

HERBERT IJEGALU OKWA OZOKWO v THE ATTORNEY-GENERAL (No.1)
(1985) Z.R. 163 (S.C.)

SUPREME COURT
SILUNGWE, C.J., GARDNER AND MUWO, JJ.S.
23RD MAY, 1985
(S.C.Z. JUDGMENT NO.15 OF 1985)

Flynote

Civil Procedure - Appeal to the Supreme Court - Order in chambers on open court matter - Leave to appeal - Whether necessary.

Supreme court - Leave to appeal - Order in chamber on open court matter - Whether leave to appeal necessary.

Headnote

In an action for damages the trial judge decided the question of liability in open court and that of the quantum of damages in chambers.

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In this particular case the issue of quantum was an open court matter, not a chambers one. Section 24(1) (e) of the Supreme Court Act provides that no appeal lies from an order made in chambers by a judge of the High Court without leave of a judge. It was argued by the respondent that the order on the quantum of damages having been made in chambers, an appeal against that order required leave.

Held:

Although the trial judge deemed it convenient to hear the matter in chambers, the issue of quantum of damages was an open court matter; leave to appeal was not necessary.

Legislation referred to:

The Supreme Court of Zambia Act, Cap.52, S. 24 (1) (e).

For the appellant: S.S. Zulu of Zulu and Company.

For the respondent: A.G. Kinariwala, Ag. Parliamentary Draftsman.

Judgment

SILUNGWE, C.J.: delivered the judgment of the court.

In this case, a preliminary issue has been raised by Mr Kinariwala, on behalf of the respondent, the issue being that the appeal is not maintainable on the ground that the order appealed against was made by the learned trial judge in chambers and the leave of the trial judge to appeal against the said order was necessary in terms of section 24 (1)(c) of the Supreme Court Act. He argues that, as no leave was obtained from the trial judge, this matter must be struck out as being incompetent. He further argues that it does not matter whether the order appealed against may have been made in

open court; but that what matters is that the order was in fact made in chambers.

On the other hand, Mr Zulu, on behalf of the appellant, has argued that there were two issues before the trial judge, namely, to decide the question of liability and that, if that was resolved in favour of the appellant, (then plaintiff), then the second issue was one of quantum. He goes on to say that the trial judge decided the question of liability in open court in favour of the appellant and, for the judge's convenience, the second issue was reserved to be dealt with in chambers, on application.

In our view, the provisions of section 24(1)(e) of the Supreme Court Act relate only to matters which must be heard in chambers. In this particular case, the issue of quantum was an open court matter, not a chambers one, although the trial judge deemed it convenient to hear the matter in chambers. The fact that a summons was taken out to have the matter heard in chambers does not make any difference, as that was merely a matter of form which may well have been dealt with simply by writing letter to the judge's marshal asking that the matter be set down for hearing.

In the light of what we have said above, it is not competent for Mr Kinariwala to raise the preliminary issue.

Application dismissed.
