IN THE SUPREME COURT OF ZAMBIA **APPEAL No. 213/2008**
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

MUYAWA LIUWA
APPELLANT

AND

ATTORNEY GENERAL **RESPONDENT**

CORAM: **Mwanamwambwa Ag/DCJ, Muyovwe, Hamaundu J.J.S.**

On 24th July, 2013 and 22nd August 2014

For the Appellant: *In person.*

For the Respondent: *Mr. N. M. Lukwasa– Deputy Chief State Advocate.*

JUDGMENT

Mwanamwambwa J, delivered the Judgment of the Court.

***CASES REFERRED TO*:**

(1) **AMPTHILL PEERAGE CASE (1976) 2 ALL ER 411 AT 417–418, (1977) AC 547 AT 569**
(2) **OWENS BANK LTD V BRACCO AND OTHERS (1992) 2 ALL ER 193 AT 203, (1992) 2 AC 443 AT 489**
(3) **B.P. ZAMBIA PLC V INTERLAND MOTORS LIMITED (2001) ZR 37**

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***LEGISLATION REFERRED TO*:**

(1) SECTION 20 OF THE CIVIL SERVICE (LOCAL CONDITIONS) PENSION CONTRIBUTORY, CAP 410 OF THE LAWS OF ZAMBIA AS AMENDED BY ACT NO. 30 OF 1973.

(2) ZAMBIA CIVIL SERVICE (LOCAL CONDITIONS) PENSION ORDINANCE CAP 48 OF THE LAWS OF NORTHERN RHODESIA

***WORKS REFERRED TO*:**

1) **RULES OF THE SUPREME COURT OF ENGLAND, WHITE BOOK, 1999 EDITION. ORDER 20/11 SUB-RULES 1, 5A, 7 and 8.**

When we heard this matter on the 24th July, 2013, we dismissed this Motion and we said that we would give our reasons later. This we now do.

Events leading to this Motion are that, we had earlier rendered a Judgment in this matter in which we dismissed the applicant's case on the merits. He later emerged with a series of Motions, seeking to re-open the case but we also dismissed them. Now through this fourth Motion before us, he was back again. This time around, he presented before us an application which was not only novel, but frivolous and mischievous. He was seeking to impeach the High Court judgment in this matter, on the ground that it was obtained by fraud. According to him, this was meant to facilitate for the correction of mistakes made by ministerial officers. The application was made pursuant to **Order 20 rule 11 Sub-**

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Rules 1, 5A, 7 and 8 of the Rules of the Supreme Court of England, White Book 1999 Edition.

The applicant filed a lengthy affidavit in support of his application. In the affidavit, he admitted that we have dealt with this matter on a number of occasions in which we condemned him for the abuse of the court process, due to his coming to court relentlessly. He also confessed that his previous moves in coming to court were influenced by frustration and desperation, which often manifested in his use of unpalatable language, which he regretted. This notwithstanding, the applicant had complaints in his affidavit.

Firstly, he complains that he was retired at the age of 60 years but his terminal benefits were worked out as if he retired at 55 years. He stated that ministerial officers fraudulently did this, despite the concession by the respondent. He deposed that the fraud began when the trial court had deliberately ignored the concession made by the respondent in the defense's submissions. The concession was that section 20 of the **Civil Service (Local Conditions) Pension Contributory, Cap 410 of the Laws of Zambia,** as amended by **Act No. 30 of 1973,** which provided for the

60 years retirement age, was compulsory. He stated that this concession was in line with what was directed by the Public Service Commission.

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However, the respondent fraudulently worked out his retirement benefits on the basis of the retirement age of 55 years.

This mistake, which constituted the fraud, was made by F. K. Bwalya, who signed as Pensions Officer, Finance Division together with Mr. G. M. F. Tonga, who signed for the Auditor General. He was certain that the Judgment of the High Court which was upheld by this court was obtained by fraud due, to these mistakes. He alleged that the process was characterized by cheating or deception; because it defied the directive of the Public Service Commission, to pay him the terminal benefits based on 720 months, as required by **Section 20** of **the Civil Service (Local Conditions) Pension Contributory**, **Cap 410 of the Laws of Zambia**. That this was fresh evidence which had been discovered. Therefore, there was need to correct the fraudulent mistake so that he could recover the loss from the underpayment.

The applicant further deposed that he was not aware of the provisions of **Order 20 rule 11/1 of the Rules of the Supreme Court 1999,** from the time he commenced this

matter in 1994. Had he been aware of it, he would have invoked it to avoid recrimination and innuendos. He stated that this court had jurisdiction to impeach the judgment of the

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High Court to correct the mistakes pursuant to **Order 20 Rule 11/1 of the Rules of the Supreme Court 1999,** it would then follow that our judgments upholding the High Court judgment should accordingly be impeached.

The second complaint was that he was entitled to buy a house and a car at subsidized government prices, under circular number B3 of 8th May, 1992, which was issued by the Public Service Management Division. The circular entitled officers within the category of S6-S1, to buy houses and cars. For him, he was entitled by virtue of serving as Assistant Secretary in Division I, in the scale S6/5. The respondent's decision to retire him had the result of denying him the opportunity to buy the house and a car. The applicant's claim was to buy the house and car or in the alternative, to be paid some money.

Thirdly, due to the respondent's decision to retire him, he was denied a scholarship to study at the University of Zambia, where he was accepted to do a BA degree course on 4th February, 1992. He adds that he failed to disclose the

acceptance letter at the commencement of this action in 1994, because he had misplaced it. He therefore wanted damages for the loss of the opportunity to pursue his studies.

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The applicant also filed heads of arguments in support of this Motion. He submitted that he was employed in the Civil Service on the 19th September 1965, pursuant to the provisions of the **Zambia Civil Service (Local Conditions) Pension Ordinance Cap 48, of the Laws of Northern Rhodesia**, under which the retirement age for male officers was 60 years. **Cap 48** was later repealed by the enactment of the **Civil Service (Local conditions) Pension Contributory Act Cap 410 of the Laws of Zambia**. This new law maintained the retirement age of 60 years for male officers under **Sections 20 and 11(1) (a**). This law was later amended and the retirement age was reduced to 55 years for male officers by section **2(a) of the Civil Service (Local Conditions) Pension Contributory (Amendment) Act No 11 of 1986**. Serving officers at the time, were entitled to choose either to retain their existing retirement age or to adopt the new retirement age. He stated that he opted to retain the retirement age of 60 years. On 14th December, 1992, he was retired from the Civil Service

pursuant to **Section 20 of Cap 410**. Given this background, he argued, the calculation of his retirement benefits on the basis of the retirement age of 55 was illegally done, hence the need to correct it.

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The applicant further argued that the law under which he retired was correct, the problem were the mistakes which were made by the Ministerial officers. The court was therefore obliged to correct these mistakes. He urged us to impeach the High Court judgment, as it was obtained by fraud, committed by ministerial officers.

The respondent did not file an affidavit in opposition or heads of arguments. However, Mr. Lukwasa, on behalf the respondent, sought the guidance of this court considering that this matter had already been adjudicated upon. That the applicant's appeal against the Judgment of the High Court had been dismissed and thereafter, he brought a Motion which was also dismissed. Counsel was taken aback since the applicant had brought this Motion again.

We anxiously considered the application by the applicant. We took time to analyze the applicant's affidavit in support as well as the heads of arguments, which he

presented before us. After evaluating the record, we came to the conclusion that the applicant had the opportunity to raise all the issues in his affidavit, when the matter was heard on its merit. However, he slept on his rights when he failed to do so. All the evidence he was trying to bring up, existed at the time he presented his case. The issue of the age at which he was retired is not new.

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Similarly, he was aware that the circular on houses and cars was not anything new. The applicant had also misplaced the acceptance letter to study for a BA degree at his peril. There was no fraud in the manner the judgment of the High Court was obtained.

Clearly, the applicant in this case aimed at having yet another bite at the cherry. When he appealed against the judgment he was now seeking to impeach, it was dismissed on merit. Thereafter, he came back with a series of these Motions, on a matter we already dealt with on merits. This conduct is not only an abuse of the court process but also against the settled principle of finality. Although a judgment can, in an appropriate case, be attacked on the grounds of fraud, a plethora of authorities shows that this is reserved for rare and limited cases, where the facts justifying the fraud can be strictly proved. The principle of finality was aptly

stated by Lord Wilberforce in the **Ampthill Peerage Case**[1] in which he stated as follows:

> **"English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed on the rights of citizens to open or to reopen disputes … Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it**
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> **closes the book … For a policy of closure to be compatible with justice, it must be attended with safeguards: so the law allows appeals; so the law, exceptionally, allows appeals out of time; so the law still more exceptionally allows judgments to be attacked on the ground of fraud … But these are exceptions to a general rule of high public importance, and as all the cases show, they are reserved for rare and limited cases, where the facts justifying them can be strictly proved."**

Similarly, Lord Bridge in the case of **Owens Bank Ltd v Bracco and Others**[2], stated as follows:-

> "**An English judgment, subject to any available appellate procedures, is final and conclusive between the parties as to the issues which it**

decides. It is in order to preserve this finality that any attempt to reopen litigation, once concluded, even on the ground that judgment was obtained by fraud, has to be confined within such very restrictive limits."

Moreover, this court has inherent jurisdiction not only to prevent abuses of court process; but also to protect its authority and dignity. We have said it before, that a party in a dispute with another over a particular subject cannot be allowed to deploy his grievances piecemeal in scattered litigation and keep on hauling the same opponent over the

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same matter. In the case of **B.P. Zambia Plc v Interland Motors Limited**[3] we stated as follows:-

"For our part, we are satisfied that, as a general rule, it will be regarded as an abuse of process if the same parties relitigate the same subject matter from one action to another or from judge to judge. This will be so especially when the issues would have become res judicata or when they are issues which should have been resolved once and for all by the first court as enjoined by Section 13 of the High Court Act which reads:—

"S.13. In every Civil cause or matter which shall come in dependence in the Court, law and equity shall be administered concurrently, and the court, in the exercise

of the jurisdiction vested in it, shall have the power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, to which any of the parties thereto may appear to be entitled in respect of any and every legal or equitable claim or defence properly brought forward by them respectively or which shall appear in such cause or matter, so that, as far as possible, all matters in controversy between the said parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and in all matters in which there is conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail."

In terms of the section and in conformity with the court's inherent power to prevent abuses of its processes, a party in dispute with another over a particular subject, should not be allowed to deploy his grievances piecemeal, in scattered litigation and keep on hauling the same opponent over the same matter before various courts. The administration of justice

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would be brought into disrepute if a party managed to get conflicting decisions or decisions which undermined each other from two or more different judges over the same subject matter."

This application was nothing but a story of a relentless litigant, who was caviling about lost opportunities in his life. The applicant appeared to blame it all on the respondent and has had his day in court to show this. We noted that he confessed to being driven by frustration and desperation. We must state here that courts should not be used to vent out a litigant's frustrations and desperation. We frown upon the applicant's conduct in this matter. We will conclude by issuing a stern warning to the applicant and other litigants, that there are attendant consequences for persistently abusing the court process in this manner.

It was for the foregoing reasons that we dismissed the Motion. This, time, we award costs to the Respondent. These shall be taxed in default of agreement.

M. S. MWANAMWAMBWA
ACTING DEPUTY CHIEF JUSTICE

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E.C. MUYOVWE
SUPREME COURT JUDGE

E.M. HAMAUNDU
SUPREME COURT JUDGE