

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**

2012/HPC/0474

(Commercial Jurisdiction)

BETWEEN:

G4S SECURITY SERVICES ZAMBIA LIMITED

PLAINTIFF

AND

CHAT FLOUR COMPANY LIMITED

DEFENDANT

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN OPEN
COURT ON THE 13TH DAY OF MARCH, 2014**

For the Plaintiff:

O. Sitimela, Messrs Fraser & Associates

For the Defendant:

N/A

J U D G M E N T

The Plaintiff **G4S Security Services Zambia Limited** commenced proceedings herein against **Chat Flour Company Limited**, the Defendant by way of a Writ of Summons on the 10th day of August 2012 seeking the following reliefs:

- 1. The sum of K32,550,759.65 being in respect of Security Services rendered and or provided to the Defendant at the Defendant's own instance and requested between 1st May 2009 and 1st August 2009 particulars whereof exceed 3 folios in length and already delivered to the Defendant,***

2. Interest on the sum,

3. Any further relief the Court shall deem fit in the circumstances,

4. Costs.

According to the attendant Statement of Claim of even date, between the period of 1st May 2009 and 1st August 2009, the Plaintiff rendered and provided services of a security nature to the Defendant at the Defendants' own instance at a chargeable fee per month by way of issuance of an invoice for settlement on each particular month.

It is averred that as a result, the amount of **K32,550,759** is outstanding and the Defendant despite due and lawful demands has failed to pay the aforestated amount, hence the claim.

The Defendant entered appearance and filed a Defence on the 30th day of August 2012 stating that they do not owe any money to the Plaintiff as all invoices were settled.

When the matter came up for trial on the 7th day of March 2014, neither Counsel for the Defendant nor the Defendant were present. I noted from the record that when the trial date was set on the 5th day of December 2013, Counsel was present and was therefore aware of the trial date and no reason was advanced as to his and the Defendant's absence.

I also observed that, although the Orders for Directions were given by the Court on the 5th day of December 2012, the Defendant had not complied with the Orders for Directions. I decided to proceed with the trial as I was of the view that the Defendant was unduly procrastinating the case.

At the trial, the Plaintiff only called one witness, **Judith Mutinondo (PW) the National Billing and Credit Manager** in the employ of the Plaintiff whose testimony was as per the witness statement filed into Court on the 5th day of May 2013.

It was PW's testimony that during the period the debt arose, she was the person responsible for generating invoices and issuing of the customer monthly statements of accounts. That she generated the invoices to the Defendant covering the requisite period which invoices appear **on pages (1) to (4)** of The Plaintiff's Bundle of Documents amounting to **K32,550,759.65**.

PW's further testimony was that it is a standard practice by the Plaintiff that all invoices it issues to its clients should be paid monthly upon receipt of the invoice due for each particular month. That despite being served with the invoices, the Defendant has not paid the amount due.

At the end of the trial, Counsel for the Plaintiff indicated that he will rely on the Plaintiffs Skeleton Arguments.

I have carefully taken into consideration the Pleadings, the Defence inclusive, PW's evidence, the Documents in the Bundle of

Documents and the Plaintiff's Skeleton arguments and the authorities cited therein.

It is not at all in dispute that there was an agreement between the parties for the Plaintiff to provide Security Services, which the Plaintiff did and consequently rendered the invoices contained in the Plaintiffs Bundle of Documents (**pages (1) to (4) refers**).

The Plaintiffs contention is that to date the said invoices have remained unpaid. Whilst on the other side, the Defendant contends that it has paid all the invoices.

A careful perusal of the Defence in my view reveals that the same does not meet the requirements of **Order L111 Rule 6 of The High Court Rules, Chapter 27 of the Laws of Zambia** as it merely contains a general and bare denial of the allegation of facts and general statement of non admission. The Defence does not specifically traverse every allegation made in the Statement of Claim.

Rule 6 (4) clearly states that a Defence which fails to meet the requirements of **Rule 6** shall be deemed to have admitted the allegations not specifically traversed.

That despite, the failure by the Defendant to fully comply with the Orders for Directions has not done any good to its Defence.

Compliance, would have given the Defendants an opportunity to produce documentation of proof of payment if indeed they did effect payment and also to adduce evidence to that effect.

In the absence of such proof and the view that I have taken, the Defendant has no Defence on the merits. The Plaintiff has proved its case on a balance of probability and this is a proper case for granting the Plaintiff the relief as sought.

In that respect the Plaintiff is entitled to recover the sum of **K32,550.75**. The said amount will attract interest at the average short term deposit rate per annum as determined by the Bank of Zambia from time to time from the 10th day of August 2012 being the date of commencement of this action to the date of Judgment and thereafter at the current Commercial Bank lending rate as determined by Bank of Zambia till full satisfaction of the Judgment debt.

Costs of these proceedings shall be borne by the Defendant. Same to be taxed in default of agreement.

Dated at Lusaka this 13th day of March 2014.

Justin Chashi
HIGH COURT JUDGE