

**IN THE HIGH COURT FOR ZAMBIA
INDUSTRIAL RELATIONS DIVISION
HOLDEN AT NDOLA**

COMP/IRC/ND/18/2015

BETWEEN:

CEPHAS KAMIMBI

AND

G4S SECURE SOLUTIONS LTD

COMPLAINANT

RESPONDENTS

BEFORE: Hon. Mr. Justice E.L. Musona

For the Complainant: Mr. C. Kamimbi – In Person

**For the Respondents: Ms Mwape Bwalya of Messrs Mwenye and
Mwitwa Advocates**

JUDGMENT

Date: 13th December, 2017

Cases referred to:

- 1. Wilson Masauso Zulu v Avondale Housing Project Ltd, (1982) ZR 172 (SC)**
- 2. Khalid Mohamed v Attorney General, (1982) ZR 49**
- 3. Galaunia Farms Ltd v National Milling Ltd, (2004) ZR 1 (SC)**

This is a Judgment following an appeal by the Respondents (G4S Secure Solutions Ltd) against the decision of the Learned Deputy Registrar which did not award costs to the Respondents for what the Respondents have called, irregular execution occasioned to the Respondents when the Complainant caused execution of a Writ of Fifa.

The matter proceeded by affidavit evidence.

This matter is not without history. The history of this matter is that on 2nd September, 2016, this court delivered Judgment in favour of the Respondents. Being dissatisfied with that Judgment, the Complainant appealed. On appeal, the Court of Appeal held in favour of the Complainant in its Judgment delivered on 4th May, 2017.

Following his success in the Court of Appeal, the Complainant issued a statement of claim for damages and costs. This was filed into court and same was served on the Respondents together with the bill of costs. What followed was execution through a Writ of Fifa.

The Respondents' argument is that the bill of costs was not taxed and was, therefore, irregular to execute on an untaxed bill of costs.

Conversely, the Complainant has argued that he served the bill of costs and statement of claim on the Respondent for purposes of

opposition but there was no opposition. Seeing that no opposition to the statement of claim and bill of costs was forth coming, the Complainant proceeded to issue a Writ of Fifa.

I have looked at the cases of **Wilson Masauso Zulu v Avondale Housing Project Ltd (1)**, **Khalid Mohamed v Attorney General (2)** and **Galaunia Farms Ltd v National Milling Corporation Ltd (3)** where it was held that:

“A Plaintiff must prove his case and if he fails to do so, the mere failure of the opponent’s defence does not entitle him to Judgment.”

Am well guided. In the case in casu the Appellant must prove the grounds of appeal. I have heard all the arguments herein and have adequately considered them.

I note from the record that on 21st June, 2017 the Writ of Fifa and execution were set aside but did not award the Respondents costs of that execution. The appeal is, therefore, premised on that failure or refusal by the Learned Deputy Registrar to award the Respondents costs of that execution.

The record is clear. I have noted that the Complainant served the Respondents a statement of claim and bill of costs essentially for purposes of opposition. I have noted further that there was no opposition from the Respondents.

A party that receives a bill of costs has a duty to raise opposition if they are adverse to it. The Respondents defaulted in their duty. Having defaulted as such, the Respondents cannot claim that they were not heard on taxation.

I have seen no merit in this appeal and I dismiss it.

I order costs of this appeal in favour of the Complainant.

Leave to appeal within 30 days from today is granted.

Delivered and signed at Ndola this the 13th day of December, 2017.


Hon. Justice E.L. Musona

