

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

2010/HPC/0629

(Civil Jurisdiction)

BETWEEN:

DANAIT TRANSPORT LIMITED

PLAINTIFF

And

ZAMBEZI PORTLAND CEMENT LIMITED

DEFENDANT

**Before The Hon. Mr Justice Justin Chashi in Chambers on
the 24th day of March, 2014**

For the Plaintiff:

G. Locha, Messrs Mweemba & Company

For the Defendant:

N/A

J U D G M E N T

The **Plaintiff Danait Transport Limited** commenced proceedings herein by way of Writ of Summons on the 21st day of October 2010 against **Zambezi Portland Cement Limited** the **Defendant**, claiming the following reliefs:

- 1. Payment of the sum of K60,014,920=00 being haulage charges due to the Plaintiff from the Defendant**
- 2. Interest thereon at bank lending rate from date of the writ until payment**
- 3. Costs of and incidental to this action**
- 4. Further and/or other reliefs as the Court may deem fit.**

According to the attendant Statement of Claim, the Defendant contracted the Plaintiff to provide transportation services for the haulage of cement from Ndola to Lusaka. It is averred that the Plaintiff duly executed the contract and rendered various invoices which the Defendant settled save for invoice number 316 in the sum of **K60,014,920**. hence the claim.

The Defendant settled it's defence on the 19th day of November 2010 denying the indebtedness of **K60,014,920**. and also disputing the rate per tonne of **K175,000** which was applied by the Plaintiff.

According to the Defendant, the Plaintiff is only entitled to the sum of **K24,557,722**. which sum has since been paid on the rate of K80,000 which they allege ought to have been applied by the Plaintiff.

Further, it is the Defendants averment that **45 bags of cement were lost**, the value being **K2,088,000**. which loss was not taken into account by the Plaintiff when rendering the invoice.

In the Reply settled by the Plaintiff on the 23rd day of November 2010, the Plaintiff acknowledged receipt of the sum of **K24,557,722**. after commencement of this cause and averred that as regards the rate of **K175,000** per tonne, the same was agreed between the Plaintiff's Managing Director and a Mr. Isaac Ngoma representing the Defendant who received the quotation and verbally instructed the Plaintiff to load the cement.

The Plaintiff also concedes to a reduction in its claim by the sum of **K2,088,000.** on the 45 damaged bags of cement.

At the hearing of the matter, the Defendant and their Counsel were not present. I noted from the record that when this matter came up on the 13th day of January 2014 despite the Notices of hearing having been issued and also being notified by the Plaintiff's Advocates, neither the Defendant nor their Advocates were before Court. I further notice that Notices of hearing were again issued for the 21st day of March 2014 and again they were not present.

I decided to proceed with the hearing as I am confident they were aware of the proceedings as the notices of hearing had been issued.

At the hearing of the Cause, the Plaintiff called only one witness **Naizghi Petros (PW)** the Plaintiffs Managing Director whose testimony was as per his witness statement filed into Court on the 25th day of March, 2011 and which was in tandem with the Plaintiff's Statement of Claim and the Reply.

At the close of the case, Counsel for the Plaintiff indicated that he will apart from the evidence also rely on the Plaintiff's Skeleton arguments.

I have carefully analysed the pleadings herein and the evidence of PW and the Plaintiff's Skeleton arguments. Although the

Defendant were not available at the trial, I have had recourse and considered their defence and Skeleton arguments.

In determining this matter, let me start by stating that although no formal contract has been produced by either party, it is not in dispute that the parties entered into a contract for the Plaintiff to transport cement from Ndola to Lusaka. The only issue, and that is the issue which the Court has to determine is, what the rate per tonne was.

The Plaintiff is alleging that the rate was **K175,000 per tonne**, whilst the Defendant is alleging **K80,000 per tonne**. The Plaintiff has in its Bundle of Documents produced Tax Invoice No. 316 dated 29th day of March 2010 which appears on page 1 of the Plaintiff's Bundle of Documents. The same Invoice appears on page 19 of the Defendant's Bundle of Documents.

Although the invoice does not indicate the agreed rate per tonne, it indicates the total amount invoiced at **K60,014,920**.

It is clear and it is in fact not disputed that, that invoice was rendered to the Defendant and that it was on the basis of that invoice that the Plaintiff loaded and transported the cement from Ndola to Lusaka.

I have further noted that there is a Purchase Order which was raised by the Defendant on the 22nd day of April 2010 in the said amount of **K60,014,920** which has in fact been produced by the

Defendant themselves and appears on page 21 of the Defendant's Bundle of Documents.

Although the parties seem to differ on the agreed rate per tonne, the documentation before this Court does not show the agreed rate but does show the amount as invoiced and also as indicated on the Purchase Order as being the sum of **K60,014,920**.

In view of the aforesaid, I have no difficulty in making a finding of fact that the parties agreed on the sum of K60,014,920 as the cost of transportation from Ndola to Lusaka.

I have also noted that the Plaintiff has acknowledged receipt of the sum of K24,557,722 and also conceded a reduction of K2,088,000 for the damaged bags of cement. The amount outstanding therefore is the sum of **K33,369,198**.

The Plaintiff in the view that I have taken has therefore proved its claim on a balance of probability and I therefore award the Plaintiff the sum of K33,369.20. The same is to attract interest at the average short term deposit rate per annum as determined by Bank of Zambia from time to time from the 21st day of October 2010 being the date of commencement of this action to the date of this Judgment and thereafter at the current Commercial Bank lending rate as determined by Bank of Zambia till full satisfaction of the Judgment debt.

Costs to the Plaintiff. Same to be taxed in default of agreement.

Dated at Lusaka this 24th day of March 2014.

**JUSTIN CHASHI
HIGH COURT JUDGE**