

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

2011/HP/1307

BETWEEN:

DAVIS MANYANDO MUYUNDA

AND

UNITURTLE INDUSTRIES (Z) LIMITED



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 1st DAY OF
DECEMBER, 2017**

For the Plaintiff : Mr B. Mukatuka, Robson Malipenga and Company

For the Defendant : Mr M. Mulenga, AMC Legal Practitioners

R U L I N G

CASES REFERRED TO:

1. *Mayo Transport V United Dominions Corporation Limited 1962 R&N LR 22*
2. *Abraham Mohamed and Alantra Transport Limited V Safeli Chumbu 1993 - 1994 ZR 4*
3. *Lisulo V Lisulo 1998 ZR 75*
4. *Akashambatwa Mbikusita Lewanika and others V F.T.J Chiluba 1998 ZR 79*
5. *Jamas Milling Company Limited V Imex International PTY Limited 2002 ZR 79*
6. *Zamtel V Aaron Mweene SCZ No 7 of 2012*

LEGISLATION REFERRED TO:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia*
2. *The Law Reform Miscellaneous Provisions Act, Chapter 74 of the Laws of Zambia*
3. *The Judgments Act, Chapter 81 of the Laws of Zambia*

This is a ruling on an application made by the Plaintiff for an order to review the judgment, made pursuant to Order 39 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia. Counsel relied on the affidavit filed in support of the application on 27th October, 2017 as well as the submissions.

He stated that it is trite law that any judgment for the payment of money should be paid with interest as provided in Section 2 of the Judgments Act, Chapter 81 of the Laws of Zambia. That therefore it was their prayer that this court reviews its judgment to the extent that it orders that the Defendant pays the 2007 March salary to the Plaintiff with interest to date.

In response, Counsel for the Defendant submitted that notwithstanding the provisions of the Judgment Act, Chapter 81 of the Laws of Zambia, Section 4 of the Law Reform (Miscellaneous Provisions) Act, Chapter 74 of the Laws of Zambia, and Order 36 Rule 8 of the High Court Act, Chapter 27 of the Laws of Zambia provide for the payment of judgments sums with interest.

However that in view of what transpired before the court, the relief sought is not attainable by way of review of the judgment, and reference was made to the case of **ZAMTEL V AARON MWEENE SCZ No 7 of 2012**. It was stated that the case is very instructive as to when review of judgment is available. That it was held in that case that except by way of appeal, no court has the power to review its' judgment or order after it has been drawn.

Further that the case of **MAYO TRANSPORT V UNITED DOMINIONS CORPORATION LIMITED 1962 R&N LR 22** although a High Court decision, but which was approved in the cases of **AKASHAMBATWA MBIKUSITA LEWANIKA AND OTHERS V F.T.J CHILUBA 1998 ZR 79** and **LISULO V LISULO 1998 ZR 75** and **JAMAS MILLING COMPANY LIMITED V IMEX INTERNATIONAL PTY LIMITED 2002 ZR 79** held that review under Order 39 has limited scope, which is limited to the correction of clerical errors, slips or omissions, where the court intends to convey the meaning of a judgment or

where there is fresh evidence which would have a material effect upon a court's judgment, which was discovered after the decision of the court, but which could not be obtained earlier with due diligence.

That where there is an error of fact or law, the only remedy available is to appeal. Counsel stated that it was their submission that the issues raised in this application are of law, and therefore the Plaintiff should have appealed against the non-award of interest. He prayed that the application be dismissed with costs.

In reply, it was stated that the cases of **AKASHAMBATWA MBIKUSITA LEWANIKA AND OTHERS V F.T.J CHILUBA 1998 ZR 79** and **JAMAS MILLING COMPANY LIMITED V IMEX INTERNATIONAL PTY LIMITED 2002 ZR 79** explained the principles governing review. That one such principle is where there is an omission, and it was Counsel's contention that is the position in this case, the failure to award interest is just a mere omission, as it is mandatory that a monetary judgment should attract interest.

With regard to the submission that the Plaintiff should have proceeded by way of appeal, the submission was that they were not dissatisfied with the judgment, but were only contesting the omission to award interest, and prayed that the application be granted.

I have considered the application. In this case the Plaintiff in the affidavit in support of the application deposed that the judgment of 25th September, 2017 delivered by this court ordered the Defendant to pay him his March, 2007 salary, but that the said award did not include the payment of interest on the amount. The Plaintiff made reference to various authorities in the submissions filed on 14th August, 2017 which in my view are of no relevance to this application, as they related to whether the Plaintiff was entitled to be paid damages for wrongful dismissal.

In opposing the application before me, Counsel for the Defendant referred to various cases, arguing that the correct procedure that should have been

adopted by the Plaintiff should have been to appeal, and not to apply for review of the judgment on account of the failure to award interest on the judgment sum found due. It was argued that Order 39 has very limited scope when it comes to reviewing judgments which are;

1. *correction of clerical errors, slips or omissions,*
2. *where the court intends to convey the meaning of a judgment*
3. *where there is fresh evidence which would have a material effect upon a court's judgment, which was discovered after the decision of the court, but which could not be obtained earlier with due diligence.*

Order 39 of the High Court Rules provides that;

"1. Any Judge may, upon such grounds as he shall consider sufficient, review any judgment or decision given by him (except where either party shall have obtained leave to appeal, and such appeal is not withdrawn), and, upon such review, it shall be lawful for him to open and rehear the case wholly or in part, and to take fresh evidence, and to reverse, vary or confirm his previous judgment or decision:

Provided that where the judge who was seized of the matter has since died or ceased to have jurisdiction for any reason, another judge may review the matter.

2. Any application for review of any judgment or decision must be made not later than fourteen days after such judgment or decision. After the expiration of fourteen days, an application for review shall not be admitted, except by special leave of the Judge on such terms as seem just."

As seen from the authorities relied upon by Counsel for the Defendant, there are a number of cases that have interpreted the scope of the said Order. In this case the judgment that I delivered on 25th September, 2017 awarded the

Plaintiff his March 2007 salary but without interest on it. The Plaintiff pursuant to Section 2 of the Judgments Act, Chapter 81 of the Laws of Zambia has applied for special review of the judgment to the extent that interest should be made payable on the judgment sum.

Section 2 of the Judgments Act, Chapter 81 of the Laws of Zambia provides that;

“Every judgment, order, or decree of the High Court or of a subordinate court whereby any sum of money, or any costs, charges or expenses, is or are to be payable to any person shall carry interest as may be determined by the court which rate shall not exceed the current lending rate as determined by the Bank of Zambia from the time of entering up such judgment, order, or decree until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment, order, or decree.”

This provision is couched in mandatory terms, and the Defendant in agreeing with this position of the law referred to the Law Reform (Miscellaneous Provisions) Act, Chapter 74 of the Laws of Zambia, as well as Order 36 Rule 8 of the High Court Rules, Chapter 27 of the Laws of Zambia as also providing for the award of interest on judgments sums found due.

The issue for determination however is whether an application for review was the right mode of requesting the court to award the interest that it omitted to award in the judgment. As seen, Counsel for the Defendant citing various authorities argued that the award of interest is an issue of law which can only be addressed by way of appeal, while the Plaintiff submitted that it should be by way of review, as the failure to so award the interest was merely a slip or an omission, which can be taken care of by way of review.

A perusal of the authorities relied on by Counsel for the Defendant in arguing that the Plaintiff can only proceed by way of appeal in this matter, shows that

they did not deal with the failure to award interest on judgment sums, but dealt with varying reasons for applying for review among them failure to set aside a default judgment as in the **JAMAS MILLING COMPANY LIMITED V IMEX INTERNATIONAL PTY LIMITED 2002 ZR 79** case. I have been unable to find the case of **ZAMTEL V AARON MWEENE SCZ No 7 of 2012** relied on by Counsel for the Defendant.

In the case of **ABRAHAM MOHAMED AND ALANTARA TRANSPORT LTD V SAFELI CHUMBU 1993 - 1994 ZR 4**, it was held that ***“When a trial judge fails to award interest it would not in the normal way be proper to apply to the registrar on assessment of damages to remedy the defect. The proper course would be to apply for a review of the judgment and in default of a revision to appeal to the Supreme Court.”***

Therefore going by this case, the Plaintiff had the option of either applying for review before me for the order to award interest, or in the event that the matter had gone for assessment of the awards in my judgment, to appeal so that the interest could be awarded. As this matter was not referred for assessment before the Deputy Registrar, the Plaintiff could only properly apply for review of the judgment for the interest to be awarded before me, and having so applied for special leave for review, I grant the application.

The March 2007 salary awarded to the Plaintiff shall attract interest at the average short term deposit rate from the date of issue of the writ until judgment and thereafter at the current lending rate as determined by the Bank of Zambia until payment. Each party shall bear their own costs of the application, and leave to appeal is granted.

DATED THE 1st DAY OF DECEMBER, 2017

Kaunda

**S. KAUNDA NEWA
HIGH COURT NEWA**