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**IN THE HIGH COURT FOR ZAMBIA**

**2016/HPC/200**

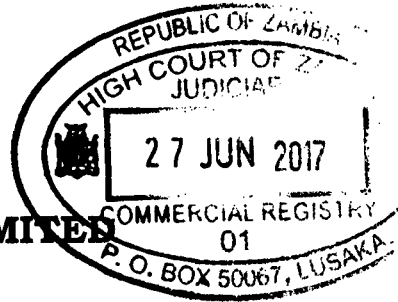
**AT THE COMMERCIAL REGISTRY**

**HOLDEN AT LUSAKA**

(Commercial Jurisdiction)

**BETWEEN:**

**SWIFT CARGO SERVICES LIMITED**



**PLAINTIFF**

AND

**AFRICAN BANKING CORPORATION ZAMBIA**

**LIMITED (T/A Banc ABC)**

**DEFENDANT**

**BEFORE HON. LADY JUSTICE IRENE. Z. MBEWE (In Chambers).**

*For the Plaintiff : Mr. Mark Haimbe of Sinkamba Legal Practitioners*

*For the Defendant : Mr. James Banda of Messrs A.M Wood & Company*

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## **RULING**

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**Cases Referred To:**

1. *Milling Company Limited v Amex International Pty Limited [2002] Z.R. 79*
2. *Mayo Transport v United Dominions Corporation Limited [1962] R & N R.22*
3. *Zamtel v Aaron M. Mulwanda and Paul Ngandwe SCZ 63 of 2009*

**Legislation Referred To:**

1. *High Court Rules, Cap 27 of the Laws of Zambia*
2. *Rules of the Supreme Court, 1999 Edition*

This is the Plaintiff's application for interpretation and variation of this Court's Ruling delivered on 12<sup>th</sup> January 2017 made pursuant to **Order 3 Rule 2 of the High Court Rules, Cap 27 of the Laws of Zambia** and **Order 20/11/17 Rules of the Supreme Court 1999 Edition**.

An affidavit in support of this application was filed on 26<sup>th</sup> January 2017, deposed to by Oscar Twelesi the Management Accountant in the Plaintiff company. The deponent avers that on 12<sup>th</sup> January 2017 this Court delivered a Ruling in favour of the Defendant on grounds that all claims in relation the Notice of Claim issued in Cause No. 2014/HPC/0365 are *res judicata* as the said Notice of Claim was expunged from the record for irregularity. The deponent avers that this Court at page 15 lines 21-25 of the Ruling held that:

*"for the foregoing reasons and based on the authorities cited above, the defendant's preliminary issue succeeds, and all*

*claims in the writ of summons issued in Cause No. 2014/HPC/0365 are res judicata, that is claims (i)-(xii) in the writ of summons”.*

The deponent avers that the Plaintiff does not intend to appeal this Court's Ruling of 12<sup>th</sup> January 2017 and is desirous to comply with the directive that it amends the pleadings within 14 days but it is unable to do so as the Ruling is unclear in its meaning and intention. The deponent avers that the Ruling in lines 24 -25 includes the rest of the claims in the Writ which have nothing to do with the Notice of Claim in question as those arising under the Notice of Claim are endorsed as claim (ix) in both the writ of summons and statement of claim and are pleaded in paragraphs 3 and 4 and 17 – 22 of the Statement of Claim. That claims (i) – (viii) in the Writ arose from a dispute between a facility obtained by Chat Milling Company Limited which culminated into inter-pleader proceedings whose affidavits are on record. The deponent avers that the Court in the said Ruling granted remedies in excess of what was applied for and effectively determined the entire matter as claims (i) to (xii) encapsulate the whole matter, and that this could have been

an accidental slip and/or inadvertent addition especially given the similarity in the cause numbers referred to herein. Further that if the Ruling herein is not clarified or interpreted the Plaintiff will be prejudiced as it would be unable to proceed with the amendments. The Court is urged to grant the application sought by the Plaintiff as the Court is vested with authority to provide such clarification and any variation that would be required to provide the Court's intention.

In furtherance of the Plaintiff's argument, Counsel filed skeleton arguments and list of authorities dated 26<sup>th</sup> January 2017. Counsel referred to **Order 3 Rule 2 of the High Court Rules and Order 20 Rules 11 and 11/17 Rules of the Supreme Court, 1999 Edition** and submits that the Ruling in question shows that the Court was determining the issue of *res judicata* arising from a decision made by another Court of equal jurisdiction in relation to a Notice of Claim which was expunged from the record. Counsel argues that it is clear from this reading that the Court only considered the issues brought before it in the Notice of Motion and supporting affidavit. Further that the Ruling in question seems to include claims in the

Writ of Summons which do not relate to the Notice of Claim thus prompting the Plaintiff to make this application so that the Court can interpret its clear intention.

The Defendant filed an affidavit in opposition deposed to by Chilufya Kaka on 2<sup>nd</sup> March 2017. It is deposed that the Plaintiff's application is misconceived and that where a party is dissatisfied with the Court's Ruling, the law affords that party the liberty to challenge the Court's Ruling by way of appeal or an application to review. It is deposed that this application is misconceived as **Order 20 Rule 11 Rules of the Supreme Court, 1999 Edition** refers to amendment of judgments in instances where there are clerical errors and/or accidental slips or omissions and not to interpretation and/or variation of a Ruling. The deponent avers that the Ruling in question granted the Plaintiff the right to appeal which was not exercised, and that it did not bar the Plaintiff from applying for review of the same Ruling. Further that the Plaintiff's claims as pleaded in the Statement of Claim are intertwined with the expunged Notice of Claim. That based on the foregoing reasons,

the Ruling in question is unambiguous, and the application is incompetent and ought to be dismissed.

The Plaintiff filed an affidavit in Reply dated 22<sup>nd</sup> March 2017. In the said affidavit, the deponent avers that this application is not misconceived as the Plaintiff is not dissatisfied with the Ruling in question but is merely seeking clarification of this Court's intention in the said Ruling. Counsel reiterated that the application is properly before Court and that the Court has inherent power to vary a judgment or Ruling, and that the claims are not intertwined.

At the hearing of this application both Counsels relied on their respective affidavit evidence and skeleton arguments filed herein. Counsel for the Defendant, Mr. Banda submits that interpretation is for instances where the Ruling or Judgment is not clear, vague or ambiguous and that the Ruling in question is clear hence does not require any interpretation. On the issue of variation, Mr. Banda submits that this only takes place when there is an application for review and that in the present circumstances variation cannot be sustained. The case of **Jamas Milling Company Limited v Amex International Pty Limited** <sup>1</sup> was referred to in support of the

argument that review only occurs if new facts have arisen or fresh evidence is discovered which existed at the time of trial or when the application was heard, which is not the case herein.

In response Counsel for the Plaintiff, Mr. Haimbe submits that the Plaintiff agrees with the bulk of the Ruling in question except in respect to the last six (6) words and seeks interpretation of the same.

I have addressed my mind to the affidavit evidence and submissions by both parties.

The gist of the Plaintiff's argument in this application is that the Court should interpret and vary its Ruling so as to show the intention of the Court. The Plaintiff in furthering its argument relies on **Order 20 Rule 11 Rules of the Supreme Court, 1999 Edition** which provides as follows:

*“Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.”*

The foregoing provision empowers the Court to correct mistakes resulting from an oversight. These are mistakes that change the meaning of a Judgment or Order such as typographical errors or unintentional addition or omission of a word or phrase. **Order 20 Rule 11/1 Rules of the Supreme Court, 1999 Edition** goes on to state that the error or omission must be an error in expressing the manifest intention of the Court. The Plaintiff further relies on **Order 20 Rule 11/17, Rules of the Supreme Court, 1999 Edition** which provides to the effect that:

*"The Court has no power under any application in the action to alter or vary a Judgment after it has been entered, except so far as it is necessary to correct errors in expressing the intention of the Court."*

A perusal of the record shows that claims (i) – (xii) of the Writ of Summons are inter-related as the Plaintiff contends that it suffered loss of its trucks, income and costs, and it is from this that the claim of damages for breach of fiduciary duty, negligence and inconvenience arose. The case of **Mayo Transport v United Dominions Corporation Limited** <sup>2</sup>, effectively dealt with the issue



as to whether a trial Court can amend, rehear, review alter or vary its Judgment. In the said case, it was held:

*“(i) The general rule as to the amendment and setting aside of Judgments or orders after a Judgment or order has been drawn up was as follows:*

*Except by way of appeal, no Court, Judge or Master has power to rehear, review, alter or vary any Judgment or Order after it has been or drawn up, respectively, either in application made in the original action or matter, or in fresh action brought to review such Judgment or Order. The object of this rule is to bring litigation to a finality but it is subject to a number of exceptions”.*

*(ii) In regard to the exceptions, the Court preferred not to attempt a definition of the extent of its inherent jurisdiction to vary, modify or extend its own Orders if, in its view, the purpose of justice required that it should do so. Eight possible types of exceptions were set out in the Judgment, though these did not pretend to be exhaustive.”*

I am ably guided by the Supreme Court in the case of **Zamtel v Aaron M. Mulwanda and Paul Ngandwe** <sup>3</sup> in which an application for interpretation of judgment was made, and it was stated that:

*“In our view, a Judgment is not supposed to be interpreted. It should be thorough, exhaustive and clear on all issues. Before delivering a Judgment, a trial Court is advised to check it; to ensure that all the issues raised in the matter and claims are determined.”*

It is trite that a slip order will only be made where the Court is satisfied that it is merely giving effect to the intention of the Court at the time the Ruling was given.

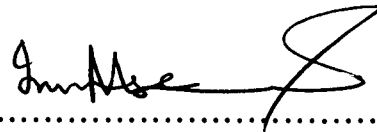
Based on the foregoing reasons I am of the considered view that the Ruling dated 12<sup>th</sup> January, 2017 is very clear as to what claims relate to the Notice of Claim and which are *res judicata*. As earlier stated, claims (i) – (xii) are related to the Notice of Claim which was determined on its merit and expunged from the evidence under Cause No. 2014/HPC/0365 by my learned brother Honourable Judge W. Mweemba.

Having explained my reasons for arriving at the decision in the Ruling of 12<sup>th</sup> January 2017, I find that there is no basis upon which this Court should interpret and vary the Ruling as it is clear as to its intention.

This application is therefore dismissed with costs to the Defendant.

Leave to appeal is hereby granted.

Dated in Chambers this 27<sup>th</sup> day of June, 2017.



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**IRENE ZEKO MBEWE**  
**HIGH COURT JUDGE**