IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

CAZ Appeal No. 24/2020
CAZ/08/409/2019

BETWEEN:

07 OCT

HUSSEIN VERSI	**1ST APPELLANT**
VAN TALL LOGISTICS & FORWARDING LIMITED	**2ND APPELLANT**

AND

AIRSEA CLEARING & FORWARDING LIMITED	**1ST RESPONDENT**
OMAR AWADH TRANSPORT LIMITED	**2ND RESPONDENT**

CORAM : Kondolo, Chishimba and Ngulube JJAs
On the 25th August, 2021 and 7th October, 2021

For the Appellant : N/A
For the Respondent : Ms. N. Mbuye of Messrs Paul Norah Advocates.

J U D G M E N T

Chishimba JA, delivered the Judgement of the Court.

CASES REFERRED TO:

1. Post Newspapers Limited v Rupiah Bwezani Banda (2009) ZR 254.
2. Sitima Tembo v National Council for Scientific Research (1988 - 1989) Z.R. 4.

3. Trust Limited v Founders Trust & Investment Company Limited (1932) 2 KB 87
4. Isaac Tantameni C. Chali (Executor of the Will of the Late Mwalla Mwalla) v Liseli Mwala (Single Woman) (1995 - 1997) ZR 199
5. Westminister City Council v Addibina (2012)EWHC 3716 (QB)
6. Khawaja v Popat (2016) EWCA Civ 362
7. Jolly v Hull (2002) FRL 6
8. Attorney general v Walthamstow UDC (1985 11 TLR 533)
9. Stancom v Trowbridge UDC (1910) 2 Ch.190
10. Steiner Productions LTD v Willy Steiner Ltd (1966) 2 ALLER 387 a
11. Savenda Services v Stambic Bank and Geofrey Chifire SCZ H7/2015 (Appeal 37/2017.
12. Hadkinson v Hadkinson (1952) ALLER 567

LEGISLATION CITED:

1. The Rules of the Supreme Court of England, (White Book) 1999 Edition.
2. The Companies Act No. 10 of 2017 of the Laws of Zambia.

OTHER WORKS REFERRED TO:

1. Halsbury's Laws of England, 4th edition. Re-issue. Vol. 9(1)

1.0 INTRODUCTION

1.1 This interlocutory appeal emanates from the ruling of the Hon. Mr. Justice W. G. K. Muma dated 13th December, 2019 in which he granted the respondents leave to issue notice of motion for committal proceedings for contempt of court against the appellants.

2.0 BACKGROUND

2.1 In the court below, the respondents were the plaintiffs while the appellants were the defendants. On 12th April, 2019, the

respondents issued a writ of summons against the appellants, claiming the sum of US$159, 146.32; damages for loss of business and income; damages for breach of contract and interest. On 16th July, 2019 the parties entered into a consent judgment. The terms were that the respondents would recover the judgment sum together with costs incidental to the action. An initial payment of US$6000.00 was to be paid. Thereafter in July 2019 monthly instalments of US$7000.00 effective from the end of August 2019. Further, a consent order was entered into between the parties on 7th August, 2019 in which it was agreed that costs in the sum of K50, 000.00 be paid to the respondents in instalments.

2.2 On 3rd September, 2019, the court below granted an order for the arrest of the 1st appellant (2nd Judgment Debtor). In his affidavit in support of summons for leave to review the ruling of 3rd September, 2019 and for an order to stay execution of the judgment pending determination of the application dated 10th September, 2019, the 1st appellant, Hussein Versi deposed that the 2nd appellant (1st Judgement Debtor in the court below), opted not to make any instalment payments towards the

judgment sum and refrained from giving any instructions to their advocates. Hussein Versi further deposed that one Talib Hassanali Dastoor, a director in Van Tall Logistics and Trading Company Limited, the 2nd appellant herein was also a director in Stallion Paints Zambia Limited.

2.3 On the basis of Hussein Versi's afore stated affidavit, the 1st respondent, through its Managing Director, one Rahim Dossa, issued summons for an order for leave to commence contempt proceedings against Hassanali Dastoor Talib. Rahim Dossa deposed in the affidavit in support of ex parte summons for an order for leave to commence contempt proceedings that Hassanali Dastoor Talib is one of the directors in the 2nd appellant and that the 2nd appellant has the means to liquidate the judgment sum but is willfully disregarding the orders of court.

2.4 Rahim Dosa further stated that the appellants had only paid the sum of US$1000.00 and had defaulted on the other monthly instalments including the payment of costs. The 2nd appellant had also relocated from the previously known premises in order to avoid liquidating the sums owed to the respondents. A writ of

fifa issued by the respondents dated 14th August, 2019 could not be executed as the Sherriff reported that there were no goods worth seizing at the last known address of the 2nd appellants.

2.5 It was further stated that Hussein Versi had admitted that the directors of the 2nd appellant are in a position to liquidate the judgment sums as evidenced by their opening of a fully operational new company, Stallion Paints Zambia Limited.

2.6 In his affidavit in opposition to ex-parte summons for an order for leave to commence contempt proceedings dated 24th September, 2019, the alleged contemnor, Hassanali Dastoor Talib deposed that while he is one of the directors in the 2nd appellant, he is not a party, in his personal capacity as director, to the consent judgment of 16th July, 2019. With respect to the affidavit of Hussein Versi filed on 10th September, 2019 on which the respondents placed reliance, it was stated that Hussein Versi was merely a guarantor of the 2nd appellant. That Versi was not one of the directors therein and as such is not privy to its operations.

2.7 The deponent further denied willfully refusing and neglecting to pay the judgment sum or shifting the 2nd appellant's offices and avoid liquidating the judgment sum. Though he admitted being a director in Stallion Paints Zambia Limited, an entity funded separately by another equity partner, the said company was incorporated on 4th June, 2019 way before the consent judgment of 16th July, 2019. Therefore, incorporation of the said company cannot be construed as an attempt to avoid liquidating the judgment sum against the 2nd appellant.

3.0 DECISION OF THE COURT BELOW

3.1 The learned Judge in the court below considered the arguments and consent judgment before him, particularly paragraph 3 of the consent judgment which stated as follows:

> ***"That in the event the defendants default to make any of the installments herein above, the full Judgment sum shall become due and the plaintiffs shall be at liberty to execute on the defendants without further recourse to the defendants."***

The court observed that the debit and advice note from the Sheriff of Zambia was basically a *nulla bona* return indicating attempted service on the 2nd appellant.

3.2 The court below then considered the provisions of **Order 45 Rule 5(4) of the Rules of the Supreme Court of England, 1999.** He noted that it gives three options for enforcement of judgment being by way of writ of sequestration against the corporate property; writ of sequestration against the personal property of any director or other officer of the body; or by an order of committal against any director or other officer of that body.

3.3 Judge Muma took the view that the respondents had executed upon the body corporate and that there was a *nulla bona* return. Hence the respondents proceeding to apply for an order of committal against the director, which is within the options available under **Order 45 of the Rules of the Supreme Court, 1999.**

3.4 He dismissed the argument by counsel for the 2nd appellant that the respondents ought to have made an application for leave to lift the corporate veil and thereafter pursue the contemnor, stating that the directors of the 2nd appellant are known arising from the relationship that prevailed between the parties. Therefore, the circumstances of the case did not warrant the

court to pierce the corporate veil and look behind the incorporated company to ascertain the identity of the persons.

3.5 Consequently, the court below granted the application for leave to commence committal proceedings.

4.0 GROUNDS OF APPEAL

4.1 The appellants have advanced four grounds of appeal framed as follows:

1) ***The court below erred in law and in fact when the court granted leave to the respondents to commence committal proceedings against the appellants without the respondents having established a prima facie case of contempt of court against the 1st and 2nd appellants;***
2) ***The learned court below erred in law and in fact when the court granted leave to respondents to commence committal proceedings against the 1st appellants when the consent judgment dated 11th July, 2019, was not endorsed with a penal notice as required by the rules of court;***
3) ***The trial judge erred in law and in fact when he granted leave to commence committal proceedings against the 1st appellant without evidence of the 1st appellant having been personally served with the consent judgment dated 11th July, 2019; and***
4) ***The learned court below erred in law and in fact when he granted leave to commence committal proceedings against the 1st appellant when the 1st appellant was not a party to the consent judgment and without prior leave to pierce the corporate veil of the 1st appellant having been obtained by the respondents.***

5.0 APPELLANTS' ARGUMENTS

5.1 The appellants filed heads of argument dated 17th February, 2021 in support of the appeal.

5.2 In ground one, the appellants contend that the respondents did not establish that there was a prima facie case of civil contempt for the court below to grant leave to commence committal proceedings. We were referred to the case of **Post Newspapers Limited v Rupiah Bwezani Banda** [1], in which, according to the appellants, the Supreme Court explained that in an application for leave to commence committal proceedings, information should be provided which will establish a *prima facie* case of contempt of court against the alleged contemnor, and that the affidavit in support of the application for leave should show that the applicant has a *prima facie* case for the court to grant leave.

5.3 On this basis, it was argued that the affidavit in support of ex parte summons for leave to commence contempt proceedings at page 22 of the record of appeal, falls far short of establishing a *prima facie* case of civil contempt of court against the 1st and 2nd appellants. As authority, **Halsbury's Laws of England, 4th**

edition. Re-issue. Vol. 9(1) para. 465 was called in aid where the learned authors explain that:

> ***"... the power to order committal for civil contempt is a power to be exercised with great care. The court will only punish disobedience to an order of the court, or non-compliance with an undertaking, if satisfied that the terms of the order or undertaking are clear and unambiguous, that the defendant has proper notice of the terms and that a breach of the order or undertaking has been proved beyond reasonable doubt."***

In this regard, it was submitted that none of the above facts legally required to establish a *prima facie* case of contempt of court were established by the respondents in the application for leave.

5.4 In particular, it was argued that the respondents failed to prove that the failure to settle the judgment debt by the appellants was willful and deliberate as no evidence as to their means and capacity to settle the debt was tendered by the respondents to confirm that the appellants have the capacity. Further, that in the affidavit in opposition to the application for leave at page 51 of the record of the appeal, the 1st appellant deposed that the 2nd appellant is facing financial challenges due to economic hardships and has been actively looking for funds to settle the

debt. This confirms that the failure to settle the debt is neither willful nor deliberate on the part of the appellants. The appellants had no deliberate intention to disregard the consent judgment as alleged by the respondents.

5.5 In grounds two and three, the appellants contend that the consent judgment of 11th July, 2019 was not endorsed with a penal notice as required by the rules of court, and that there was no evidence of the 1st appellant having been personally served with the said consent judgment.

5.6 With respect to the absence of a penal notice on the consent judgment, the appellants submitted that **Order 45 Rule 7(4) of the Rules of the Supreme Court** provides that:

> ***(4) There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.***

The respondents failed to comply with the above provision as the consent judgment did not provide for a penal notice thus

the proceedings by the respondents in the court below were incompetent and materially defective at law.

5.7 The appellants further contend that the absence of a penal notice endorsed on an order or judgment alleged to have been breached, is fatal to civil contempt proceedings. To underscore the importance of a penal notice in civil proceedings, we were referred to the case of **Sitima Tembo v National Council For Scientific Research** [2] where Gardner, JS sitting as a single Judge, held that:

> ***"Order 45, Rule 7(4) of the Supreme Court Practice provides that it is necessary for a written notice of an injunction to be endorsed with a penal notice. The exceptions referred to in the Note to the rule apply only when there has been insufficient time to prepare a written notice of injunction. Once a written notice has been prepared it must contain a penal notice in order to make the breach of injunction the subject of an order of committal."***

5.8 Therefore, as the consent judgment and consent order were not endorsed with a penal notice, they cannot be the subject of committal proceedings at law.

5.9 The appellants further submit that the respondents failed to establish that the consent judgment and consent order in issue

were personally served on the 1st appellant as there is no proof of personal service on the 1st appellant in terms of **Order 45 Rule 7(2)(a) and (3)(a) of the Rules of the Supreme Court**. The said provisions read as follows:

> *(2) Subject to Order 24, rule 16 (3), Order 26, rule 6 (3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless -*
>
> *(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and*
>
> *(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5 (1)(b)(ii) or (iii) unless -*
>
> *(a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought, and .....*

5.10 To amplify the point, **Halsbury's Laws of England. 4th edition. Re-issue. Vol. 9(1) para. 470**, was cited where the authors state:

> *"... Personal service of an order upon an officer of a company must be proved before he can be committed for disobedience to an order against the company ..."*

The case of **Iberian Trust Limited v Founders Trust & Investment Company Limited** [3] was also called in aid to show that the court will decline to issue an order of attachment against directors of a company if the order is not personally served on the directors and no penal notice is endorsed to warn them of the consequences of breaching the order.

5.11 The appellants submit that it is not sufficient that the consent judgment and consent order were executed by counsel for the 2nd appellant as the law requires that the respondents should have personally served on the 1st appellant.

5.12 Lastly in ground four, the appellants seek to assail the ruling of the lower court on two fronts: the first being that the 1st appellant was a non-party to the consent judgment and consent order for which leave is sought to commence contempt proceedings; and the second being that no prior leave of court was obtained by the respondents to pierce the corporate veil of the 1st appellant.

5.13 The appellants submit that the consent judgment and consent order were executed by the 2nd appellant, the respondents and Hussein Versi, who agreed on terms of settlement of the debt.

The 1st appellant was not party to the consent judgment and consent order. Therefore, the 1st appellant, not being a party to the consent judgment and consent order, cannot be held in contempt for the failure of the 2nd appellant and Hussein Versi to settle the judgment debt. As authority, the case of **Isaac Tantameni C. Chali (Executor of the Will of the Late Mwalla Mwalla) v Liseli Mwala (Single Woman)** [4] was cited which held that the rules of practice governing joinder and non-joinder of parties before trial of the action, legally and effectively preclude a court from considering the interests of non-parties.

5.14 The appellants further contend that a company, being a separate legal person from its directors and shareholders, it was legally incorrect to hold the 1st appellant answerable to the alleged acts of contempt of court by the 2nd appellant. The respondents failed to make a formal application before court to lift the veil of incorporation prior to making the application for leave to commence contempt of court proceedings.

5.15 The appellants took the view that by the contempt proceedings, the respondents are endeavouring to attach liabilities of the 2nd appellant to the 1st appellant, which is contrary to the

provisions of **section 125(1)(a) of the Companies Act No. 10 of 2017** that a shareholder is not liable for an obligation of the company by reason only of being a shareholder. Therefore, the 1st appellant cannot be answerable to the liabilities of the 2nd appellant by reason of being a director and shareholder unless and when a formal order of court piercing the veil of incorporation has been obtained by the respondents.

5.16 The appellants prayed that the appeal be allowed and the ruling of the court below set aside in its entirety with costs to the appellants.

6.0 **RESPONDENTS HEADS OF ARGUMENTS**

6.1 The respondent relied on their heads of arguments dated 18th August 2021 and began by giving a factual background leading to the consent judgment, breach and the ruling granting leave to commence contempt and committal proceedings subject of appeal. In respect of the 1st appellant, the respondents submit that the ruling appealed is against the 2nd appellant's Director, Hassanali Dastoor Talib and not the 1st appellant Hussein Versi. The said Hussein Versi was the guarantor of the debt and the 2nd Judgment Debtor in the Consent Judgment of 11th July

2019. Therefore, the Order to commence contempt proceedings is concerned with the 2nd appellant and not the 1st appellant.

6.2 As regards ground one whether a *prima facie* case was established of contemptuous conduct on the part of the 2nd appellant, it was contended that the same had been demonstrated. The basis being the default in payment of the debt within the stipulated time in the consent judgment, willful refusal to pay and termination of the 2nd appellant's operations, all being a clear indication of no intention to abide by the orders of the judgment of court.

6.3 In response to ground two and three, on the issue of the consent judgment order not being endorsed with a penal notice and not having been personally served, the respondents contend that there is no legal need because the appellants had agreed to the terms of payment and even paid the sum of US$ 1,000=00 towards the debt. This proves that they were aware of the contents of the consent judgment.

6.4 The respondent cited the provisions **of Order 45 Rule 7 (2) (a) and 3 (a) of the RSC** on the purpose of serving a judgment on an alleged contemnor i.e to be aware of what they require to do

or abstain from doing. Aside from contending financial constraints the appellants do not dispute breach of their obligation. Reference was made to the case of **Westminister City Council v Addibina** [5] on the discretion to dispense with a penal notice being done sparingly and the question being prejudice by failure to comply with rules. Other cases on waiver of procedural defects in committal applications were cited such as **Khawaja v Popat** [6] and **Jolly v Hull** [7]

6.5 The fact that the appellant's solicitors were aware of the terms of the consent judgement should be considered an exceptional circumstance to warrant dispensing with the service and penal notice requirement. Further, that the 2nd appellant has not demonstrated how noncompliance with the requirements to commence contempt proceedings have prejudiced him to warrant setting aside the leave obtained on account of technicalities. We were urged to waive the requirement of personal service and to dispense retrospectively with the requirements for penal notice.

6.6 As regards ground four on whether the court erred when it granted leave to commence committal proceedings against the

1st appellant when he was not a party to the consent judgment and without piercing the corporate veil of the appellant, the respondents reiterate that the appeal herein should not be concerned with the 1st appellant as the ruling, subject of appeal, refers only to the Director of the 2nd appellant. Reference was made to the following: **Order 45 Rule 5 (1)(a) of the Rules of the Supreme Court** on enforcement of judgment to do or abstain from doing an act, **Atkin's Court Forms 2nd Edition Volume 19** and the cases of **Attorney general v Walthamstow** [8]; **Stancom v Trowbridge** [9] **and Steiner Productions LTD v Willy Steiner Ltd** [10] **and Savenda Services v Stambic Bank and Geofrey Chifire** [11].

6.7 It was submitted that we should not entertain the appeal because no application to the court may be allowed by a contemnor until such person has purged himself of his contempt. As authority the case of **Hadkinson v Hadkinson** [12] was cited.

6.8 It was contended that though the 2nd appellant argues that he was not a part of the consent judgment, this flies in the teeth of

the partial payment made by it towards compliance with the order. The 2nd appellant if he was not a party should have applied to set aside the consent judgment.

6.9 In conclusion it was submitted that it is in the interest of justice and in public interest for the court to be strict in adherence and enforcement of its own judgments to maintain authority and power in the eyes of the public. We were urged to dismiss the appeal with costs.

7.0 **DECISION OF THE COURT**

7.1 We have considered the appeal, the arguments advanced and the authorities cited by the parties. The facts preceding the appeal are not in dispute as earlier narrated. Namely that the respondents and the appellants entered into a consent judgment for the payment of the sum of US$ 159,146.32 in monthly instalments. Upon default a writ of *fieri facias* was issued and there was a *nulla bona* report issued by the Sheriff of Zambia.

7.2 Arising from the above, the respondents filed ex-parte summons for an order for leave to commence contempt proceedings against the alleged contemnor, Hassanali Talib, a director in the

2nd appellant company and against the 2nd appellant. The basis being willful disobeyance or disregard to the Order of the Court.

7.3 The appellants have raised a number of issues such as whether the respondents have established a *prima facie* case of contempt against them, whether the consent judgment was endorsed with a penal notice as required and personally served. Further whether leave to commence committal proceedings against the 1st appellant could be granted when he was not a party to the consent judgement and without leave to pierce the corporate veil of the company.

7.4 We shall begin by addressing the issue raised in ground four. The challenge is against the grant of leave to commence contempt proceedings against the 1st appellant, Husein Versi. A perusal of the record and the affidavit in support of ex-parte summons for an order for leave to commence contempt proceedings refers to Talib Hassanali Dastoor, a director in the 2nd appellant company as having willingly refused or neglected to make payment as agreed in the Consent Judgment of 16th July 2019. The respondent in the application prayed for leave to commence contempt proceedings against the judgment

debtors. They referred to Hussein Versi as 2nd judgment debtor. In the statement supporting an application for leave to issue notice of motion for committal proceedings for contempt, the name of the contemnor is stated as Van Tall logistics (2nd appellant) acting through its director Hassanali Dastoor Talib.

7.5 The court below states in the ruling that the application to issue notice of motion for committal proceedings for contempt of court is in relation to the 2nd appellant company. The ruling does not specifically make mention of the 1st appellant as alleged contemnor.

7.6 The court below granted the application for leave to commence committal proceedings. One is left wondering whether it was against the appellants as judgment debtors as well as the mentioned Hassanali D. Talib. It is trite that a well-structured judgment enhances clarity and conciseness. There must be clarity on the relief granted or against whom it is made. It is therefore desirable that the judgment should have clarity both on facts, law, reasoning and the ultimate relief granted.

7.7 The 1st appellant having been a judgment debtor, cannot therefore be faulted for contending that he was not served with

the order subject of contempt because of the lack of clarity as to whom the order was directed at. Simply stating that ***"I therefore grant the application for leave to commence committal proceedings"*** is not enough. It should have stated the names of the alleged contemnors. Be as it may, we hold the view that the grant of leave to commence committal for contempt of court was directed at Dastoor Talib a director in the 2nd appellant.

7.8 Therefore the 1st appellant cannot be heard to say the contempt proceedings were also directed at him. Even if for arguments sake they were, due process as to personal service was not followed. An issue which we will discuss at a later stage.

7.9 We shall now proceed to address the grounds raised as applicable to the 2nd appellant. The issue in our view for determining is whether due processes pursuant to **Order 45 Rule 5 (4) (5) & (7)** of the **Rules of the Supreme Court Practice (white book) 1999** was compiled with.

7.10 **Order 45 Rule 5 of Rules of the Supreme Court** provides for enforcement of judgment where a person required by a judgment or order to do an act within a time specified in the

judgment refuses or neglects to do so within the stipulated time. The judgment or order may be enforced by one or more of the following means;

> ***"(i) With the leave of the court, a writ of sequestration against the property of that person***
>
> ***(ii) Where that person is a body corporate, with leave of the court, a writ of sequestration against the property of any director or other officer of the body."***

7.11 As regards the effect of the above cited rule, it governs the methods for the enforcement by the court of its judgments in circumstances amounting to contempt of court.

7.12 It is not in issue that the consent judgment stipulated that payment of debt should be paid in monthly instalments which was defaulted upon. Further that execution was effected and a *nulla bona* return report issued.

7.13 It is trite that the provisions of **Order 45 Rure (5) 1 of RSC** must be read together with **Rule 7**. Enforcement cannot be obtained unless a copy of the order is served personally on the person in default. As regards an order requiring a body corporate to do an act, it shall not be enforced unless a copy of the order has been personally served on the officers against

whom an order of committal is sought and served before the expiration of the time within which the corporate body was required to do the act. In *casu*, service of the consent judgment on the 2nd appellant's officers.

7.14 A further requirement under **Order 45 Rule 7 (4)** is that there must be;

> ***"Prominently displayed on the front of the copy of an order served a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment etc ....."***

7.15 The respondents contend that there was and is no logical need for the appellants to claim that they ought to have been served with the Consent Judgment because they participated in arriving at it and undertook to pay on time. Further, that the 2nd appellant was aware of the contents of the judgment and even made a partial payment. That in any event, the court has power to dispense with service of the judgment or order. And that it would be in the interests of justice to waive the requirement.

7.16 As regards the indorsement of a penal notice or order, the respondents contend that we should, for the reasons advanced,

waive the personal service requirements and further that we should in the interest of justice dispense with the penal notice. The basis being that the 2nd appellant has not demonstrated prejudice occasioned by failure to serve and endorse the consent judgment with a penal notice.

7.17 **Order 45 Rules 7** makes explicit the conditions precedent to the enforcement of the judgment or order of committal, by specifying the documents to be served, the time within which the person on whom such orders must be served and the terms of the penal notice to be endorsed.

7.18 It is not in issue that there are instances under which the court may dispense with service of the requisite documents and to dispense with the failure to incorporate a penal notice in the judgment or order requiring a person to abstain from doing an act.

7.19 We are however of the firm view that the court has no such discretion to dispense with the penal notice where the judgment/order, as in *casu,* requires the person to do an act. The court has no discretion to dispense with the requirement for the display on the front of the copy of the order in a

prominent manner warning that disobedience would be a contempt of court punishable with imprisonment.

7.20 We are equally of the view that an order of committal of a person for disobedience to an order requiring him to do a given act within a given time as in *casu* will not be directed unless a copy of that order with the proper endorsement has been personally served upon him in due time. The fact that a person is aware of the order or that it was made in court when he was present or that his lawyers are aware of it is not sufficient to dispense with service of the order.

7.21 In as much as it is in the public interest for strict obedience to a court judgment/order, proper court processes must be followed in enforcing them particularly those relating to an order of contempt committal against persons/directors etc. The conditions precedent to the enforcement of a judgment or order by order of committal or sequestration must be met. Having held that the necessary conditions for enforce of judgment order under **Order 45 (5)** and **45 (7)** of the **Rules of the Supreme Court** were not met, we find merit in the appeal.

7.22 We accordingly set aside the ruling of the lower court dated 13th December 2019 and set aside the order for leave to commence committal proceedings. Costs to the 2nd appellant to be taxed in default of agreement.

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M. M. Kondolo S.C

COURT OF APPEAL JUDGE

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F. M Chishimba

COURT OF APPEAL JUDGE

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P. C. M. Ngulube

COURT OF APPEAL JUDGE