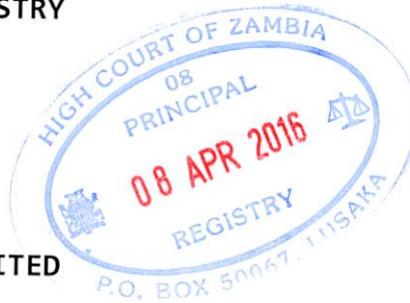


IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(Civil Jurisdiction)

2015/HP/1669

BETWEEN:

C & B ENTERPRISES LIMITED



PLAINTIFF

AND

LIEGE ZAMBIA LIMITED

DEFENDANT

Before the Honorable Mr. Justice C.F.R. Mchenga SC

For the Plaintiff: N. Yalenga, Nganga Yalenga & Associates

For the Defendant: T. Marietta, Sharpe Howard legal Practitioners

R U L I N G

The defendant has pursuant to the provisions of Order 53 Rule 2 (1) of the High Court Rules of the High Court Act, Chapter 27 of the laws of Zambia, applied for an order for this matter be transferred to the Commercial List.

The application is supported by an affidavit deposed by Jay Edward Horwood, a director, in the defendant company. He has deposed that the plaintiff's claim and the defendant's counter claim arise out of a

commercial transaction and result from a dispute which was previously before the Commercial List.

The application has been opposed, Victor Simbotwe, a director in the plaintiff company, deposed that the matter that was before the Commercial List was determined and settled by a consent judgement. He also deposed that even if this action arises out of a commercial transaction, it is not mandatory that it should have been commenced before the Commercial List.

At the hearing, both parties made oral submissions, they also made reference to skeleton arguments and lists of authorities that they had earlier filed into court.

Counsel for the defendant referred to **Order 53 Rule 2 (1) of the High court Rules** and submitted that a commercial action is one that arises out of a transaction relating to commerce, trade, industry or any action of a commercial nature. She also referred to the definitions of "commerce", "trade", "industry" and "advance note" in **Blacks' Law Dictionary** and submitted that the defendant's hire of the plaintiff's grader towards the payment of a debt fell within the definition of a

commercial transaction. She also submitted that the defendant is desirous that the matter is referred to the Commercial List for expeditious conclusion.

On behalf of the plaintiff, it was submitted that it is not mandatory that a case involving a commercial transaction must be commenced on the Commercial List. Counsel referred to Order 53 Rule 2 (1) and the cases of *Jamas Milling Company Limited v Imex International (Pty) Ltd* SCZ No. 20 2002 and *Otk Limited v Amanita Zambiana Limited*, *Diego Gan-Maria Casili*, *Amanita Premium Oils Limited*, *Amanita Milling 2005/HPC/199* and submitted that the purpose of the Commercial List is to fast track matters. In this case, the plaintiff has applied for directions and there is nothing to suggest that the defendant will be prejudiced in any way by the hearing of the matter on the general list.

I am indebted to counsel for their submissions and I have taken them into account in arriving at my decision.

From the submissions of both counsels, it is common cause that these proceedings are founded on a commercial transaction. The question for

R4

determination is whether it is mandatory that all matters concerning commercial transactions should be commenced on the commercial list.

Rule 2(2) of Order 53 of the High Court Rules, provides as follows:

"Every commercial action shall be commenced in accordance with these Rules"

In the case of Rule 2(5) of Order 53 of the High Court Rules, it provides that:

"A commercial action shall be commenced and filed in the commercial Registry"

The use of the word "shall" in the two provisions is indicative that a commercial action must be filed in the Commercial Registry in accordance with Order 53 of the High Court Rules. Consequently, I find that this application has merit because this matter is of a commercial nature and should have been filed in the Commercial Registry. This matter is therefore transferred to the Commercial List.

Costs will be in the cause.

Delivered in chambers at Lusaka this 8th day of April 2016


C. F. R. MCHENGA SC
JUDGE