ZAMBIA SEED COMPANY LIMITED AND CHARTERED INTERNATIONAL (PVT) LIMITED

SUPREME COURT
CHAILA, LEWANIKA AND CHIBESAKUNDA, JJ.S.
2ND JUNE ,1999 AND 16TH AUGUST,1999.
(S.C.Z JUDGMENT NO. 20 OF 1999)
APPEAL NO. 121/98

Flynote
Company Law - Rendering full account - Order 43 R.S.C.

Headnote
The appellants applied pursuant to Order 43 R.S.C. for an order that the Respondents should render full account of the appellant's account since the inception of the transaction under inquiry. The account sought related to the principal sum, interest, amounts repaid and the date of repayments. Before the lower court the respondents were claiming the sum of US $471,268.71 from the appellants. On 20th October,1997, the parties consented to judgment entered in favour of the respondents in the amount of US $375,000.00 which was not indispute. The difference between the two amounts would go to trial. By November 26th, 1997, the appellants had failed to liquidate the judgment debt, and the respondents obtained a writ of *fieri facias.* The appellants obtained a stay of execution and on appeal to a judge in Chambers, the parties once again reverted to the earlier arrangement wherein the appellants would pay the sum amount of US $375,000.00 with simple interest. On 31st March ,1998, the appellants obtained a stay of execution and applied to the court for an account to be rendered once more. The court dismissed the application to render account for the transaction before consent judgment but ordered an account to be rendered for post judgment. On appeal, it was held:

1. That since the appellants did not challenge the summary judgment and consented to it, they were bound by it.

Authorities
(1) High Court Rules Cap. 27
(2) Rules of the Supreme Court of 1976
(3) Halsburys Laws of England Volume 26 4th Edition.

For the appellant: Mr. P. Matibini of Messrs. P. Matibini & Associates.
For the Respondent: Mr. Mutemwa of Messrs. Mutemwa Chambers.

Judgment
CHIBESAKUNDA, J.S.: delivered the judgment of the Court.

This is an appeal from a judgment by the lower court dismissing an application by Zambia Seed Company Limited (the defendants in the action now the appellants) against Charterfield International (Pvt) Limited (the plaintiffs in the action before the lower court now the respondents). 35

The appellants applied pursuant to Order 43 R.S.C. for an order that the respondents should render full account of the appellant's account since the inception of the transaction under inquiry. The account sought related to the principal sum, interest, amounts repaid and the dates of repayments. Before the lower court, the history of the main action was that the respondents had taken out a "Especially Endorsed Writ" out of the Principal Registry on 21st August, 1997, claiming a sum of US $471,268.71. On the 15th of September, 1997, the respondents took out summons under **Order 13 of the High Court** (1) praying for a summary judgment. The appellants filed an affidavit in opposition. At the hearing of these summons on 20th October ,1997, according to the notes, the parties consented to judgment being entered in favour of the respondents in the sum amount of US $375,000.00 with interest accruing.

According to the Order of the Deputy Registrar the difference between the initial claim of US $471,268.71 and the agreed judgment debt of US $375,000 was to go for trial. On the 27th of October ,1997, post this summary judgment the appellants indicated that they would repay this summary judgment debt in three monthly instalments. It would appear that by the 11th November, 1997, the appellants failed to liquidate this judgment debt of US $375,000. So the respondents issued a writ of *fieri facias* to levy execution of this judgment debt. Thereupon the appellants sought a stay of execution. This was granted on 26th November, 1997, by the learned Deputy Registrar for a period of 30 days to enable the parties *ex curia* sort out a dispute raised by the appellants on interest rates only. The respondents being dissatisfied with this decision by the Deputy Registrar appealed to a Judge at Chambers. From records, even at this stage, the appellants raised no serious challenge to the judgment debt under Order 13 of the High Court Rules, (1) conceivably so in our view, because up to that point in time that judgment debt in the sum of US $375,000.00 had been consented to by the appellants. Moreover even this time when the matter came for hearing before the Judge in Chambers the parties consented to withdraw the appeal and the appellants once again consented to paying the same sum of US $375,000.00 plus simple interest at the rate of five per cent (5%) on the judgment date from 1st of February ,1997, to 20th October, 1997, and thereafter an interest of six per cent (6%) per annum until final payment. Also by consent each party agreed to bear its own costs. The appeal was thus withdrawn. Nothing happened in this matter until the 31st of March ,1998, when the appellant applied for stay of execution of this High Court Order. The application was granted and thereafter the appellants applied to the same Court for the account to be rendered once more. The court dismissed the application to render an account for the transaction before consent judgment but ordered an account to be rendered for post judgment and hence the appeal before us.

Mr. Matibini has advanced more or less the same arguments, which he did before the learned Judge when he sought a full account to be rendered. His argument is that the facts before the Deputy Registrar, High Court, now before us demands that for justice to be done a full account has to be rendered. We will not go into too many details of his arguments. Surface for us to say that his main contention is that because:

(1) The courts in Zambia administer both law and equity concurrently;
(2) Equity follows the law; and
(3) Where equity and law are in conflict equity shall prevail (vide Section 13 of the High Court Act), with this particular case equity dictates that a full account of the whole transaction to be rendered. Equity has to prevail in this case.

Citing a number of English cases, his core argument is that even though there was consent

judgment equity in this particular case calls for a full account to be rendered. He has furthermore argued that such an Order will not amount to an impeachment of the summary judgment. It will amount to a supplementary order made to ensure that all aspects of the case are adequately dealt with.

Mr. Mutemwa in response has argued that the application before the court amounts to an impeachment of the lower court's judgment. Contrary to the well established principle of law that a judgment can only be impeached by way of an appeal to a higher court. He has submitted that the appellants have had chances up to now to challenge the judgment by appealing against the lower court's judgment. According to him there can be no account of the transaction back-dating to the commencing of the transaction before summary judgment. The account can be rendered of the transaction post-judgment up to date. He has therefore prayed that we should dismiss the appeal before us.

We have considered the arguments before us. From the court's records there is no doubt that before summary judgment under Order 13 was entered there were affidavits filed by both parties before the court stating each party' position indicating differences in the amounts due to the respondents. Nonetheless, at the hearing of summons under Order 13 the appellants consented to a judgment sum of US $375,000.00, a sum well below the original figure claimed. The Order by the Deputy Registrar was that the difference between the original claim of US $471,268.71 and US $375,000 was to go for trial. Post this summary judgment according to the records the appellants accepted this summary judgment and even went to propose payment in three instalments in their letter dated 27th October, 1997. There was no challenge to the summary judgment. There has never been any challenge to the summary judgment debt. Even on two occasions when the matter reached the Judge at Chamber level, the appellants did not seek to challenge the judgment. Conceivably so, because they consented to a summary judgment thus were bound by the summary judgment. In our view, the summary judgment however was a final judgment as defined in the Halsbury's Laws of England, Fourth Edition, Page 238, thus:

> '' 'A judgment obtained in an action by which a previously existing liability of the defendant to the plaintiff is ascertained or established' and as 'a judgment obtained in an action by which the question whether there was a pre-existing right of the plaintiff against the defendant is finally determined in favour either of the plaintiff or of the defendant. ' ''

We do not accept Mr. Matibini's arguments that there are aspects of the claim, which need supplementary orders. By law the only way to challenge a judgment by consent would be to start an action specifically to challenge that consent judgment.

We therefore dismiss the appeal with costs to be taxed in default of agreement.

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