

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

APPEAL NO. 142/2000

(CIVIL JURISDICTION)

BETWEEN:

FR. TELESPORE TAFUNA

APPELLANT

AND

KENNETH SIKASOTE

RESPONDENT

Coram: Chaila, Lewanika and Chibesakunda, JJS
on 7th June 2000 and 23rd February 2001

For the Appellants: Mr J M Chimembe of Messrs. J M C and Associates, Lusaka

For the Respondent: Mr Sikasote in Person

JUDGMENT

Chibesakunda JS, delivered the judgment of the Court

This is an appeal against Wanki J's judgment, which judgment was mainly on the alleged irregularities in lodging the appeal before the High Court. The High Court dismissed the appeal by Fr. Telespore Tafuna, on the grounds that the appeal before the High Court was not lodged in accordance with Order 44 Rule 3 of the Subordinate Act Rules, Cap. 25 of the Laws of Zambia. The court below had ordered damages of K3,500,000.00, in favour of the complainant now the Respondent.

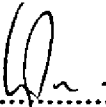
Before the High Court the Appellant argued that the Magistrate's court had no jurisdiction to award compensation in an adultery matter which if adultery was proved would have amounted to a ground for divorce. He argued that the Subordinate court had no original jurisdiction on matrimonial customary law matters. His other argument is that the same court below misconstrued the Appellant's admission. The Appellant also advanced one or two grounds, which we do not intend to deal with. The High Court dismissed the appeal without dealing with the important ground of jurisdiction advanced before it. The learned counsel for the Appellant argued the same ground before us. When we heard the appeal in our last session in Ndola we upheld the appeal and set aside the order made by the High court.

We now wish to give reasons for our decision in this judgment. We entirely accept the learned counsel's arguments before us. In particular, we accept his argument that the learned trial Judge misdirected himself when he left unresolved the question of jurisdiction. The Subordinate court has no jurisdiction on claims for damages for adultery in matrimonial customary law issues. Such claims are based on the customary law notion of compensation for adultery. Only the local court has such jurisdiction. The Subordinate court has appellate jurisdiction if either party is not satisfied with the local court's judgment.

We, therefore, as already stated, set aside the judgment by the High Court and we order costs to be borne by each party.

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M S Chaila
SUPREME COURT JUDGE

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D M Lewanika
SUPREME COURT JUDGE


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L P Chibesakunda
SUPREME COURT JUDGE

Mr. Lisimba submitted that the application was misconceived as Rule 78 of the Supreme Court was intended to correct clerical errors or omissions which do not change the judgment. He submitted that since the appellant was requesting the court to review the whole of the judgment, that was not a clerical error as it goes to change the whole judgment. He contended that the appellant had not shown any error in the judgment. He submitted that the issue of discrimination was a finding of fact which was not appealable.

We have very carefully considered the arguments of both the appellant and the respondent. From the heads of arguments in support of the motion, it is evident that the appellant was, under the disguise of Rule 78, asking this court to review its own judgment. We have said in many cases before us including in *Trinity (PVT) Ltd V. Zambia National Commercial Bank (I)* that the Slip Rule is meant for the court to correct clerical mistakes or errors in its judgment arising from accidental slips or omissions. From the arguments advanced in support of the motion, we are satisfied that the appellant was effectively seeking the reviewing and setting aside of our previous judgment which is not possible. We do not have that jurisdiction of reviewing our own judgment or setting it aside and re-

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opening the appeal. If it were not so, then there would be no finality in appeals coming before us. This motion is therefore refused with costs to be taxed in default of agreement.

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E.L. Sakala,
ACTING DEPUTY CHIEF JUSTICE.

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M. S. Chaila,
SUPREME COURT JUDGE.

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D. K. Chirwa,
SUPREME COURT JUDGE.