

IN THE SUPREME COURT FOR ZAMBIA

APPEAL NO. 23 OF 1996

HOLDEN AT LUSAKA

B E T W E E N :

MATCH CORPORATION LIMITED

APPELLANT

And

EDWARD CHOOLWE

RESPONDENT

CORAM: BWEUPE DCJ., CHAILA, CHIRWA JJS
On 10th June, 1996

For the Appellant – Mr. MUNDIA F. SIKATANA of Veritas Chambers.

For the Respondent – Messrs Luangwa Chambers.

JUDGMENT

BWEUPE DCJ. delivered the Ruling of the Court.

This is an application on behalf of the Appellant for an Order that the action which was reverted by this Honourable Court to the High Court for re-hearing be restored to this court and be heard in its original merit. The facts of the case are that on 20th May, 1998 this court, by consent of the parties, ordered a retrial before the High Court. The matter was not re-heard and the Appellant decided not to proceed with the case in the High Court and moved the court to review its own decision and restore the matter back to the Supreme Court.

The reason why the matter was sent for retrial is that the record of the court was incomplete in that no pleadings were on the file. An affidavit has been sworn by **BREASTFORD JAMES GONDWE**, the Personnel and Administrative Manager. He says that the Appellant seeks indulgence of the court for the High Court to dispense with the re-hearing of the actions pursuant to the Order of the Supreme Court for a re-hearing on the ground that the record of appeal before the court at the material time of appeal was incomplete and did not include the material pleadings and documents that were supposed to be included both at the High Court and the Supreme Court on the following grounds, namely:-

- (a) after the Supreme Court's Order for a retrial by the High Court, it was discovered, by the Appellant's Advocate, that the full pleadings depended upon during the hearing of the case by the High Court Judge were in fact available as forming part of the record which had earlier not been on the file;
- (b) that the Appellant verily believes that there is no additional document or pleading that should have been before the trial Judge which is not on record or was not on record during the trial;
- (c) that the Appellant's witnesses who testified during the trial of the case before Justice CHIBESAKUNDA prior to the appeal are no longer available for the Appellant to call on the grounds that Mr. RAO who was the Appellant's Accountant and did testify at the material time, is reported to be gravely ill in India and is not likely to be able to recover at all, or to recover in time to enable him to travel to Zambia to come and testify. Furthermore, the Appellant's other key witness Mr. DHARLIWAL, the Appellant's General Manager at the material time, now resides in Nepal and the Appellant has not been able to secure his presence for the retrial of this case;
- (d) the Appellant verily believes that there will be no prejudice that would be occasioned to any of the parties to the action in the cause herein, if the Honourable Supreme Court reviewed its order for the retrial of the case so as to hear the appeal which would expedite the process;
- (e) the Appellant verily believes that it would be in the interest of justice that the Supreme Court reviews its Order for the re-hearing of the action by the High Court and that instead the appeal be restored for its determination by the Honourable Supreme Court

Mr. SIKATANA, on behalf of the Appellant, argued that the application arises from the decision of the Supreme Court ordering the retrial of this case before the High Court on the ground that the record was incomplete in that the pleadings were not on the file. By consent of both parties, the counsel were directed on those grounds, the case should be reverted back to the High Court for retrial. Mr. SIKATANA went on to say that when the case went for retrial, it could not take off because the Plaintiff could not secure the presence of witnesses. The reasons for the failure were those contained in the affidavit by one, Mr. GONDWE, on behalf of Match Corporation, to the effect that Mr. RAO was in India, extremely ill and would not be available. The other witness Mr.

DHARLIWAL is now in Nepal and all efforts to get him have not succeeded. The reasons for applying is that Mr. BANDA did not appear at the trial and they discovered after such that there were full pleadings which have been exhibited as being DJG.1. They found there is no need for retrial and asked the court that the appeal should be heard on its own original merits. He further argued that the court has an inherent jurisdiction to do so as there would be no prejudice to any of the parties. He applied for an order that this court set aside the order of retrial and re-hear the appeal. He said under the Supreme Court Act there is no provision that stops the Supreme Court from setting aside its own judgment. There is no direction for the third party to plead. The court has therefore an inherent jurisdiction to set aside its order for retrial.

Mr. CHISI, on the other hand, objected to the application that the case reverts back to the Supreme Court for rehearing. He said the order for retrial was made after the consent of both parties. The court cannot reverse itself. The only way, he argued, this case can be reviewed, is where there has been a mistake of law or fraud.

We have given anxious consideration to the facts of this case, cases, cited, submissions rendered by both counsel, we are of the opinion that the court may review its own decision where there is mistaken law or fraud. This is not the case here. Mr. SIKATANA has not pointed to any provision nor laws which give jurisdiction to the court to review its own decision. Moreover, the order for retrial was made after the consent of both parties. It is our considered view that this court has no jurisdiction to

- J4 -

review its own decision. This application is dismissed and we direct the parties to have the matter re-heard by the High Court. Costs in the cause.

B.K. Bweupe
DEPUTY CHIEF JUSTICE

M.S. Chaila
SUPREME COURT JUDGE

D.K. Chirwa
SUPREME COURT JUDGE