

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2015/HPC/0443



BETWEEN:

MILFORA DAIRY SUPPLIERS INC

PLAINTIFF

AND

**VARUN FOOD AND BEVERAGES
(ZAMBIA) LIMITED**

DEFENDANT

Before the Honorable Mr. Justice W.S. Mweemba in Chambers at Lusaka.

For the Plaintiff : Ms. T. Marrieta Gray – Messrs Sharpe and Howard Legal Practitioners.

For the Defendant : Mr. A. Kalikiti – Messrs MSK Advocates.

JUDGMENT ON ADMISSION

LEGISLATION REFERRED TO:

- 1. Order 21 Rule 6 of the High Court Rules, Cap 27 of the Laws of Zambia.*

2. Order 27 Rule 3 of the Rules of the Supreme Court, White Book (1999) Edition.

CASES REFERRED TO:

- 1. *Standerwick V Royal Ordnance Plc (1966) 8 C.L.***
- 2. *Porrette V White (1886) Ch D31.***
- 3. *A.J. Trading Company Limited V Chilombo (1973) Z.R. 55.***
- 4. *Contract Discount Corporation Limited V Furlong & Others (1948) I All ER 276.***

This is the Plaintiffs application for an Order to enter Judgment on Admission pursuant to Order 21 Rule 6 of the High Court Rules, Chapter 27 of the Laws of Zambia.

It is deposed in the Affidavit sworn by Kelvin Anthony Bonnar the Plaintiff Company's Sales and Marketing Manager on 10th November, 2015 that by Writ of Summons and Statement of Claim dated 16th October, 2015, the Plaintiff commenced an action against the Defendant wherein it claimed the sum of United States Dollars Eight Hundred and Seventy Four Thousand Three Hundred and Thirty Seven and Eight Cents (US\$874,337.80) (the Debt) together with interest and costs.

That the Defendant has on countless occasions undertaken both verbally and in writing to settle the Debt inclusive of interest charged at such rates as were agreed between the parties, but has failed to effect a single payment towards the same.

Further that the Defendant has no defence to the action, having admitted to owing the Debt in full.

There is no Affidavit in Opposition.

Counsel for the Plaintiff filed Skeleton Arguments in Support of the application for entry of Judgment on Admission pursuant to Order 21 Rule 6 of the High Court Rules, Cap 27 of the Laws of Zambia.

He stated that the Plaintiff filed a Writ of Summons and Statement of Claim on 16th October, 2015 for payment of the sum of US\$874 337.80 plus interest and costs in respect of milk products supplied by the Plaintiff to the Defendant.

That by the way of e – mails and other correspondence, the Defendant's directors and/or management personnel admitted and accepted liability for the aforesaid sum and made several proposals for the payment thereof, which proposals never came to fruition despite countless undertakings and promises.

According to learned Counsel the admission by the Defendant demonstrates that there is no further evidence required to be adduced to prove the claim by the Plaintiff. Order 27 Rules 3 of the Rules of the Supreme Court, White Book (1999 Edition) was cited for this submission. Counsel also relied on Order 27 Rule 3/7 of the White Book on the topic of Judgment on Admissions which states that:

“The jurisdiction of the Court is discretionary, but in the absence of reason to the contrary the order is made so as to save time and costs”.

It was submitted that this is a proper case for me to enter Judgment on Admission against the Defendant.

The Plaintiff’s Counsel also relied on the case of **STANDERWICK V ROYAL ORDNANCE PLC (1)** where the Court of Appeal has specifically stated the law to be that –

“An admission may be relied upon even if made before the action is commenced. The admission must be by a party to the action but may be before he became a party”.

The case of **PORRETTE V WHITE (2)** was also cited. To further illustrate the position of the law, Counsel cited the Zambian case of **A.J. TRADING COMPANY LIMITED V CHILOMBO (3)** in which it was held that:

“An admission by the Defendant of an allegation in the Plaintiff’s Statement of Claim means there is no issues between the parties on that point and no further evidence is admissible in reference to that point”.

In the premises the Plaintiff’s prayer was that the Court enters Judgment in its favour for the said sum of US\$874, 337.80 together

with interest and costs of and incidental to the action on admission of the Defendant.

During the hearing on 6th June, 2016 Counsel for the Defendant stated that the application for Judgment on Admission is not opposed. He however, said that the Defendant is requesting that the interest rate on the debt be reduced from 1.5% per month to 1% per month and that in view of the quantum of the debt the Defendant should be given 90 days within to pay the debt in full.

The issue is whether this is a proper case to enter Judgment on Admission.

Order 21 Rule 6 of the High Court Rules Chapter 27 of the Laws of Zambia as well as Order 27 Rule 3 of the Rules of the Supreme Court of England (White Book) 1999 Edition provides for entry of Judgment on Admission where a Defendant has admitted the amount owed or any part thereof.

I am of the view that where a sum is admitted, Summary Judgment ought to be entered. I refer to the case of **CONTRACT DISCOUNT CORPORATION LIMITED V FURLONG & OTHERS (4)** where it was held that:

“where a definite sum is admitted by the Defendant, Summary Judgment is perfectly in order because he puts up no defence to that amount”.

The Defendant has clearly admitted owing the Plaintiff a sum of US\$874,337.80 inclusive of interest as at 15th October, 2015. I am therefore of the firm view that this is a proper case for the Court to enter Judgment on Admission.

For the foregoing reasons, I hereby enter Judgment on Admission in favour of the Plaintiff against the Defendant for the payment of the sum of US\$874, 337.80 or the kwacha equivalent as at 15th October, 2015 with interest at the short term commercial banking deposit rate from date of Writ to date of Judgment and thereafter at the current banking lending rate as determined by Bank of Zambia until full payment.

It is further ordered that the Judgment sum together with interest shall be paid within ninety (90) days from date hereof. Costs to the Plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

Delivered in Chambers at Lusaka this 6th day of June, 2016.



**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**