

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

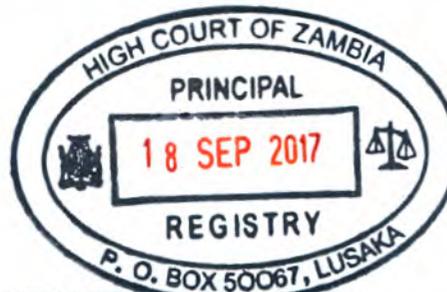
2017/HP/0744

BETWEEN:

JOINT MINING LIMITED

AND

BRUNELI CONSTRUCTION COMPANY (ZAMBIA) LTD



PLAINTIFF

DEFENDANT

Before the Honourable Mrs. Justice M. C. Kombe

For the Plaintiff : *Mr. R. Msoni - Messrs Willa Mutofwe & Associates*

For the Defendant : *Mr. C. Musonda - Messrs Dzekedzeke and Company*

J U D G M E N T

Cases referred to:

1. Chazya Silwamba v Lamba Simpito (2010) Vol.1 ZR 475.
2. Ellis v. Allen (1914) CH 904.
3. Hughes v. London, Edinburgh and Glasgow Assurance Co. (1891) 8 TLR 81 (CA).
4. Indeni Petroleum Refinery Company Limited v. V.G Limited (2007) Z.R 197.

Legislation and other material referred to:

1. High Court Rules, Chapter 27 of the Laws of Zambia.
2. The Rules of the Supreme Court, 1999 Edition (White book).
3. The Halsbury's Laws of England, Volume 37, Fourth Edition, Butterworths, London- 1982.

The Plaintiff herein commenced this action on the 8th of May, 2017 by way of a Writ of Summons accompanied by a Statement of Claim. In turn, the Defendants on the 22nd of May 2017 filed their Defence and Counter Claim.

Subsequently on the 1st of June, 2017 the Plaintiff filed in its Reply to the Defence and Counter Claim. On the same day the Plaintiff filed Summons for Leave to enter judgment on Admission together with its supporting Affidavit and the Skeleton Arguments.

The Plaintiff's application to enter judgment on admission is made pursuant to **Order 21 rule 6 of the High Court Rules Chapter 27 of the Laws of Zambia** and **Order 27 Rule 3 of the Supreme Court Rules, 1999 edition** and is supported by an affidavit deposed to by **HASSAN KARNIB** the Managing Director in the Plaintiff Company.

The deponent explained that the Plaintiff entered into a supply and purchase agreement with the Defendant for the supply of the various quarry products, namely dust and stones; that between 2015 and 2016, the Plaintiff supplied to the Defendant the said quarry dust and stones on various occasions. He deposed that according to the Statement of Account with the Plaintiff, the Defendant's account showed an outstanding amount in the sum of ZMW 303,703.40 which had remained unpaid. That despite repeated reminders for the Defendant to pay the above mentioned outstanding amount to the Plaintiff, the Defendant had failed, ignored and/or neglected to make payments.

He further deposed that the Defendant through its Managing Director acknowledged and admitted the debt/amount and through various email correspondence proposed a payment schedule to settle the debt. He also added that the Defendant issued various post-dated cheques towards the debt. However the same could not be deposited because the Defendant kept on

postponing when the Plaintiff could deposit the same until the cheques became stale.

It was further deposed that the Plaintiff through its Advocates wrote a formal demand letter dated 4th April, 2017 and the Defendant responded to the letter of demand through a letter dated 7th April, 2017 again acknowledging and admitting the amount as owing and stated that it would submit a payment plan to settle the amount owing. He produced the said letter which was marked '**HK5**'. Furthermore, that the Defendant's Advocates by way of admitting the amount owed to the Plaintiff also proposed a payment plan to settle the debt and the Plaintiff counter proposed the payment plan in a letter dated 10th May, 2017.

The deponent explained that the Plaintiff was left with no option but to commence legal proceedings against the Defendant by way of Writ of Summons accompanied by the Statement of Claim claiming the sum of ZMW 303,703.40, interest and costs which sum had in any event been unequivocally admitted by the Defendant.

In addition, it was deposed that although the Defendant had since entered appearance and defence as well as filed a counter-claim against the Plaintiff, a close scrutiny of the purported defence and counter claim clearly showed that it was a mere ploy by the Defendant to further delay the expeditious adjudication of this matter whose claim the Defendant had already admitted. As a matter of procedure the Plaintiff filed a Reply to Defence and a Defence to Counter Claim which from the face of it was frivolous and vexatious.

The deponent further explained that he had been advised by his Advocates that where a Defendant had expressly or impliedly admitted the amount owing as stated in the Writ of Summons and Statement of Claim, it was not necessary to proceed to trial as doing so would waste the courts time and escalate costs on the part of the Defendant; that the Defendant had voluntarily admitted the

amount owing and no form of prejudice would be occasioned on the Defendant's part instead justice would be better served on the part of the Plaintiff who had been put out of money by the Defendant's failure to liquidate the debt owing.

The Defendant did not however file any Affidavit in Opposition to the Summons for Leave to enter Judgment on Admission.

At the hearing of the matter on the 13th of September 2017, Mr. Msoni, learned counsel for the Plaintiff submitted that he would rely on the Affidavit filed on the 1st of June, 2017 as well as the List of Authorities filed on the same day.

In his Skeleton Arguments in support of the Application for leave to enter judgment on admission, Mr. Msoni referred this Court to the case of **Chazyia Silwamba v Lamba Simpito** ⁽¹⁾, in which the Court held, *inter alia* that a party could admit the truth of the whole or any part of another party's case. When a fact was admitted, it was unnecessary for a party to advance evidence in relation to the admitted facts at trial. In this regard, it was submitted that this was a proper case for this Honourable Court to exercise its jurisdiction to enter judgment on admission.

In response, learned counsel for the Defendant, Mr. C. Musonda submitted that his client had no objection to the application to enter Judgment on admission. When asked by the Court the Defendant's position regarding the counter claim, Mr. Musonda informed the court that the Defendant had decided to abandon the counter claim as it wanted to make progress in the matter and also to agree with the Plaintiff on how it was going to liquidate the amount owed.

I have considered the affidavit evidence, the skeleton arguments and the submissions by both counsel on behalf of the respective parties. By this

application, I have to determine whether or not the Plaintiff is entitled to judgment on admission.

Paragraph 314 of the Halsbury's Laws of England Volume 37, Fourth Edition provides that:

'Where admissions of fact or part of a case are made by the party to a cause or matter either by his pleadings or otherwise, any other party may apply to the court by motion or summons 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.'

Thus Order 27 rule 3 of the White Book is couched in similar words. Further, Order 21 rule 6 of the High Court Rules provides that:

'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.'

The admission may be express or implied but it must be clear (see footnote 1 under paragraph 314 at page 236 of the Halsbury's Laws of England). In the case of Ellis vs. Allen ⁽²⁾ judgment on admission was entered against the Defendant by Sargant J. In doing so, he made the following observation:

'I cannot conceive any circumstances which the Defendant Allen could rely on as a defence to the action having regard to the admissions by the letter.'

What is clear from the above case is that if there is no defence conceivable on which the Defendant can rely on to the action having regard to the alleged admission, then the court can enter judgment on admission.

Furthermore, in the case of *Huges v London, Edinburgh and Glasgow Assurance* ⁽³⁾, it was held that:

'The court will not allow final judgment to be signed upon admissions in a pleading or affidavit unless the admissions are clear and unequivocal.'

In the present case, the Plaintiff has applied that this Court enters judgment on admission as the Defendant through its Managing Directors acknowledged and admitted the debt and through various email correspondences collectively marked "HK2" proposed a payment schedule to settle the debt. The Plaintiff contends that the Defendant issued various post-dated cheques marked "HK3" towards the debt, which could not be deposited until they became stale. Furthermore the evidence adduced by the Plaintiff is that the Defendant had through a letter dated 7th April, 2017 and marked "HK5" acknowledged and admitted owing the amount claimed. In addition, the Plaintiff also adduced evidence that the Defendant's Advocates had admitted the amount owed to the Plaintiff by proposing a payment plan to settle the debt and the Plaintiff had counter-proposed the said proposal in a letter dated 10th May 2017.

I have carefully examined the above evidence. It is clear from the provision of **Order 27/3/4 of the RSC** that:

'An admission may be in a letter before or since the action was brought'

In this regard, I am of the considered view that since the Defendant through the various correspondences made with the Plaintiff has admitted that it has failed to pay the Plaintiff accordingly, it follows then that it has admitted that it owes the Plaintiff the amounts claimed.

Furthermore, the Defendant did not file any affidavit in opposition to Summons for Leave to enter Judgment on admission and at the hearing of the matter

counsel for the Defendant did not object to the Plaintiff's application. To add on, counsel informed the court that the Defendant had decided to abandon the counter-claim against the Plaintiff.

In view of the foregoing, I am of the considered view that on the evidence adduced, there is no defence conceivable on the claim made against the Defendant by the Plaintiff on which the Defendant can rely on. I therefore find the admission by the Defendant to be clear and unequivocal that the total amount claimed by the Plaintiff is owed by the Defendant and that the Plaintiff is entitled to judgment on admission. I accordingly enter judgment on admission in favour of the Plaintiff for the payment of the sum of ZMW 303,703.40

In line with the Supreme Court case of ***Indeni Petroleum Refinery Company Limited v V.G Limited*** ⁽⁴⁾ the Defendant has kept the Plaintiff out of its money and it ought to compensate the Plaintiff for it. The amount of ZMW 303,703.40 shall attract interest at the average short term deposit rate from the date of Writ of Summons to the date of Judgment and thereafter at the current lending rate as determined by the Bank of Zambia from the date of judgment until final payment. I also award costs to the Plaintiff to be taxed in default of agreement.

DELIVERED at Lusaka this 18th day of September, 2017.



M. C. KOMBE
JUDGE