

**SELECTED S.C. JUDGMENT NO 66 OF 2017**

**P3150**

**IN THE SUPREME COURT OF ZAMBIA**

**APPEAL NO. 141/2014**

**HOLDEN AT LUSAKA**

**SCZ/8/77/2014**

*(Civil Jurisdiction)*

**BETWEEN:**

MATHEW CHOMBO



APPELLANT

**AND**

ELIZABETH MULENJE (THE REIGNING-SENIOR  
CHIEFTAINESS NKOMESHA MUKAMAMBO II)

RESPONDENT

**CORAM: Mwanamwambwa, D.C.J., Hamaundu, Malila,  
Kaoma, & Musonda, J.J.S.**

On the 10<sup>th</sup> of October, 2017 and 4<sup>th</sup> January, 2018

*For the Appellant:*

*Dr. O. Banda, S.C., of Messrs OMM Banda and Company*

*For the Respondent:*

*Mrs. M. Zaloumis of Messrs Dove Chambers*

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**JUDGMENT**

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**Mwanamwambwa, D.C.J., delivered the Judgment of the Court**

***Cases referred to:***

1. Violet Kambole Tembo v. David Lastone Tembo (2004) Z.R. 79 (SC)
2. Frieslaar v. Frieslaar 2010/HP/D124
3. Chiyungu v. Chiyungu (2013) 2 Z.R. 156.
4. Musona v. Musona 2010/HP/D.86 (unreported)
5. Ernest Karl Paul Lembe v. Kearney and Company Limited (1979) Z.R. 20

**P3151**

6. J.K. Mpofu v. Impregilo Recchi (Zambia) Ltd and Goodwin Mungandi (1979) Z.R. 51
7. Water Wells Ltd v. Wilson Samuel Jackson (1984) Z.R. 98
8. Anne Scott v. Oliver Scott (2007) Z.R. 17
9. Attorney General and the MMD v. Lewanika and 4 others (1993-94) Z.R. 164 (SC).

***Legislation referred to:***

1. The High Court Rules, Chapter 27 of the Laws of Zambia, Order 30 Rule 10
2. The Rules of the Supreme Court, 1999, Order 14A rule 1
3. The Matrimonial Causes Rules, 1977, Rule 124 (1)

This is an appeal against the Deputy Registrar's orders on property settlement.

The brief facts of the matter are that the parties herein were married in December, 1978 under customary law. On the 21<sup>st</sup> of July, 1984, they converted their marriage to a statutory marriage when they solemnized their marriage in the Catholic Church. After the marriage in church, the Appellant moved into the Respondent's residence and started living with her.

On the 5<sup>th</sup> of September, 2008, the Respondent petitioned for the dissolution of the marriage. On the 25<sup>th</sup> of March, 2011, the High Court granted a decree nisi to the Respondent.

**P3152**

The matter went to the Deputy Registrar for property adjustment. The application for property adjustment was made by the Appellant. The Deputy Registrar delivered her Judgment, in which she made various orders for property adjustment.

The Appellant was dissatisfied with the decision of the Deputy Registrar and appealed to this Court.

Before the appeal was heard in the Supreme Court, the Respondent filed a notice of intention to raise a preliminary issue on whether this Court has jurisdiction to hear an appeal against the decision of the Deputy Registrar, in matters relating to property settlement, in light of the provisions of **Order 30 Rule 10** of the High Court Rules, Chapter 27 of the Laws of Zambia.

The notice was filed together with an affidavit in support. The affidavit was deposed to by the Respondent. She stated that she commenced divorce proceedings in the Court below on the 5<sup>th</sup> of September, 2008, and the same was granted on 25<sup>th</sup> March, 2011. She stated that the Appellant was dissatisfied with the Deputy Registrar's Judgment on property settlement and appealed to the Supreme Court against the whole judgment under **Cause No. 2008/HP/D.122**. She deposed that she had been advised by her lawyer that the appeal is incompetently before this Court because an appeal

**P3153**

from the decision of the Deputy Registrar on property settlement cannot lie directly to the Supreme Court.

In the Respondent's skeleton arguments, Mrs Zaloumis referred this Court to **Order 30 Rule 10** of **the High Court Rules, Chapter 27** of the Laws of Zambia. She also referred this Court to **Order 14A Rule 1** of **the Supreme Court Rules, 1999 Edition**, which provides that-

1. (1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that-

(a) Such question is suitable for determination without a full trial of the action; and

(b) Such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(2) Upon such determination, the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this order unless the parties have either-

(a) had an opportunity of being heard on the question; or

(b) consented to an order or judgment on such determination.



**P3154**

**(4) The Jurisdiction of the Court under this Order may be exercised by a Master.**

**(5) Nothing in this order shall limit the powers of the Court under Order 18, rule 19 or any other provision of these rules.**

She relied on the above Rules to submit that this Court has jurisdiction to entertain the preliminary issue.

Mrs. Zaloumis argued that Order 30 Rule 10 of the High Court Rules cited above, provides that an appeal from the Registrar lies to a Judge at Chambers and only an appeal against assessment of damages lies to the Supreme Court. She went on to state that the provisions of Order 30 are not ambiguous in terms of content and construction. She added that this Court has no jurisdiction to entertain an appeal against the decision of the Deputy Registrar on property settlement. She relied on **Violet Kambole Tembo v. David Lastone Tembo** <sup>(1)</sup> where the Appellant in that matter initially made an application to the Deputy Registrar, then the Judge and subsequently appealed to the Supreme Court. Further, that the High Court in **Frieslaar v. Frieslaar** <sup>(2)</sup> held that an appeal from the decision of the Deputy Registrar on property settlement lies to a High Court Judge at chambers. Counsel also cited **Chiyungu v. Chiyungu** <sup>(3)</sup> and **Musona v. Musona** <sup>(4)</sup> where in both matters, the High Court determined appeals from the Deputy Registrar on property settlement.

**P3155**

On the basis of the above submissions, Mrs. Zaloumis submitted that this appeal was improperly before this Court and should be dismissed.

The Appellant filed skeleton arguments opposing the Respondent's Notice of Intention to raise a preliminary issue. Counsel for the Appellant, Dr Banda, submitted that judgments on property settlement and assessment of damages rendered by Deputy Registrars in matters referred to them by the High Court Judges are determined on behalf of the High Court Judges and are in the category of final judgments of the High Court and are considered as such. He added that since they are High Court judgments, appeals against such decisions ought to have been directed to the Supreme Court before the Court of Appeal was established.

He added that the interpretation of Order 30 rule 10 is that it deals with interlocutory decisions made by Deputy Registrars and not final Judgments made by the Deputy Registrars on behalf of High Court Judges. He went on to refer this Court to the following cases:

1. **Ernest Karl Paul Lembe v. Kearney and Company Limited** <sup>(5)</sup>, where it was held that-

**"A decision, order or direction by the deputy registrar on a matter referred to him by a judge**

**P3156**

**is made on behalf of that judge and an appeal does not therefore lie to the same judge or to a judge of the same jurisdiction.”**

**2. J.K. Mpofu v. Impregilo Recchi (Zambia) Ltd and Goodwin Mungandi <sup>(6)</sup>**, where it was held that-

**“The deputy registrar having assessed damages, the dissatisfied party should appeal to the Supreme Court and not to a judge in chambers.”**

**3. Water Wells Ltd v. Wilson Samuel Jackson <sup>(7)</sup>**, where it was held that-

**“Order 30 r. 10 of the High Court Rules confers a right of appeal from a Registrar to a Judge at Chambers, but by Practice Direction No. 1 of 1979, appeals against the assessment of damages by a Registrar lie direct to the Supreme Court.”**

Dr. Banda stated that this Court has entertained appeals against the decisions of Deputy Registrars on assessment of damages and property adjustment. He cited **Anne Scott v. Oliver Scott** <sup>(8)</sup> where this Court entertained an appeal from the Ruling of the Deputy Registrar on property settlement as

**P3157**

can be seen from the opening remarks of the Judgment which are as follows:

**“this appeal is against The Ruling of the Deputy Registrar dated 20<sup>th</sup> May, 2004.”**

Further that on the same page, the Court held that-

**“In view of the fact that the interest of the appellant and that of the respondent in the property is indivisible, it was wrong, in the absence of fraud or mistake, for the learned Deputy Registrar to award one or more structures to the appellant...”**

He argued that it is clear that this Court has jurisdiction to entertain an appeal from the decision of the Deputy Registrar on property settlement. He pointed out that matters should be determined on their own merit where no injustice and prejudice will be suffered by the other party. He added that in this matter, the Respondent would not suffer any prejudice as she would argue her case without any difficulties. That is because she had already lodged her heads of argument. He urged us to dismiss the preliminary issue.

In the alternative, Dr. Banda submitted that if this Court upheld the preliminary issue, this Court should consider this case as a proper one for referral to the High Court because no injustice and prejudice would be suffered by the parties.



**P3158**

We have looked at the evidence on record and considered the submissions and skeleton arguments filed by both parties as well as the authorities cited therein.

This preliminary issue is centred on **Order 30 Rule 10** of **the High Court Rules, Chapter 27**. However, we find it necessary to examine the provisions of **the Matrimonial Causes Rules, 1977**, which apply to Zambia, and give guidance on the procedure to be adopted, in matrimonial causes before we finally examine **Order 30 Rule 10**.

**Rule 124(1)** of **the Matrimonial Causes Rules, 1977** provides that-

**“ C.C.R Order 13 rule 1[(10)] (which enables the Judge to vary or rescind an order made by the Registrar in the course of proceedings) and C.C.R Order 37, rule [6] (which gives a right of appeal to the Judge from a judgment or final decision of the registrar) shall not apply to an order or decision made or given by the registrar in matrimonial proceedings pending in a divorce county court, but any party may appeal from such an order or decision to a judge on notice filed within five days after the order or decision was made or given and served not less than two clear days before the day fixed for hearing of the appeal, which shall be heard in chambers unless the judge otherwise orders.”**

**P3159**

From the above rule, it is clear that that an appeal from a Deputy Registrar lies to a Judge at Chambers and not an appellate Court. Property adjustment being a matrimonial cause falls within the ambit of this rule. Therefore, it is clear that an appeal from a decision of the Registrar on property adjustment lies to a Judge at Chambers.

Having said that, we wish to discuss the law as cited by the parties as regards appeals on property adjustment.

**Order 30 Rule 10 of the High Court Rules, Chapter 27**  
of the Laws of Zambia states as follows:

**“10. (1) Any person affected by any decision, order or direction of the Registrar may appeal therefrom to a Judge at chambers. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons, within seven days after the decision, order or direction complained of, or such further time as may be allowed by a Judge or the Registrar. Unless otherwise ordered, there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision, order or direction of the Registrar shall be no stay of proceedings unless so ordered by a Judge or the Registrar.”**

**P3160**

**(2) Any person affected by any decision, order or direction of an Assistant Registrar may appeal therefrom to the Registrar. Such appeal shall be by notice in writing to attend before the Registrar without a fresh summons, within seven days after the decision, order or direction complained of, or such further times as may be allowed by the Registrar or Assistant Registrar. Unless otherwise ordered there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision, order or direction of an Assistant Registrar shall be no stay of proceedings unless so ordered by the Registrar or Assistant Registrar.**

**(3) An appeal from the decision, order or direction of the Registrar on appeal from a decision, order or direction of an Assistant Registrar shall lie to a Judge in accordance with the provisions of sub-rule (1).**

**(4) An appeal from the decision or order of the Registrar on assessment of damages shall lie to the Supreme Court**

**P3161**

It is clear from **Rule 10(1)** that generally, an appeal from the decision of a Deputy Registrar or Registrar lies to a Judge at Chambers. Further, it is clear that **Rule 10(4)** takes away from the general rule and provides that an appeal from the decision of a Registrar on assessment of damages lies to the Supreme Court.

The Appellant in this case argued that a decision or order made by a Deputy Registrar on a matter referred to him or her by the Judge is made on behalf of the Judge and hence an appeal from such a decision cannot go to the same Judge. He cited a number of cases to support his argument.

We have examined the cases cited by the Appellant. We shall start by discussing the case of **Ernst Karl Paul Lembe v. Kearney and Co**<sup>(5)</sup>.

In that case the judge entered judgment in favour of the plaintiff and directed that damages be assessed by the deputy registrar in chambers. The appellant was dissatisfied with the assessment and appealed against the decision to another judge. Sakala, J, as he then was, held that-

**“A decision, order or direction by the deputy registrar on a matter referred to him by a judge is made on behalf of that judge and an appeal does not therefore lie to the same judge or to a judge of the same jurisdiction.”**



**P3162**

An examination of this case reveals that the holding referred to by the Appellant was made in the context of that case. The question for determination in that case was where an appeal from the decision of the Deputy Registrar on assessment of damages should lie. Further, this case was determined by the High Court. The decisions of the High Court are not binding on this Court. Therefore, we are of the view that this is not a proper authority to persuade this Court on issues for determination by this Court. In any case, the holding by the learned trial Judge was discussing an appeal on assessment of damages, therefore, it does not assist the Appellant in his submissions.

The next case relied upon by the Appellant was **J. K. Mpofu v. Impregilo Recchi (Zambia) and Goodwin Mungandi** <sup>(6)</sup>. The question for determination in that case was whether an appeal from the order of assessment of damages by the Deputy Registrar lies to a judge at chambers. Sakala, J, as he then was, held that-

**“The Deputy Registrar having assessed damages, the dissatisfied party should appeal to the Supreme Court and not to a judge in chambers.”**

**P3163**

This case confirms the application of Rule 10(4) referred to above. It does not support the Appellant's argument in any way.

The third case referred to by the Appellant was **Water Wells v. Jackson**<sup>(7)</sup>. This was an appeal against the refusal by the High Court to set aside judgment in default of appearance and defence where the Deputy Registrar had also already assessed damages. In that case, we held that-

**“Order 30 r. 10 of the High Court Rules confers a right of appeal from a Registrar to a Judge at Chambers, but by Practice Direction No. 1 of 1979, appeals against the assessment of damages by a Registrar lie direct to the Supreme Court.”**

Our view of this case, again, confirms the application of Order 30 rule 10(4) referred to above.

The last case relied upon by the Appellant is **Scott v. Scott**<sup>(8)</sup>. That was our decision. It was an appeal against the ruling of the Deputy Registrar dated 20th May, 2004. The background to the ruling is that the appellant and respondent were lawfully married in November, 1993, and after more than ten years of cohabitation decided to terminate their relationship through a judicial process. There was no child born during the marriage. The issue that arose as a

**P3164**

consequence of the dissolution of the marriage was property adjustment and settlement pursuant to **Section 21(2)** of **the Matrimonial Causes Act** of **1973**.

An examination of this case shows that we entertained an appeal from the decision of the Deputy Registrar on property adjustment. This is the basis of the Appellant's argument in this preliminary issue.

A reading of **Order 30 Rule 10** of **the High Court Rules, Chapter 27** of the Laws of Zambia reveals that generally, appeals from the Deputy Registrar lie to a Judge at chambers. However, in **Rule 4**, the appeal on assessment lies to the Supreme Court. An examination of that provision shows that the words used in that provision are very clear and unambiguous. We say so because the rule is couched in such a way that it specifically gives the general position and also a specific position as regards appeals on assessment of damages. This Court in the case of **Attorney General and the MMD v. Lewanika and 4 others** <sup>(9)</sup> held that:

**"Acts of Parliament ought to be construed according to the intention expressed in the Acts themselves. If the words of the statute are precise and unambiguous, then no more can be necessary than to expand those words in their ordinary and natural sense. Whenever a strict interpretation of a statute gives rise to an absurdity and unjust situation, the**

**P3165**

**Judges can and should use their good sense to remedy it, by reading words in, if necessary, so as to do what parliament would have done had they had the situation in mind.”**

From the above, it is clear that words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. In the case at hand, we do not see anything to suggest that **Order 30 Rule 10** should be interpreted in any way different from its ordinary grammatical sense.

If indeed there was an intention that all appeals from the Deputy Registrars, on property adjustment, needed to go before the Supreme Court or the Court of Appeal as the law provides now, then the law would have expressed that intention specifically, the way it has been expressed as regards appeals on assessment of damages.

Therefore, we hold the view that only appeals on assessment of damages need to go to the Supreme Court, and now the Court of Appeal after the Amendment to **Order 30** by **Statutory Instrument No. 96** of 2016.



Having said the above, it is clear that our decision to **entertain** the appeal in **Scott v. Scott** was made inadvertently. We use the word entertain because we are not referring to the decision in that case. We are referring to the decision to entertain the appeal by hearing it. We stick to our decision in that case. However, the decision to entertain the appeal in that case from the decision of the Deputy Registrar was made per incuriam. In fact, an examination of our Judgment in that case shows that the issue of jurisdiction of this Court, in matters on appeals from decisions of the Deputy Registrars on property adjustment, was not discussed and neither did it arise. This confirms our view that the decision to entertain the appeal was made inadvertently.


From what we have said above, we find merit in the Respondent's preliminary issue and we allow it. We order that the appeal is filed before the High Court and determined by a Judge at chambers since no prejudice will be suffered by the Respondent.

**P3167**

We award costs to the Respondent to be taxed in default of agreement.



M.S. MWANAMWAMBWA  
**DEPUTY CHIEF JUSTICE**




E M HAMAUNDU  
**SUPREME COURT JUDGE**



DR. M. MALILA, S.C.,  
**SUPREME COURT JUDGE**



R.M. C. KAOMA  
**SUPREME COURT JUDGE**



MICHAEL MUSONDA, S.C.,  
**SUPREME COURT JUDGE**