

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2014/HP/1742



BETWEEN:

SEBASTIAN SAIZI ZULU, SC

PLAINTIFF

AND

ATTORNEY GENERAL

DEFENDANT

CORAM: HONOURABLE JUSTICE MR. MWILA CHITABO, SC

For the Plaintiff: Mr. S. Zulu of Messrs Zulu and Company

For the Defendant: State Advocate

R U L I N G

Cases referred to:

- 1. Stickrose (PTY) Limited v. Permanent Secretary, Ministry of Finance (1999) ZR 159 Chikuta v Chipata Rural Council S.C.Z No. 6 of 1983.*
- 2. Buchanan v. Attorney General (1993/1994) ZR 131*

Legislation referred to:

- 1. The State Proceedings Act Chapter 71 of the Laws of Zambia*

This was an application by the Plaintiff for an Order to direct the Secretary to comply with section 21 (3) of the State Proceedings Act. The said application was accompanied by an affidavit in support. The said affidavit was deposed to by the Plaintiff herein.

He contended that on 20th August after complying with the rules of Court, Judgment in default was entered against the Attorney General for payment of his benefits as former Minister of Justice. A certificate of Judgment was obtained on 23rd March, 2016 for the said Judgment from the District Registrar of the High Court. The said certificate certified that the amount owed to the Plaintiff was K240,929.83. The said Judgment and certificate were exhibited and marked "**SSZ1**" and "**SSZ2**".

He further contended that on 30th March, 2016 he wrote to the Secretary to the Treasury, Ministry of Finance with a copy to the Attorney General forwarding the certificate of Judgment and requested him to pay the judgment sum. The said letter was marked "**SSZ3**".

He averred that on 20th April, 2016 the Acting Secretary to the Treasury Ministry of Finance wrote to him advising that he should pursue his claim through the Ministry of Justice. The said letter was marked exhibit "SSZ4". He responded to him by a letter dated 28th April, 2016 advising that pursuant to section 21 (3) of the State Proceedings Act and the Certificate of Judgment, he was to pay the plaintiff the judgment debt.

He averred that to date the Secretary to the Treasury had not informed him that he had paid his terminal benefits to the Ministry of Justice nor the Attorney General informed that there was no money.

The applicant cited the case of ***Stickrose (PTY) Limited v. Permanent Secretary, Ministry of Finance (1999) ZR 159*** which stipulated section 21 of the State Proceedings Act which makes provisions for the issuance on application of a certificate containing particulars of an order made against the State.

He relied on section 21 (3) of the State Proceedings Act to support his claim. The said section provides that:

“(3) If the order provides for the payment of any money by way of damages or otherwise, or any costs, the certificate shall state the amount so payable and the Permanent Secretary Ministry of Finance shall subject as hereinafter provided pay to the person entitled or to the legal practitioner acting for such person in the proceedings to which the order relates the amount appearing by the certificate of be due to him together with the interest, if any allowed under section twenty”

I have carefully considered the affidavit in support of this application as well as the arguments of the Plaintiff. The State proceedings Act is very clear with regard to executions against the State. Section 21 (4) of the said Act provides that:

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the State of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the State or any public officer as such, of any such money or costs”

The effect of this particular provision is that you cannot execute judgment against the State. This position was agreed to by the Supreme Court in the case of ***Stickrose (PYT) Limited v. Permanent Secretary, Ministry of Finance***.¹

The Plaintiff in this matter has asked the Court to grant an Order compelling the Secretary to the Treasury, Ministry of Finance to comply with the default judgment against the State within a stipulated time frame. The reason for this was that there has been an unreasonable delay on the part of the State in complying with the said Default Judgment.

Having considered the arguments of the Plaintiff, I find no difficulty in stating that by the doctrine of stare decisis, I am bound by the holding of the Court in the ***Stickrose***¹ case.

In the case of ***Buchman v. Attorney General***², the Supreme Court expressed themselves clearly in a matter where a High Court Judge had given extension of stay permit to an applicant under the Immigration and Deportation Act. Their Lordships observed at page 152

“It is in the light of this section that Mr. Kinakiwara has complained that the Court’s are going too far in granting extensions. We fully agree with his sentiments. The people concerned should make representations to the Executive Authorities.....”

As alluded to, these remarks arose in the extension of Immigration permits. In my view however, the observations aptly apply to the case in casu. In my view I will be going too far by ordering the Secretary to the Treasury in the Ministry of Finance to comply with the consent Judgment in a prescribed time. Declaratory orders against the State should sparingly be made.

The effect of the Plaintiff’s application is that the Court will be compelling the state to fulfill the default judgment within a certain time frame. This is against the principle laid out in the **Stickrose** case.

I accordingly dismiss this application. Costs shall be in the cause. Leave to appeal granted.

Delivered this ^{21st}..... day of September, 2016



**Mwila Chitabo, SC
Judge**