

IN THE SUPREME COURT FOR ZAMBIA

HOLDEN AT LUSAKA

(Civil Jurisdiction)

APPEAL NO. 179/2005

B E T W E E N:

ZAMBIA NATIONAL COMMERCIAL BANK PLC

APPELLANT

AND

ROSEMAT INVESTMENTS LIMITED

RESPONDENT

CORAM: SAKALA, CJ, MUMBA, JS, KABALATA, AJS

25th April and 12th July, 2007

For the Appellant: Mr. S. Akalutu, Legal Counsel

For the Respondent: Mr. Mathias Kabwe, In person

JUDGMENT

Mumba JS, delivered the Judgment of the Court.

Cases referred to:

1. **Buchman vs. Attorney General SCZ No. 14 of 1994.**
2. **Mhango vs. Ngulube and Others (1983) ZR 61.**
3. **Trinity Engineering (PVT) Ltd vs Zambia National Commercial Bank Ltd
1995-97 ZR 166**

By Notice of Motion the respondent seeks to have the court vary its Judgment on the applicable date for the exchange rate on the award of damages. The respondent seeks such variation under the provisions of Rule 78 of the Rules of this Court. The respondent filed written heads of argument on which he relied. In the main, the respondent submitted that the Judgment included matters that were

not raised on appeal; that the respondent believed that it was a slip or an inadvertent inclusion for the court to state the applicable date for the exchange rate.

The respondent was awarded damages arising out of a breach of contract. The case involved sales of tractors in the Democratic Republic of Congo, the prices were quoted in American Dollars. We directed that the conversion date be the date of the writ of summons. In support of the Motion, the respondent cited the cases of **Buchman vs. Attorney General (1)** and **Mhango vs Ngulube (2)**.

The appellant filed an affidavit in opposition and made oral submissions. The gist of the submissions was that the Motion under Rule 78 of the Rules of the Supreme Court was misconceived. It was submitted that the court has power to vary, confirm, amend or set aside judgment on appeal or, to give such judgment as the case may require; that a dissatisfied litigant had no right to challenge such judgment by way of Motion; it was submitted that the exchange rate

like the interest rate, was a matter of law and not fact; that it was a misconception to allege that the rate of exchange of any convertible currency was a matter of fact. It was submitted that the court has jurisdiction to set the law as it must be; and it was finally submitted that the application was an appeal in disguise against the judgment of the court.

We have examined the Notice of Motion, the affidavits and submissions by both parties. We do not find it necessary to discuss the submissions which are on record. It is obvious that the process of coming to court by way of Motion under the Rule cited is misconceived, this is a misunderstanding of the jurisdiction of the court. Rule 78 does not provide for such matters, as the matter raised by the respondent. Indeed, an award of damages involving a calculation in foreign exchange demands an exchange rate which must be used by both parties when calculating the award. Besides, the principle of law on damages for loss such as that suffered by the respondent, generally, requires an applicable date for purposes of calculation, as the court may see fit. The date when the award was issued out of court is usually a definite date when proceedings can be

said to have commenced. This being the final court, finality of any claim in all respects must be met. The effective date for the exchange rate is an aspect of the judgment which touches on the principle of fair compensation for the loss suffered, which is a matter of law. As such, it was part of the quest for justice in the circumstances of this particular case. We agree with the submissions of counsel for the appellant that rates of exchange like rates of interest are matters of law which are pronounced upon by courts.

The principle of finality does not deal with the judgment only, but also with all issues that make up the judgment or redress. This is so in order to make the judgment complete not only on liability but also on what the court has decided to be fair compensation. The exchange rate, whenever a part of a judgment is expressed in convertible currency, determines the full measure of an award and a fixed date for such conversion is an essential part of such judgment.

We refer to the case of **Trinity Engineering (PVT) v Zambia National Commercial Bank Ltd (3)** where we stated that judgments of

[P.227]

this court are final, they cannot be varied, nothing more can be done. The applicable date for the rate of exchange in our judgment was neither a slip nor a clerical error.

This motion is dismissed with costs, to be taxed in default of agreement.



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E. L. Sakala
CHIEF JUSTICE



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F. N. M. Mumba
SUPREME COURT JUDGE



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T. A. Kabalata
ACTING SUPREME COURT JUDGE