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Pamodzi Hotels Plc v Rosemary Nyangu Appeal No.15 of 2011 (ZMSC) 2021
Natasha Chibuye¹ and Mwami Kabwabwa²

Facts

On the 2nd of March 2010, Pamodzi Hotel Plc (the Appellant) filed a notice of appeal against the whole judgement of the Industrial Relations Court delivered on 4th February 2010 awarding Rosemary Nyangu (the Respondent) damages equivalent to 6 months' salary plus allowances, for unfair and wrongful dismissal from employment. The Respondent filed a notice of cross-appeal on 7th March 2011, against the part of the judgement that awarded her only 6 months' salary inclusive of allowances. The first ground of argument by the Respondent was that the withdrawal of cross-appeal was made under a fundamental error or mistake. In response to this, the Appellant was of the view that the Respondent had not shown the basis on which she made the error and that there was no fundamental error on which she could have withdrawn the cross-appeal. Rather, she was within her legal rights either to wait for a date of hearing or to withdraw the cross-appeal as she did.

The second ground of argument by the Respondent was that the withdrawal of cross-appeal could be a nullity. On this argument, the Respondent argued that whereas Rule 63 (1) of the Supreme Court Rules³ provides for steps to be taken by a Respondent who intends to cross-appeal, there is no equivalent specific provision for withdrawal of a cross-appeal. The Respondent pointed out that Rule 63(1) provided for withdrawal of an appeal but not a cross-appeal and therefore the withdrawal of the cross appeal could be a nullity.

In the alternative, the Respondent submitted that the only reasonable inference was that Rule 63(1) equally applied to a cross-appeal with all necessary adaptations and this reasonable inference would not be prejudicial to any of the parties if the appeal was restored.

Holding

The Supreme Court held that it was improper for counsel for the Respondent to come back to this court under the guise of this motion to seek to restore the cross-appeal for the Respondent to re-litigate the same issue of her entitlement, which the registrar of the Industrial Relations Court and the Court of Appeal ably dealt with. The court was convinced that there was clear abuse of the court process by counsel for the Respondent. Reason being the ends or interest of justice demanded that the courts do not restore the cross-appeal for hearing as there must be an end to litigation.

In relation to ground two of the Respondents' argument, the court found that Rule 63 of the Supreme Court Rules that deals with the withdrawal of an appeal, equally applies to the withdrawal of a cross-appeal. Therefore, the withdrawal of the cross-appeal could not be a nullity.

In relation to the status of the cross-appeal following its withdrawal, the court held that in terms of Rule 63(3) of the Supreme Court Rules, if the parties to an appeal did not consent to the withdrawal of the appeal, the appeal shall remain on the list. The appeal shall come on for the hearing of any issue as to the costs or otherwise remaining outside between the parties, and for the making of an order as to the disposal of any sum lodged in court as security for the costs of

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³ Chapter 25 of the Laws of Zambia

the appeal. In the current position, both parties did not consent to the withdrawal of the cross-appeal and as such it remained on the list and should have come on for the hearing of any issue as to costs or otherwise remaining outstanding between the parties.

Importantly, the court held that legal practitioners were to act in the best interests of their client and follow the lawful, proper, and competent instructions of a client. However, under section 85 of the Legal Practitioners Act⁴ lawyers are officers of the court and are subject to where the court and administration of justice is paramount to the duty to the client to the extent of any inconsistency with any other duty. The court stated that in situations where acting in the personal interests of a client conflicts with a legal practitioner's duty to the court or administration of justice, counsel must act in ways that will uphold the duty to the court and administration of justice because as officers of the court, the duty to the court is overriding. As officers of the court, counsel must be free from personal bias, must be frank in their responses and disclosures to the court and must act with competence, honesty, and courtesy towards the court, opposing counsel and parties. Importantly in terms of section 52(b) of the Legal Practitioners Act counsel should not mislead or allow any court to be misled, so that such court makes an order, which such practitioner knows to be wrong or improper.

The court further held that as an officer of the court, counsel for the Respondent's duty to the court was paramount even if his client gave contrary instructions. His role was not merely to push the personal interests of the Respondent, rather counsel should have provided clear and proper advice to his client to avoid any compromise to his integrity and professional independence. Therefore, counsel should not have brought to court a motion that is devoid of any merit simply because his client instructed him to do so.

Significance

This ruling is important because it brings out salient principles in respect of a Legal Practitioner's duties and professional ethical obligations in the execution of their duties.

1. Lawyers are officers of the Court and are subject to the jurisdiction of the Court;
2. The duty of a Lawyer to the Court and the administration of justice is paramount to the duty to the client to the extent of any inconsistency with any other duty;
3. Where the personal interests of a client conflict with a Legal Practitioner's duty either to the Court or the administration of justice, the latter shall take precedence; and
4. A lawyer should not mislead or allow any Court to be misled so as to make a wrong or improper order

Importantly, the ruling serves as a stern warning to legal practitioners to always maintain their professional integrity and prioritise their duty to the court and the administration of justice.

The representation of a lawyer as an officer of the Court is an ancient principle that has been in existence over the course of the history of the legal profession. This is explained by the various oaths that lawyers take before they can be admitted to the bar in various jurisdictions including Zambia. The representation of a lawyer as an officer of the court generally implies that a lawyer has a special obligation to the broader judicial system and to the Court. Specifically, and importantly, it entails that a lawyer is a quasi-judicial officer and as such also bears the responsibility for the administration of justice.⁵ Justice Hoke in the Supreme Court

⁴ Chapter 30 of the Laws of Zambia

⁵ E.W. Timberlake Jr 'The Lawyer as an Officer of the Court' 1925 Vol 11 263- 277 Virginia Law Review.

case of North Carolina explained the underlying principle of a Lawyer's profession in the following terms:

An attorney at law is a sworn officer of the court to aid in the administration of justice. He is sought as counselor, and his advice followed in the most important and intimate relations of life. There is doubt if any profession affords an equal opportunity for fixing the standards and directing the civic conduct of his fellows. It is of supreme importance, therefore, that one who aspires to this high position should be of upright character and should hold, and deserve to hold, the confidence of the community where he lives and works⁶

The above explanation illustrates that the oath taken by lawyers before they are admitted to the bar as Legal Practitioners is intricately linked to their duty as officers of the court who must at all-time assist the Court in the administration of justice. A lawyer's oath therefore marks or sets the Lawyer apart as an officer of the Court with obligations, duties, and responsibilities akin to that of Judges albeit in a different context. lawyers should always remember that the oath they take is not just a formality devoid of meaning but is indicative of their calling to be conduits in the administration of justice. It follows therefore and as the ruling points out that a Lawyer is not a servant to his client but is at all times an officer of the Court.⁷ Furthermore, because the Chief Justice administers the Lawyers Oath in her capacity as head of the Judiciary and on behalf of the judicial systems, Lawyers are subject to the jurisdiction of Court and the Courts have the inherent jurisdiction to chastise a Lawyer who acts contrary to his duty as an officer of the Court and contrary to his professional ethical obligations.

The ruling brought out another important principle that a Lawyer has a duty to the court and the administration of justice. This duty entails that a Lawyer has the responsibility to accurately present to the attention of the Court every issue of fact and law legitimately available to his knowledge for the purpose of presenting his client's case and or interests and to aid the court in arriving at a just outcome. This outcome can either be in favour or against the Lawyer's client. Thus, a Lawyer's duty to his or her client is to professionally present the client's side of the story whereas his duty to the court as an officer of the Court is to assist the Court in the administration of justice. However, while a Lawyer is expected to represent his client's case diligently, it will never be acceptable for the lawyer to do this at the price of truth. This is because although a Lawyer's duty to his or her client is important it does not transcend his ethical and professional obligation to truth. Sharswood in his essay on Legal Ethics had the following to say on the fundamentality of truth and the legal profession:

Truth is the basis of all virtue but more emphatically of legal morality. Truth in all its simplicity truth to the Court, truth to the client and adversary is the polar star of every lawyer⁸

The representation of a Lawyer as an officer of the Court also entails that a lawyer must be unreservedly frank with the Court if he is to be a valuable instrument in the administration of justice. In addition, a lawyer should never purposely mislead the Court as to a known fact or

⁶ *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (N.C. 1924).

⁷ *Ibid* note 5.

⁸ Geo Sharswood 'A Compend of Lectures on the Aims and Duties of the Profession of the Law Delivered before the Law Class of the University of Pennsylvania' (1855).

event. A Lawyer who in the execution of his or her duties either to the court or his client misguides the Court will ultimately overreach himself.⁹

Conclusion

The court in the case acknowledged the duty counsel has to the court. This is an important ruling because it not only outlined the principles and obligations of Lawyers as officers of the Court but it is also an example of the consequences attached to misleading the Court and is a reminder to Lawyers that much as they have an obligation to safeguard the interests of their clients they remain officers of the Court and their duty to the court must be the primary priority.

⁹ Isaac M. Meekins 'The Lawyer as an Officer of the Court -His Duty to the Court and the Administration of Justice' 1926 North Carolina Law Review.