

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

2019/HP/0905



BETWEEN:

CHRINE HAPOMPWE**PLAINTIFF**

AND

CASSIDY MUKUKA**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 31st
DAY OF MAY, 2024**

For the Plaintiff : Mr L.M. Chikuta, Messrs L.M. Chikuta Legal Practitioners
For the Defendant : Ms C.K Puta, Messrs Sinkamba Legal Practitioners

R U L I N G

CASES REFERRED TO:

1. *Robinson v Harman 1848 1 Ex 850*
2. *Mullins v Howell 1879 11 CH D 763*
3. *Lavarack v Woods of Colchester Ltd 1966 EWCA*
4. *Water Wells Limited v Wilson Samuel Jackson 1984 ZR 98*
5. *Mubita Namabunga v Motor Holdings (Z) Limited 1988-1989 ZR 188*
6. *Bank of Zambia v Caroline Anderson and Andrew W. Anderson 1993 - 1994 ZR 47*
7. *Yonna Shimonde Freight and Liners v Meridian Bank Zambia Seed Company SCZ No 7 of 1999*
8. *Zambia Seed Company Limited v Chartered International (Pvt) Limited SCZ No 20 of 1999*
9. *Kasote Singogo v Lafarge Zambia Plc Appeal No 33 of 2012*
10. *Maureen Simpemba v Abraham Kamalamba and Chibwe Malipenga 2013 Vol 2 ZR 279*
11. *Mathew Chombo v Elizabeth Mullenji (The reigning Senior Chieftainess Nkomeshya Mukamambo II) Selected Judgment No 66 of 2017*

LEGISLATION REFERRED TO:

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

OTHER WORKS REFERRED TO:

1. **Black's Law Dictionary, 2nd Edition**
2. **Black's Law Dictionary, 9th Edition, by Bryan A. Garner Thomson Reuters, 2009**
3. **Halsbury's Laws of England Volume 22, 3rd Edition**
4. **Zambian Civil Procedure: Commentary and Cases, Vol 2 by Patrick Matibini, Lexis Nexis, 2017**

1. INTRODUCTION

- 1.1 This Ruling is on a preliminary issue which was raised by Cassidy Mukuka, the Defendant herein. The Notice raising preliminary issues was filed on 12th April, 2024, pursuant to **Order 30 Rule 10 (4) of the High Court Rules, Chapter 27 of the Laws of Zambia**, and was supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 1.2 An affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition was filed to the application on 24th April, 2024.

2. BACKGROUND

- 2.1 Chrine Hapompwe, as Plaintiff, commenced these proceedings against Cassidy Mukuka, by Writ of Summons which was accompanied by a statement of claim, on 13th June, 2019, claiming the following;
- i. *An Order for specific performance of the contractual obligations on the part of Cassidy Mukuka.*
 - ii. *An Order that Cassidy Mukuka pays the contractual interest on the defaulted instalments as from the date of default to the date of settlement together with the*

outstanding principal amount which amount is in excess of K704, 950.44.

- iii. Damages for inconvenience caused by Cassidy Mukuka's actions.*
- iv. Damages.*
- v. Any other relief the Court may deem fit.*

2.2 After appearance and defence were entered and filed, Orders for Directions were issued. Trial was held in the matter, and on 30th December, 2021, I delivered a Judgment in which I found as follows:

1. I decline to grant the Order directing the payment of interest surcharge on the payments defaulted to be made in this matter.
2. Having found that this is a matter where specific performance of the agreement should be granted, I enter Judgment in favour of Chrine Hapombwe for the payment of the sum of ZMW20, 000.00, being the balance of the purchase price. That amount shall attract simple interest as agreed in Clause 9 of the special conditions of sale, from the date of default until the date of issuance of the Writ of Summons. The amount due shall also carry interest at the average short-term deposit rate, from the date of issue of the Writ until Judgment, and thereafter at the Bank of Zambia lending rate until payment.
3. The parties are at liberty to sit down and agree on the amount of simple interest payable as directed, and in

default thereof, the Registrar shall assess the said simple interest due. Costs of the action go to Chrine Hapombwe to be taxed in default of agreement.

- 2.3 The matter went for assessment before the District Registrar, who in a Judgment dated 23rd February, 2023, found the interest that was payable on the balance of the purchase price that was outstanding. Dissatisfied with that decision, Chrine Hapompwe filed an application on 4th April, 2023, for leave to appeal out of time.
- 2.4 A Consent Order was executed by the parties on 19th May, 2023, allowing the appeal out of time before the Hon Judge. The Notice of appeal was filed on 24th May, 2023. Thereafter, the Notice raising preliminary issues, which is the subject of this Ruling was filed.

3. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR CASSIDY MUKUKA

- 3.1 At the hearing, Counsel for Cassidy Mukuka stated that the application was filed pursuant to ***Order 30 Rule 10 (4) of the High Court Rules, Chapter 27 of the Laws of Zambia***. Reliance in making the application, was placed on the affidavit and the List of Authorities and Skeleton Arguments, which were filed in support of the application.
- 3.2 It was Counsel's position, that the High Court does not have jurisdiction to hear an appeal from the Registrar on assessment, as an appeal from the Registrar on assessment, lies to the Court of Appeal. As authority, ***Order 30 Rule 10 (4) of the High Court Rules***, as amended by the ***High Court***

Amendment Rules, 2016 was cited. Therefore, the prayer was that the appeal be dismissed with costs.

RESPONSE BY COUNSEL FOR CHRINE HAPOMPWE

- 3.3 In response, Counsel submitted that reliance was placed on the affidavit in opposition, as well as the List of Authorities and Skeleton Arguments in opposition, which were filed on 25th April, 2024. Counsel's contention was that **Order 30 Rule 10 (4) of the High Court Rules**, which had been relied on, in making the application, was the exception to the Rule.
- 3.4 In justifying that position, Counsel stated that in his understanding, **Order 30 Rule 10 (1) of the High Court Rules**, is the general Rule, against which **Rule 10 (4)** was framed. Thus, the application by Cassidy Mukuka intended for this Court to create a general rule out of an exception. Counsel further submitted that a careful perusal of **Order 30 Rule 10 (4) of the High Court Rules**, showed that the exception to the general rule, is assessment of damages, and not any other matter.
- 3.5 It was also submitted that if the proposition was that damages are the same as interest, then the argument was sustainable. If, however, the two were not the same, then assessment of interest could not be sneaked into the exception. Counsel went on to further note that they understood the dilemma, as Court's Order assessment of damages and interest in the same cause.
- 3.6 It was submitted that Counsel's understanding was that damages are part of a Judgment sum, and there was no way

that interest could be assessed without reference to an assessed sum of damages. Thus, in that scenario, there was no way that the assessment of interest could be isolated from an assessment of damages. Counsel added that therefore, there was no way that a Judge at chambers could be expected to deal with the interest component, which is not covered by **Order 30 Rule 10 (1) of the High Court Rules** without reference to damages, which form part of **Order 30 Rule 10 (4)**.

- 3.7 It was further Counsel's submission, that in this matter, no Order was made in favour of Chrine Hapompwe with regard to the damages being assessed by the Registrar. Counsel noted that the value was clearly put with interest thereon, to be assessed as simple interest. Thus, the assessment fell within **Order 30 Rule 10 (1) of the High Court Rules**, as a general Rule, and was not affected by the proviso under **Order 30 Rule 10 (4)**.
- 3.8 Consequently, when this Court executed the Consent Order by the parties, allowing the appeal to come before it, it was a decision that was made upon a proper and legal position of the law. The view that Counsel also took, was that the application that their colleagues were trying to run away from, was not made without referring to where an appeal would lie from the District Registrar's decision.
- 3.9 It was also submitted that assuming that the Consent Order was signed in error, which was denied, the contention was that this Court is functus officio, whether the decision was

right or wrong. Still in submission, Counsel stated that they had cited various decisions by the Supreme Court, which were in reaction to a provision that was exactly the same when appeals lay to the Supreme Court from the High Court, and which now lie to the Court of Appeal.

- 3.10 The position taken, was that the Supreme Court in those matters, guided that the proviso under **Order 30 Rule 10 (4) of the High Court Rules**, was only in relation to assessment of damages, and that the general rule was in **Order 30 Rule 10 (1)**. In concluding, Counsel's submission was that whichever way one looked at it, the request that had been made, could not be granted by this Court.

REPLY BY COUNSEL FOR CASSIDY MUKUKA

- 3.11 There was no reply.

4. DECISION OF THIS COURT

- 4.1 I have considered the application. **Order 30 Rule 10 (4) of the High Court Rules, Chapter 27 of the Laws of Zambia** on which the application was anchored, provides as follows:

"(4) An appeal from the decision or order of the Registrar on assessment of damages shall lie to the Court of Appeal; and"

- 4.2 The gist of the affidavit filed in support of the application, which was deposed to by Caroline Kalwa Puta, the advocate who is seized with conduct of the matter on behalf of Cassidy Mukuka, was that following the Judgment of this Court, the District Registrar assessed the interest on the principal sum, and found that the amount due was K37, 000.00 together

interest thereon, at the current banking lending rate and costs.

- 4.3 It was further averred that following the assessment, the parties executed a Consent Order to allow the appeal out of time. Thereafter, an appeal to a Judge at chambers was filed. Counsel further deposed that an appeal from the Registrar on assessment goes to the Court of Appeal, and not to a Judge at chambers.
- 4.4 In the List of Authorities and Skeleton Arguments, the law in **Order 30 Rule 10 (4) of the High Court Rules** was cited, and reliance was placed on the case of **Mubita Namabunga v Motor Holdings (Z) Limited** ⁽⁵⁾, stating that the Supreme Court in that matter, held that whether a Rule is mandatory or not, depends on the use of word "shall", as it is for the Court to construe the intention and the effect of the Rule, having regard to the construction, whether or not the rule is to be regarded as mandatory or directory.
- 4.5 In opposition, the averment in the affidavit in opposition, whose affiant was Chrine Hapompwe, was that it was agreed that the District Registrar rendered a Judgment on assessment, and thereafter Chrine Hapombwe appealed. It was also deposed, that it came to him with a sense of shock that Cassidy Mukuka wished to circumvent the Order of this Court, by way of the preliminary issue, when the law provides for how the same may be challenged.
- 4.6 Chrine Hapombwe further deposed that he had been advised by his advocates, that the parties executed a Consent Order

which gave rise to the notice of appeal being filed. Therefore, this Court is functus officio, and it was being invited to review its' decision, and the Consent Order had not been set aside. He averred that as advised by his advocates, there is no provision in the law, for an appeal against the assessment of interest to lie to the Court of Appeal.

- 4.7 Further, that as advised by his advocates, this Court has no jurisdiction to hear the preliminary issue on account of the Consent Order.
- 4.8 The arguments in the List of Authorities and Skeleton Arguments in opposition, were that the parties having executed a Consent Order on the appeal, this Court is functus officio, as by the Consent Order, the appeal was allowed before this Court. The provisions of **Order 30 Rule 10 (1) of the High Court Rules** were cited, the argument being that this is the general provision that was relied on, in making the application, which culminated in the Consent Order dated 19th May, 2023, being signed.
- 4.9 A question was posed, as to whether or not a Judgment on the assessment of interest, fits within what the law terms as a decision, order or direction under **Order 30 Rule 10 (1) of the High Court Rules**. In answering that question, **Black's Law Dictionary, 2nd Edition** was referred to as defining the word *decision* as:

“A Judgment or decree pronounced by a Court in settlement of a controversy submitted to it. A Judicial decision is an authoritative

determination (as a decree or Judgment) made after consideration of facts or law. A Judicial decision is thus the determination by a Court of competent jurisdiction on matters submitted to it.”

- 4.10 Based on the above, the contention was that the decision of the District Registrar dated 23rd February, 2023, fell within the general provisions of ***Order 30 Rule 10 (1) of the High Court Rules***, which is the general Rule. The argument was that ***Order 30 Rule 10 (4) of the said High Court Rules***, is an exception to ***Order 30 Rule 10 (1)***, which Order provides that an appeal from an assessment of damages shall lie to the Court of Appeal.
- 4.11 The continued argument was that, initially the provision in ***Order 30 Rule 10 (4)*** read that appeals from assessment of damages went to the Supreme Court. However, by virtue of the ***High Court Amendment Rules of 2016***, appeals now go to the Court of Appeal.
- 4.12 It was also stated that interest and damages are not the same when it comes to Judgments of the Court. The argument in that regard, was that damages refer to the amount of money that is awarded to a plaintiff as compensation for loss or injury that is suffered due to a defendant's action or negligence, such as compensatory damages, punitive damages and nominal damages.
- 4.13 That on the other hand, interest is a separate concept, that represents the cost of borrowing money or the return on investment. It was argued that in the context of Court

Judgments, interest is often awarded in addition to damages to compensate the plaintiff for the time value of money. It was submitted that this means that the defendant must pay interest on the Judgment amount from the date of Judgment until the amount is paid.

4.14 The submission was further that interest may be varied, and it includes, pre-Judgment interest, which is interest that is awarded on a Judgment, from the date of the claim until the Judgment, or it may be post Judgment, that is interest that is payable on a Judgment sum from the date of the Judgment until payment.

4.15 It was further argued that in Order to assess whether a party is entitled to damages, the following factors are considered, when assessing compensatory damages:

- i. Has the claimant suffered loss?
- ii. Is the loss suffered actionable?
- iii. Was the type of loss reasonably foreseeable?
- iv. Did the claimant mitigate the loss?
- v. Did the claimant contribute to the loss?

4.16 Relying on the case of ***Robinson v Harman*** ⁽¹⁾, the contention was that the aim of an award of damages, is to put the non-breaching party in the position that they would have been in, had the contract been performed as agreed. Thus, in contract, in Order for the Court to assess the extent of loss, it needs to look at:

- i. Expectation measure
- ii. Reliance measure

- 4.17 It was argued that expectation measure involves a comparison between a claimant's current position, and the position that they would have been in, had the contract been performed correctly. That other than this, in expectation measure, other factors such as foreseeability come into play. Relying on the case of *Lavarack v Woods of Colchester Ltd* (3), it was stated that an important rule of expectation measure, is that it is calculated on the expectation that the breaching party would have performed their obligations under the contract, but no more and no less.
- 4.18 Still in argument, it was stated that in this matter, the manner of calculating the damages was entirely different from the manner of assessing simple interest as Ordered by the Court, as it was based on the formula $I = \text{Principal} \times \text{Rate} \times \text{Time}$ ($P \times R \times T$). The argument was that the formula for assessing simple interest had no relationship whatsoever with the steps that are taken, by which damages are assessed, as shown above.
- 4.19 Thus, the two concepts are totally mutually exclusive, and the mention of one, is to the exclusion of the other. It was also argued, that had the Legislature intended that any assessment, be it of interest or damages, should be subjected to appeal to the Court of Appeal, **Order 30 Rule 10 (4) of the High Court Rules** would have expressly provided so, as the two concepts are distinct from each from other. Thus, any matter that does not fall within **Order 30**

Rule 10 (4) of the High Court Rules, is subject to **Order 30 Rule 10 (1) of the said High Court Rules**.

- 4.20 The submission was also that it was from that stand point, that the Consent Order was executed. The case of **Mathew Chombo v Elizabeth Mulenji (The reigning Senior Chieftainess Nkomeshya Mukamambo II)** ⁽¹¹⁾ was relied on, stating that the Court in that matter, held that it was clear from **Rule 10 (1)** that generally, an appeal from the decision of a Deputy Registrar lay to a Judge at chambers, and that **Rule 10 (4)** took away from the general rule, by providing that an appeal from Deputy Registrar on assessment, lay to the Supreme Court.
- 4.21 Further authority in that regard, was sought from the decision in the case of **Water Wells Limited v Wilson Samuel Jackson** ⁽⁴⁾.
- 4.22 In this matter, Chrine Hapombwe sued Cassidy Mukuka claiming among other reliefs, specific performance of contractual obligations, and an Order that Cassidy Mukuka pays the contractual interest on the defaulted instalments. The assertion was that in line with the contract of sale, Cassidy Mukuka was liable to pay interest at Thirty (30) percent fortnightly, on any outstanding instalment.
- 4.23 In defence, Cassidy Mukuka contended that he had asked for a waiver on the payment of compound interest. In my Judgment, I found that Clause 9 of the special conditions of sale, provided for a 30% fortnightly interest surcharge on any defaulted amount.

4.24 I referred to the definition of *surcharge* in ***Black's Law Dictionary, 9th Edition, by Bryan A. Garner Thomson Reuters, 2009*** at page 1579, which is;

"1. An additional charge or cost usually one that is excessive. 2. An additional load or burden. 3. A second or further mortgage. 4. The omission of a proper credit on an account. 5. The amount that a Court may charge a fiduciary that has breached its duty. 6 An overprint on a stamp, esp that changes its face value. 7. The overstocking of an area with animals".

4.25 I further considered the definition of *Compound interest* in the said dictionary at page 887, which is;

"Interest paid on both the principal and the previously accumulated interest".

4.26 I noted that from the above two definitions, a surcharge is an additional charge which is excessive, while compound interest, is the charging of interest on both the principal and interest previously accumulated. I stated that a surcharge while being additional in my view, does not mean that is compounded interest. Based on that, and after considering a number of authorities, I held that compound interest can be charged where there is agreement or consent or acquiescence by the parties.

4.27 I further found that Clause 9 of the special conditions of sale, which the parties had executed, did not expressly state that the 30% interest chargeable fortnightly on every payment

defaulted on, was compound interest. My finding was that it was interest surcharge. I noted that from the definition of surcharge seen above, that interest was an additional charge or cost, which was excessive.

- 4.28 I also found that penal interest being illegal at law, it cannot be enforced even if there is agreement between the parties for its' payment. I therefore declined to grant the Order directing the payment of the interest surcharge on the defaulted payments.
- 4.29 I entered Judgment in favour of Chrine Hapompwe for the payment of the sum of ZMW20, 000.00, being the balance of the purchase price. That amount was directed to carry simple interest as agreed in Clause 9 of the special conditions of sale, from the date of default, until the date of issuance of the Writ of Summons. The parties were directed to agree on the simple interest that was payable, and if not, the amount would be assessed by the Registrar. The assessment was accordingly done, which is in issue.
- 4.30 From this review of what transpired at trial and my findings in the Judgment, it is clear that the Judgment sum due to Chrine Hapompwe was the balance outstanding on the purchase price with interest thereon, which was simple interest. That amount as the Judgment sum, would carry interest at the average short-term deposit rate from the date of issue of the Writ of Summons until Judgment, and thereafter at the Bank of Zambia lending rate until payment.

- 4.31 Submission was made in opposition to the application, by Chrine Hapompwe, on what damages and interest are, and that the two are distinct. I agree with those definitions, and I note that he alluded to pre-Judgment interest and post Judgment interest.
- 4.32 In the case of ***Kasote Singogo v Lafarge Zambia Plc*** ⁽⁹⁾, the Supreme Court, after an application was made for it to interpret its' Judgment, noted that the issues that the said Court had to determine, was how pre and post Judgment interest should be calculated, and whether money that is paid into Court attracts interest.
- 4.33 On the question of pre and post Judgment interest, the Supreme Court found that when a Judgment is rendered, the principal sum owing and interest if any, merge to form the Judgment debt, and attracts interest in accordance with ***Section 2 of the Judgments Act Chapter 81 of the Laws of Zambia***. The case of ***Yonna Shimonde Freight and Liners v Meridian Bank*** ⁽⁷⁾ was cited as authority in that regard.
- 4.34 Further reference was made to the case of ***Bank of Zambia v Caroline Anderson and Andrew W. Anderson*** ⁽⁶⁾ where the Supreme Court held that interest after a Judgment, is interest on a Judgment debt, and it is entirely separate from interest awarded in the Judgment. They stated that, that interest at a rate awarded by the Court, becomes part of the Judgment debt, and carries interest in accordance with the law.

- 4.35 Also referred to, was **Section 4 of the Law Reform (Miscellaneous Provisions) Act Chapter 74 of the Laws of Zambia** stating that it does not authorise the payment of interest upon interest. The finding was that the interest awarded on damages, must be simple interest.
- 4.36 From this, it can be seen that where the damages comprise an amount of money with interest thereon, as in this case, the amount due, and the interest payable thereon merge, and become the Judgment sum. The Judgment sum then carries interest in accordance with the law.
- 4.37 So, to answer Chrine Hapompwe's question as to whether the interest that I directed to be calculated, did not form part of the Judgment sum, it did. As such, on that interest sum being assessed by the District Registrar, the principal sum and the interest that was calculated then became the Judgment sum, and it carried interest at the average short-term deposit rate, from the date of issue of the Writ of Summons until Judgment, and thereafter at the Bank of Zambia lending rate until payment.
- 4.38 **Order 30 Rule 10 (1) of the High Court Rules** provides that:

"10. (1) Any person affected by any decision, order or direction of the Registrar may appeal therefrom to a Judge at chambers. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons, within seven days after the decision, order or direction complained of, or

such further time as may be allowed by a Judge or the Registrar. Unless otherwise ordered, there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision, order or direction of the Registrar shall be no stay of proceedings unless so ordered by a Judge or the Registrar.”

- 4.39 This is a general Rule, and the exception to that rule is found in **Order 30 Rule 10 (4) of the said Rules**, which has been quoted above. That Rule provides that an appeal from assessment of damages by the Registrar who includes a District Registrar goes to the Court of Appeal. I have found that the District Registrar assessed the Judgment sum which was due, by assessing the simple interest due on the amount of K20, 000,00, and that simple interest which was found, together with the balance of the purchase price of K20, 000.00 due, became the Judgment sum.
- 4.40 That being the position, the argument that the interest that was assessed by the District Registrar in this matter, is not the same as damages, cannot stand, in light of what I have stated above. Consequently, the appeal on assessment does not lie to this Court, but to the Court of Appeal, in line with **Order 30 Rule 10 (4) of the High Court Rules**.
- 4.41 The argument by Chrine Hapompwe was that this Court is functus officio, having signed the Consent Order where the parties allowed the appeal to come before this Court.

- 4.42 In the book ***Zambian Civil Procedure: Commentary and Cases, Vol 2 by Patrick Matibini, Lexis Nexis, 2017 in paragraph 21.15 at page 1142*** the learned author states that different considerations apply to setting aside interlocutory orders that are executed by consent. He states that the general rule, is that an interlocutory Order even if approved by the Court, may be set aside, where it appears that the consent was given under misrepresentation or from want of materials, provided that the order has not been perfected.
- 4.43 The learned author also refers to the case of ***Maureen Simpemba v Abraham Kamalamba and Chibwe Malipenga*** ⁽¹⁰⁾ which was decided by Hon Mrs Justice Chisanga, as she then was. In that matter, the 1st Defendant applied to dismiss the action for being an abuse of Court process, as he had obtained an Order for Judgment on admission against the Plaintiff and the 2nd Defendant. The 1st Defendant subsequently took out a writ of possession which the Plaintiff applied to suspend.
- 4.44 However, the writ of possession had already been executed and could not be suspended, and out of sympathy for the Plaintiff, the 1st Defendant agreed with both the Plaintiff and the 2nd Defendant, to sign a Consent Order allowing the Plaintiff back onto the property, while the 2nd Defendant paid him the value of the land, and the materials that were found on the subject land, when the Plaintiff purportedly bought the land and converted the materials to her use.

- 4.45 Hon Mrs Justice Chisanga, while noting the decision in the case of ***Zambia Seed Company Limited v Chartered International (Pvt) Limited*** ⁽⁸⁾ which was that by law, the only way to challenge a Judgment that is executed by consent, is to start a fresh action specifically to challenge the Consent Judgment, stated that a Consent Order or Judgment envisaged by that case and others that had been referred to in the arguments before her, pertained to the compromise of an action.
- 4.46 Her finding was that such Consent Order or Judgment is a substitute for a reasoned Judgment or Order of the Court, and it decides the action between the parties for all intents and purposes. It was her position, that in her judgment, it is only Orders or Judgments of a final character, that may be set aside by way of a fresh action, and that interlocutory Orders do not fall within that category.
- 4.47 In support of that position, she relied on the case of ***Mullins v Howell*** ⁽²⁾ which held that;
- “The court has jurisdiction to discharge an order on an interlocutory application by consent when it is proved to have been made under a mistake though the mistake was on one side only, the court having a sort of general control over orders made on interlocutory applications.”***
- 4.48 This position is reiterated at paragraph 1672 of page 792 of ***Halsbury’s Laws of England Volume 22, 3rd Edition*** which states that:

“unless all the parties agree, a consent order, when entered, can only be set aside by a fresh action and an application cannot be made to the court of first instance in an original action to set aside the judgment or order except apparently in the case of an interlocutory order nor can it be done by way of appeal.”

4.49 Therefore, in this matter, the Consent Order that was executed by the parties, not being one that is final in nature, by way of compromise of the action, but interlocutory, it is bound to be set aside.

5. CONCLUSION

5.1 Having so found, and on account of the fact that an appeal on assessment of damages from the Registrar, who includes a District Registrar, lies with the Court of Appeal, I discharge the Consent Order which was executed by the parties on 19th May, 2023. The preliminary issue therefore succeeds, and the appeal before this Court is dismissed, with costs in the cause. Leave to appeal is granted.

DATED AT LUSAKA THE 31st DAY OF MAY 2024

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

