

**IN THE HIGH COURT FOR ZAMBIA**

**2015/HPC/0031**

**AT THE COMMERCIAL REGISTRY**

**HOLDEN AT LUSAKA**

**BETWEEN:**

**AGRI-OPTIONS LIMITED**

**PLAINTIFF**

**AND**

**JEFFREY'S BAKERY LIMITED**

**DEFENDANT**

**BEFORE HON. MR. JUSTICE NIGEL K. MUTUNA AT LUSAKA THIS 8<sup>TH</sup> DAY  
OF JULY 2015**

**FOR THE PLAINTIFF : Ms T. Marietta of Messrs Sharpe & Howard  
Legal Practitioners**

**FOR THE DEFENDANT : N/A**

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**J U D G M E N T**

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**CASES REFERRED TO:**

- 1) *Habwanda vs. Zambia Breweries Plc (2012) ZR 75*
- 2) *Base Chemicals (Z) Ltd and Mazzonites Ltd vs. Zambia Air Force and Attorney General SCZ No. 9 of 2011*
- 3) *Pickard vs. Sears (1875) 6 Ad and EL 469*
- 4) *Central Newbury Car Auction vs. Unity Finance Limited (1957) 1 QB 371*
- 5) *North Western Energy Company Limited vs. Energy Regulation Board 2010 (HP) 786*

**Other Authorities referred to:**

- 1) *Halsbury Laws of England, by Lord Hailsham of St. Marylebone, 4<sup>th</sup> edn, Volume 9(1), Butterworths, London*
- 2) *Sale of Goods Act, 1893*

The Plaintiff's claim as it is endorsed on the writ of summons is for payment of the sum of K51,497.00. The same being money allegedly owed to the Plaintiff by the Defendant for the supply of flour. The Plaintiff also claims for interest.

The facts of this case are that on 28<sup>th</sup> June 2014, the Defendant executed a confidential credit agreement for the Plaintiff to supply flour to it on credit. It was a condition of the said agreement that the Defendant would make payment for any flour supplied within 30 days of the date of invoice. Further, the credit was limited to flour of the value of K100,000.00.

The Plaintiff's contentions as they are contained in the statement of claim are that it supplied flour to the Defendant at its request and pursuant to a credit facility agreement dated 28<sup>th</sup> June 2014. That the total amount due and owing to the Plaintiff by the Defendant is K51,497.00 which amount should have been paid in 30 days of issuance of invoices. Further, the Defendant has failed and or neglected to settle the amount.

The Defendant's contentions as they are contained in the defence are that it denies it entered into the credit facility agreement and is not in breach of any agreement. Further that it has not failed or neglects to pay money owing to the Plaintiff in pursuance of any agreement between the two. It therefore denies that the Plaintiff has suffered any loss and as such it is not entitled to any relief.

The matter came up for trial on 2<sup>nd</sup> July 2015. The Defendant was not represented but I decided to proceed with the trial because, and as the record shows, the Defendant persistently stayed away from status conference hearings and did not comply with the directions for trial prior to the trial. This prompted me to issue an unless order directing the Defendant to comply with the directions failing which, I would proceed to give the matter a trial date, without recourse to the Defendant. The Defendant still did not comply.

At the trial, the Plaintiff called one witness by the name of Christoffel De Wat Snyman, PW. His evidence was that he is an accountant in the

employ of the Plaintiff as Finance Manager. That the Defendant applied for a credit facility for the supply of flour in the sum of K100,000.00. The Plaintiff approved the credit facility which was evidenced by document at page 1 in the Plaintiff's bundle of documents. On divers days the Plaintiff supplied various amounts of flour to the Defendant whose monetary value totalled K60,984.00. This was evidenced by tax invoice at page 4 of the Plaintiff's bundle of documents. When the Plaintiff demanded settlement the Defendant made four payments as follows: K3,000.00 on 22/07/14; K3,000.00 on 5/08/14; K1,987.00 on 5/09/2014; and K1,500.00 on 4/11/14. These sums reduced the mount owing to the Plaintiff to K51,497.00, a sum the Defendant acknowledged as owing by letter dated 9<sup>th</sup> September 2014.

At the close of the trial, counsel for the Plaintiff Ms T. Marietta indicated that she relied on the skeleton arguments filed on 9<sup>th</sup> June 2015. In the said arguments counsel argued that an agreement for the supply of flour had been reached by the parties as there was an offer and acceptance. She relied on ***Halsbury's Laws of England*** 4<sup>th</sup> edition and the case of ***Habwanda vs. Zambia Breweries Plc (1)***.

She argued further that since the agreement was for the sale of goods the ***Sale of Goods Act 1893*** is instructive on the matter. She in this respect, demonstrated by use of sections in the Act: when a contract is deemed to have been entered into; duty of the seller to deliver; and when goods are deemed to have been acceptable. Counsel argued further that since there is sufficient evidence of the existence of a contract the doctrine of estoppel can be relied on to bind the Defendant to its undertaking to pay for the flour. Counsel relied on the cases of ***Pickard vs. Sears (3)***, ***Central Newbury Car Auction vs. Unity Finance Limited (4)*** and ***North Western Energy Company Ltd vs. Energy Regulations Board (5)***.

She prayed that this court order the Defendant to pay the amount claimed.

I have considered the pleadings, evidence and arguments by counsel for the Plaintiff. The Plaintiff has contended that the two parties entered into a credit agreement and has produced before court a document at page 1 of the Plaintiff's bundle of documents titled confidential credit application form. The said document has the Defendant's name in the column marked trading name and is signed at the bottom by a person named Banda Jonathan on behalf of the Defendant. The document also indicates that the Defendant sought a 30 day credit facility for the supply of flour to the tune of K100,000.00. There is no evidence on the record showing that at discovery stage the Defendant objected to production of the said document and neither has it alleged that the document is a forgery. The document, on its face, is an agreement entered into by the parties for the supply of flour on credit and I accordingly so find. My finding is reinforced by the fact that although in paragraph 3 of the defence the Defendant denies entering into the credit facility agreement, at paragraph 4 it contends that it is *"not in breach of any agreement between the parties herein and has not neglected to make good the payment to date at what the Defendant herein are alleged to be owing."* The question that arises from this averment in the defence is why would the Defendant alleged it is not in breach of an agreement if it did not enter into one. Clearly by the said pleading the Defendant is admitting to have entered into an agreement with the Plaintiff and I so find.

The next question is, whether or not the Defendant is owing any money on the said agreement as claimed by the Plaintiff. The evidence of PW is of assistance in determining this question. The evidence as it is revealed at paragraph 10 of PW's witness statement is that after the Plaintiff made a demand for the payment, the Defendant made four payments which reduced the debt to K51,497.00 from K60,984.00. To evidence the payments PW referred me to the documents at pages 7, 8 and 9 of the Plaintiff's bundle of documents. These are the deposit slips evidencing the four payments made into the Plaintiff's bank account which clearly show that the deposits were made by the Defendant. The evidence also reveals that the Defendant acknowledged being indebted to the Plaintiff in the

sum of K52,997.00. This is by way of document at page 10 of the Plaintiff's bundle of documents. The foregoing evidence is not only clear and self-explanatory but has not been challenged by the Defendant. Further, the admission of the debt made by the defendant in the document at page 10 of the Plaintiff's bundle of documents is, in and of itself, sufficient evidence to warrant entry of judgment on admission. I accordingly accept the evidence and find that on a balance of probabilities, the Plaintiff has proved its case against the Defendant. I therefore, enter judgment in favour of the Plaintiff against the Defendant in the sum claimed of K51,497.00. The said sum to attract interest at the short term bank deposit rate from date of writ to date of judgment, thereafter at the current bank lending rate as determined by Bank of Zambia, till date of payment. I also award the Plaintiff costs, to be agreed, in default taxed.

**Dated at Lusaka this 8<sup>th</sup> day of July 2015**

**NIGEL K. MUTUNA  
HIGH COURT JUDGE**