

IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT NDOLA.
(Civil Jurisdiction)

SCZ APPEAL NO. 65/2001

SOCIETE MINIERE DE BAKWANGA "MIBA" APPELLANT

AND

ZAMBIA NATIONAL OIL COMPANY LIMITED RESPONDENT

**Coram: Ngulube, C. J., Sakala, J.S., and Mambilima, AG. J. S.,
5th December, 2001 and 5th March, 2002.**

For the Appellant: N/A.

For the Respondent: Mr. Mwale of Mwale Musonda Associates.

J U D G M E N T

Sakala, J.S., delivered the Judgment of the Court.

Cases referred to:

- 1. Shanzi V. UBZ (1999) ZR 397.*
- 2. Bank of Zambia V. Anderson (1993-1994) ZR 47.*

We heard this appeal in the absence of counsel for the Appellant as we were satisfied that the Appellant's counsel was aware of this new date; the matter having been adjourned in open court at Lusaka on 11th October, 2001 to be heard at Ndola Sessions on 4th December, 2001. However, in considering the appeal, we have taken into account the amended memorandum of appeal as well as the heads of argument based on the two grounds contained in the amended memorandum of appeal.

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This appeal was against the learned Appellate Judge's refusal to grant the Appellant leave to apply for review of a Judgment on appeal out of time.

The brief facts of the case were that on 30th November, 1998, the Appellant commenced an action by a Specially Endorsed Writ claiming for US\$ 88,476.11, being part of the money paid by the Appellant to the Respondent as consideration for the supply of 650 Cubic Meters Gas Oil at US\$ 210 per Cubic Meter by the Respondent which commodity the Respondent had only supplied in part.

The Appellant obtained Judgment on admission before the Deputy Registrar to recover the balance of the undelivered consignment at 35% from the date of the Writ to date of Judgment and thereafter 6 percent. The Respondent appealed to a Judge in Chambers against this Judgment. The Appellant also cross appealed against the award of interest.

On 4th June, 1999, the learned Appellate Judge set aside the award of 35 percent interest on account that the claim was in United States Dollars. The Appellate Judge awarded interest on the amount payable at the average current bank dollar

interest rates applicable on short term deposits from the date of the Writ up to the date of Judgment and thereafter at the current dollar lending rate as determined by the Bank of Zambia.

On 20th June, 2000, over a year later, the Appellant applied, ex-parte, for leave to apply for review of the Judgment dated 4th June, 1999. The application was supported by an affidavit. The learned Appellate Judge considered the affidavit evidence in support of the Application and expressed surprise why it had taken one year to apply for review. The court also explained that it had rejected the demand, which was being again raised, to back date interest to a date of demand. The Appellant's application for review out of time was accordingly refused. The Appellant has now appealed against this refusal to this court.

The Appellant filed heads of argument based on two grounds of appeal namely that the Appellate court below erred in law in not granting the Appellant leave to apply for review of a Judgment delivered on 4th June, 1999 out of time; and that the learned Appellate Judge in the court below misdirected herself when she held that interest must run from the date of demand. We want quickly to indicate that the second ground of appeal, as pointed out by Mr. Mwale in his heads of

argument appears to have misconstrued the Appellate Judge's ruling. If she ever said "interest must run from the date of demand" then that must have obviously been a mistake on her part and inconsistent with her reasoning where she relied on the authorities of *Shanzi Vs UBZ(1)* and *Bank of Zambia Vs Anderson (2)* where the Supreme Court has said interest runs from the date of the Writ.

The gist of the written heads of argument on behalf of the Appellant was that the cases of *Shanzi V. UBZ (1)* and *Bank of Zambia V Anderson(2)* had no relevance to the facts of the case before the court since the award in those cases was for general damages in which the interest rate runs from the date of service of the Writ. The contention on behalf of the Appellant was that in the present case, the Appellant sought an award of interest on the debt owing from the time the debt became payable or at the time on which payment was demanded.

We take note that the written heads of argument on behalf of the Appellant did not deal with the ground relating to refusal to grant leave to apply for review of Judgment of 4th June, 1999 out of time. Mr. Mwale also relied on his written heads of argument. He observed that although the appeal was based on two

grounds, written heads of argument on behalf of the Appellant only dealt with the question of award of interest. He pointed out that in relation to the refusal to grant leave to apply for review out of time, the court will note that from the date of the Judgment, 4th June, 1999, no steps were taken by the Appellant to apply for review of that Judgment until 20th June, 2000, a year later. Counsel contended that this was inordinate delay for which there was no explanation in the affidavit filed in support of the application for review. He submitted that the Judge was on firm ground when she refused the application. As regards the refusal to award interest from the date of demand, counsel pointed out that there is nowhere in the record where the Judge made such a ruling, pointing out that the Judge consistently made it clear that her award of interest was from the date of the Writ.

We have considered the written heads of argument by both learned counsel. We are satisfied that no special reason was advanced for applying for review out of time, one year after the Judgment. The application was properly rejected, although in rejecting it the court still alluded to its earlier Judgment. We have also considered the arguments on commencement date of interest. We reject the arguments. In terms of this court's decisions in the cases of *Shanzi* and

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Anderson interest runs from the date of the Writ to the date of Judgment. This is still the law. The ground on interest also fails.

The two grounds of appeal having been unsuccessful, the appeal is dismissed with costs to be taxed in default of agreement.

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M.M.S.W. Ngulube,
CHIEF JUSTICE.

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E. L. Sakala,
SUPREME COURT JUDGE.

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I.C. Mambilima,
SUPREME COURT JUDGE.