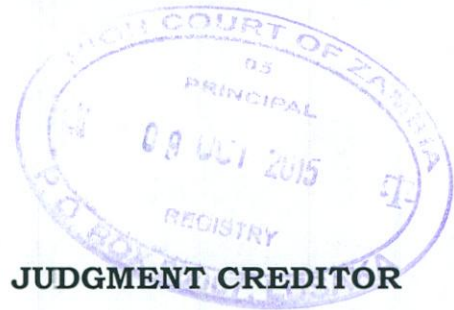


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2015/HP/0847



BETWEEN:

EASTWAYS INVESTMENTS LIMITED

JUDGMENT CREDITOR

AND

LESTART ENTERPRISES LIMITED

JUDGMENT DEBTOR

MOTA ENGIL ZAMBIA

INTENDED GARNISHEE

Before the Honourable Mrs. Justice M. C. Kombe on 9th day of October 2015 in Chambers.

For the Judgment Creditor : *Mr. R. Ngulube from Messrs
Tembo Ngulube and Associates*

For the Judgment Debtor : *N/A*

For the Garnishee : *N/A*

R U L I N G

Case referred to:

- 1. Breza Engineering Limited v G M International Limited and Konkola Copper Mines PLC (2010)1 Z.R 46.**

Other material referred to:

- 1. The Supreme Court Practice 1999 Edition (White Book).**

This is a Ruling on the judgment creditor's *ex parte* application to issue Garnishee Order Nisi for the attachment of the funds due and or accruing from the Garnishee to the judgment debtor.

The application was supported by an affidavit deposed to by **FRED MWALE**, the Manager for operations in the employment service of the judgment creditor.

He deposed that on 13th August, 2015, the judgment creditor obtained a judgment against the judgment debtor in the sum of K100, 100.00; that on 8th September, 2015, the judgment creditor issued a Writ of *Fieri Facias* against the judgment debtor which was returned *nulla bona*. A copy of the Sheriff's Debit and Advice Note was produced and marked as '**FM1**'.

It was further deposed that it was clear that the judgment debtor did not have assets known to the judgment creditor that could be seized to recover the Judgment debt; that however, he knew as a matter of fact that the judgment debtor had supplied various road construction equipment to the Garnishee upon which it was paid hire charges/rentals at the end of the month; that the basis of this information was the fact that the Judgment debt herein arose because the judgment debtor failed to remit the funds to the judgment creditor which had been collected from the Garnishee.

He produced a copy of the unsigned contract by the judgment debtor which gave rise to the Judgment debt herein. The same was marked as '**FM2**'.

At the hearing learned counsel for the judgment creditor Mr. R. Ngulube informed the court that he was relying on the affidavit in support filed on 22nd September, 2015. He submitted that the Judgment debt arose from the failure by the judgment debtor to remit funds that were collected from the Garnishee. Further, that as the affidavit showed, the judgment debtor had a business relationship with the Garnishee where monies for hire of construction equipment were paid every month. That those were the funds that the

judgment creditor intended to attach until such a time when the Garnishee Order was made absolute.

In response to a question from the court on the basis of the judgment creditor's contention that there was a business relationship between the Garnishee and the judgment debtor, Mr. Ngulube submitted that paragraph 7 of the affidavit showed that the judgment debtor and the Garnishee had a business relationship. The court was also referred to clause 6 of exhibit marked **'FM2'**. Counsel submitted that clause 6 showed that the equipment that the judgment debtor was hiring from the judgment creditor was being hired out to the Garnishee.

In response to a question from the court that the purported contract marked **'FM2'** between the judgment creditor and the judgment debtor was not signed, counsel submitted that the contract was signed by one party and not the other and the fact that there was a judgment meant that the parties relied on the provisions of the contracts. He submitted that this is what led to the cause of action. Mr. Ngulube further submitted that what he was asking for was an interim order and the other side would be given an opportunity to be heard.

Those were the submissions which I have carefully considered.

By this application, I have been invited to grant a Garnishee Order Nisi for the attachment of funds due and/ or accruing from the Garnishee to the judgment debtor. Order 49 of the Rules of the Supreme Court (White Book) gives the court the discretion to order the garnishee to show cause and to attach the debt due and accruing to the judgment debtor.

Paragraph 49/2/3 of the White Book also provides:

'In every case, the sources of the deponent's information or the grounds of his belief must be stated.'

Further, the Supreme Court in the case of **Breza Engineering Limited v G M International Limited and Konkola Copper Mines PLC** held that:

'In order to obtain a Garnishee Order Nisi, it is not enough for the judgment creditor to merely inform the Court that the judgment debtor is awaiting payment from the garnishee. The test whether a debt is attachable is that there must be a debt of which the judgment debtor can enforce payment if he desires to.'

As is evident from the above cited case, the test to be met before a court can grant a Garnishee Order Nisi attaching a debt is very clear. The judgment creditor must show that there is a debt due from the garnishee on which the judgment debtor can enforce payment.

I have considered the evidence adduced by the judgment creditor in support of this application. The source of the information and the belief that there is a business relationship between the judgment debtor and the Garnishee and that there is a debt due from the Garnishee to the judgment debtor is the unsigned contract marked **'FM2'** purportedly entered into between the judgment creditor and the judgment debtor. The judgment creditor contends that the said contract gave rise to the cause of action herein.

Clause 1 of the said contract makes reference to a running contract between the judgment debtor and the Garnishee. It reads as follows:

'The Hiree (judgment debtor) has a running Contract of supplying road equipment to MOTA ENGIL ZAMBIA (Garnishee).'

However, this contract between the judgment debtor and the Garnishee has not been adduced. Further, no other evidence by way of communication or correspondence between these parties has been adduced to enable this court make an inference or ascertain that there is a legal relationship between the judgment creditor and the Garnishee and that there is a debt due from the Garnishee on which the judgment debtor can enforce payment.

I am of the considered view that for the purposes of this application, it is not enough for the judgment creditor to merely rely on the unsigned contract marked as 'FM2' as the source or ground of its belief that there exists a business relationship between the judgment debtor and the Garnishee and that there is a debt due to the judgment debtor from the Garnishee. I say so because in the absence of other evidence showing the intention of the parties, the unsigned contract does not meet the test as elucidated by the Supreme Court in the **Breza Engineering Limited** case.

In view of the foregoing, I find that a *prima facie* case has not been established by the judgment creditor that there is in existence a business relationship between the judgment debtor and the Garnishee and that there is a debt due to the judgment debtor capable of being enforced.

The net result of my finding is that the judgment creditor has failed to meet the test for the attachment of debt. Accordingly, the application for the grant of a Garnishee Order Nisi is dismissed as it lacks merit.

Delivered at Lusaka this 9th Day of October, 2015



**M.C KOMBE
JUDGE**