

JACOBUS WYNAND KOEKEMOER v MARTHA MARION GOWER (1981) Z.R. 138
(S.C.)

SUPREME COURT
SILUNGWE, C.J., CULLINAN, J.S. AND MUWO, AG. J.S.
10TH MARCH AND 15TH SEPTEMBER, 1981
(S.C.Z. JUDGMENT NO. 16 OF 1981)

Flynote

Civil procedure - Jurisdiction - Registrar or District Registrar - Limit of jurisdiction.

Statutes - Construction - Meaning of "the court" and "a judge" under High Court Rules, O. 25, rr. 1 and 2.

Civil procedure - Registrar - Jurisdiction limited to that of judge in chambers.

Headnote

The plaintiff made an application to the District Registrar under s. 10 of the Debtors Act Cap. 87 for the arrest and imprisonment of the respondent. The order was made. However, the District Registrar was shortly afterwards moved to rescind the order on the ground that it was irregular as he had no power to make such an order. He declined to do so on the ground that he had sat in the High Court, therefore the order had been validly made. The respondent successfully appealed to a judge in chambers against the decision of the District Registrar on the ground that the learned District Registrar had no jurisdiction to make an order under s. 10 of the Debtors Act. The issue before the court was whether the reference to "the court" or "a judge" under O. 25 r. 1 of the High Court Rules, Cap. 50 includes the Registrar, a Deputy Registrar and a District Registrar.

Held:

- (i) The words "the court" and "a judge" used under O. 25 rr. 1 and 2 do not mean one and the same thing. The words "the court" refer to judges or a judge sitting in open court, and the words "a judge" can only mean a judge sitting in chambers and this by

p139

- virtue of O. 3 r. 3 includes the Registrar, Deputy Registrar and a District Registrar.
- (ii) When the Registrar or a Deputy Registrar or a District Registrar sits as such, he does not constitute the High Court for his jurisdiction is limited to that of a judge in chambers.
- (iii) By O. 3 r. 3 promulgated by the High Court rules committee, the Registrar is given all the powers of a judge in chambers.
- (iv) Rule 2 of the High Court Rules defines "Registrar" as meaning the Registrar of the High Court and including a Deputy Registrar and a District Registrar enjoy all the powers of a judge in chambers with the exception of O. 3 r. 3 (a) which expressly excludes from the jurisdiction of the Registrar, all matters relating to the liberty of the subject.

Case referred to:

- (1) Loto Petroleum Distributors Ltd v Arduini (1973) Z.R. 340.

Legislation referred to:

Debtors Act, Cap. 87, s. 10.

High Court Rules, Cap. 60, O. 25 rr. 1 and 2, O. 3 r. 3 (a).

For the appellant: R. Musonda, Ezugha, Musonda & Co..

For the respondent: S. Malama, Jacques & Partners.

Judgment

SILUNGWE, C.J.: This is a case in which a District Registrar made an order under s. 10 of the Debtors Act, Cap. 87, for the arrest and imprisonment of the respondent. The District Registrar was shortly afterwards moved to rescind the order on the ground that it was irregular as he had no power to make such an order, but he declined to do so holding that as he had sat in the High Court the order had been validly made. The respondent then appealed to a judge in chambers against the decision of the District Registrar and in that appeal she was successful, the learned appellate judge holding that the learned District Registrar had no jurisdiction to make an order under s.10 of the Debtors Act and that any reference to "the court or judge" under Order XXV, rule 1 of the High Court Rules, Cap. 50, does not include the Registrar, a Deputy Registrar and a District Registrar. In these circumstances, the District Registrar's order was held to be null and void for want of jurisdiction. The appeal before us now is at the instance of the plaintiff in the District Registrar's court.

Section 10 of the Debtors Act confers upon "the High Court or any Subordinate Court" jurisdiction to make an order for the arrest and imprisonment of a defendant who is proved to be about to quit Zambia.

In this case, the learned District Registrar entertained the appellant's application not only because the application had been commenced in the High Court, but more importantly on the basis that when a District Registrar sits, he constitutes the High Court. As we have just observed, he was over-ruled by an appellate judge.

p140

The Registrar of the High Court derives his statutory jurisdiction powers and duties, from section 7 of the High Court Act, Cap. 50 which provides :

"7. (1) The Registrar and Deputy Registrars shall, subject to any rules of court, have the same jurisdiction, powers and duties as a Master of the Supreme Court of Judicature, and a Registrar of the High Court, in England, and, in addition, shall have such further jurisdiction, powers and duties as the Chief Justice may by rule prescribe."

The Chief Justice has not made any rules conferring upon the Registrar and District Registrars jurisdiction under the Debtors Act. Subsection (1) of section 7, however, provides that the jurisdiction of the Registrar and Deputy Registrars shall be "subject to any rules of court". The High Court Act defines in section 2 (1) the term "Court" as meaning the High Court. Reference in section 7 (1) of the High Court Act to "any rules of court" is, therefore, a reference to the High Court Rules as promulgated by the High Court Rules Committee. By Order III, rule 3 of such Rules, the

Registrar is given all the powers of a Judge in chambers. Rule 2 of the High Court Rules defines "Registrar" as meaning the Registrar of the High Court and including a Deputy Registrar and a District Registrar. It is quite clear from the foregoing that the Registrar, a Deputy Registrar and a District Registrar enjoy all the powers of a judge in chambers, subject only to exceptions appearing under Order III, rule 3; I will refer to one of those exceptions later.

Section 10 of the Debtors Act gives to the High Court power to make an order for the arrest and imprisonment of a debtor. It is clear from Order XXV, rule 2 of the High Court Rules that such power is vested in the "Court or a Judge." Mr Musonda takes the point, on behalf of the appellant, that the learned appellate judge misdirected himself in holding that the word "Court" has a special meaning and that when a reference is made to the "Court or a Judge" this does not include the Registrar, a Deputy Registrar or a District Registrar.

Section 2 (1) of the High Court Act defines the term "Court" as meaning the High Court and the term "Judge" as including the Chief Justice and any Puisne Judge of the Court. Clearly, the words "the Court" and "a Judge" used under Order XXV, rules 1 and 2 do not mean one and the same thing. The words "the Court" refer to judges or a judge sitting in open Court and the words "a Judge" can only mean a judge sitting in Chambers and this of course, by virtue of Order III, rule 3, includes the Registrar, a Deputy Registrar and a District Registrar. This demonstrates that the use of the expression "the Court or a Judge" signifies that jurisdiction is conferred upon a Judge (or Judges) in open Court as well as in Chambers, inclusive of the Registrar, a Deputy Registrar and a District Registrar (vice paragraph 2004 of the Supreme Court Practice, 1979, Vol. 2 (The White Book)). It follows that when the Registrar or a Deputy Registrar or a District Registrar sits as such, he does not constitute the High Court for his jurisdiction is limited to that of a Judge in Chambers.

p141

However, Order III, rule 3 (a), expressly excludes from the jurisdiction of the Registrar, etcetera, all matters relating to the liberty of the subject. The rule reads as follows (omitting parts not relevant to this case):

"3, The Registrar may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the Act and these Rules may be transacted or exercised by a Judge at Chambers, except in respect of the following proceedings and matters, that is to say:
(a) All matters relating . . . to the liberty of the subject;"

The observations of Doyle, C.J., as he then was, in *Loto Petroleum Distributors Limited v Arduini*, (1), at page 345, Lines 15-18, are in point. Paragraph (a) of rule 3 aforesaid puts it beyond doubt that the jurisdiction of the Registrar, a Deputy Registrar and a District Registrar, is expressly ousted in regard to all proceedings and matters relating to the liberty of the subject, and this necessarily includes all proceedings and matters relating to the liberty of a debtor or a person applying, e.g., for *habeas corpus ad subjiciendum*. It is certainly not confined to proceedings between the State and the subject, as suggested by counsel for the appellant. Incidentally, neither a Master of the Supreme Court of Judicature nor a Registrar of the High Court of England has jurisdiction to hear any proceedings or matters relating to the liberty of the subject (see Order 32, rule 11 (1) (b) of the

Supreme Court Practice, 1979, Vol. 1). It is instructive to note from the last paragraph of Order 52/1/5 of the Supreme Court Practice aforesaid that even a contempt committed before a Judge in Chambers is punishable by a Judge in open Court.

For the reasons given above, I would dismiss the appeal with costs to the respondent in this court and in the proceedings before the appellate Judge and the District Registrar.

Judgment

CULLINAN, J.S.: I concur with the judgment of the learned Chief Justice.

Judgment

MUWO, AG. J.S.: I also concur with the judgment of the learned Chief Justice.

Appeal dismissed
