

**IN THE SUPREME COURT OF ZAMBIA      APPEAL NO. 108/2012**  
**HOLDEN AT LUSAKA**  
***(CIVIL JURISDICTION)***

BETWEEN:

**FINANCE BANK ZAMBIA LIMITED**

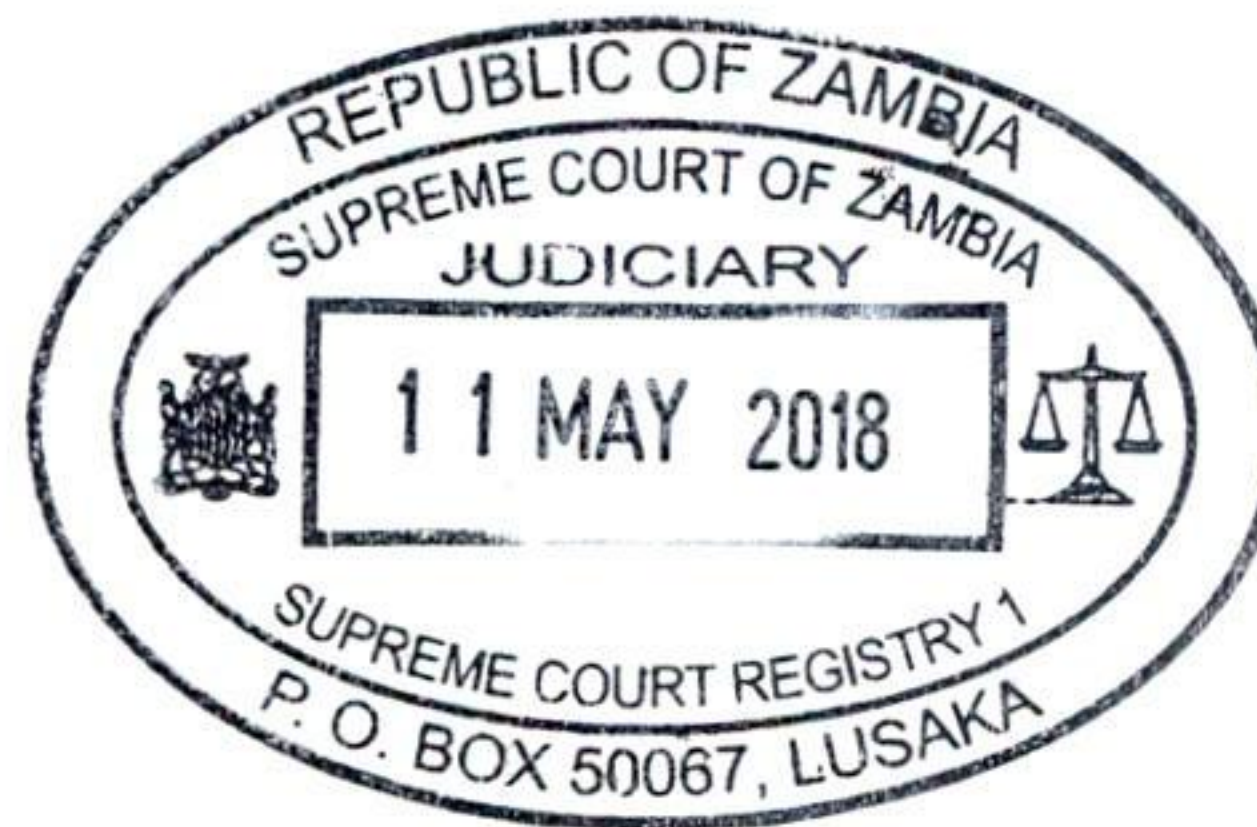
**APPELLANT**

AND

**NOEL NKHOMA**  
**BANK OF ZAMBIA**

**1<sup>ST</sup> RESPONDENT**  
**2<sup>ND</sup> RESPONDENT**

BETWEEN:



# BANK OF ZAMBIA

**APPELLANT**

**AND**

**MILES SAMPA  
FINANCE BANK ZAMBIA LIMITED**

**1<sup>ST</sup> RESPONDENT**  
**2<sup>ND</sup> RESPONDENT**

**CORAM : Hamaundu, Wood and Malila, JJS**  
**On the 23<sup>rd</sup> January, 2017 and 11<sup>th</sup> May, 2018**

For the appellant : Mr K. Hang'andu, Messrs Kelvin  
Hang'andu & Co

For the respondent : Mr K. Chenda, Messrs Simeza Sangwa & Associates

## JUDGMENT

**Hamaundu, JS**, delivered the Judgment of the court.



Cases referred to:

1. **Michael Kahula v Finance Bank Zambia Limited, Appeal No.96 of 2012**
2. **Caltex Oil Zambia Limited v Teresa Transport Limited [2002] ZR 97**

Legislation referred to:

**The Supreme Court of Zambia Act, Chapter 25 of the Laws of Zambia, Section 9.**

In this motion, the applicant, Noel Nkhoma, wishes to proceed against Finance Bank Zambia Limited with regard to enforcement of a consent order that the two parties executed in the two appeals referred to herein. The background to this application is this: Noel Nkhoma and Miles Sampa had been employees of Finance Bank Zambia Limited. In 2010, the Bank of Zambia, pursuant to its powers under the **Banking and Financial Services Act, Chapter 387 of the Laws of Zambia** took over the control of Finance Bank. It then terminated the services of Noel Nkhoma and Miles Sampa on 10<sup>th</sup> December, 2010. The two employees took their grievances separately to the Industrial Relations Court which granted their complaints and awarded them damages. This led to two separate appeals to this court by Finance Bank and Bank of Zambia. Before this court the parties signed a consent order in the following terms:



- “ (a) That the appeal intituled No. 108 of 2012 be and is hereby consolidated with the appeal intituled No.118 of 2012 and that the said appeals proceed as one appeal;
- (b) That Finance Bank Zambia Limited shall pay the contractual benefits of Noel Nkhoma and Miles Sampa that had accrued as at the date of termination of their respective contracts of employment with Finance Bank by Bank of Zambia and interest thereon;
- (c) That the Bank of Zambia shall pay to Noel Nkhoma and Miles Sampa the damages awarded in the respective judgments of the Industrial Relations Court in Complaint No. 73 of 2011 and complaint No. 253 of 2010 and interest thereon;
- (d) that the Bank of Zambia shall pay to Noel Nkhoma and Miles Sampa Legal costs of and occasioned by their respective actions;
- (e) That upon payment as aforesaid the parties shall have no further claims against each other in respect of complaint No.73 of 2011 and complaint No. 253 of 2010 or this appeal and that this appeal shall thereupon stand irrevocably withdrawn save for purposes of enforcing this order.”

The consent order was filed on 13<sup>th</sup> October, 2013. On 1<sup>st</sup> August, 2014 we passed judgment in the case of **Michael Kahula v Finance**



**Bank Zambia Limited<sup>(1)</sup>**. In that case we confirmed the decision of the Industrial Relations Court that Michael Kahula was entitled to accrual of pension benefits during the period that Finance Bank had not yet set up its own pension scheme; and that such benefits should be calculated using the formula that was applicable at the time. In the case of Michael Kahula, the period was from 1988 to 1999. Upon becoming aware of the case of Michael Kahula, Noel Nkhoma filed an action in the High Court, claiming the sum of K2,394,000 as damages for unpaid accrued pension benefits from 1<sup>st</sup> December 1987, his date of engagement, to 10<sup>th</sup> December, 2010.

Finance Bank raised a preliminary issue, challenging the action on the ground that it was *res judicata*. That application was unsuccessful. On appeal, however, we upheld the preliminary issue in our judgment of 9<sup>th</sup> March, 2016. Noel Nkhoma now seeks to recover the said sum of K2,394,000 by way of enforcement of the consent order that the parties signed in the two earlier appeals. In this regard, he did contemplate enforcing the order by way of contempt of this court.



At the hearing it was difficult to understand clearly the standpoint from which the applicant was arguing this motion. This was because the motion was being argued against the background that he had attempted to prosecute the same sum of K2,394,000 as a claim in the High Court but the claim was eventually held to be *res judicata* by this court. However, what became clear in the end was the following argument, as advanced by Mr Hang'andu on behalf of the applicant: That, never mind that the claim may have failed for being *res judicata*, the fact is that the payment of benefits, including those relating to pension was contemplated by the parties in their consent order before the Supreme Court. The argument goes on that, in so far as this aspect of the benefits has not been paid by Finance Bank, there remains a debt due to Noel Nkhoma under the consent order; and which debt can be recovered by way of enforcement of that order.

To the above argument, Mr Chenda, on behalf of Finance Bank, argued that this court's position is that its judgments are enforced in the High Court. We were referred to the case of **Caltex Oil Zambia Limited v Teresa Transport Limited**<sup>(2)</sup> in support of that argument.



Indeed, in the **Caltex Oil** case referred to by the respondent we said:

**“on 5<sup>th</sup> December, 2001, when we heard the main appeal, counsel for the appellant drew our attention to the fact that the respondent had not complied with our order of 16<sup>th</sup> March, 2001 and asked for directions as to what should be done about enforcing the order. We advised her that the court does not enforce its orders and advised her to make the necessary applications to the High Court....**

**We would like to draw the attention of the parties to section 9 of the Supreme Court of Zambia Act which provides as follows: -**

*Section 9:*

*‘The process of the court shall run throughout Zambia and any judgment of the court shall be executed and enforced in like manner as if it were a judgment of the High Court’*

**The effect of this section is that our judgments and orders are to be enforced in the High Court as there is no provision to conduct running litigation in this court.”**

The above position applies similarly to matters that originate from the Industrial Relations Court. Our judgments and orders in those matters are to be enforced in the Industrial Relations Court.



Mr Hang'andu argued that we should hold some form of inquiry, or assessment, to determine the exact figure that is due. The point we wish to make is that, even when our judgments or orders require to be ascertained, the assessment thereof is carried out by the court where the trial took place. Infact in his notice of motion the applicant did, among other pleas, request us to order that the recovery of the pension be enforced in accordance with **Section 9** of the **Supreme Court of Zambia Act, Chapter 25** of the **Laws of Zambia**. As we have said, the procedure in **Section 9** is that enforcement is carried out in the trial court.

We, therefore, think that in so far as the applicant, by this motion, seeks to enforce the consent order, he has come to the wrong forum. In the circumstances we will not comment on the merits or demerits of the enforcement sought as that would amount to entertaining the enforcement itself. We dismiss this motion, with costs to Finance Bank Zambia Limited.

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E. M. Hamaundu  
**SUPREME COURT JUDGE**





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A. M. Wood  
**SUPREME COURT JUDGE**



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Dr M. Malila, SC.  
**SUPREME COURT JUDGE**