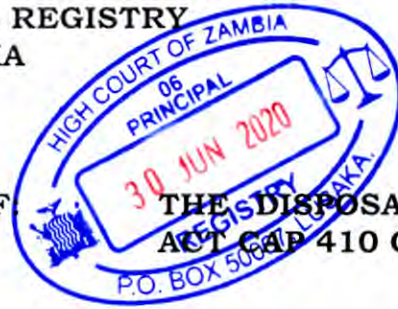


IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2019/HP/A046



IN THE MATTER OF **THE DISPOSAL OF UNCOLLECTED GOODS
ACT CAP 410 OF THE LAWS OF ZAMBIA**

AND

CHRISTOPHER KASONGO

APPELLANT

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 30th DAY OF JUNE,
2020

J U D G M E N T

LEGISLATION REFERRED TO:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia*

This is an appeal against the order of the Subordinate Court that was delivered 26th April, 2019, dismissing the matter. Before that court, the appellant commenced proceedings on 1st April, 2019 by way of originating notice of motion claiming;

1. *An order for the disposal of uncollected goods namely Toyota Camry Prominent AAX (white in colour) and Daewoo AAP 4573 (red in colour).*
2. *Any other relief the court may deem fit.*
3. *Costs.*

The affidavit in support of the originating notice of motion, which was deposed to by the appellant states that the owners of the vehicles, Toyota Camry Prominent AAX 5997 (white) and Daewoo AAP 4573 (red), namely Mr Tom London and Mr Zulu, who took the vehicles to the appellant's property that is used as a car park on 18th October, 2015 and 1st April, 2017 respectively are elusive. Exhibited as 'CK1' to the affidavit are copies of the entries that were made after the vehicles were taken to the car park.

The appellant further deposed that 19th August, 2019, he placed an advertisement in the media as shown on exhibit 'CK2', the certificates of advertisement and the receipts giving fourteen (14) days within which the vehicles could be claimed. However, the owners of the vehicles did not come forth to claim them.

In the order dated 26th April, 2019, which dismissed the matter, the learned Magistrate noted that no law had been cited pursuant to which the application had been made. The trial magistrate further found that the matter involved recovery of fees for parking the vehicles, which amounts the appellant knew. Therefore, in his view, the matter should have been commenced by default writ of summons to recover the parking fees.

Being dissatisfied with the order, the appellant applied for special leave to appeal, which the trial Magistrate granted on 5th July, 2019. The ground of appeal is that;

- 1. The trial magistrate misdirected himself by dismissing the application on the ground that he was supposed to commence the action by default writ of summons, which according to him was the*

right mode of commencement, but the whereabouts of the persons who had left the motor vehicles at the appellant's car park were not known, and their vehicles had accumulated car park fees which he needed to recover by selling the said motor vehicles, which are still parked in the appellant's car park.

No heads of argument were filed, despite the appellant being directed to do so within fourteen (14) days of 13th February, 2020.

I have considered the appeal. Order XLVII of the High Court Rules Chapter 27 of the Laws of Zambia deals with appeals from the Subordinate Court to the High Court. Order XLV11 Rule 15 (1) provides that;

“15. (1) If the appellant fails to appear, in person or by professional representative, when his appeal is called on for hearing, the appeal shall, on proof of service upon him of the notice of the hearing, stand dismissed with costs”.

However, in light of the outbreak of the corona virus, I have decided to determine the matter based on the documents on record. The sole ground of appeal attacks the order of the trial magistrate in dismissing the matter after he found that no law had been cited pursuant to which the matter was brought before him. Further, that the trial magistrate erred in law when he held that the matter should have been commenced by default writ of summons, as the appellant was claiming car park fees.

A perusal of the originating notice of motion at page 1 of the record of appeal shows the matter was commenced pursuant to the Disposal of Uncollected Goods Act, Chapter 410 of the Laws of Zambia. That being the position, the magistrate erred in law when he held that no law

pursuant to which the matter had been brought had been cited. As to the merits of the matter, this can only be determined upon the hearing the said matter. The magistrate having erred by finding that no law had been cited pursuant to which the matter was brought, the appeal succeeds. I accordingly set aside the order dismissing the matter, and send it back to the Subordinate Court to be heard before another magistrate of competent jurisdiction. Leave to appeal is granted.

DATED AT LUSAKA THIS 30th DAY OF JUNE, 2020

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**