IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NO 617 OF 2001

BETWEEN

G.P. CHINTHU …….. PLAINTIFF

AND

MALAWI TELECOMMUNICATIONS
LIMITED …….DEFENDANT

CORAM : HON. JUSTICE NYIRENDA

: Mr. Mkhutabasa, Counsel for the Plaintiff
: Mr. Mumba, Counsel for the Defendant

RULING

These are summons to amend judgment by the defendant under Order 20 rule 11 of the Rules of the Supreme Court on the ground of what is described as clerical errors and/or errors arising from accidental slip and omission.

In the affidavit of Mr. Mumba on behalf of the defendant the mistake is said to be in the number of years that the plaintiff worked for the defendant. Mr. Mumba's submission is in paragraphs 3,4,5,6 and 7 of his affidavit which I should quote as follows:

3. *The plaintiff got judgment in this matter where it was ordered that he should be paid by the defendant severance and compensation for unfair dismissal for 22 years.*

4. *The plaintiff was initially employed by the predecessor to the defendant. The plaintiff's employment with the defendant's predecessors was*

terminated and the defendant employed him on 1st April 1997 and his services were terminated on 15th June 2001. Copy of the plaintiff's letter of appointment is attached hereto as Exhibit "SCM1".

5. *In the foregoing circumstances, it is clear that the defendant cannot be liable to pay the plaintiff severance allowance and compensation for 22 years covering the period when the plaintiff was not an employee of the defendant.*

6. *It is clear that the fact that the plaintiff worked for the defendant for 22 years when he in fact worked for about 8 years is an error arising from an accidental slip or omission as the court could not have intended to award the plaintiff compensation and severance allowance covering the period when the plaintiff was not employed by the defendant.*

7. *During the hearing of the matter, the parties proceeded on the assumption that the issue before the court was primarily that of liability and once that was determined the parties were going to have the assessment of compensation and or severance allowance before the Registrar of the court where facts about when the plaintiff was employed by the defendant could have been put before the court.*

Mr. Mumba has further filed a supplementary affidavit through which he has introduced various documents in order to show that the plaintiff was appointed by the defendant in 1997.

This court pronounced its judgment in this matter on the 26th March 2007. The judgment of the court contains what the court believes is an exhaustive analysis of the facts and evidence that both parties presented before it.

The issue of the period of service was stated in the plaintiff's statement of claim where in the particulars the plaintiff stated that he had worked for the defendant's company for twenty years and that he had invested his entire career in the defendant's industry. In his testimony in court the plaintiff corrected the position in his opening statement which I must quote for its importance:

> *My name is George Chinthu. I am from Likoma. I now live in Area 18A here in Lilongwe. I am an engineer. I am not working now. I worked for Malawi Telecommunications Limited since 1979. I had worked 22 years. I am not there now. I was dismissed. It was alleged that I had been grossly negligent I do know what I had done for it to amount to this.*

The plaintiff then went on to tender the letter of dismissal Exhibit P1 dated 15th June 2001 dismissing him from the date of that letter. The plaintiff was cross examined at considerable length. There was no question directed at or challenging the period of employment. The plaintiff was the only own witness.

The defence called three witnesses who were all very familiar with the plaintiff. None of the witnesses questioned or said anything to the contrary about the period of service of the plaintiff. Put simply therefore the plaintiff's period of service was never contested. What is also true is that it is not in the defence as an issue. The issues that the defendant is bringing are fresh and are being brought to the court's attention for the first time. In other words the defendant is trying, by this application, to invoke and introduce fresh evidence into the matter.

Order 20 rule 11 provides as follows:

> *Clerical mistakes in judgments or orders, or errors arising therein from*

any accidental slip or omission, may at any time be corrected by the court on motion or summons without an appeal.

In explaining the rule Order 20/11/1 says the rule applies only in cases where there is a *clerical mistake* in a judgment or order or an error arising from an *accidental* slip or omission. Apart from the rule a Court has inherent power to vary its own orders so as to carry out its own meaning and to make its meaning plain. Where an error of that kind has been committed, it is always within the competency of the Court, if nothing has intervened which would render it inexpedient or inequitable to do so, to correct the record in order to bring it into harmony with the order which the judge obviously meant to pronounce, see *Kelsey v Doune (1912) 2 K.B. 482, Hession v Jones (1914) 2 K.B. 421.*

Although the power to amend under this rule extends to cover accidental slips and omissions of counsel, it does not extend to a situation where a defendant has failed to inform his solicitor what his defence is, see *G.A. Verdegaal & Zonen Export BV v Pullen (1987) The times, November 27, C.A.* Yet this is exactly what is being attempted here. There was no clerical mistake or an error arising from an accidental slip or omission. The variation which the defendant seeks is not mere clarification but seeks a fundamental variation of a radical nature by introducing into the case fresh evidence. If that were to be allowed then there would be no end to litigation and nothing else to a perfected judgment.

Counsel for the defendant has brought up something else in his application which the court can clearly see as a further attempt to have another go at the matter. It is said it was the understanding of the parties that the court was only going to determine liability and that the question of damages was going to be referred to the Registrar. If there was that proposal between the parties it was certainly never brought to the attention of the court. Counsel for the defendant is well aware how the case proceeded in court. I am surprised he is attempting this course. Defence

Counsel's own submissions on behalf of the defendant at the close of the case addresses all the issues that were to be determined by the court, including issues of severance pay, pension contributions, interest, general damages, the amount of the defendants counterclaim and costs. The submissions on both sides were meant to see this matter to its conclusion. There was to be nothing else left for another forum as suggested by defence counsel.

I dismiss this application as totally lacking in all respects. I make an order for costs for the plaintiff.

MADE in Chambers this 13th day of September 2007.

A.K.C. Nyirenda

J U D G E