

HOLDEN AT LUSAKA

(Civil Jurisdiction)

THE ATTORNEY-GENERAL

Appellant

and

MOOKA MUBIANA

Respondent

Coram: Bweupe, DCJ, Sakala and Chirwa JJS.

28th June, 1994.

Mr. D.K. Kasote, State Advocate, for the appellant.

Mr. E.C. Lungu of Andrea Masiye & Company, for the respondent.

J U D G M E N T

Sakala JS delivered the judgment of the court.

This is an appeal against that part of an assessment by the Deputy Registrar wherein he ordered interest at fifteen percent to be paid on the award of damages of K150,000 as value for replacement of a second hand television set and also the same percentage of interest on an award of K1,000.00 as money which had been taken from the respondent by the appellant's servants which the court ordered that it be returned to the respondent. For convenience, we shall refer to the appellant as the defendant and the respondent as the plaintiff which they were in the court below.

The brief relevant facts of the case are that the house of the plaintiff was searched by the police in the course of some investigation into a criminal offence in which the plaintiff was a suspect. In the course of the investigations the police collected a second hand working television set and compelled the plaintiff to pay K1,000.00 to a man who was said to have been swindled. The investigations did not end into any prosecution. Later the plaintiff demanded the return of his television set but when he discovered that it was not in a working condition he refused to collect it. He subsequently sued the Attorney General claiming damages for a number of things including the return or value of the television set and the refund of K1,000.00. He

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succeeded on the claim for damages for the television set and the return of K1,000.00. The Deputy Registrar awarded him the sum of K150,000.00 as replacement value of a second hand television set. On both awards interest of fifteen percent was awarded. It is this award of the interest that the defendant has appealed to this court.

According to the memorandum of appeal, one ground was filed namely that the Deputy Registrar misdirected himself in law by awarding interest on the replacement value of the television set. In this court Mr. Kasote has filed an additional ground of appeal namely that the learned Deputy Registrar erred in law by awarding fifteen percent interest for unlimited period which means that the interest rate will run until the damages are paid by the defendant. In arguing the first ground Mr. Kasote submitted that the Deputy Registrar misdirected himself in law by departing from the learned trial Judge's Order that a fair value of the television set should be paid to the plaintiff. He pointed out that the endorsement on the writ of summons was for the return of the television set and that this was repeated in the statement of claim. He also pointed out that even in the court the plaintiff produced a proforma invoice which showed that the value of the new television set was K205,000.00. He noted that accepting the claim of the plaintiff on the basis of the proforma invoice which related to a new television set would be enriching the plaintiff unjustly. Mr. Kasote informed the court that he had no complaint with the award of K150,000.00 but that it was the award of interest at fifteen percent which he was complaining of.

We have very carefully considered Mr. Kasote's arguments on the first ground in relation to the amount awarded. We are satisfied that the plaintiff having been deprived of a working television set he was entitled to a fair replacement value. In the instant case the learned Deputy Registrar was on firm ground when he refused to award the plaintiff an amount equivalent to a new television set. This ground of appeal therefore cannot succeed. We uphold the

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learned Deputy Registrar's award of K150,000.00 as replacement value of a second hand television set.

On the second ground Mr. Kasote's complaint is that the interest was awarded for unlimited period. He pointed out that according to Section 20 of Cap 92 the interest after judgment should be at six percent and not fifteen percent. Mr. Lungu on behalf of the plaintiff concedes that in terms of the law as it stands now the interest rate after judgment should be confined to six percent. He has also drawn out attention to order 36 of Cap 50 which has changed the rate after judgment. He has suggested that we should perhaps try to reconcile the various laws relating to interest rates. We do not consider that this is an appropriate case in which to deal with those rates. Mr. Kasote has however pointed out that Order 36 is a Statutory Instrument provision while Section 20 of Cap 92 and Section 4 of Cap 74 are enactment provisions. We would agree that the different provisions of the law relating to interest appear to raise some uncertainty. But as we have said the issues in the present case are conceded and it is therefore unnecessary to deal with the point raised by Mr. Lungu asking us to try to reconcile the various provisions of the law on interest. In our view we do not understand the Deputy Registrar's judgment to have awarded interest for unlimited period, since the award of interest is dependent on the day of payment of the damages awarded. However to the extent that the interest was at the same rate even after judgment then the Deputy Registrar fell into error. We therefore uphold the learned trial Deputy Registrar's award of fifteen percent interest up to date of judgment but after judgment up to date of payment, we propose to follow the law as it stands namely interest will run at six percent from date of judgment to date of payment. The defendant has therefore partially succeeded on ground two. But the net result is that the appeal is dismissed. On the question of costs, we order that each party will bear its own costs in this court.

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B.K. Bweupe,
DEPUTY CHIEF JUSTICE

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E.L. Sakala
SUPREME COURT JUDGE.

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D.K. Chirwa
SUPREME COURT JUDGE.