

IN THE HIGH COURT OF ZAMBIA
AT THE DISTRICT REGISTRY
AT KABWE

1997/HP/2126



(Civil Jurisdiction)

BETWEEN:

ROSEMART INVESTMENT LIMITED

PLAINTIFF

AND

ZAMBIA NATIONAL COMMERCIAL BANK PLC

DEFENDANT

Before the Hon. Mr. Justice E. M. Sikazwe in Chambers.

***For the Plaintiff* : *Mr. K. I. Mulenga of*
*Messers Kumasonde Chambers***

***For the Defendant* : *Mrs S. N Wamulume*
*Acting Senior Legal Manager - ZANACO***

R U L I N G

This matter came before this Court pertaining the stay of Execution of a Writ of FIERI FACIAS which was granted to the Defendants on 16th November 2012. The gist of the matter in brief is that Mr. Kabwe stated that since the matter was in his favour by the Supreme Court, he was also awarded to be paid an **OUT OF POCKET EXPENSES**.

Yes this is true as of the Supreme Court Judgment of June 2006 and March 2007 where it stated that:

“It is correct that the trial Court did find as a fact that the Plaintiff’s managing director and manager were detained in the Democratic Republic of Congo, sourcing money to get themselves out of the predicament became urgent, the predicament having flawed from the Defendant’s failure to honour the Plaintiff’s instructions. We find no reason to fault the Deputy Registrar in this decision to allow the measure of damages in the manner he approved the Plaintiff’s claim. Furthermore, liability was settled by the trial Court.”

This was for the claim of damages and US\$ 2, 250.00 as an OUT OF POCKET EXPENSES which Mr. Kabwe and his manager expended in Hotel Karavina in Lubumbashi from 21st to 29th June 1997. This amount was paid to Mr. Kabwe’s Lawyers Messrs Luangeni Chambers.

Eleven (11) years later in May 2008, Mr. Kabwe again brought another OUT OF POCKET EXPENSES in the sum of US\$ 32.070.00 Kwacha equivalent K152.722.423.02 as the money expended in the Democratic Republic of Congo in January and April 2005 and issued a Writ of Fieri Facias against the Defendant saying that he is entitled to this amount as per the Supreme Court Judgment.

This is wrong and an abuse of the Court process as the issue of OUT OF POCKET EXPENSES was paid to him through his Lawyers Luangeni Chambers after the Judgment of this Court in 2002. This has been confirmed as stated earlier on by the Supreme Court Judgment of June 2006 and March 2007 as well as the Supreme Court Ruling of 29th February 2012.

The attempted execution of the Fieri Facias stating that he has not been paid his OUT OF POCKET EXPENSES in the sum of US\$ 32.070.00 Kwacha equivalent K152.722.423.02 was embarked on in bad faith and as observed by the Supreme Court. The Plaintiff had to change numerous Lawyers in order to pursue his ill-conceived scheme.

The Writ of Fieri Facias filed by Mr. Kabwe on 16th August 2012 and amended by his new Lawyers Messrs Kumasonde Chambers and filed on 18th August 2012 has been set aside.

Costs are awarded to the Defendant to be taxed in default of agreement.

Appeal to Supreme Court is granted within 30 days from the date of this Ruling.

Delivered in Chambers this **10th** day of **July 2014**.


.....
E. M. SIKAZWE
JUDGE