ruling which set aside the order of attachment was not being contested any further; so, no further order regarding the attachment could be anticipated. Therefore, it was perfectly in order for a taxing officer to tax the interested party's costs

forthwith. In our view, therefore, **paragraph (9) of Order 62, rule 8** disposes of all the three limbs of the appellant's argument, for even if the interested party could be said to be a permanent party to the proceedings; or was to be joined as a defendant, he would be entitled to his costs immediately as long as there was no further order anticipated with regard to the attachment.

The foregoing are the reasons why we dismissed the appellant's appeal on 1st October, 2019. We award costs in this appeal to the interested party.


.....
E. M. Hamaundu
SUPREME COURT JUDGE


.....
J. K. Kabuka
SUPREME COURT JUDGE


.....
J. Chinyama
SUPREME COURT JUDGE