

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT KABWE
(CIVIL JURISDICTION)

APPEAL NO. 37/2005

B E T W E E N:

PADDY PHILEMON KAUNDA
AND 144 OTHERS

APPELLANTS

AND

ZAMBIA RAILWAYS

RESPONDENT

CORAM: LEWANIKA, DCJ, CHIBESAKUNDA, CHITENGI, JJS
On 2nd April, 2005 and 6th September, 2005.

For the Appellants: M. NYIRENDA of Kafunda & Co.
For the Respondent: C.N. MUNEKU of Charles & Charles

JUDGMENT

LEWANIKA DCJ, delivered the judgment of the Court.

AUTHORITIES REFERRED TO:-

1. KOEKEMOER VS GOWER, 1981 Z.R. 138

This is an appeal against the decision of the Industrial Relations Court as decided that the full bench of the Industrial Relations Court had the power to entertain appeals against judgments on assessment of the Registrar of the Industrial Relations Court.

Counsel for the Appellant only filed and argued one ground of appeal namely:-

- 1. that the Honourable Chairman of the Industrial Relations Court misapprehended the law when he ruled that the full court of the Industrial Relations Court has the power to entertain appeals against judgments on assessment of the Registrar of the Industrial Relations Court.**

Arguing this ground, Counsel for the Appellant submitted that the court below failed to differentiate between interlocutory matters where appeals lie to the full court and non interlocutory matters. He said that the decision which is the subject matter of this appeal arises out of a non interlocutory matter, i.e. a decision on assessment of damages.

He referred us to Section 97 of the Industrial and Labour Relations Act Cap 269 which provides as follows:-

S.97 "Any person aggrieved by any award, declaration, decision or judgment of the court may appeal to the Supreme Court or any point of law or any point of mixed law and fact."

Counsel submitted that a decision on assessment is a non-interlocutory decision and is a decision of the court as contemplated by Section 97 and is therefore appealable to the Supreme Court. He said that the decision of the

court below failed to take into account the fact that in carrying out the exercise of assessment, the Registrar acts for and on behalf of the full court. He said that the office of the Registrar is therefore for the purpose of assessment, a full court.

Counsel for the Appellant also referred us to Practice Direction No. 1 of 1979 on appeals from assessment of damages by a Registrar or Deputy Registrar which provided as follows:-

“It is hereby notified that all appeals from assessment of damages by a Registrar or Deputy Registrar shall lie direct to the Supreme Court.”

Counsel said that although the Practice Direction in question was made in aid of practice in the High Court, it equally applies to the practice in the Industrial Relations Court as the Registrars in both the High Court and Industrial Relations Court enjoy the same powers. He submitted that the court below misapprehended the law by dismissing the application of the spirit of Practice Direction No. 1 in reaching its decision.

Counsel said that the mischief intended to be cured by Practice Direction No. 1 of 1979 was to defeat both delay in the enjoyment of the fruits of judgment by a successful litigant and duplicity if the appeal came before a Judge of the High Court or the full court of the Industrial Relations

Court. That the Practice Direction aforesaid is therefore relevant in the practice and procedure in the Industrial Relations Court which in any event stands to do substantial justice. He submitted that the Practice Direction must be applied in its entirety in all appeals from assessment of damages by the Registrar of the Industrial Relations Court.

In reply Counsel for the Respondent referred us to Section 86 of the Industrial and Labour Relations Act which provides as follows:-

86 (1) The court shall consist of the following members:-

- (a) a Chairman***
- (b) deputy Chairman; and***
- (c) not more than ten members as the Minister may appoint.***

Counsel pointed out that according to this Section, the composition of the court does not include the Registrar. He also referred us to Section 87 of the same Act which provides as follows:-

87(1) There shall be a Registrar and such Deputy Registrars and such Assistant Registrars, as may be necessary, who shall be public officers and who shall be appointed by the Judicial Service Commission.

Counsel said that under this Section, the Registrar of the Industrial Relations Court is referred to and defined as a public officer and not a court. He submitted that it follows therefore, that an appeal against a judgment on assessment by the Registrar of the Industrial Relations Court does not lie to the Supreme Court but to the full court of the Industrial Relations Court. He further submitted that Practice Direction No. 1 of 1979 is not applicable to the Industrial Relations Court and urged us to dismiss the appeal.

We have considered the submissions by Counsel for the Appellant and for the Respondent. We note that Section 87(1) of the Industrial and Labour Relations Act established the office of Registrar of the Industrial Relations Court. The proceedings of the court are governed by Section 89 of the Act and Section 89(1) provides as follows:-

89(1) The Chairman or a Deputy Chairman shall preside over the Court.

It will be observed that both Section 86(1) which deals with the composition of the court and Section 89(1) make no reference to the Registrar. A perusal of part XI of the Act which deals with the Industrial Relations Court shows that the powers and duties of the Registrar are not defined.

A perusal of the Industrial Court Rules is no more helpful as the only reference to Registrar is to be found in Rules 70, 77 and 86. Rule 70 provides as follows:-

70. every application, appeal, complaint, reference, statement of claim, answer or other document to be filed with the court shall be scrutinized by the Registrar and if it is in order shall be admitted to the file, entered in the register and given the case number. Every such document shall be sealed by the Registrar and shall thereupon be deemed to be issued..

Rule 77 provides as follows:-

77. application in the following matters shall be made to the Registrar in writing, or substantially in accordance with the form IRC 28 contained in part of the schedule or a letter addressed to him-

- (a) for certified copies of documents;*
- (b) for issue of summonses to witnesses in any matter filed in or referred to the court;*
- (c) for inspection of documents filed in the court,*
- (d) for withdrawal of matters filed in the court before these are placed for hearing; and*
- (e) for return of exhibits.*

Rule 86 provides as follows:-

86. The Registrar shall ensure that each and every document requiring to be stamped hereunder is sufficiently and properly stamped before accepting the same

On the other hand, the duties and powers of a Registrar of the High Court are well defined in the High Court Act and the Rules made thereunder. We also held in KOEKMOER VS GOWER (1) that a Registrar or Deputy Registrar is a '**Court**' as Order 3 Rule 3 of the High Court Rules has given the Registrar all the powers of a Judge in chambers. The same cannot be said for the Registrar of the Industrial Relations Court who has not been clothed with the powers of a court, and cannot be said to be a '**Court.**'

Furthermore Practice Direction No. 1 of 1979 which allowed appeals from assessment of damages by a Registrar or Deputy Registrar to lie directly to the Supreme Court is not applicable to proceedings in the Industrial Relations Court. The sum total of our holding is that an appeal from an assessment by the Registrar of the Industrial Relations Court lies to the full court of the Industrial Relations Court and not the Supreme Court. For the foregoing reasons, we find no merit in the appeal which we dismiss with costs, the costs are to be taxed in default of agreement.

D.M. Lewanika
DEPUTY CHIEF JUSTICE

L.P. Chibesakunda
SUPREME COURT JUDGE

P. Chitengi
SUPREME COURT JUDGE