

IN THE COURT OF APPEAL OF ZAMBIA

APPEAL NO. 162 OF 2017

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

ACKWELL MUSANTU LUPELE



APPELLANT

AND

MERIDIEN BIAO BANK (In Liquidation)

RESPONDENT

CORAM: Chashi, Siavwapa and Ngulube, JJA

ON: 28th March, 14th August and 6th September 2018

For the Appellant: D. E. Ndhlovu, Messrs Kalulushi Chambers

For the Respondent: K. Kaunda, Messrs Ellis and Company

J U D G M E N T

CHASHI, JA delivered the Judgment of the Court.

This is an appeal against the Ruling of the learned Deputy Registrar of the High Court, which was delivered on 25th October 2017.

The brief background to this matter is that, the Respondent herein in the year 1995 whilst operational as a bank, took out foreclosure proceedings against the Appellant in the High Court. In the alternative, the Respondent claimed the sum of K50,095.00 (rebased) with interest.

After considering the affidavit and witnesses' evidence, the learned trial Judge found in favour of the Respondent vide Judgment dated 10th March 2009 and made the following Order:

"Therefore, I enter Judgment for the applicant for the payment of the principal sum of K20,000.00 (rebased) together with interest on the Judgment as agreed in the mortgage deed up to the date of Judgment.

Thereafter, there shall be simple interest on the Judgment at the rate of 20% per annum until date of payment. In default of payment, I Order the sale of the mortgaged farm."

Thereafter, the learned Judge referred the matter to the learned Deputy Registrar. In referring the matter, this is what the learned Judge stated:

"to give orderly effect to this Judgment, the Deputy Registrar shall conduct accounts and inquiries to determine exactly how much is owed"

Our understanding of the learned Judge's referral, is that, the learned Deputy Registrar, was to determine the exact amount owing, given the Judgment and Orders of the court.

The learned Deputy Registrar then determined that the total amount payable which included the interest and the principal sum of K20,000.00 at the date of entry of Judgment as at 10th March 2010 was K182,212,063.48 (unrebased). That the amount was to be subjected to interest at the rate of 20% until final Judgment; the

total amount payable as at the end of October 2017 was 292,431.10 (rebased).

That is what prompted the Appellant to appeal to this Court, advancing two grounds of appeal couched as follows:

1. Assessing interest at 20% per annum in favour of a liquidated bank was wrong in principle and contrary to the guidelines given by the Supreme Court of Zambia in the case of **Embassy Supermarket v Union Bank Zambia Limited (In Liquidation) – 2007 ZR 226**; and
2. The learned Honourable Registrar erred in law and fact when he compounded interest.

Counsel for the Appellant filed heads of argument, which we need not recapitulate for reasons which will become obvious.

At the hearing of the appeal, Mr. Ndhlovu, Counsel for the Appellant confirmed that, the Appellant had appealed to the Supreme Court against the learned Judge's Judgment of 10th March 2010. When the appeal came up for hearing, the Supreme Court directed that the issues before the learned Deputy Registrar should first be resolved before the Supreme Court could hear the appeal.

This in our view, made the pending outcome of the proceedings before the learned Deputy Registrar, part of the Supreme Court appeal.

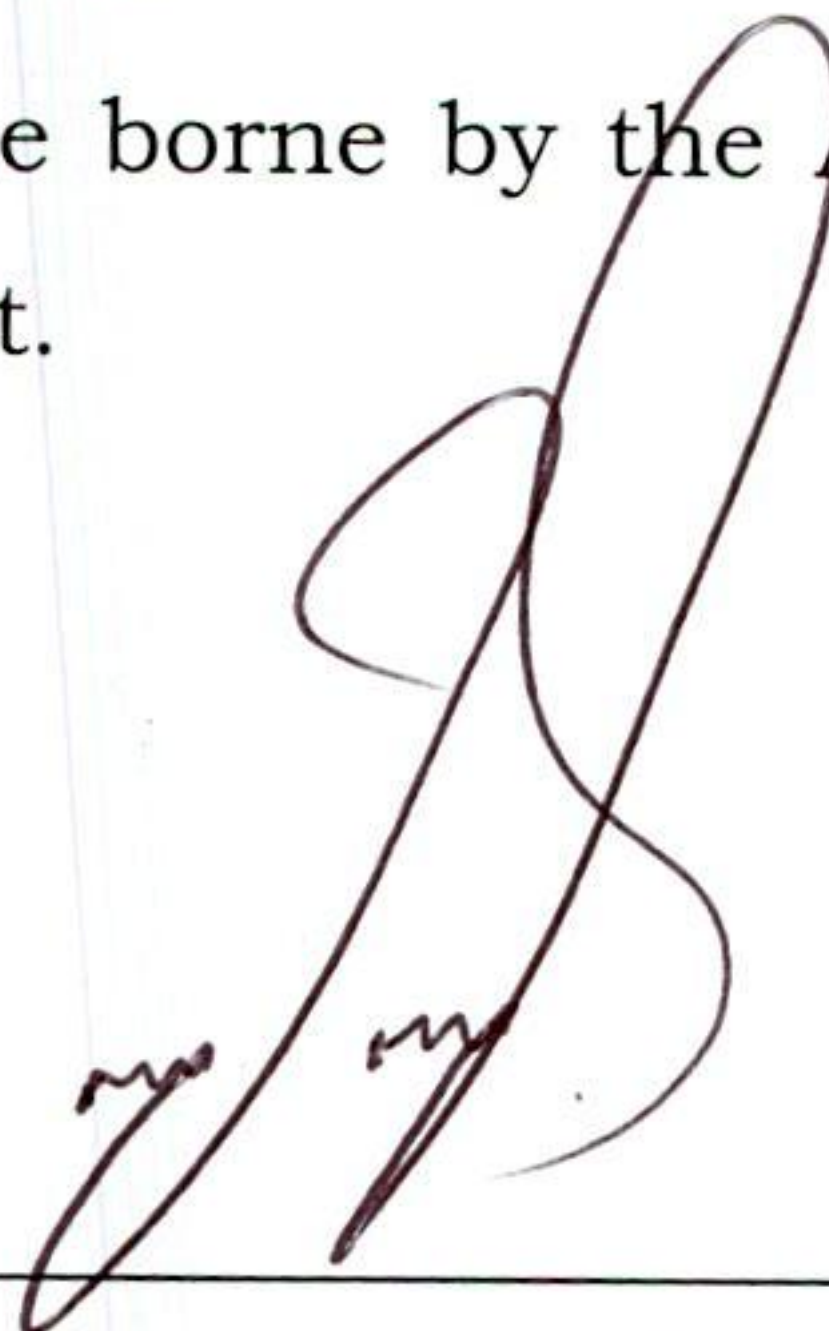
We note, which has again been confirmed by Counsel for the Appellant that, before the learned Deputy Registrar could deliver his ruling, the Supreme Court at the hearing of the appeal made a finding that the record was incomplete and dismissed the entire appeal for being incompetent.

It is our view that, the dismissal of the appeal by the Supreme Court made the proceedings before the Deputy Registrar otiose.

That notwithstanding, we are further of the view that the Appellant should not have ingeniously appealed to this Court on 2nd November 2017 against the Ruling of the learned Deputy Registrar which was only dealing with the calculation of the exact, or total amount due as directed and Ordered by the learned trial Judge in his Judgment. If there were any issues, such as the issues the Appellant is now raising, such as the rate of interest and compounded interest, those issues should have been brought before the Supreme Court and not before this Court.

In the view that we have taken, this appeal is incompetently before us and is accordingly dismissed.

Costs of this appeal shall be borne by the Appellant. Same to be taxed in default of agreement.



J. CHASHI
COURT OF APPEAL JUDGE



M. J. SIAVWAPA
COURT OF APPEAL JUDGE



P. C. M. NGULUBE
COURT OF APPEAL JUDGE