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IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 50/2002

HOLDEN AT LUSAKA

SCZ Judgment No.19/2006

(Civil Jurisdiction)

BETWEEN:

**THE ATTORNEY-GENERAL
DEVELOPMENT BANK OF ZAMBIA**

1st Appellant

2nd Appellant

And

GERSHOM MOSES BURTON MUMBA

Respondent

Coram: Sakala, CJ. Mumba and Chitengi, JJS.

On 22nd March, 2006 and 29th May, 2006

For the 1st Appellant:

Mr. J. Jalasi
Principal State Advocate

For the 2nd Appellant:

Mr. B. Gondwe - Legal Counsel

For the Respondent:

Mr. W. Mubanga of Messrs Permanent
Chambers

JUDGMENT

Chitengi, JS, delivered the judgment of the court.

Case referred to: -

- 1. Trinity Engineering (PVT) Ltd V Zambia National
Commercial Bank Ltd (1995/1997) ZR 189.***

Legislation referred to: -

1. ***Rule 78 Supreme Court Rules Supreme Court Act Chapter 25 of the Laws of Zambia***

Works referred to: -

1. ***Blacks Law Dictionary at Page 563***

This is a Notice of Motion by the Respondent pursuant to ***Rule 78 of the Supreme Court Rules, Chapter 78 of the Laws of Zambia⁽¹⁾*** and Order 20 Rule 11 of the Rules of the Supreme Court 1999 Edition to correct a judgment. The Notice of Motion is supported by an Affidavit sworn by the Respondent, Gershom Moses Burton Mumba.

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This case is not without history. The Respondent who, prior to the termination of his services on 18th June 1998, was the Managing Director of the Second Appellant, commenced an action in the Industrial Relations Court for wrongful dismissal.

1 The Industrial Relations Court found for the Respondent and awarded the Respondent damages equivalent to the unfinished period of his contract of service and to be computed on the emoluments of the Respondent's successor in office and which emoluments were superior to those enjoyed by the Respondent. 7

On appeal by the Appellants, we reversed the Industrial Relations Court's award and instead made an award of 12 7

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months pay plus allowances calculated on the Respondent's last salary and allowances.

We delivered the judgment allowing the appeal on 19th December, 2002. In that judgment, we did not award the Respondent interest on the damages we awarded him. Subsequent to our judgment of 19th December, 2002 the Respondent took out a Notice of Motion pleading that we had inadvertently omitted to award him interest on the damages. We were readily amenable to the Respondent's prayer and we awarded him interest on the damages. When awarding the Respondent interest we said this: -

"We agree that this is a case that falls under Rule 78 of the Supreme Court Rules, which is our slip rule. We have looked at the Plaintiff's Notice of Complaint and note that interest was pleaded. We are satisfied that had we had in our minds at the time we delivered the judgment the fact that interest had been pleaded we would have included it in our judgment and we would not have made the omission which we now correct."

We awarded the Respondent 10% interest in respect of the damages in Kwacha and 3% interest in respect of the damages in dollars.

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Counsel addressed us at length. But on account of the view we take of this Notice of Motion, it is not necessary for us to reproduce the details of the submissions and the authorities cited to us. Suffice it to say that we have given the submissions and the authorities cited therein our careful consideration.

We accept Mr. Mubanga's submissions that a successful party is entitled to interest. We also agree with Mr. Mubanga that this court has the jurisdiction to correct its judgment. Mr. Musukwa, learned counsel for the second Appellant does not advance argument contrary to these submissions.

As we see it, the critical issue is whether this application falls under the slip rule.

Mr. Mubanga submitted that the correction can be made on the Notice of Motion because this is not a matter of either appeal or rehearing. It was Mr. Mubanga's submission that what happened here was an error in copying and not Judicial reasoning. He said the court did not establish its reasoning on the 3% interest. It was Mr. Mubanga's submission that there was a clerical error to be corrected.

In answer to these submissions, Mr. Musukwa submitted that this application does not fall under the slip rule. It was Mr.

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Our judgment to that effect was delivered on 19th April, 2004. After that nothing was said about this case and we thought the case was finished. We deceived ourselves. Almost two years later, the Respondent has come to us again claiming more money by way of interest saying that we made another mistake, which we should correct. This time the alleged mistake to be corrected is that we should have awarded the Respondent 7% interest on the dollar component of the damages and not 3%.

The contents of the Affidavit in Support of the Notice of Motion mostly contain argument. To the extent that the Affidavit deals with facts, its theme is that the award of 3% interest on the dollar component of the damages was an error or clerical mistake, which can be corrected within the Rules.

The second Appellant filed an Affidavit in Opposition sworn by its Director of Finance, one Rose Gertrude Kacha Malila Phiri. Apart from referring to matters, which are for argument, the second Appellant's Affidavit devoted itself to how foreign currency interest is determined under a regime called LIBOR which is an acronym of London Interbank Offered Rate. We say no more about LIBOR because we cannot rest our Judgment on the practice of LIBOR.

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Musukwa's submission that the court considered all respects of the matter and did not make a mistake or error in the judgment qualifying it to be dealt with under the slip rule.

At this juncture, we wish to say that we have our own Rules and case law dealing with correction of judgment. Therefore, in determining this Notice of motion we have first to look to our own Rules and jurisprudence. In our laws, the Rule dealing with correction of judgments is **Rule 78 of the Supreme Court**. **Rule 78** reads: -

"78. Clerical errors by the court or a Judge thereof in documents or process, or in any judgment, or error therein arising from any accidental slip or omission may at any time be corrected by the court or Judge thereof."

Rule 78 does not define "clerical error". Blacks Law Dictionary, works cited by Mr. Mubanga, defines "clerical error" at page 563 as: -

"An error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record and not from judicial reasoning or determination."

In the high water mark case of **Trinity Engineering (PVT) Ltd V Zambia National Commercial Bank Ltd⁽¹⁾** on slip rule, we held that the slip rule was meant for the court to correct

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clerical mistakes or errors in a judgment arising from accidental slips or omissions.

After reviewing the law on slip rule, we have to consider whether the award of 3% interest on the dollar component of the damages amount to a clerical error in terms of Rule 78. We have no difficulty in holding that there was no clerical error. Contrary to Mr. Mubanga's submissions that we made no decision on interest, our judgment is clear that we applied our minds to the interest on foreign currency and awarded the Respondent 3%. This is what we said when awarding the Respondent 3% interest: -

"About interest on dollar. As we have said in several cases interest on foreign currency is generally low. In this case we award the Plaintiff interest on the dollar component of the damages at 3% from the date of Notice of Complaint until final payment."

These words are clear in their terms. Even an elastic interpretation of this passage cannot lead one to the conclusion that there was a clerical error arising from accidental slips or omissions. In the event, we accept Mr. Musukwa's submissions that the Court made a decision on the interest of 3%.

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The errors envisaged by Rule 78 should be errors within the documents, or process or judgment under inquiry. In the earlier Notice of Motion, we had no difficulty to award the Respondent interest because clearly we made an omission to award the Respondent interest, which he had pleaded and there was no reason to deny the Respondent interest. In this case, there is nowhere in the judgment where we referred to 7% interest before we awarded the Respondent 3% interest.

In his submissions and arguments, Mr. Mubanga referred to an earlier case where we awarded 7% interest on foreign currency. Further, Mr. Mubanga also talked about the need for consistency. These arguments make us firm and confident in our minds that this application has nothing to do with correcting clerical errors but has something to do with challenging the correctness of our judgment when we awarded the Respondent 3% interest on the dollar component of the damages. In the event, we accept Mr. Musukwa's submissions that the Respondent in this case is effectively seeking a review of our Judgment of 19th April, 2004. As we said in the ***Trinity Engineering (PVT) Limited case⁽¹⁾***, we have no jurisdiction to review our judgment and to reopen the appeal. We also said that there should be finality in dealing with appeals.

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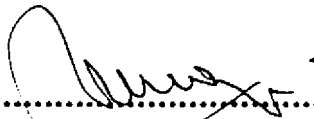
We find no merit in this motion and we dismiss it. But having regard to the circumstances of the entire case, we make no order as to costs.



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E.L. SAKALA
CHIEF JUSTICE



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F. N. N. MUMBA
SUPREME COURT JUDGE



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PETER CHITENGI
SUPREME COURT JUDGE