

**IN THE SUPREME COURT OF ZAMBIA SCZ/8/243/2014**

**HOLDEN AT LUSAKA**

**(Civil Jurisdiction)**

**BETWEEN:**

**ZAMBIA STATE INSURANCE CORPORATION LIMITED APPELLANT**

**AND**

**DAVID MWANAMOYA AND OTHERS RESPONDENT**

**BEFORE:**

**Hon. A.A. Lungu**

**FOR THE APPELLANT:**

**Mrs. C Chapewa – In House  
Counsel**

**FOR THE RESPONDENT:**

**Mr. J. Mulongo – Messrs. MSK  
Advocates**

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**R U L I N G**

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This is a ruling on an application by the Respondent for me to address and resolve whether the appellant can maintain and have taxed a bill of costs drawn up and filed into court pursuant to revoked law namely Statutory Instrument No. 9 of 2001 and whether or not an employed advocate is entitled to profit costs under the Legal Practitioners (costs) Order 2017, Statutory Instrument No. 6 of 2017 or at all.

Before this ruling was heard, there was another preliminary issue raised which has since been dealt with.

On the first limb of contention the Respondent submitted that the bill filed was relying on Statutory Instrument No. 9 of 2001 and this

was misleading to the Court as it was repealed by the Legal Practitioners costs Order No. 6/2017. To recant this the Appellant noted that their citing of repelled law should not warrant the bill dismissed as it was an error or irregularity which can be rectified without prejudice to the Respondent. They cited Article 118 of the Constitution that undue regard to procedural technicalities at the expense of dispensing justice is unconstitutional. They also cited the cases of Standard Chartered Bank PLC v Willard Solomon Nthanga & Others Appeal No. 51 of 2016 and Standard Chartered Bank PLC v Banda Appeal No. 54/2015 where they submitted that the Supreme Court directed that if irregularity can be cured without prejudice it is desirable that it be put right subject to an order for costs to the ailing party.

In rebuttal, the Respondent submitted that citing Appeal No. 54 of 2015 as well as the amended constitutional provision is wrong as they were not in force and therefore, could not be relied upon. He added that not only was the citation on the bill of costs wrong, all the entries therein were also wrong which called for the bill to be expunged as it is anchored on repealed law.

Coming to the second limb, the Respondent questioned whether an employed advocate is entitled to profit costs under the Legal Practitioners (Costs) Order 2017 Statutory Instrument No. 6 of 2017. Relying on the Legal Practitioners Practice Rules 2002 Statutory Instrument No. 51 of 2002, he submitted that an employed advocate shall not share profits costs with an unqualified



person. He also cited Judge Nyangulu from the case of the Legal Practitioners Costs Order, Legal Practitioners Committee of the Law Association of Zambia [2002] HP 0202 to buttress his argument that proceeding in this taxation would offend the Legal Practitioners Practice Rules No. 7(1), 41 and 42 which also make provision for disciplinary proceedings. He summarized that the appellants counsel being an in-house advocate is prohibited from sharing costs with her unqualified employer.

In response the Appellant's advocate noted that the Legal Practitioners Act, in its definition of a "Legal Practitioner" does not make a distinction between one who is employed by a company or one in private practice. It provides for one admitted to practice and on the roll. Reference was also made to Section 4 of the Legal Practitioners (costs) Order 2017 on who is entitled to costs and submitted that there is no discrimination against employed lawyers. She indicated that from inception the Appellant had been represented by counsel i.e., Mbambara Legal Practitioners. She prayed for the bill to be taxed and the preliminary issue dismissed as taxation also included not only profit costs but fees, charges, disbursements, expenses and remuneration which directly go to the Appellant.

In rebuttal, the Respondent mentioned that there was a distinction between lawyers employed and those in private practice and no advocate should share costs with their employer. He pointed out that the Appellant's counsel conceded that she did not represent

the Appellant but Messrs. Mbambara and is thus not the right counsel to claim costs.

I am grateful to both parties for their spirited arguments. It goes without question that having been awarded costs the Appellant did file a bill of costs pursuant to SI No. 5 of 2001 and SI No. 9 of 2001 and that the items in the bill date from the year 2008 to July 2018. The argument first raised is that the Appellant used old scales as opposed to the new scales in the prevailing Statutory Instrument No. 6 of 2017.

Dr. Justice M. Malila SC as he then was already made pronouncement on this issue in **Appeal No. 004/2013 - Bank of Zambia and Vortex Refrigeration Company, Dockland Construction Company Limited**. He held that Statutory Instrument No. 6 of 2017 does not have retroactive effect and therefore the applicable Statutory Instrument for purposes of taxation of the first respondent's bill of costs is Statutory Instrument No. 9 of 2001 for all works done before Statutory Instrument No 6 of 2017 took effect.

What this means is that all the professional works in the bill, prior to 1<sup>st</sup> January 2017 are subject to the calculation of under SI No. 5 and SI No. 9 of 2001 and those done on or after the 1<sup>st</sup> of January 2017 are subject SI No. 6 of 2017.

The assertion therefore that the Appellant should have applied SI No. 6 of 2017 for all the items in their bill of costs as raised by the



Respondent is flawed. It is not the whole bill that has wrong calculation but items 177 to 182 which are supposed to be based on the current Statutory Instrument No. 6 of 2017.

The Appellants failure to use the correct computation for the six items does not strike me as being so grave an error for the bill to be expunged. It was noted in the case of **Zambia Revenue v Jayesh Shah (2001) ZR 60** that

“The rules must be followed but the effect of a breach will not always be fatal if the rule is merely regulatory or directory”

In this regard I order that the Appellant to amend pages 22, 23 and 24 of their bill of costs in order to include the recalculation of items 177 to 182 which should be based on Statutory Instrument No. 6 of 2017.

Coming to the second issue raised, the question addressed to me asks what qualifies a legal practitioners from drawing costs given in a suit or indeed what disqualifies them. **Section 4 of Statutory Instrument No. 6 of 2017** provides that:

A practitioner who is entitled or permitted to appear in any proceedings before a commission, tribunal, mediator or arbitrator board, court or other body shall be entitled to costs in accordance with the scale set out in the schedule and the provisions of

the High court rules with regard to taxation shall apply to the taxation of the costs.

A practitioner is defined in the **Legal Practitioner's Act CAP 30 of the Laws of Zambia** in section 2 as a "person who has been admitted to practice as an advocate under the provisions of the Act and whose name is admitted on the Roll.

I concur with the Appellant that neither the Legal Practitioners Act nor Statutory Instruments No. 6 of 2017 or 9 of 2009 make a distinction between a lawyer in private practice and a lawyer working for a company as in house counsel. It only states a "practitioner" is entitled to costs.

Further, Part V of the Legal Practitioners Practice Rules, 2002, statutory Instrument No. 51 of 2002 notes that an employed practitioner shall practice as an advocate or practitioner only if they hold a valid practicing certificate and are appearing on behalf of their client (the employer). It therefore, goes without saying that employed legal practitioners and legal practitioners in private practice are entitled to costs awarded. The case of **2002/HP/0202 In the Matter of the Legal Practitioner Act Cap 30, In the Matter of the Legal Practitioners (costs) Order 2001 and in the Matter of the Legal Practitioners Committee of the Law Association of Zambia and Section 7(1) of the Legal Practitioners Practice Rules 2002** give guidance on how those costs when retrieved are to be handled or rather who has right to them. A practitioner representing the successful litigant/client and



not the successful litigant is entitled to costs if they have a practicing certificate. This is with the exceptions of refunds due to the client such as deposits of legal fees paid.

The status of a practitioner in private practice and an employed advocate is very similar in that they both still draw salaries, one from the firm and the other from the employer. The Rules indicate that in representation the employer is considered a client. It is my position therefore and in consideration of the above that when it comes to the question of costs awarded there is no distinction in practice or discrimination in right of claim to remove an employed practitioner from claiming costs awarded by the court.

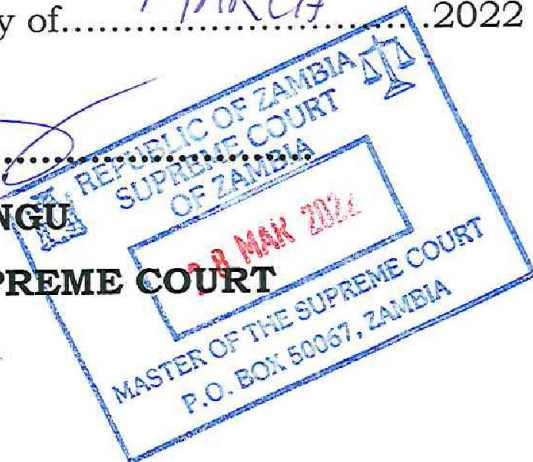
Given the forgoing I find no merit to dismiss or expunge the bill of costs filed.

The order for amendment as directed earlier should be done within 7 days and a filed copy sent to the Respondent who are also given 7 days to file in their objections to the bill. The appellant is further given 5 days to respond to the objections if they so desire.

This matter shall resume before me on the 26<sup>th</sup> of April 2021 at 10:30 hours.

Delivered this.....28<sup>th</sup>..... day of.....MARCH.....2022

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**A. A. LUNGU**  
**MASTER OF THE SUPREME COURT**



REPUBLIC OF ZAMBIA  
SUPREME COURT  
OF ZAMBIA  
18 MAR 2022  
MASTER OF THE SUPREME COURT  
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