

## **SENTOR MOTORS LIMITED AND 3 OTHER COMPANIES (1996) S.J. (S.C.)**

SUPREME COURT

M.M.S.W NGULUBE C.J., CHIRWA AND W. M. MUZYAMBA, JJ.S.

28TH MARCH AND 5TH JULY, 1996.

(S.C.Z. JUDGEMENT NO 9 OF 1996)

### **Flynote**

Court - Duty of - Interim settlement order not capable of being resolved - Court ordering interim order to remain as final order - Amounting to dereliction of duty to adjudicate.

### **Headnote**

In the High Court the parties had arrived at an interim settlement which was made an order of court pending further negotiations outside the Court. Such negotiations were unsuccessful however and the parties returned to Court where the Court made its interim order final.

### **On appeal, Held:**

- (1) That it was the duty of the Court to adjudicate matters brought before it.
- (2) That the Court in the present matter had abdicated its responsibility and this amounted to a denial of justice. Appeal allowed and matter remitted to the High Court for hearing.

### **Case referred to:**

1. Zulu v Avondale [1982] Z.R. 172

### **Legislation referred to:**

1. High Court Act Chapter 27 of the Laws of Zambia
2. The Constitution of Zambia, Chapter 1 of the Laws of Zambia 1

For the appellants: Mr. S N Lungu of Shamwana and Company

For the respondents: Mr. C Mundia of Mundia, Kakoma and Company

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### **Judgment**

**NGULUBE, C.J.:** delivered the Judgment of the Court.

On 28th March, 1996, when we heard this appeal, we allowed it by consent of both sides; we reversed the decision below; we ordered that the petition be set down for hearing before a Judge of the High Court; and we ordered that the costs abide the outcome of the trial of the petition in the court below. We said we would give our reasons later and this we now do.

One Jose Manuel Fernandes, a shareholder and Managing Director of Sentor Motors took out a petition for the compulsory winding up of the company, citing unhappy differences and difficulties another major shareholder. The petition was opposed. The record shows that on 6th March 1995 the learned judge below approved and signed a consent order which was in the following terms:

UPON HEARING COUNSEL for the parties herein AND BY CONSENT it is HEREBY

ORDERED THAT:

1. The Pleadings be amended by inclusion of the following companies to form part of the petition:-
  - (a) NEPTUNE CARRIES LIMITED
  - (b) NEPTUNE AGENCIES LIMITED
  - (c) AFRICOR C.C SOUTH AFIRCA
  - (d) ARCTICA REFRIGERATION LIMITED
2. A firm of reputable Auditors with International experience shall be appointed as interim Managers, auditors and accountants to investigate the affairs of Sentor Motors Limited and the other four companies herein before mentioned from the date of this order for an initial period of three months subject to renewal.
3. The interim Managers will have independence to run the companies and shall be given full co-operation by all the Shareholders on the various companies.
4. The Share holders shall communicate with the interim Manager and amongst themselves through their counsel.
5. The Shareholders should declare all the assets of the various companies both within and outside Zambia.
6. The Interim Managers are to have full mandate to run the companies and shall have power to sign all cheques and negotiate instruments on behalf of the companies.
7. Any other independent audit investigations are to cease forthwith.

The consent order, by its very term, was clearly intended to serve in the interim until the matter was finally resolved. It seems from the record that the parties attempted to settle the matter out of court without much success. However, when this fact was communicated to the court, the record shows that a rather curious order was made. The note of the proceedings on the 5th September, 1995 reads as follows:-

	"05/09/1995	at 09:05 hrs
From:	B Bwalya - Judge	
Marshal:	Mr Tembo	
For the petitioner:	Mr M K Maketo C.R	
		Cook & Co instructed by Central Chambers.
		For the Respondents: Mr S N Lungu - Shamwana & Co with Mr C.K.Banda - Chifumu Banda & Ass
	Mr Lungu:	Mr Banda is instructed by us
	Mr Maketo:	We have failed to vary consent order by consent
	Mr Lungu:	That is the position.

Order: In view of the fact the parties have failed to vary the consent order by leave of court, the consent order or judgment dated the 6th day of March 1995 stands as the final judgment in this case. Any aggrieved party may appeal to the supreme court if dissatisfied with the consent order or judgment in question. Leave is granted to appeal. However the parties are also at liberty to enforce the consent order or judgment or take any course open to them under the Law. In view of my role in the consent order in question, I shall not entertain any application for enforcement of the consent order. However, such an application can be made before any other Judge. This therefore closes this matter before me save where the parties seek to vary the Judgment or to set it aside in accordance with the Law and procedure on the subject.

B M Bwalya  
Judge"

Effectively, the parties were not allowed to take the litigation already in court before the learned Judge to its logical conclusion. The whole of the dispute was left in abeyance and the danger was that on the order made in September the petition would languish, unheard, virtually indefinitely. The interim arrangements where some interim Managers took charge of business would now last more or less for ever since the consent Order was ordered to stand as a final judgment despite its obvious lack of finality. We were wholly unable to support the course take by the learned trial Judge. It is a primary function of the court to adjudicate disputes which have been submitted for determination. Although there is everything to be said favour of the promotion of amicable settlements where these are possible, the disputes which are not so settled must of necessity be resolved through adjudication by the court. The parties before us complained that their case has never been tried. It is unnecessary to stress that they are entitled to a trial and to a judgment. The duty to adjudicate and to do so with some finality and in a timely fashion is reflected in the language of the various statutory provisions dealing with the function of the courts. For Example, S9 (2) of the High Court Act opens with the phrase:-

"The jurisdiction vested in the court shall include the judicial hearing and determination of matter in difference,....."

Another Section of the High Court Act which is worth quoting in full is S.13 which reads:

"In every civil cause or matter which shall come in dependence in the Court, law and equity shall be administered concurrently, and the court, in the exercise of the jurisdiction vested in it, shall have the power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or relief whatsoever, interlocutory or final, to which any of the parties thereto may appear to be entitled in respect of any and every legal or equitable claim or defence properly brought forward by them respectively or which shall appear in such cause or matter, so that, as far as possible, all matters in controversy between the said parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail."

We draw particular attention in the section to the requirement to completely and finally determine all matters in controversy between the litigants and the avoidance of "all multiplicity of legal proceedings". See also *Zulu v Avondale* (1) regarding the need to finally determine disputes. Finally, we also draw attention to the Court's responsibility as articulated by Article 1 (9) of the Constitution which reads:

"Any Court or other adjudicating authority prescribed by law for the determination of the existence or extent any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time."

The foregoing speaks for itself. The order of 5th September 1995 complained of in this appeal was a misdirection and a denial of justice. It was for the foregoing reasons that we allowed the appeal.

Appeal Allowed

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