

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*



**B E T W E E N:**

CITIBANK ZAMBIA LIMITED

**PLAINTIFF**

**AND**

SUHAYL DUDHIA

**DEFENDANT**

**Before Hon. Mrs. Justice M. Mapani-Kawimbe in Chambers on  
21<sup>st</sup> February, 2017**

*For the Plaintiff* : *Ms. S. Kahingu, Messrs Chibesakunda & Company*  
*For the Defendant* : *Ms. L. Shula, Messrs J & M Advocates*

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**R U L I N G**

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**Case Authorities Referred To:**

- 1. Development Bank of Zambia and KPMG Peat Marwick v Sunvest Limited and Sun Pharmaceuticals Limited (1995 - 1997) Z.R 187*
- 2. BP Zambia Plc. v Interland Motors Limited (2001) Z.R 37*

**Legislation Referred To:**

- 1. High Court Act, Chapter 27*
- 2. Rules of the Supreme Court, 1999 Edition*

This is an appeal against the ruling of the Learned Deputy Registrar delivered on 21<sup>st</sup> June, 2016, which cast out the Defendant's application to dismiss this action for abuse of Court process.

The facts leading to the appeal are that the Defendant filed Complaint No. 211/2013 before the Industrial Relations Court challenging his termination of employment by the Plaintiff. The Defendant contended that the Plaintiff's action commenced to recover the monies owing on the Defendant's loan facility, which was an incident of his employment, should have been raised as a counter-claim in the action before the Industrial Relations Division. The Defendant further contended that by bringing this action, the Plaintiff was likely to lead the Courts into delivering conflicting judgments as the issue raised in this action is already before the Industrial Relations Division.

Disenchanted by the Learned Deputy Registrar's ruling, the Defendant brings this appeal fronting four grounds as follows:



- (1) *The Deputy Registrar fell into error when he ruled that there was no likelihood of having conflicting judgments in the matter before the Industrial Relations Court and the one before this Honourable Court.*
- (2) *The Deputy Registrar fell into error when he held that the matter in the Industrial Relations Court and the matter before this Honourable Court are not interrelated contrary to the evidence before him, in the Appellant's (Defendant) Affidavit in Support of application to dismiss action for abuse of court process.*
- (3) *That if the Deputy Registrar was of the view that the Plaintiff would be prejudiced by dismissing the entire action, he should have at least made an order to stay the proceedings pending the outcome of the matter in the Industrial Relations Court.*
- (4) *Other grounds of appeal shall be submitted to Court at the hearing of this Appeal.*

Learned Counsels for the respective parties filed written submissions, for which I am indebted. In the case of the Defendant, Learned Counsel submitted in ground one that the Learned Deputy Registrar erred by ruling that there was no likelihood of having conflicting judgments before the Industrial Relations Division and this Court. Counsel called in aid the case of **Development Bank of Zambia and KPMG Peat Marwick v Sunvst Limited and Sun Pharmaceuticals Limited**<sup>1</sup> where the Supreme Court stated that:

*“the court does not approve of the commencement of a multiplicity of procedures, proceedings and actions in different courts which may result in the courts making contradictory decisions on the same matter”.*

Counsel insisted that there was a possibility of the Courts producing conflicting judgments because the issues in controversy, between the parties in both causes were substantially the same. She further argued that the Plaintiff's claim being an ancillary issue in the Defendant's Complaint should have been filed as counter-claim as opposed to this action.

The issue raised in ground two of the appeal was no different from that in ground one to the extent that the Defendant contended that the actions in the Industrial Relations Division and this Court were interrelated. Counsel argued that since the reliefs before the Courts were interwoven, the Industrial Relations Division was bound to make a decision on the Plaintiff's claim.

In ground three, Counsel submitted that since the Learned Deputy Registrar found that the Plaintiff would be prejudiced by dismissing its action, then he should have at least stayed the proceedings *in casu* pursuant to Order 19 Rule 19 (1) of the Rules of the Supreme Court.



In response, Learned Counsel for the Defendant submitted that the possibility of the Industrial Relations Division and this Court delivering conflicting judgments was remote, because the issues in controversy were not interrelated. Counsel asserted that the claim presented by the Plaintiff in this cause was not among the reliefs sought by the Defendant in his Complaint. As such, the Plaintiff's claim was unlikely to be resolved through the Defendant's Complaint. Counsel relied on the case of **BP Zambia Plc. v Interland Motors Limited**<sup>2</sup> where the Supreme Court stated that:

**“(.....) A party in dispute with another over a particular subject should not be allowed to deploy his grievance piecemeal in scattered litigation and keep hauling the same opponent over the same matter before Courts. The administration of Justice would be brought into disrepute if a party managed to get conflicting decisions which undermined each other, from two or more different Judges, over the same subject matter”.**

Counsel contended that to establish a claim for multiplicity of actions, the Defendant was under an obligation to show that the same subject matter or the same claim existed before the Courts.

In ground three, Counsel insisted that the Defendant's proposition that the Courts were likely to deliver conflicting

judgments was misplaced and baseless. She prayed to the Court to dismiss the appeal.

I have seriously considered the grounds of appeal and written submissions of the respective parties. I must hasten to state that although four grounds of appeal were fronted, they all in my considered view appear to canvass a sole issue, that is, whether the Plaintiff's action amounts to a multiplicity of actions.

The substance of the Defendant's contention is that the Plaintiff's claim is ancillary to its Complaint in the Industrial Relations Division. In consequence, the reliefs sought by the Plaintiff are likely to be determined by the Industrial Relations Division. The Notice of Complainant filed in the Industrial Relations Division (*Exhibit SD1 of the Affidavit in Support to Dismiss Action for Abuse of Court Process*) at page 6 reads in part as follows:

***“By other letters dated the said 4<sup>th</sup> July, 2013, the Respondent purported to compute my dues and liabilities to the Bank, called in my personal loan for immediate payment and demanded that I return all Bank property in my custody including the Bank car without taking into account the various company policies regarding the loan, payment of amounts due to me under my pension scheme and my right to purchase the Bank car at Book***



*value upon "termination". The Respondent Bank further implemented unjustifiable deductions from the monthly salary related to the 13<sup>th</sup> and 14<sup>th</sup> cheque, and the Respondent did not make any provision for settlement of the family medical plan, fuel, the motor vehicle and my lawful dues under my pension plan".*

The reliefs sought by the Defendant in the Notice of Complaint are stated thus:

- "(i) An order for the Respondent to rescind their various letters which were issued to the Complainant alleging misconduct on his part on grounds of purported breach of confidentiality and unprofessionalism, which said charges are unsubstantiated, untrue and malicious in nature and whose known intent was only to disparage the Complainant's personal and professional character and good repute and was merely a means to afford the Respondent grounds upon which to terminate the Complainant's employment which said actions were wrongful and unlawful;*
- (ii) An order for payment of all amounts lawfully due to the Complainant including amounts due, under the Complainant's pension plan;*
- (iii) Damages for unfair, wrongful, and unlawful termination of contract of employment;*
- (iv) Aggravated damages for mental anguish suffered by the Complainant on account of the deliberate, planned and systematic and institutionally tolerated abuse directed at the Complainant by the Respondent's officers with the Respondent's knowledge and approval coupled with the abrupt, summary and unlawful termination of the Complainant's contract of employment whilst he was still on suspension pending hearing of the allegations against him;*
- (v) Aggravated damages for the deliberate and malicious damage caused to the Complainant's personal and professional repute by the false allegations leveled against him by the Respondent in order to force him out of employment, which said damage to the Complainant's repute has adversely affected his future prospects of employment; either as a banker or lawyer;*



- (vi) A declaration that the Complainant is entitled to be offered to purchase the Respondent's motor vehicle, Jeep, Registration Number ALB 312 at its current Book value in accordance with the Citi Bank Zambia Limited Car Policy;*
- (vii) A declaration that the Complainant is entitled to hold on to the said motor vehicle Jeep, Registration Number ALB 312, until the Respondent makes an offer to the Complainant to purchase the said motor vehicle at its current Book Value;*
- (viii) An order compelling the Respondent to sell the said motor vehicle, Jeep, Registration Number ALB 312 to the Complainant at its current and verified Book Value in accordance with the Citi Bank Zambia Limited Car Policy;*
- (ix) Any other relief the Court may deem fit."*

The Plaintiff's Statement of Claim filed in this Court reads as follows:

- " (1) The Plaintiff is and was at all times a bank incorporated in the Republic of Zambia pursuant to the Companies Act Chapter 388 of the Laws of Zambia with its registered office at Stand 4646 Addis Ababa Roundabout, P O Box 30037, Lusaka.*
- (2) The Defendant is an adult male who was at all material times in the employ of the Plaintiff until his contract of employment was terminated on 4<sup>th</sup> July, 2013.*
- (3) On or about 5<sup>th</sup> February, 2012 the Defendant applied for and was granted a personal loan from the Plaintiff amounting to ZMW121,004.82*
- (4) It was a term of the loan agreement that the Defendant would repay the loan in monthly installments of ZMW4,529.09 on or before the 21<sup>st</sup> day of each month until the loan and all accrued interest was paid in full.*
- (5) It was a further term of the loan agreement that upon the termination of his employment with the Plaintiff the loan became immediately due and payable.*
- (6) The Defendant's employment with the Plaintiff was terminated on 4<sup>th</sup> July, 2013 and the Defendant was informed that the loan was due and payable immediately. This notwithstanding the Defendant has not made any*



**payments to date and that amount has now attracted interest at the rate of 15% and stands at ZMW156,560.35.**

**(7) Notwithstanding demands made by the and on behalf of the Plaintiff for the payment of the outstanding, the Defendant, in default of payment has failed alternatively refused to make good the payment and to date, the Defendant owes the sum of One Hundred and Fifty Six Thousand, Five Hundred and Sixty Kwacha Thirty Five Ngwee (ZMW156,560.35).**

**(8) By reason of the aforesaid the Plaintiff has suffered loss or damage.**

**The Plaintiff therefore claims:**

- (i) Payment of the amount of ZMW156,560.35 being the loan and interest accrued;**
- (ii) Any other order the Court may deem fit; and**
- (iii) Costs of and incidental to this action”.**

After carefully analyzing the Plaintiff and Defendant's claims in the different causes, I am inclined to agree with Learned Counsel for the Defendant that the issue of the Defendant's loan, which is the core of the Plaintiff's claim, is raised in the Defendant's Notice of Complaint. That being the case, I find that there is likelihood that the Industrial Relations Division will address the issue.

I further find that even though the loan agreement between the parties is a separate agreement, the fact that the Defendant secured the loan during the tenure of his employment brings it into dependency of his Notice of Complaint. Accordingly, I stay these

proceedings pending the decision of the Industrial Relations Division. The effect of my decision is that the appeal succeeds.

The Defendant is awarded costs to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 21<sup>st</sup> day of February, 2017.

  
M. Mapani-Kawimbe  
**HIGH COURT JUDGE**