

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

APPEAL NO. 194/2004

B E T W E E N:

A.M. SISKI

APPELLANT

AND

ZAMBIA STATE INSURANCE  
CORPORATION

RESPONDENT

CORAM: LEWANIKA, DCJ, CHIBESAKUNDA, SILOMBA JJS  
On 5<sup>th</sup> April, 2005 and 14<sup>th</sup> March, 2006

For the Appellant: M.V. KAONA of Nakonde Chambers  
For the Respondent: A. MBAMBARA, Legal Counsel

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### JUDGMENT

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LEWANIKA DCJ, delivered the judgment of the Court.

Authorities referred to:

1. ZAMBIA SEED COMPANY LTD VS CHARTERED INTERNATIONAL (PVT) LTD SCZ. NO. 20 OF 1999

When we heard this appeal, we allowed the appeal and ordered that the action be heard and determined by a different Judge of the High Court and that we would give our reasons later, and we now do so.

In this appeal we shall refer to the Appellant as the Plaintiff and the Respondent as the Defendant which is what they were in the court below.

The short history of this matter is that there had been proceedings between the same parties in Cause No. 1998/HP/367 wherein the Plaintiff was claiming from the Defendant monies for unpaid commissions and loss of business. The parties entered into a consent judgment before the late Honourable Justice J.C. MUTALE on 12<sup>th</sup> January, 2000 whereby it was agreed as follows:-

1. that the Defendant will pay the Plaintiff the sum of K9,000,000.00 in full and final settlement of the Plaintiff's claim in these proceedings;
2. that therefore the Plaintiff abandons all his claims against the Defendant as enumerated in the writ of summons and hereby discontinues this action.

Subsequently a dispute arose between the parties as to the terms of the consent judgment. The Plaintiff then instituted these proceedings by way of writ of summons claiming for;

1. An order that the consent judgment dated 12<sup>th</sup> January, 2001 under Cause No. 1998/HP/6230 be amended, varied, reviewed or set aside on the ground of mistake;
2. Payment of damages for loss of business at K6 million per annum from 1994 to date of judgment;
3. Any other relief the court may deem fit.

When the matter came up for hearing before the learned trial Judge he made the following observation, *'the court has observed that the cause of action arises from the fact that a consent judgment was made by the late Judge*

*Mutale on 12<sup>th</sup> January, 2000, which judgment is now in question and being disputed by the Plaintiff who was a party to the said judgment. This court has no authority to review a consent judgment made by another Judge. This matter should have gone on appeal to the Supreme Court if there was any dispute in respect of the consent judgment.”*

Counsel for the Plaintiff then applied to have this action consolidated with Cause No. 1998/HP/367 between the same parties. In his Ruling the learned trial Judge refused the application to consolidate the two actions and dismissed this action on the ground that it was concluded in Cause no. 1998/HP/367 when the parties entered into a consent judgment and that the present action was an abuse of the court process. Hence the appeal before us.

From the Ruling of the learned trial Judge in the court below, it is quite apparent that the learned trial Judge was labouring under the misapprehension that he was dealing with an application to review a judgment pursuant to the provisions of Order XXXIX of the High Court Rules, when in fact the action before him was one that sought to impeach the consent judgment entered into by the parties on the ground of mistake. As we restated the law in **ZAMBIA SEED COMPANY LIMITED VS CHARTERED INTERNATIONAL (PVT) LTD** the only way to

challenge a judgment by consent would be to start an action specifically to challenge that consent judgment. This is precisely what the Plaintiff did in these proceedings and it was for that reason that we allowed this appeal. We make no order as to costs.

D.M. Lewanika  
DEPUTY CHIEF JUSTICE

L.P. Chibesakunda  
SUPREME COURT JUDGE

S.S. Silomba  
SUPREME COURT JUDGE