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**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

**2013/HP/1550**

**SASHIN HARICHAND**

**AND**

**PLINTH TECHNICAL WORKS LIMITED**



**PLAINTIFF**

**DEFENDANT**

**BEFORE : HON. G.C. CHAWATAMA - IN CHAMBERS**

*For the Plaintiff : Mr. Besa – Messrs Besa Legal Practitioners*

*For the Defendant : Mr. Mhango- Messrs Nyangulu and Company*

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***RULING***

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CASES REFERRED TO:

1. *Byrd v Nunn (1877) 7 Chancery Div 287*
2. *John Lancaster Radiators Limited v General Motor Radiator Company Limited & Others (1946) 2 ALL ER, 685.*
3. *Raphael Ackim Namungandu v Lusaka City Council (1978) ZR 358*

AUTHORITIES REFERRED TO:

1. *Order 18/13/2 Rules of the Supreme Court*
2. *Order XXVI Rule 1 High Court Rules Cap 27 of the Laws of Zambia*
3. *High Court Rules, Cap 27 of the Laws of Zambia under Order LIII Rule 6 (as amended by S.I. No. 27 of 2012)*

This is an application by the Plaintiff to enter Judgment on Admission. The Plaintiff's claim is for immediate payment of a total sum of K302,000.00 for salary and rental arrears; immediate payment of the total sum of K36,000.00 being outstanding balance on the equipment supplied by the Plaintiff to the Defendant; immediate payment of the sum of US\$158,500 outstanding on the total amount borrowed by the



Defendant from the Plaintiff; Rent and general upkeep cost of the Plaintiff from the date of separation to date of payment of his salary arrears plus costs.

The Defendant entered appearance and defence. In its two paragraph defence, the Defendant stated the following:

- 1. The Defendant admits the contents of paragraphs 1,2 and 3 of the Plaintiff's Statement of Claim**
- 2. The Defendant denies owing the Plaintiff any money or at all and will put the Plaintiff to strict proof.**

When the matter came up for hearing the application, Counsel for the Plaintiff relied on the affidavit of Sashin Harichand, the Plaintiff herein.

It was brought to my attention that the Defendant had not filed an affidavit in opposition and that it was the third time that the matter was coming up without any representation from the defendant. Counsel further argued that he felt that the Defendant's notice to adjourn on that particular day was not made in good faith. Counsel applied to be heard on his application even in the absence of the Defendant. For the foregoing reasons I went ahead to hear the application.

Counsel for the Plaintiff submitted that the learned authors of *Ordgers on Civil Actions* have stated at page 240 that any allegation of fact made by a party in his pleading is deemed to be admitted by the other party unless it is traversed by that party its pleadings. That it was clear from the defence filed by the defendant that despite the Statement of Claim being detailed and specific on the claims, the Defendant has not



traversed any claims in the Statement of Claim save a general and bare denial.

Counsel referred the court to the cases of *Byrd v Nunn (1877) 7 Chancery Div 287* and *John Lancaster Radiators Limited v General Motor Radiator Company Limited & Others (1946) 2 ALL ER, 685*.

Counsel contended that the Statement of Claim made specific claims, for example, the Plaintiff having not been paid a salary for 10 months, to which the Defendant has not traversed save a bare denial.

He further contended that it is on record that the Defendant does not oppose this application and has persistently and deliberately ignored to attend court to delay the proceedings in this matter. That the same was a clear indication that the defendant has no defence to the claims raised by the Plaintiff.

Counsel submitted that this was the case for the court to enter Judgment on Admission.

Counsel also informed the court that when serving the order of attachment on Road Traffic and Safety Agency (RTSA), it was discovered that the Defendant has been changing ownership of the vehicles in order to defeat the recovery on any order the court might make in future.

The mode of pleadings cannot be over emphasized. Both the *High Court, Cap 27 of the laws of Zambia* and the *Rules of the Supreme Court of England* do go to great length to explain the standard expected of pleadings, whether it



be a Statement of Claim or a Defence. The reason is to avoid surprises on the other party, as was stated by Judge Ngulube (Obiter dicta) in the case of *Raphael Ackim Namungandu v Lusaka City Council (1978) ZR 358*:

*"I have borne in mind that the defendant's defence was a bare-denial and that in the course of trial, they sprung a lot of surprises which were neither pleaded nor put to the Plaintiff. Had the defendants pleaded more specifically, trial may conceivably have become unnecessary or at least much shorter."*

The other reason is as outlined in *Order 18/13/2 Rules of the Supreme Court 1999 Edition* under heading: "*Effect of rule*", where it is stated as follows:

*The main object of this rule and of r.14 is to bring the parties by their pleadings to an issue, and indeed to narrow them down to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing (per Jessel M.R. in Thorp v. Holdsworth (1876) 3 Ch.D. 637). This object is secured by requiring that each party in turn should fully admit or clearly deny every material allegation made against him. Thus, in an action for a debt or liquidated demand in money, a mere denial of the debt is wholly inadmissible.*

Similarly, the consequences of neglect or refusal to plead properly are also provided for by the same rules. As in this case and as has been prayed for in this application, an admission is implied in a case of a bare denial and judgment on admission can be granted in an appropriate case.

*Order 18/13 Rules of the Supreme Court* provides that:

*(1) Any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.*



**(3) Every allegation of fact made in a statement of claim or counter claim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counter claim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not sufficient traverse of them.**

The ***High Court Rules, Cap 27 of the Laws of Zambia under Order LIII Rule 6 (as amended by S.I. No. 27 of 2012)*** provides more specifically as follows:

***6. (1) A statement of claim or counter-claim, as the case may be, shall state in clear terms the material facts upon which a party relies and shall show a clear cause of action, failing which the statement of claim or counterclaim may be struck out or set aside or the action dismissed by the Court, on its own motion or on application by a party.***

***(2) The defence shall specifically traverse every allegation of fact made in the statement of claim or counter-claim, as the case may be.***

***(3) A general or bare denial of allegations of fact or a general statement of non-admission of the allegations of fact shall not be a traverse thereof.***

***(4) A defence that fails to meet the requirements of this rule shall be deemed to have admitted the allegations not specifically traversed.***

**(5) Where a defence fails under sub-rule (4), the plaintiff or defendant, or the Court on its own motion, may in an appropriate case, enter judgment on admission.**

I am satisfied that this is an appropriate case in which judgment on admission can be granted. I accordingly grant the Plaintiff's application.

I would have probably thought differently had the Defendant shown some interest in defending this matter, especially with regards to this application. I have perused the record and can confirm that there is no affidavit whether in opposition or otherwise from the Defendant. It is



also clear from the record that this is the third time the Counsel for the Defendant was applying for an adjournment. I am at this point inclined to think as put to me by Counsel for the Plaintiff that the Defendant has no defence.

Concerning the change of ownership of motor vehicles subject of the attachment order, this is contemptuous as this action is in total defiance of the attachment order as provided in **Order XXVI Rule 1 High Court Rules, Cap 27 of the Laws of Zambia**. The very idea of the attachment order is to stop the Defendant from disposing of his property with intent to obstruct or delay the execution of any decree that may be passed against him. Changing of ownership of property in any way is disposing of property.

The Defendant is ordered to stop dealing with any of the property that is a subject of the attachment order in any that will amount to disposing of such property. It is further ordered that all the motor vehicles, subject of the attachment order, whose ownership has since been passed to another person should be changed back to the Defendant's ownership until further order of court.

**DELIVERED AT THIS 20<sup>th</sup> DAY OF OCTOBER 2014.**

  
**G.C. CHAWATAMA**  
**JUDGE**