

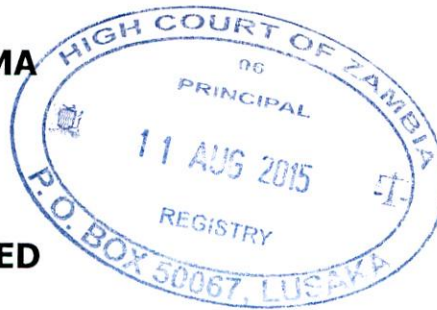
IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA

2013/HP/1240

(Civil Jurisdiction)

BETWEEN:

MATIMBA LINDA HASALAMA



PLAINTIFF

AND

ZAMBIA RAILWAYS LIMITED

DEFENDANT

Before the Hon. Mrs. Justice A. M. Sitali on the 11th day August, 2015 in Chambers.

For the Plaintiff : *Mr. M. Chitundu of
Messrs Barnaby and Chitundu Advocates*

For the Defendant : *Mr. N. M. Mulikita of
Messrs N. M Mulikita and Partners*

JUDGMENT ON ADMISSIONS

Case referred to:

1. Ellis v. Allen (1914) 1 Ch. 904

Legislation referred to:

2. The High Court Rules, Chapter 27 of the Laws of Zambia, Order 21 rule 6.
3. The Rules of the Supreme Court, 1999 edition, Order 27 rule 3.

The plaintiff commenced this action by writ of summons on 23rd August 2013 claiming for the following reliefs:

- i. An Order for specific performance of the contract of sale between the parties herein in respect of Subdivision 64 of Subdivision A of Subdivision Y2 of Farm No. 748, Ndola.
- ii. An order for vacant possession of Subdivision 64 of Subdivision A of Subdivision Y2 of Farm No. 748, Ndola.
- iii. Mesne profits from the time the full purchase price was made to the time vacant possession will be granted computed at the ruling property market rate.
- iv. An order for damages for breach of contract.
- v. Interest.
- vi. Any other relief the court may deem fit under the given circumstances.
- vii. Costs of and incidental to the action.

The facts of the case as averred by the plaintiff in the statement of claim are that she is and was at all material times the bona fide purchaser of property known as Subdivision 64 of Subdivision A of Subdivision Y2 of Farm No. 748 Ndola and that the defendant company was the vendor of the property. The defendant company offered to sell the property to her on or about 6th May 2011 and that she accepted the offer on or about 12th of May, 2011. The plaintiff further asserted that around 2011, the parties entered into and executed a contract for the sale to the plaintiff by the defendant of the property at the price of one hundred and twenty-nine million Kwacha (K129,000,000.00) which purchase price she paid to the defendant in full between 21st July 2011 and 30th September 2011.

The plaintiff averred that she has adhered to her contractual obligations under the contract but that the defendant has failed to discharge its contractual obligations under the contract of sale which obligated the defendant to obtain state consent and any other licence to assign; complete the transaction within ninety (90) days and grant vacant possession of the property to the plaintiff.

On 24th September 2013 the defendant filed a memorandum of appearance and *defence* in which the defendant averred that it does not deny the contents of paragraphs 1 to 7 of the statement of claim. The defendant further averred that it has not wilfully failed, refused, or neglected to adhere to its contractual obligations but that in an effort to adhere to its contractual obligations the defendant commenced an action before the Ndola High Court to remove the illegal occupant, a Mr. Francis Mwansa, from the property in issue, namely subdivision 64 of Subdivision A of Subdivision Y2 of Farm No. 748 Ndola on 3rd August, 2011. The defendant obtained an order granting it possession of the property. However, Mr. Mwansa on 11th October, 2011 obtained a stay of execution of the said order pending hearing of the application to set it aside.

On 7th May, 2012 the stay of execution was discharged. Mr. Mwansa obtained a further stay pending his appeal against the High Court decision of 7th May, 2012. The defendant asserted that it has therefore not wilfully failed to adhere to its contractual obligations.

On 8th September, 2014, the plaintiff filed summons to enter judgment on admissions supported by an affidavit deposed to by Mwamba Chitundu the plaintiff's advocate. In that affidavit counsel deposed that the plaintiff commenced this action against the defendant on 23rd August, 2013 claiming an order of specific performance of the contract of sale entered into with the

defendant in respect of Subdivision 64 of Subdivision A of Subdivision Y2 of Farm No. 748, Ndola. The defendant further sought an order of vacant possession of the said property and mesne profits, damages for breach of contract, interest and costs.

Counsel went on to assert that the defendant in its defence filed on 24th September, 2013 admitted the facts set out in paragraphs 1 to 7 of the plaintiff's statement of claim and thus clearly admitted the plaintiff's entire claim as it has no defence. Counsel urged that this is an appropriate cause for the Court to grant judgment on admissions.

The defendant did not file any affidavit in opposition to the application.

When the matter came up for hearing on 31st October, 2014, Mr. Mulikita, counsel for the defendant requested for an adjournment pending the hearing of a matter before the Ndola High Court which related to the same subject matter and which according to Mr. Mulikita was scheduled for hearing on 26th November, 2014. I adjourned the matter to 4th December, 2014. The matter did not proceed on that date and I adjourned it to 17th March, 2015. Notices to that effect were issued and served on the parties. When the matter came up for hearing on that date Mr. Mulikita, counsel for the defendant was not present and no explanation was given to me for his absence. I therefore permitted Mr. Chitundu to proceed with the application.

In making the application, Mr. Chitundu counsel for the plaintiff relied on his affidavit in support of the application filed on 8th September, 2014 and submitted that the application was made pursuant to Order 21 rule 6 of the High Court Rules, Chapter 27 of the Laws of Zambia which empowers this Court to enter

judgment on admissions where a party has made admissions of facts pertaining to a cause. Counsel submitted that the plaintiff's claim is for specific performance of a contract of sale entered into by the parties to this action under which contract the defendant sold to the plaintiff Subdivision 64 of subdivision A of Subdivision Y2 of Farm 748, Ndola. Counsel submitted that the plaintiff paid for the said property in full and that the plaintiff thus seeks the enforcement of the agreement by this Court. Counsel observed that in its purported defence, the defendant admitted the plaintiff's entire claim and that for that reason this is an appropriate case for the Court to enter judgment on admissions as there is no issue left to try.

I have considered the affidavit evidence and the submissions by counsel for the plaintiff. Order 21 of the High Court Rules, Chapter 27 of the Laws of Zambia and Order 27 of the Rules of the Supreme Court, 1999 edition, clearly set out the applicable law on admissions. The plaintiff herein has applied to enter judgment on admissions pursuant to Order 21 rule 6 of the High Court Rules, Cap. 27, which provides that:

"6. A party may apply, on motion or summons, for judgment on admissions where admissions of facts or part of a case are made by a party to the cause or matter either by his pleadings or otherwise."

Similarly, Order 27 rule 3 of the Rules of the Supreme Court 1999 edition provides that:

"3. Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment, or order as

upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may give such judgment or make such order, on the application as it thinks just."

From the foregoing provisions of the law, it is clear that where an admission of fact is made by a party to a matter or cause, the other party to the cause, that is the plaintiff or defendant, may apply to the Court for such judgment, based on the admission, as he may be entitled to without waiting for the court to determine any other question between the parties. This is because when a fact is admitted, it ceases to be an issue and neither party to the matter or cause is required or permitted to advance evidence about the fact at trial. According to Ellis v. Allen (1) an admission may be express or implied but it must be clear.

It is settled law that an admission may be made expressly in a defence or in a defence to a counterclaim, or it may be an admission arising as a result of the rules, as in the case where a defendant fails to traverse an allegation of fact in a statement of claim (see Order 18 rule 13 and paragraph 23/3/4 of the Rules of the Supreme Court, 1999 edition). The jurisdiction of the Court to enter judgment on admissions is discretionary but in the absence of reason to the contrary, the Court will make the order in order to save time and costs (see para 23/3/7 of the RSC, 1999 ed.).

In the present case, the defendant in paragraph 1 of its defence filed on 24th September, 2013 admitted paragraphs 1 to 7 of the statement of claim which state the following facts: that the plaintiff is the bona fide purchaser of Subdivision 64 of Subdivision A of Subdivision Y2 of Farm No. 748, Ndola; that the defendant offered the said property for sale to the plaintiff who accepted the

offer; that the plaintiff and the defendant entered into a written contract for the sale to the plaintiff by the defendant of the property in issue at the price of K129,000,000.00 which purchase price the plaintiff has paid in full and has thus discharged her obligations under the contract.

Further, that the contract of sale obligated the defendant to obtain State consent to assign six weeks from the date of the contract and complete the transaction ninety days from the date of obtaining State consent to assign and afterwards grant vacant possession of the said property to the plaintiff. That whereas the plaintiff had performed her contractual obligations in full, the defendant has refused or neglected to perform its contractual obligations and has not yielded vacant possession of the property to the plaintiff.

The defendant has thus expressly admitted the plaintiff's entire claim in paragraph 1 of its defence. Thus, as Mr. Chitundu submitted and I agree with him, there is no issue left to be determined at trial.

I, accordingly, enter judgment in favour of the plaintiff and order specific performance of the contract of sale between the plaintiff and the defendant relating to Subdivision 64 of Subdivision A of Subdivision Y2 of Farm No. 748, Ndola. I further order that the defendant yields vacant possession of the said property to the plaintiff forthwith.

I also award mesne profits from 1st January, 2012 to the date vacant possession will be granted, taking into account the 90 days allowed to complete the transaction under the contract calculated from the date the plaintiff paid the full purchase price for the subject property. I say so because it was after 90 days that the defendant's legal right to occupy the property expired. The mesne

profits are to be computed at the ruling property market rate in the said period and will be assessed by the Deputy Registrar with interest.

The plaintiff also claims for damages for breach of contract with interest. However, having granted the plaintiff the order of specific performance and awarded mesne profits, I do not consider it appropriate to award damages for breach of contract in addition to the award of mesne profits which are compensation for having been deprived of the use and occupation of the property.

I award the costs of this application to the plaintiff. Leave to appeal is granted.

Dated the 11th day of August, 2015.



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A. M. SITALI
JUDGE