



IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 16/2017

HOLDEN AT NDOLA  
(Civil Jurisdiction)

**BETWEEN:**

BANK OF ZAMBIA (AS LIQUIDATOR OF CREDIT  
AFRICA BANK LIMITED LIQUIDATION)

APPELLANT

AND

AL SHAMS BUILDING MATERIALS  
TRADING COMPANY LIMITED

RESPONDENT

*Before the Hon. Lady Justice F.M. Chisanga on the*

*For the Appellant : Ms. N. Chibuye, Messrs Nchito & Nchito Advocates*  
*For the Respondent : Mrs. N. Mutambo, Mesdames Theoties Mutemi, Legal Practitioners*  
*Mr. K. M. Mwanza, Messrs J and M Advocates*

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## **R U L I N G**

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**CHISANGA, JS** DELIVERED THE RULING OF THE COURT

Cases referred to

1. ***Finsbury Investments Limited vs Antonio Ventriglia and Manuel Ventriglia - Appeal No 177/2018***

2. **ZEGA Limited Zambia vs Zambia Revenue Authority<sup>2</sup> Appeal No. 96 of 2018**
3. **Kaole Contracting and Engineering Company Limited vs Mindeco Small Mines Limited (1980) ZR 91,**

Legislation Referred to:

1. **Halsbury's Laws of England**

Other Works referred to:

1. **Order 42/3 Rules of the Supreme Court**

I have before me a Notice of Motion to set aside an Ex-Tempore handed down by the Taxing Master on 7<sup>th</sup> November 2021. This ruling dismissed two issues that were raised by the respondents. The issues were, firstly, whether the appellant could effectively enforce the judgement of the Court delivered on 9<sup>th</sup> April 2020, to tax its Bill of Costs, which was filed on 15<sup>th</sup> September 2202, without an order embodying the judgement of the court, in terms of Rule 75 Supreme Court Rules. The second issue was whether the Taxing Master could exercise his discretion to tax the appellant's Bill of Costs in the absence of the Order.

On considering the arguments, the learned Taxing Master reasoned that although Rule 75 of the Supreme Court Rules is couched in mandatory terms, it is subsidiary to Section 9 of the Supreme Court Act CAP 25. In his view, Rule 75 was intended to give effect to Section 9, and like provisions. He relied on **Finsbury Investments Limited vs Antonio Ventriglia and Manuela Ventriglia<sup>1</sup>** where the Court of Appeal held that the Order of Embodiment is not intended to add or subtract anything that would have the effect of changing the intendment of the judgment, and that the embodiment order was intended to

2. **ZEGA Limited Zambia vs Zambia Revenue Authority<sup>2</sup> Appeal No. 96 of 2018**

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give effect to the judgement for the purpose of effective enforcement so as to allow the successful part to enjoy the fruit thereof.

The Taxing Master asked himself whether the costs order made by the Court on 9<sup>th</sup> April 2020 was capable of enforcement without an embodiment order. He answered this question in the affirmative. He thus determined that the Costs Order was not one that required embodiment as such an Order may only be required where the pronouncement of the Court needed to be put in clear terms for easier enforcement.

Moreover, he opined, the single judge had, on 14<sup>th</sup> September 2021 ordered the appellant to file its Bill of Costs out of time, within 14 days, and the Bill of Costs was filed in compliance with that order. The learned Taxing Master found the issues to be devoid of merit, and dismissed them.

The respondent has now raised the same issues before a single Judge to be determined afresh. The Notice of Motion to that effect is supported by an affidavit, sworn by one Mzondi Mwanza. The affidavit narrates the background against which the two issues were raised. It then proceeds to state legal arguments, contrary to the applicable rules. I will as a result not restate them here.

The gist of the arguments advanced in support of the Notice of Motion is that Rule 75 of the Rules of the Supreme Court is obligatory, in its requirement that every judgement of the Court be embodied in an Order. Reference is made to

decisions that construe the word 'shall' as imperative, one of them being **ZEGA Limited Zambia vs Zambia Revenue Authority**<sup>2</sup>, a decision of the Court of Appeal.

It is submitted that the requirement to embody a judgement of the Court into an Order does not confer discretion on the successful party, or officer of the Court to ignore it. It is argued that the judgement can only be enforced after embodiment, without which the enforcement should be considered defective. This extends to an application to tax costs by the successful litigant. Learned counsel refers to Halsbury's Laws of England, as well as Order 42/3 Rules of the Supreme Court, among other authorities in pressing the argument as to when a judgement becomes effective.

It is then urged that the Taxing Master had no mandate to proceed with the taxation.

The Notice of Motion is opposed by affidavit sworn by Mwansa Nachula. The deponent chronicles the manner in which the matter had progressed, but equally includes arguments. Learned Council are urged to visit the rules that speak to the swearing affidavits, to avoid these shortcomings.

Turning to the opposing arguments, learned counsel for the appellant argues that a judgement is enforceable immediately it is delivered. Reliance is placed on Section 9 of the Supreme Court Act, as well as Order 12 Rule 5(2). Reference is also made to Civil Procedure in Zambia: Commentary and Cases Volume II by

Dr. Matibini, where the learned author states the time when a judgment of the court takes effect:

***“Judgements and Orders take effect on the date that they are given. Therefore, time begins to run from that date and not the date on which reasons for the decision are given or the Order is perfected...”***

Enlisted too, is the decision in ***Kaole Contracting and Engineering Company Limited vs Mindeco Small Mines Limited***<sup>3</sup>, where the Court said:

***“The effective date of judgement would be the date on which it was pronounced subject to any directions given by the master or... the district registrar.”***

It is submitted that the Supreme Court in its judgement of 9<sup>th</sup> April 2020, clearly directed as follows:

***“...the appellant as the successful party will have its costs of the appeal to be taxed in default of agreement....”***

Moreover, it is contended, this Court , as a single judge, ordered the appellant by ruling dated 14<sup>th</sup> September 2021, to file the Bill of Costs, our of time, within 14 days. The Bill of Costs was filed in compliance with the Order of the Court. The appellant cannot therefore be faulted. I am urged to dismiss the application.

At the hearing, learned counsel repeated their written argument. I will not reiterate them here.

I have cogitated on the issues raised by the respondent. As submitted by learned counsel on behalf of the appellant, any judgement of the Court is to be executed and enforced in like manner as if it were a judgement of the High Court.

Our High Court Rules do not state when a judgement will take effect. This has prompted the courts to recourse Order 42 r 3(1) which states that a judgement or order of the court takes effect from the date of its delivery. In the notes to the said Order, it is explained, at 42/3/2, that where a judgement is set aside by the Court of Appeal and another judgement ordered to be entered in its place, the practice is to date the second judgement as of the date of the Order of the Court of Appeal, and interest upon debt or damages recovered runs from that date.

The Court has similarly held that a judgement takes effect from the date of its delivery. The Court having pronounced on the date a judgement takes effect, the argument that it only becomes effective upon reduction into an Order cannot prevail.

It is as well notable that although rule 75 Supreme Court Rules stipulates in imperative terms that every judgement is to be embodied in an Order, it does not invalidate a judgement until this is done. Additionally, Section 9 of the Supreme Court Act speaks of execution of a judgement of the Court, and not execution of an Order of the Court. To hold that a judgement of the Court is unenforceable until an order is drawn would result in elevation of rule 75 over Section 9. This would be contrary to applicable principles.

It should equally be borne in mind that rule 77 Supreme Court Rules provides for the making of costs orders on appeal or in any Court below, as well as the assessment of such costs. Alternatively, the Court may direct taxation in accordance with the applicable schedules. This rule speaks to Costs Orders directly, and how they may be dealt with. The view by the Taxing Master that the Costs Order was as clear as day cannot be faulted. While his qualification of rule 75 as being applicable to unclear judgements may not be accurate, the position still remains that a judgement may be executed upon pursuant to section 9 of the Act. Additionally, neither rule 75 nor rule 77 make assessment of costs dependent on the drawing up of the Order envisaged in rule 75.

On the foregoing discussion, I dismiss the issues raised for being without merit. I award the costs of this application to the appellant to be agreed, and in default taxed.

Dated the ..... 30<sup>th</sup> day of January ..... 2022



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**F. M. CHISANGA**  
**SUPREME COURT JUDGE**