CHIBOTE LIMITED, MAZEMBE TRACTOR COMPANY LIMITED, MINESTONE (ZAMBIA) LIMITED, MINESTONE ESTATES LIMITED AND MERIDIEN BIAO BANK (ZAMBIA) LIMITED (IN LIQUIDATION)

SUPREME COURT
SAKALA, CJ., MAMBILIMA AND CHITENGI, JJS
19TH MARCH AND 16TH SEPTEMBER, 2003
SCZ No. 11 OF 2003.

Flynote:

Notice of Motion under rule 78 of the Supreme Court rules cap. 25 - slip rule - Correction of errors in a Judgment from any slip or omission - correction by the Supreme Court of its own Judgment.

Headnote:

The Respondents made an application to the Supreme Court to correct its Judgment as the Respondent through its counsel believed that the Supreme Court had made errors or omissions in its Judgment earlier in this cause. The back ground is that the appellants had appealed to the Supreme Court against a High Court decision which was made in favour of the Respondent. When the appellants appealed against that decision, their grounds of appeal were dismissed by the Supreme Court and the court ordered that the matter be taken for re-trial in the High Court. As a result of the said decision of the Supreme Court, the Respondent felt that the court had made an accidental error in ordering a re-trial and not a dismissal of the appeal. By way of notice of motion, the Respondent applied to court to revisit its decision arguing that the court, having dismissed all the grounds of appeal of the appellants, should not have ordered for a re-trial but a dismissal of the entire appeal. The Respondent argued that such pronouncement was not the intention of the court but that it was made accidentally or by omission or error or slip. Hence the Respondent applied to the court for the court to correct its Judgment.

Held:

(i) The intention of the court in its Judgment when it sent back the matter to the High Court for re-trial was to ensure Justice for both parties.

(ii) There was no error, omission or slip in the Judgment.

(iii) The court can not vary its Judgment so as to bring about a result more acceptable to a given party

Application not granted. .

Cases referred to:

1. **Owen (Trading as Max Owen Associates) v. Pugh (1995) 3 All ER pages 345-346**
2. **Allen v. Sir Alfred Mc Alpine and Sons (1968) 1 All ER page 536 letters A and B**
3. **Trinity Engineering v. Zambia Commercial Bank Limited (1995-97) ZR 166**
4. **Podbery v. Peak (1981) 1 All ER 699**
5. **Rickhards v Rickhards (1990) Fam. 194: (1989) 3 All ER 1933 CA**
6. **R v. Bow Street Metropolitan Stipendiary Magistrate and Others, ex parte Pinochet (1999) 1 All ER 1936**
7. **Cassel and Co. Ltd v. Broome (No. 2) (1972) All ER 849**
8. **Swiza Laboratories Limited v. Mercantile Printers Limited, SCZ Appeal No. 94 (1996) page J8 lines 22 to 25**
9. **Miyanda v. The Attorney-General (1985) ZR 243**

For the Applicant/Respondent: Mr. A.M. Hamir, SC, with Mr. Chisunka, Legal Counsel

For the Respondents/Appellants: Mr. C. Banda, SC, of chifumu Banda and Associates with Mr. S.M. Malama, of Jacques and Partners

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JUDGMENT

Sakala, CJ., delivered the judgment of the court

This is an application, by way of a Notice of Motion, made under Rules 48(5) and 78 of the Supreme Court Rules, CAP 25, seeking for an order to correct this Court's judgment delivered on 31st July, 2002, by setting aside our order for a new trial and instead to order that the appeal be dismissed and that the judgment and the orders claimed in the counterclaim be granted to the applicant/respondent. The application is supported by an affidavit sworn by Mr. Hamir, quoting extensively from our judgment.

On account that the affidavit cites a number of sentences and paragraphs from our judgment forming the basis of the Motion , we are compelled to reproduce the relevant

paragraphs of that affidavit. These paragraphs are (6) to (12). They read as follows:-

"6) I have perused the said Judgment and observe that in so far as the Judgment states at Page 10; lines 9 to 11, and lines 17 to 19 ".....the ownership of the 51 or so properties in this case to be resolved on the merit at the trial" ".....the Order of dismissal will be set aside and the Plaintiffs again be given the chance to take their own cause of action to trial," constitutes a manifest error arising from an accidental slip or omission and I urge the Court to correct it.

7) The appellants had filed 6 grounds of appeal. The first 3 grounds are pertinent to this application. The 4th dealt with the counterclaim the 5th was peripheral and the 6th abandoned.

8) The first ground stated that, "the High Court erred in holding that whether a case has been dismissed or struck out of the cause list the end result is the same". This Court held that the statement of the learned Judgment complained of was not a misdirection and dismissed this ground.

9) The 2nd ground of appeal stated that, "the High Court erred in holding that sufficient cause was not shown (by the appellants) to persuade it to set aside its ruling and Orders made on 26th September, 2001". This Court similarly dismissed this ground and observed "We do not see how it can be asserted as ground 2 sought to do – that the judge was in error to hold that no sufficient cause was not shown. Indeed Mr. Banda (Counsel for the appellants) quite candidly admitted that it was inexcusable and a contempt for counsel to walk away from Court and not return."

10) The 3rd ground of appeal encompassed argument advanced in the other grounds and in substance stated, the High Court erred in dismissing the action for want of prosecution instead of proceeding to strike out the action under Order 35 Rule 2 of the High Court Rules. The Court similarly dismissed this ground of appeal. The Court so concluded after it addressed its mind to the history of the case and said, "Conduct bordering on or amounting to defiance attracts an entirely different set of considerations. The judges Orders clearly stand on a higher footing than the rules and it is an extremely naive litigant who can think of disobeying and challenging the authority of the Judge in his own courtroom." "The sad history of the re-trial ordered by this court, as adumbrated by the trial Judge, revealed the clearest case of reluctance or unwillingness to prosecute let alone to expedite the trial and resolution of the case. Such default coupled with lack of progress and the walkout entitled the Court to conclude there was want of prosecution meriting the dismissal of the action". (Emphasis is mine).

11) This Court is in total agreement with the High Court Judge in granting the respondent Judgment dismissing the appellants' claims and in his reasons for doing so. In addition thereto the appellants had clearly failed to satisfy it that the trial Judge acted under mistake of law, or in disregard of principles or under a misapprehension of facts or that he took into account irrelevant matters in exercising his discretion to dismiss the action.

12) I am advised that in the circumstances aforesaid, the only cause open to this Court was to dismiss the appeal. The omission to so was an error arising from an accidental slip."

The notice of motion was premised on four grounds: that it is trite law that there are two distinct, though related, circumstances in which an action may be dismissed for want of prosecution, namely: when a party has been guilt of intentional and contumelious default; and where there has been inordinate and inexcusable delay in the prosecution of the action; that the Court dismissed all the grounds of appeal advanced by the appellants to challenge the judgment dismissing the claim by holding that the trial court did not err in fact or law and correctly applied his discretion to dismiss the appellants' claim; and that this Court was in total agreement with the findings and the conclusions of the trial Judge and therefore precluded from disturbing the judgment of the trial court, because the appellants and their Counsel were guilty of intentional and contumelious default on a number of occasions, as their conduct was reprehensible, disparate and difficult to imagine happening in any court in any jurisdiction. The fourth ground was in the alternative; that the Court was misled that Mr. Malama, Counsel for the appellants, unilaterally abandoned the appellants at the trial and on appeal as to allow the appeal.

At the hearing of the Motion, Mr. Hamir made oral arguments and submissions based on the four grounds. The oral submissions were supplemented later detailed written submissions filed on 25th March followed by addendum submissions filed on 20th May, 2003. We want to acknowledge that there was a lot of industry and research put in the submissions. There was also a lot of force in the submissions.

Mr. Hamir opened his oral arguments and written submissions on the four grounds by pointing out that he was embarking on a voyage of showing and persuading the Court that its intention in its judgment of the 31st of July, 2002 was not to order a retrial but to dismiss the appeal. The import of both the oral and written submissions of Mr. Hamir was that the applicant was seeking for an order of this Court to correct its judgment of 31st July 2002 to the extent that the appellant's appeal against dismissal of their action is dismissed. Counsel pointed out that the application was made pursuant to Rule 78 of the Supreme Court Rules, Cap 25 of the Laws of Zambia, the relevant part being that which relates to correction at any time, of errors in a judgment from any accidental slip or omission. According to Counsel, our Rule 78 is in substantial conformity with Order 20, r. 11, "Amendment of judgment and Orders" in the Supreme Court Practice (the White Book 1999). Mr. Hamir pointed out that Order 20/11/1 explains the effect of the rule and that the author also explains that "apart from this rule, the Court has an inherent power to vary its own orders so as to carry out its meaning and to make its meaning plain" and that the Court also has inherent powers to correct a slip touching reasons given for its decision. It was the submission of Counsel that the slip rule permits this Court to correct an error in a judgment in so far as it is necessary in properly expressing its intentions.

Mr. Hamir explained that the proceedings at trial comprised two actions. The plaintiffs' action against the defendant and the defendants' counter-claim against the plaintiff. He pointed out that a counter-claim is equivalent to an independent action and rules that apply to the plaintiff in a main action also apply to a defendant conducting a counter-claim in that neither could permitted to allow the claim to remain un-prosecuted without sanction. In supporting the first ground of the Motion, Mr. Hamir cited, in his written submissions the cases of **Owen (Trading as Max Owen Associates) v. Pugh [(1)] and Allen v. Sir Alfred Mc Alpine and Sons [(2)].**

Turning to our judgment in issue, Mr. Hamir pointed out that up to top of page 17, the judgment is unexceptionable, beyond criticism and altogether admirable. He pointed out that an analysis of this part of the judgment reveals that the Court dismissed all the substantial grounds of appeal, namely; grounds 1,2 and 3 while 4th ground of appeal, dealt

with the counter-claim, the 5th ground was peripheral and the 6th was abandoned. Mr. Hamir submitted that at the point in the judgment; when this Court agreed with the trial court's judgment and dismissed all the three grounds, the appeal concerning the plaintiff's main cause of action had been disposed of under the court's reasoning in dismissing grounds one to three. Counsel observed that in discussing grounds one to three, this Court wholly endorsed the findings of the learned trial Judge and noted that the trial had been adjourned on numerous occasions; that the plaintiff's counsel was aware of the court's concern and its warnings over their numerous applications for adjournments; that the trial was adjourned for the final time yet plaintiffs' counsel disappeared from court on the pretext he was going to robe, that the plaintiff's counsel had devised a scheme to further delay the case; that the plaintiffs were not keen to prosecute their case; and that the conduct amounting to direct disobedience to an order and amounting to contempt of attracts a different set of considerations.

Mr. Hamir further noted that this Court had concluded that "this case clearly revealed in the clearest terms of the reluctance or unwillingness to prosecute let alone to expedite trial and resolution of the case." It was Mr. Hamir's contention that a finding of this Court of a scheme engineered by the plaintiffs to delay the case in addition to instances of inexcusable delay extending to intentional and contumelious conduct is a very grave, weighty and scandalous matter. Mr. Hamir submitted that this Court was clearly satisfied that the two-requisites for the dismissal of the plaintiffs action for want of prosecution, namely; intentional and contumelious default and inordinate and inexcusable delay in the prosecution of the action had been established and this Court upheld the trial Judge.

According to Counsel, this Court having emphatically and unwavering supported the decision of the trial Court, this Court could only have intended to dismiss the appeal but omitted to do so and proceeded to address the counter-claim, which, it was submitted, was a clearly an accidental omission as the intention of the Court to dismiss the appeal was crystal clear from the judgment.

Mr. Hamir also argued, in discussing ground four of the appeal in the judgment which related to the counter-claim, that the Court inserted the part as to the plaintiffs action, departing from the earlier finding that the learned trial Judge committed no error or misdirection which could only stem from an accidental slip. According to Counsel, the merits of the plaintiff's action were not in issue in the defence to the counter-claim. Above all, he contended that this Court had already found that the trial Judge was entitled to dismiss the action.

Mr. Hamir also argued that while this Court may pronounce its decision at any point in the judgment, the practice, however, is that in cases where there is a main action and a counter-claim and the appeal pertains to both, the Court will pronounce its decision immediately after having addressed all the grounds of appeal in each action.

Mr. Hamir explained that the applicant was not asking the Court to review or reopen the appeal as it was in the **Trinity Engineering v. Zambia National Commercial Bank Limited**[3] case. Counsel indicated that in this case, all parties agree that the Court correctly analyzed the facts and the law. It did not err in addressing the facts and the law. According to Mr. Hamir, he was not asking that even a single word be changed or that the court addresses other documents, evidence or matters as he had described the Court's analysis of the appeal in the main action as above admiration. Mr. Hamir stated that his criticism was directed at the order for re-trial in the main action following the findings of the Court. He submitted that he attributed the order complained of to an accidental slip or omission.

According to Counsel, the order for retrial was a manifest error despite the fact that it is clearly set out. He pointed out that the absence of a reason preceding the pronouncements; the absence of even one positive feature to persuade the Court to order a re-trial, and the unequivocal finding of this Court that the appellant did not possess one fold of a redeeming feature, was a clear testament that the Court erred or slipped accidentally.

Mr. Hamir contended that for the Court to say that "We have given very anxious consideration to this appeal and all the submissions and arguments which we have heard" and then proceed to order a re-trial would in the context of this case be unreal, false and insincere on the part of the Court. This, he pointed out, was so because the Court in the very next sentence characterized the appellants' submissions and arguments "as unable to do anything."

Mr. Hamir again repeated himself at this stage in his arguments by further explaining that this Court dismissed all grounds of appeal in the main action and was in total agreement with the trial Judge. That the Court came to an independent conclusion that the history of the case revealed the clearest case of reluctance or unwillingness to prosecute the trial and resolution of the case. According to Mr. Hamir , it was improbable that there is any merit in the contention that this Court could have based its decision to order a retrial on the submissions, arguments and the appeal as contended. The contrary, according to Counsel, was that the arguments, submissions and appeal as discussed by this Court would have led to only one conclusion; and that is that the appeal in the main action be dismissed following the dismissal of each and every one of the grounds of appeal. Hence, according to Mr. Hamir, this application to correct the accidental slip.

In the rest of the written submissions, Mr. Hamir analysed two Court of Appeal decisions on manifest slip or error. The first case was that of **Podbery v. Peak**[(1)] In which he said the Court of Appeal made a manifest error in its decision by holding that the Court of Appeal did not have jurisdiction to grant an applicant an extension of time to appeal against a decision of the lower Court. But the very Court of Appeal in **Richards v. Richards**[(5)] set aside the decision in the **Podbery** case and held that the Court of Appeal had jurisdiction to hear applications for extension of time to appeal.

According to Mr. Hamir, the significance of the authority of **Rickhard** case to the application before us is that the **Podbery** case involved a manifest slip or error. The Court of Appeal was at plain to deviate from the doctrine of **stare decision** in relation to its own decision and rectified the slip in **Podbery** case.

Mr. Hamir concluded his written submissions by pointing out that this Court has the opportunity to rectify the slip at this time and it should do so. He contended that he was convinced beyond any shadow of doubt that it was the intention of this Court, following the admirable analysis of the trial court's decision and reasons, to dismiss the appeal in the plaintiffs action against the defendant.

Two months later, after the hearing of the Motion, and over one and half months after filing written submissions Mr. Hamir filed addendum submissions to those file earlier on. This further submission, according to Counsel, was necessitated by the need to bring to the attention of this Court the decision of the House of Lords in the case of **R v. Bow Street Metropolitan Stipendiary Magistrate and Others, ex-parte Pinochet** [(6)]**.** Mr. Hamir contended in these further submissions that the Supreme Court always has an inherent jurisdiction to correct its previous decision in certain compelling circumstances. He pointed out that the Supreme Court and the Supreme Court Rules do not limit the powers of the Supreme Court to do so. Mr. Hamir argued that the Supreme Court is the highest Court in

the land, it must be able to correct and set aside its previous decision, even in the same case, where the decision is improper for otherwise no other Court is able to do so. According to Counsel, the House of Lords has encountered at least two situations when it was obliged to set aside its previous decisions in the same cases. These being the cases of **Cassel & Co. Ltd v. Broome** [(7)], where the Court had made an order for costs; but on application, the Court set aside its previous award of costs because it had not afforded the parties to address it on the issue of the award of costs; and **R v. Bow Metropolitan Stipendiary Magistrate and Others, ex-parte Pinochet Ugarte** [(6)] in which the House of Lords similarly set aside its previous order. Counsel submitted that the power and the jurisdiction of the Supreme Court remains unfettered in its quest to administer justice according to law; that it is obliged to correct an injustice where there is one.

Mr. Hamir repeated his earlier arguments that in the present case the Supreme Court was in total agreement with the findings and the decision of the trial Judge when it found in fact and law that the learned trial Judge was entitled to dismiss the plaintiff action. Counsel submitted that the irresistible conclusion by the Supreme Court must have been to dismiss the appeal and to order a retrial could not have been the intention of the Court. According to Counsel, a correction of this slip would not amount to varying or rescinding the order because this Court, after reading such disturbing but inevitable conclusions would not have contemplated ordering a retrial but for the accidental slip in addressing the defence to counter-claim.

On behalf of the Respondents/Appellants, Mr. Malama made oral submissions supplemented by written submissions filed on the 6th of May, 2003 following the hearing of the Motion.

Mr. Malama pointed out that the purpose of the Motion is stated as being for ".....an Order of the Court to correct the .....judgment to the extent that the appellants' appeal against dismissal of their suit is dismissed; and For an Order of that the decision ordering a new trial herein is corrected, the appeal be dismissed and judgment and orders claimed in the counter-claim be granted to the Respondents.

Citing page 10 lines 15 to 23 of our judgment where he said:-

"As the loans and advances were not effectively traversed, those parts of the judgment given below as related to the loans and advances will not be disturbed. The remainder of the judgment and the order of dismissal will be set aside and the Plaintiffs again be given the chance to take their own cause of action to trial. The Defendant's own amended defence and the part of the counterclaim on which the judgment is set aside will be considered in the same fresh trial which we Order....", Mr. Malama contended that flowing from the part of our judgment quoted above are the following: that some parts of the judgment of the trial Court were set aside; that some parts were allowed to stand; and that this Court ordered a retrial on those parts of the judgment of the Court below, as were set aside. Counsel also pointed out that this Court set aside the judgment of the Court below relating to "..the ownership of the fifty-one or so properties in the case...." and that the dispute over the properties should...be resolved on the merit at the trial...". He further pointed out that this Court also set aside part of the counter-claim where it said: **"...The Defendants' own amended defence and the part of the counterclaim on which the judgment is set aside will be considered in the same fresh trial which we order...."**
In his written submissions, Mr. Malama set out the counter-claim and agreed that this Court did not disturb certain parts of the judgment of the Court below; while the other claims in the counter-claim were set aside and a retrial ordered in respect thereof.

After citing Rule 78 of the Rules of this Court and after making reference to the Motion, Mr. Malama argued that it was clear from the terms of the Motion that it was seeking to have the judgment of this Court upset by substituting the orders the Motion was asking for in place of the clear and unambiguous orders of this court. Mr. Malama submitted that Rule 78 does not apply to a case where a party to an appeal applies for an order which in effect asks this Court to set aside, reverse or vary a judgment of this Court. Counsel pointed out that the Court has stated in the past that the error or omission referred to in Rule 78 "must be an error in expressing the manifest intention of the Court and that the Court cannot correct a mistake of its own in law or otherwise eve though apparent on the face of the order." **(See Swiza Laboratories Limited and Mercantile Printers Limited** [8]. Counsel further pointed out that in the same case of **Swiza** this Court emphasized that "....it has no jurisdiction to vary or set its own judgment.."

Mr. Malama also cited the case of **Miyanda v. The Attorney-General** [9] where the appellant asked this Court to order re-instatement instead of the order given by this Court in damages. The appellant proceeded under Rule 78 and asked this Court to relook at its judgment so that it orders reinstatement instead of damages. Mr. Malama referred us to a passage in that judgment where we said: -

> **"There was nothing accidental about the determination and the position is simply that the applicant is dissatisfied with an award of damages and would have us vary our decision so as to bring about a result more acceptable to him"**

Counsel also referred us to the case of **Trinity Engineering v. Zambia National Commercial Bank Ltd** [3] which he said the applicant was desperately attempting to distinguish from the case before the Court but whose principles aptly apply to the Motion before the Court. Mr. Malama submitted that the application by the applicant/respondent is misconceived and must be dismissed with costs.

We have deliberately set out the parties arguments and submissions at some great length to bring out the parameters of the complaint against our judgment. According to Mr. Hamir, and he is right, the Court may pronounce its decision at any point in the judgment and it is the practice, where there is a main action and a counter-claim, and the appeal pertains to both to do so immediately after having addressed all the grounds of appeal in each action. It was Mr. Hamir's position that his complaint is not the placement of the decision as the Court could have recorded the dismissal of the grounds of appeal to that main action. The contention of Mr. Hamir is that the Court having done so (dismissing the three grounds of appeal) at the point where it was specifically addressing the defence to the counterclaim without any discussion as to why the main action should go to re-trial or advancing any reasons for the relevance under ground 4, can only be on the basis of an accidental slip. According to Mr. Hamir, had the Court done so following the dismissal of the first 3 substantive grounds of appeal, the whole appeal would have been dismissed. In short, Mr. Hamir contends that the three grounds of appeal having been dismissed, the Court should have dismissed the appeal before dealing with the ground relating to the counter-claim.

The truth of the contention as we see it is that Mr. Hamir's complaint relates to the placement of our decision in the judgment, although he denies this fact. Be that as it may, even if there was misplacement of decision, which we do not agree; and even if there was no discussion as to why the main action should go to retrial; which we also do not agree and even if as contended; no reasons were advanced for the relevance of ground four; which we also do not agree, our judgment and orders made therein are very clear. At J10 we said as

follows:

"We have given very anxious consideration to this appeal and all the submissions and arguments which we have heard. The defaulting plaintiffs were unable to do anything more than throw themselves, as it were, at the mercy of the Court. We cannot ignore the principle in the MULIANGO case but as in that case, we have closely scrutinized the proposed defence to the counterclaim. Having done so, we can see that it is preferable for the dispute concerning the ownership of the fifty-one or so properties in the case to be resolved on the merits at a trial. However, since justice is for both sides, it is also that there was no effective traverse of the counterclaim in respect of the loans and advances. There is thus merit in the submission to consider severance more so that a counterclaim is an independent cause. As the loans and advances were not effectively traversed, those parts of the judgment given below as related to the loans and advances will not be disturbed. The Remainder of the judgment and the order of dismissal will be set aside and the plaintiffs again be given the chance to take their own case of action to trial. The defendant's own amended defence and the part of the counterclaim on which the judgment is set aside will be considered in the same fresh trial which we order."

On the facts that were before us, in a situation where there were defaulting plaintiffs, this Court, being a final Court of Appeal, was duty bound to scrutinize the proposed defence to ensure justice in the whole matter before it. Indeed, we did observe that "justice is for both".

We agree with Mr. Malama that flowing from our judgment, some parts of the trial court's judgment were set aside; some parts were allowed to stand that we ordered a retrial on those parts of the court's judgment which were set aside. We also set aside part of the counter-claim. This was our manifest intention.

We are very familiar with the provisions of our Rule 78 and Order 20 of the White Book, 1999 Edition in relation to correcting errors in a judgment. We accept that this court had inherent jurisdiction to correct a slip touching reasons given for its decision. But in the case of **Podbery** supra, cited to us by Mr. Hamir, the Court had made a manifest slip or error, which was properly corrected in the case of **Rickhard** supra also cited by Mr. Hamir. Mr. Hamir in his addendum submission drew our attention to a very persuasive House of Lords decision in **exparte Pinochet Ugarte** supra. To appreciate the persuasive nature of case, it is necessary to set out the relevant brief facts. These brief facts are: The House of Lords made an order on appeal by the Government of Spain in which by a majority of 3 to 2 it found that the former President of Chile, Augustine Pinochet Ugarte did not enjoy immunity in respect of acts committed while he was head of state, and the Secretary of State in his discretion could, if he were so minded to do, extradite him to Spain for trial.

Augustine Pinochet Ugarte applied to the House of Lords to set aside that order on the ground the Lord Hoffmann who had concurred with the majority opinion was closely linked to one of the parties that had intervened in the appeal. The intervener had sought his extradition for trial in Spain. This linkage gave the appearance that Lord Hoffmann might have been biased against him. The applicant applied to the House of Lords to set aside its order.

The House of Lords held that the Court has jurisdiction in appropriate cases to rescind or vary an earlier order of the House. The Court went on to state that "In principle, it must be that your Lordships, as the ultimate Court of Appeal, have powers to correct an injustice caused by an earlier order if this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains

unfettered."

We totally agree with the House of Lords on the unfettered inherent jurisdiction of the Court. But, this is important, the **Ugarte** case was a case where bias was alleged against one of the Law Lords. The House was enforcing the well known principle that a judge was automatically disqualified from hearing a matter in his own cause. The House, however, stressed the point that an appeal to the House of Lords will only be reopened where a party, through no fault of its own, has been subjected to an unfair procedure; pointing out that a decision of the House of Lords will not be varied or rescinded merely because it is subsequently thought to be wrong.

The position taken by the House of Lords has been the consistent position taken by this Court in a number of cases one of them being **Trinity Engineering** case supra, which the applicant desperately attempted to distinguish from the case before us.

The manifest intention of our judgment was to and did: set aside some parts of our judgment; not disturb some parts of the judgment of the trial court; and order a retrial on those parts of the judgment as were set aside.

Indeed, on the hearing of an appeal in a civil matter, in terms of Section 25(1)(a) of the Supreme Court Act, Cap 25, this Court "shall have power to confirm, vary, amend or set aside the judgment appealed from or give such judgment as the case may require." And Section 25(1)(c) goes on to say "shall, if it appears to the Court that a new trial should he held, have power to set aside the judgment appealed against and order that a new trial be held." This is what we did in the judgment complained against.

There was no error, omission or slip in our judgment. As we see it, the applicant was simply dissatisfied with out judgment and would have us vary our judgment so as to bring about a result more acceptable to them. This we cannot do. See **Miyanda v. The Attorney-General**[(9)]**.**

For the reasons stated, this Motion is refused with costs to be taxed in default of agreement.