IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 3389 OF 2004

BETWEEN:

ERNEST MTINGWI ..... APPELLANT

-AND-

MALAWI REVENUE AUTHORITY ..... RESPONDENT

CORAM: Hon. Justice M.L. Kamwambe
Mr. Mmeta of Counsel for the Appellant
Mr. Ngutwa of Counsel for Respondent
Mrs. Gangata, Official Interpreter

Kamwambe J

RULING

This is an appeal against the decision of the Assistant Registrar His Honour Chigona made on 29th June 2007 declining to find that there was an omission in the order of assessment delivered by the Assistant Registrar Her Honour Chizuma on 4th July 2005 in that it left out a bundle of entitlements from the plaintiff's notice pay, terminal benefits and compensation as directed by the judgment of Chipeta J. made on 24th March 2005.

What was before His Honour Chigona was Plaintiff's application to correct the order of Assessment of damages made by Her Honour Chizuma under the 'Slip Rule'. The application was brought under Order 20 rule 11 of the Rules of the Supreme Court.

This appeal to a judge at Chambers is properly conducted by way of notice under Rule 3 of the High Court (Exercise of jurisdiction of Registrar) Rules in that there is no strict requirement to itemise grounds of appeal so long as the notice of appeal refers to the order or judgment complained of. Hence the appeal is by way of rehearing.

At the time when the matter was before His Honour Chigona, Her Honour Chizuma was outside the country. His Honour Chigona maintained that he had all the same jurisdiction to hear the matter of correcting the order of assessment of damages under the said Order 20 rule 11 made by Her Honour Chizuma. His Honour Chigona made a conclusion that there was no omission whatsoever in the order of assessment by Her Honour Chizuma.

I warn myself not to treat this application as an appeal from the decision of Her Honour Chizuma. Any argument by the Plaintiff must show where or how His Honour Chigona erred in his finding. I note that at paragraph 2.0 of the Plaintiff's skeletal arguments he states that he does not allege mistake in law, fraud or mistake to have been occasioned by Her Honour Chizuma. He suggests that the issue is rather on omissions of particular awards, arithmetical errors and oversight. In the same breath he says Her Honour Chizuma exercised her discretion over which exhibit to adopt. (ie as basis of making an oversight or mere arithmetic error because she made a deliberate choice which course of action to take. Hence, His Honour Chigona decided that to apply Order 20 rule 11 Rules of Supreme Court is not appropriate.

Arithmetical errors are those where one makes wrong additions, multiplications such as

8+5 = 12
8x5 = 42
8-5 = 2

In my view such mistakes are mere slips to be attended to under Order 20 rule 11. But where one chooses between the two sets of computations of damages, one prepared by the Plaintiff and the other by the Defendant, Order 20 rule 11 should apply on the face of it.

In his skeletal arguments the Plaintiff does clearly come out to mention the omission or slip. I have had occasion to look at Plaintiff's skeletal arguments of 10th January, 2007 for guidance. The listed omissions are as follows:-

a) It left out award of compensation

b) It left out some benefits in its "purported" package of notice pay and benefits. These have been succinctly outlined in paragraph 14 of the Plaintiff's affidavit in support.

c) It left out Plaintiff's salary and benefits from 4th November, 2006 to 31st December 2006 in the calculation of the terminal benefits.

Note: Gratuity is the only benefit that was awarded up to 31st December, 2006.

d) According to clause 5.0 of the Plaintiff's contract, gratuity is made up of 25% of gross salary drawn under the contract. As such gratuity corresponds with the salary. Therefore the Defendant cannot grant gratuity up to 31st December, 2006 on one hand; and refuse to grant Plaintiff's salary up to 31st December, 2006.

ISSUE

The real issue for me to consider is whether His Honour Chigona was right in finding that Order 20 rule 11 is not applicable herein.

The Applicant has cited several cases in a bid to show that Order 20 rule 11 is applicable. The other issues as shown in Plaintiff's supplementary skeletal arguments are in my view irrelevant. As I have said before what was before His Honour Chigona was a request to correct the record under Order 20 rule 11 and he refused to do so under Order 20 rule 11.

Order 20 rule 11 provides that clerical mistakes in judgments and 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 (My emphasis). The error or omission must be an error in expressing the manifest intention of the Court. In other words it is put that the Court has no power under any application in the action to alter or vary a judgement after it has been entered or an order after it is drawn up, except so far as it is necessary to correct errors in expressing the intention of the Court.

The case of **Tak Miny Co. Ltd vs Yee Metal Supplies Co.** [1973] 1 All ER 569 is very instructive in this regard. The Supreme Court of Hong Kong after finding one party liable omitted to make an award of interest. The Court allowed the correction and on appeal it was affirmed. Lord Person quoted a passage from Pickering J's judgment in the Court below that:-

> *"A most important matter for me to consider is what I would have done at the time I gave judgment had this matter of interest been in my mind. After a lengthy trial, in the course of which both sides asked me to confine my decision to take issue of liability and having written a long judgment which occasioned to me no small difficulty, my mind was on the issue of liability rather than upon any figures. But had I thought the matter through further, as I should have done, I am in no doubt what ever.. that I would have made an award of interest …"(p572)*

Consequently, it was found that there was an accidental omission.

One thing comes to mind from this passage cited above. The matter for correction is best dealt with if brought to the Judge/Registrar who made the order or judgment to be corrected. It is not an easy task that another Judge/Registrar should decide on behalf of the maker. However, in certain circumstances where it is easy to justify an omission as accidental of course any other Judge/Registrar could make the correction. Such slips should more often be of an obvious nature.

The other thing I learn from the passage is that such a slip or omission must be as a matter of course that it was just a slip or omission. As soon as it becomes highly contentious whether it is a slip or not, then it is better to employ more caution how to address the issue especially if being handled not by the maker.

We should not lose sight of the fact that the Appellant is of the view that the court's manifest intention in its judgment is that he be paid: (a) terminal benefits up to completion of his contract ie, up to 31st December, 2006, (b) compensation equivalent to 3 months salary and benefits, and (c) 3 months pay and benefits in lieu of notice. This, he says, was not fulfilled on assessment. In his view all items were omitted except for gratuity which was paid up to the end of the contract period ie 31 December 2006.

Without labouring the issue, let me say that I read the judgment of Hon. Justice Chipeta with special interest and I now fully appreciate what his judgement is, from which one can perceive the Court's manifest intention. The Honourable Justice Chipeta fully and adequately analysed the issue of payment of terminal benefits for the duration of notice

period vis-a-vis the full contract term ie up to 31st December 2006, and in conclusion he stated this at page 35:-

> *"In the light of my finding, therefore that Clause 12.3 of the contract of service is so wide as even to swallow both the situation in Clauses 12.1 and 12.2 the net result in this case is that the Plaintiff is entitled, not just to pay and benefits in lieu of three months notice. He is in fact, by the legal obligations the law of contract is concerned with, and which the parties in this case contracted on, entitled to all the terminal benefits payable up to completion of his contract, to wit up to 31st December, 2006, both under this contract and under the staff terms and conditions of service. Accordingly I now award the Plaintiff all the terminal benefits less the K1,671,431.23 he already got after his exhibit "MRA 4" request and also less the tax legally due thereon."*

Quite frankly I do not see any ambiguity in the judgment of the Honourable Judge since it is couched in simple and clear language that Plaintiff's entitlement is up to the end of contract, ie, 31st December 2006. It therefore baffles me to see that Her Honour Chizuma chose to pay terminal benefits only for the three months notice contrary to the spirit of the Judge's judgment. If His Honour Chigona had read the judgment, he would not have questioned why Order 20 rule 11 was used and consequently dismiss the application. I am now contented that of course the manifest intention of the court or judgement is to award terminal benefits up to end of the contract period as spelt out in Clause 12.3 of the contract of service. This is a situation where one would apply the words of wisdom and instruction of Pickering J. as quoted by Lord Person in **Tax Ming Co. Ltd v Yee Metal Supplies Co.** (supra)

The short of it is that if I were in the shoes of Her Honour Chizuma, I would have complied with the letter of the judgment of Hon. Justice Chipeta by awarding terminal

benefits and salary up to the end of the contract period without even making a wink. The application was therefore properly made under Order 20 rule 11 Rules of Supreme Court and consequently I dismiss the order of His Honour Chigona with costs.

Made in Chambers this 11th day of August 2008 at Chichiri Blantyre.

M.L. Kamwambe
JUDGE