

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA

Appeal No. 10/94
SCZ/8/192/93

(Civil Jurisdiction)

B E T W E E N :

JAVEED IQBAL MALIK

Appellant

and

PILATUS ENGINEERING COMPANY LIMITED

Respondent

CORAM: Challa, Chirwa and Muzyamba JJJ.S.

29th March, 1994

For the Appellant : Mr. John Sangwa of R.M.A. Chongwe & Company

For the Respondent : Mr. Chrispin Muyoba of Munali Chambers

R U L I N G

Challa, J.S. delivered the ruling of the court.

Before the appeal against the continuing of the injunction granted by the High Court in November 1993 was argued, the court inquired from the appellant's counsel on the status of the injunction and the position of the main case. Mr. Sangwa informed the court that although the learned trial judge had fixed trial dates in January and February of 1994 in respect of the main case, the case had, at the time of the hearing of the dissolution of the injunction been determined by the Deputy Registrar, in that the Deputy Registrar had given a summary judgment in favour of the respondent. The court inquired from Mr. Sangwa whether or not that fact was brought to the attention of the learned trial judge. Mr. Sangwa said it had been brought to his attention. We have been unable to find any where in the record where the attention of the learned trial judge was drawn to that fact. It appears that the matter never came up on the fixed dates before the learned trial judge and the matter has not proceeded further. We drew Mr. Sangwa's attention to the Judge's ruling:-

/2..."The injunction

(Civil Jurisdiction)

B E T W E E N :

JAVEED IQBAL MALIK Appellant

and

PILATUS ENGINEERING COMPANY LIMITED Respondent

CORAM: Chaila, Chirwa and Muziyamba JJ.J.S.

29th March, 1994

For the Appellant : Mr. John Sangwa of R.M.A. Chongwe & Company

For the Respondent : Mr. Chrispin Muyoba of Munnali Chambers

R U L I N G

Chaila, J.S. delivered the ruling of the court.

Before the appeal against the continuing of the injunction granted by the High Court in November 1993 was argued, the court inquired from the appellant's counsel on the status of the injunction and the position of the main case. Mr. Sangwa informed the court that although the learned trial judge had fixed trial dates in January and February of 1994 in respect of the main case, the case had, at the time of the hearing of the dissolution of the injunction been determined by the Deputy Registrar, in that the Deputy Registrar had given a summary judgment in favour of the respondent. The court inquired from Mr. Sangwa whether or not that fact was brought to the attention of the learned trial judge. Mr. Sangwa said it had been brought to his attention. We have been unable to find any where in the record where the attention of the learned trial judge was drawn to that fact. It appears that the matter never came up on the fixed dates before the learned trial judge and the matter has not proceeded further. We drew Mr. Sangwa's attention to the judge's ruling:-

/2...The injunction

"The injunction and car custody order made by this court on 19th March, 1993 shall continue to remain in force until this matter is disposed of. And the court suggests that the main action be tried within the next three months, ie before 28th February, 1994 to avert serious damage being caused to the car by non-use. This court now proposes that trial in this case should take place on Tuesday 11th January, 1994 and on Wednesday, 2nd February, 1994 at 10.00 hours each day."

Mr. Sangwa conceded that the matter had been disposed of by the Deputy Registrar and that the injunction had fallen away.

His colleague Mr. Muyoba has argued to the contrary. He has maintained that the ruling of the learned trial judge was capable of various interpretations. He has argued that at the time the matter was held regarding the injunction in November 1993, there was an appeal to the judge in Chambers against the Deputy Registrar's decision and that since the appeal was officially on the record, the learned trial judge must have taken judicial notice that there was an appeal and that when he ordered that the injunction stays until the matter is disposed of, he meant that the matter will continue until disposed of by the judge himself and probably later by the Supreme Court. He has urged the court to let the injunction stand since it has not fallen away.

He have considered the ruling of the learned trial judge made on 23rd November, 1993 which was communicated to the parties on 19th November 1993 and we have considered submissions of the two learned counsel. The language used by learned trial judge is very clear. He was referring to the trial in the main action and he was talking about certain issues which could only be cleared by the evidence of the parties. The ruling of the learned trial judge again does not suggest in any way that he was aware of the appeal pending before him otherwise he would have set the dates for trial. We are of the view, having considered the record, that if the learned trial judge himself, had been informed of the pending decision by the Deputy Registrar, he was not going to allow the injunction to continue

W.M. Muziyamba
SUPREME COURT JUDGE

D.K. Chitwa
SUPREME COURT JUDGE

M.S. Challa
SUPREME COURT JUDGE

since the matter had already been disposed of.
We agree with the stand taken by Mr. Sangwa that the
matter had fallen off and that therefore there is nothing
to appeal against. The appeal is therefore dismissed.