

## **CALTEX OIL ZAMBIA v TERESA TRANSPORT LIMITED.**

Supreme Court.

Lewanika, DCJ, Chibesakunda and Mabilima JJS.

17<sup>TH</sup> July 2002 and 9<sup>TH</sup> September 2002.

SCZ Judgment No. 22 of 2002.)

### **Flynote**

*Civil Procedure – Enforcement of judgment – Whether there is provision to conduct running litigation in the Supreme Court.*

*Civil procedure – Judgment – Enforcement of –By High Court.*

### **Headnote**

On 16<sup>th</sup> March 2001, the Supreme Court made an Order that money that was withdrawn from the court by the respondent be paid back into Court within 30 days from the date of that Order. On 5<sup>th</sup> December 2001, when the main appeal was heard, Counsel for the appellant drew the attention of the court to the fact that the respondent had not complied with the Order of 16<sup>th</sup> March 2001, and requested for direction, as to what should be done about enforcing the order. The Court advised Counsel that the Supreme Court does not enforce its own orders and advised her to make the necessary applications to the High Court. On 20<sup>th</sup> December 2001, Counsel made applications to the High Court for sequestration and contempt. The applications were dealt with by two Judges of the High Court, one after the other and the latter Judge refused to entertain the application on the ground that he had no jurisdiction to do so.

#### **Held:**

Judgments and orders of the Supreme Court are to be enforced in the High Court as there is no provision to conduct running litigation in the Supreme Court.

#### **Legislation referred to:**

Supreme Court Act Cap. 25 s. 9.

*C. Makungu of Makungu and Company* for the appellant.

*No appearance* for the respondent.

### **Judgment**

**LEWANIKA, DCJ** delivered the ruling of the court.

This is a notice of motion by the appellant for directions as to which procedure should be taken to enforce the order of the court made on 16<sup>th</sup> March 2001, and as to whether the informal order of the court given when the main appeal was heard is invalid.

The brief background to this appeal is that on 16<sup>th</sup> March 2001, we made an order that the money that was withdrawn from the court by the respondent be paid back into court within 30

days from the date of that order.

On 5<sup>th</sup> December 2001, when we heard the main appeal, Counsel for the appellant drew our attention to the fact that the respondent had not complied with our order of 16<sup>th</sup> March 2001, and asked for directions as to what should be done about enforcing the order. We advised her that the court does not enforce orders and advised her to make the necessary applications to the High Court. On 20<sup>th</sup> December 2001, Counsel for the appellant made applications to the High Court for sequestration and contempt. These applications were dealt with by two judges of the High Court one after the other and the latter Judge refused to entertain the applications on the ground that he had no jurisdiction to do so.

We would like to draw the attention of the parties to section 9 of the Supreme Court of Zambia Act which provides as follows:-

Section 9: "The process of the court shall run throughout Zambia and any judgment of the court shall be executed and enforced in like manner as if it were a judgment of the High Court."

The effect of this section is that our judgment and orders are to be enforced in the High Court as there is no provision to conduct running litigation in this court. As to the notice of motion now before us, we note that on 4<sup>th</sup> June 2002, we delivered judgment in the main appeal and set aside the judgment of the High Court and ordered a retrial before another Judge at Ndola. We now direct that the same Judge who will conduct the retrial should deal with the applications for sequestration and contempt. The costs of this application will abide by the outcome of the main action.

Appeal allowed.