RAM PETROLEUM (PRIVATE) LIMITED
versus
FUTURE FOCUS MINING

HIGH COURT OF ZIMBABWE
ZHOU & WAMAMBO JJ
HARARE, 24 September 2024 & 26 March 2025

Civil Appeal

B. Pabwe for the appellant
V. Mhungu for the respondent

ZHOU J: This is an appeal against a judgment of the Magistrates Court (the court *a quo*) dismissing an application by the appellant for the correction of an order of that court. The appeal is opposed by the respondent.

The material background facts to the matter are as follows: The appellant instituted a claim by way of summons against the respondent in the court *a quo* claiming payment of a sum of US$36 460.00 together with interest thereon at the prescribed rate, collection commission and attorney-client costs. The respondent defaulted, and the Court granted default judgment in the following terms:

> "IT IS ORDERED IN DEFAULT THAT:
> (a) An order directing the defendant to pay the plaintiff the sum of US$36 460.00 or its equivalent in ZWL$ at interbank rate.
> (b) An order directing the defendants (*sic*) to pay plaintiff the prescribed rate of interest on the above sum calculated from the 30th June 2023 to date of final payment.
> (c) Payment of 10% as collection commission."

The formulation of the order reveals grammatical errors in the order which calls for attention on the part of Magistrates to properly apply their minds when they issue orders. The statements numbered (a), (b) and (c) are incomplete sentences even when read together with the portion that reads: "IT IS ORDERED IN DEFAULT THAT".

Be that as it may, that is not the issue that is before this Court. After the above order was granted the appellant approached the Magistrates Court seeking correction of the order in terms of s 39 (1) of the Magistrates Court Act [*Chapter 7:10*]. That section provides as follows:

> "(1) In civil cases the court may –
> (a) . . .

(b) . . .
(c) correct patent errors in any judgment in respect of which no appeal is pending."

The error that the appellant asked the court *a quo* to correct was the reference in the order issued to "or its equivalence in ZWL$ at interbank rate". The appellant's contention was that there was an error because the claim that it made sounded in United States dollars only and, in any event, the commodity that was sold to the respondent was purchased exclusively in that currency. The Court *a quo* dismissed the application for correction of the order with no order as to costs. That dismissal is what triggered the instant appeal. The appellant advanced two grounds, which are as follows:

"1. The learned Magistrate grossly erred in fact and law and thereby misdirecting herself in dismissing the court application without demonstrable basis and thus failing to find that it was a jurisprudential anomaly and error for the court to issue an order different from the default judgment.
2. The court *a quo* further erred and misdirected itself in failing to find that the anomaly in Ground 1 above stood to be remedied by resort to section 39(1)(c) of the Magistrates Court Act [*Chapter 7:10*] and further erred by not correcting the anomaly per its powers under s 39(1)(c)."

What can be discerned from the two rather mouthful grounds of appeal is that the court *a quo* fell into error by determining that the issue complained of was not one that warranted correction in terms of s 39(1)(c) of the Magistrates Court Act. Indeed, the court *a quo* did not accept that the making of the portion of the order giving an option to pay the debt in the local currency was an error. Its reasoning was that that was a matter that fell to be dealt with by way of appeal and not by seeking correction of the order.

At the hearing, Mr *Mhungu* for the respondent raised three objections *in limine.* He abandoned the one point pertaining to the citation of the respondent but persisted with two others, namely (a) that the appeal was invalid because it was presented as against the whole judgment yet it was only against a part of the judgment, and (b) that the grounds of appeal are fatally defective for want of conciseness. We dismissed the two objections and informed that the reasons for the dismissal would be contained in the final judgment.

The first ground of objection is meaningless and difficult to understand. The application before the court *a quo* was for correction of the order of court. That application was dismissed. The grounds of appeal challenge the dismissal of the application. In other words, the order that was granted is the one that is being appealed against, and not merely a portion thereof. The submission that the appeal was against part only of the order is not borne out by the grounds of appeal and the relief sought. This ground of objection is therefore devoid of merit.

The second ground of objection complains about the lack of conciseness of the grounds of appeal. While, as noted earlier on, there is verbosity in the formulation of the ground, it is easy to discern what is being impugned in the two grounds of appeal. We have already pointed out what the essence of the grounds of appeal is. For these reasons, the objection is not sustainable.

On the merits, the one question that disposes of the matter is whether there was a patent error such as would trigger the invocation of the powers granted by s 39(1)(c) of the Magistrates Court Act. In the context of legal proceedings, a "patent error" refers to an error or omission (or commission) in a judgment or order that is so obvious and readily apparent that it is clear that the judgment or order does not reflect the true intention of the judicial officer, see *Hopcik Investments (Pvt) Ltd v Minister of Environment, Water and Climate and Another* HH 336-2016 (2016 ZWHHC 336 (1 June 2016). I add that the mere fact that the judicial officer was conscious of what he or she was doing when he or she made the error complained of does not deprive the issue of its erroneous nature. In other words, an error does not cease to be an error merely because the judicial officer was convinced that what they were doing was right. The fact of it being an error is inherent in the thing done and not in the motive for doing it.

In casu the court which granted the default order complained of may have thought it was entitled to grant alternative relief for payment in the local currency. But the error that inheres in the order is from two dimensions. Firstly, that relief that the court gave was never asked for. This was a default judgment. In other words, the respondent had not contested the relief sought. The court *a quo* could only be entitled to give the additional alternative relief if it had been prayed for or if it was incompetent to grant the relief sought as it stood in the pleadings before the court. The court *a quo* confirmed that there was no law that made it illegal for judgment to be granted in United States dollars. The multicurrency regime permits that. It could not have been the intention of the court to grant relief that had not been sought before it, certainly not without hearing the affected party thereon especially with the potential prejudice that it could give rise to.

The second dimension is the fact placed before the court *a quo* and was never disputed, that the claim related to fuel that had been sold and delivered to the respondent, and fuel was sold exclusively in United States dollars. Given that notorious fact, the court could not have intended to order an option to a defaulting defendant to pay for the fuel in a currency that could not purchase the commodity supplied. Doing so constituted an obvious error, one that is so

apparent that it would render that alternative portion of the judgment not a judgment in favour of the plaintiff even if it had been satisfied.

Once this court found, as it has done, that there was a patent error in the order complained of, the matter fell squarely within the purview of s 39(1)(c) of the Magistrates Court Act. The error is not one that fell to be remedied by way of an appeal because the appellant could not appeal against an order granted in its favour. It is not an order granted against it or in favour of its adversary. In the circumstances, the Court *a quo* erred when it dismissed the application for the error to be corrected.

In the result, IT IS ORDERED THAT:

1. The appeal is allowed.
2. The judgment of the court *a quo* is set aside and the following is substituted:

   "(a) The court application for correction of court order is granted.
   (b) The court order date stamped 6th September 2023 be and is corrected by the deletion of the words "or its equivalence in ZWL$ at interbank rate"

3. The respondent shall pay the costs.

WAMAMBO J: …….. **Agrees**

ZHOU J: ……..

Venturas & Samukange, appellant's legal practitioners
Chasi – Maguwudze, respondent's legal practitioners