

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

2014/HPC/0416



BETWEEN:

BSI STEEL ZAMBIA LIMITED

PLAINTIFF

AND

KAPESIKA ENTERPRISES LIMITED

1ST DEFENDANT

KAPEMBWA SIKAZWE

2ND DEFENDANT

**BEFORE HON. MADAM JUSTICE PRISCA MATIMBA NYAMBE, SC
AT LUSAKA IN CHAMBERS**

For the Plaintiff:

Mr. M C Chonta
Miss M Chisanga
Chonta, Musumali and Pindani Advocates

For the Defendants:

Mr. M W Mulele
G M Legal Practitioners

RULING

This is an application by the Defendants for an Order for leave to liquidate Judgment sum in installments filed into Court on 16th January 2015. This application arises from a Judgment in Default dated 2nd December 2014 whereby the Honourable Deputy Registrar awarded the Plaintiff Judgment in Default of Appearance in the sum of K613,057.08 with interest and an Order

that the 2nd Defendant as guarantor pays the 1st Defendant's Debt together with Costs of and incidental to these proceedings.

In his affidavit filed on 16th January 2015, the 2nd Defendant admits that he and the 1st Defendant do not have the capacity to liquidate the Judgment sum in lump sum as their income has been significantly reduced due to delays in payment from a number of their clients.

That currently the 1st Defendant's income from which the 2nd Defendant draws his salary is approximately K30,000.00 and the liabilities stand at K25,000.00 on average every month.

That in addition to these liabilities the 1st Defendant is servicing another Judgment Debt of about K148,000.00.

In paragraph 8 of the affidavit in support the 2nd Defendant, states that he is currently not drawing a salary from the 1st Defendant but offers to raise monthly installments of K10,000.00 towards the liquidation of the Judgment Debt.

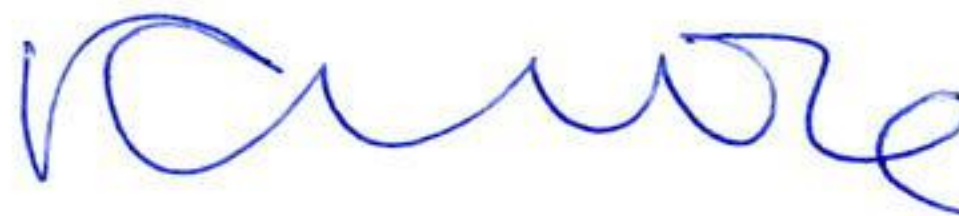
The Plaintiff has opposed this application pointing out that the proposed sum of K10,000.00 per month if granted will cause the Judgment sum of K613,057.88 plus interest to be paid at the very least over a period of five (05) years.

I have read the affidavit in reply filed by the Defendants on 4th June, 2015. The sum total of this affidavit is to the effect that the payment terms as proposed, by the Defendants do not make business or commercial sense at all.

On the evidence on record, it is doubtful that the Defendants can sustain any payments at all. What purports to be their affidavit of means is wholesomely incompetent to be able to sustain the proposed monthly repayment.

In the event the application as prayed is declined with costs to the Plaintiff, to be taxed in default of agreement.

Dated this...^{10th}.....day of^{June}.....2015



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Prisca M. Nyambe, SC
JUDGE