

ERNST KARL PAUL LEMBE v KEARNEY AND COMPANY LIMITED (1979)
Z.R. 20 (H.C.)

HIGH COURT
SAKALA, J.
12TH FEBRUARY, 1979
1973/HP/182

Flynote

Criminal law and procedure - Appeals - Jurisdiction - Appeal against decision of Deputy Registrar on a matter referred to him by judge - To whom does appeal lie.

Headnote

In this case the judge entered judgment in favour of the plaintiff and directed that damages be assessed by the deputy registrar in chambers. The appellant was dissatisfied with the assessment and appealed against the decision to another judge.

Held:

- (i) A decision, order or direction by the deputy registrar on a matter referred to him by a judge is made on behalf of that judge and

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an appeal does not therefore lie to the same judge or to a judge of the same jurisdiction.

Legislation referred to:

High Court Rules Cap 50, O 30, r 10 (1)
Supreme Court Rules, 1976 (England) O. 58, r 2

For the plaintiff: C.D. Mabutwe, Shamwana & Co.
For the defendant: F.M. Jere, Gib Chigaga & Co.

Judgment

SAKALA, J.: The appellant has applied to this court, for extension of time within which to file a notice of appeal to a judge in chambers.

The notice in part reads as follows:

"Take notice that Kearney and Company Limited being desirous of appealing against the ORDER of Assessment given by the Acting Deputy Registrar Mr K.A. Chishala on 28th September, 1978, HEREBY GIVES NOTICE OF APPLICATION for an extension of time within which to give Notice of Appeal to a Judge in Chambers against the said ORDER of Assessment for the reasons and upon the following grounds . . ."

Before hearing the application, the court invited submissions on a point of procedure namely, whether an appeal from the assessment of damages by the deputy registrar lies to a judge in

chambers or direct to the Supreme Court. I raised this point because after going through the history of the case, I observed that on the 4th August 1977, Mr Justice Bweupe after entering judgment in favour of the plaintiff directed that damages be assessed by the deputy registrar in chambers. The deputy registrar assessed the damages. The appellant was dissatisfied with that assessment and has appealed to this court against the assessment. If the application for the extension of time is allowed, what it means in effect is that, this court will have to hear an appeal against the decision of the deputy registrar on assessment of damages referred to him by a court of the same jurisdiction as this court.

On behalf of the applicant, Mr. Jere submitted that the application was properly before the court in accordance with the provisions of O. 30, r. 10 (1), of the High Court Rules, Cap. 50. On the other hand, it was contended by Mr. Mabutwe that O. 30, r. 10 (1) is silent as to what matters are subject of appeal to a judge in chambers from the registrar. He submitted that in the light of the provisions of O. 58, r. 2, of the 1976 ed. of the White Book, an appeal against assessment of damages lies only to the Supreme Court. Order 30, rule 10 (1), reads as follows:

"Any person affected by any decision, order or direction of the Registrar may appeal therefrom to a Judge at chambers. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons, within seven days after the decision, order or direction complained of, or such further time as may be

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allowed by a Judge or the Registrar. Unless otherwise ordered, there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision order or direction of the Registrar shall be no stay of proceedings unless so ordered by a Judge or the Registrar."

It will be observed that the most significant words are- "Any person affected by any decision, order or direction of the Registrar may appeal therefrom to a Judge at chambers. . ."

In the instant application, the appeal is against the decision of the deputy registrar made after the maker was referred to him by a judge. There is no suggestion that the judge had no jurisdiction to assess damages. The High Court (judge) has jurisdiction to assess damages. It follows in my view that a decision, order or direction made by the deputy registrar on a matter referred to him by a judge is made on behalf of the judge and hence it is the decision or order of the judge who referred the maker to him. While O. 30, r. 10 (1), of Cap. 50 may be said to be wide, it would in my view be a contradiction that a decision made by the deputy registrar on behalf of a judge should be appellable to the same judge or court of same jurisdiction. While O. 30, r. 10 (1), may not be of great assistance on the point, this court is in my opinion entitled to seek assistance from O. 58 (2) of the 1976 ed. of the White Book by virtue of s. 10 of Cap. 50 which entitles the High Court to conform to the law and practice observed in the High Court of justice in England in case of default in our law. The practice in England according to O. 58 (2) of the Supreme Court rules is that an appeal from the judgment, order or decision of the master is to the Court of Appeal. Part of the comments on O. 58 at p. 835 of the 1976 ed. of the White Book reads as follows:

"The effect of para. (1) is that appeals from all judgments, order or decision of a Q.B. Master in all causes, matters, questions or issues tried before or referred to him lie direct to the Court of Appeal. The words 'hearing or determination' refer to a proceeding which results in a final, as opposed to an interlocutory in character is made after the trial or hearing of an action or assessment of damages has begun before a Master and during the course of such trial or hearing, e.g., grant or refusal of leave to amend, it is submitted that the appeal against such order will lie to the Court of Appeal as part of an appeal against the final order or judgment, for otherwise it would be anomalous that the appeal in such circumstances against the interlocutory order should lie to the Judge in Chambers and the appeal against the final order to the Court of Appeal."

In the present appeal, I told the opinion that on this preliminary point, this court has no jurisdiction. Accordingly I decline to entertain the application on the ground of lack of jurisdiction.

Application refused
