

pursuant to Order 36, rule 9 of the High Court Rules, Chapter 27 of the Laws of Zambia.

The application is supported by an affidavit deposed to by the Respondent, Brenda Mambwe, and Skeleton Arguments both dated 9th August, 2017.

In the Affidavit in Support of Summons for an Order to Liquidate Judgment Sum in Instalments (“the Affidavit in Support”), Brenda Mambwe deposes that upon commencement of this matter, the Applicant, through its agent, intimated to her via telephone conversation the possibility of an *ex curia* settlement and requested her to write a commitment letter to settle the debt, which she did. That she did not enter appearance or file an affidavit in opposition and neither did she attend the hearing of this matter because she reasonably believed that the matter would be settled *ex curia*.

That while waiting for a response from the Applicant and unknown to the Respondent, the Applicant proceeded with prosecution of this matter and obtained judgment in its favour on 23rd May, 2017, which required the Respondent to settle the judgment sum within 90 days. The deponent deposes further that it is her desire to settle the judgment sum in monthly minimum instalments of K8,000.00, which she has begun paying.

At the hearing of the application learned Counsel for the Respondent, Mr. Mbewe, submitted that his client would rely on the documents referred to above and emphasised that Order 36, rule 9 of the High Court Rules gives this Court the discretion to consider an application of this nature where the judgment debtor is desirous of

settling the judgment sum in instalments and that it is on this basis that this Court has been moved to grant the said order. Counsel submitted further, that the Respondent has already begun to make such payments in instalments.

In opposing the application Ms. Sameta, learned Counsel for the Applicant, submitted that her client would rely of the Affidavit in Opposition to Summons to Liquidate Judgment Sum in Instalments ("the Affidavit in Opposition"), which they filed into Court on 8th September, 2017. In addition, Counsel put emphasis on the requirement by an applicant in making such application to show sufficient grounds as provided for under Order 47, rule 1 (3) of the Rules of the Supreme Court, 1999 ("the White Book") which requires that an applicant should disclose his income, the nature and value of his property and the amount of any other liabilities of his.

Counsel submitted that, in making this application, however, the Respondent has neglected to disclose these material facts in her affidavit in support of the application. Further, that contrary to what has been stated in her affidavit, the Respondent has not been forthcoming in the instalment payments that she committed herself to by way of a letter exhibited in her affidavit.

That from May, 2017 to September, 2017 the Respondent had only paid a meagre K8,000.00 to the Applicant Bank. Therefore, it is the Applicant's contention that the Respondent has failed to show reasonable grounds to enable the Court grant the application and there is no basis upon which this Court can grant the application. Counsel urged the Court to dismiss the Respondent's application with costs.

In reply, Counsel for the Respondent, reiterated his earlier submission and stated that the grounds that have been stated in the Affidavit in Support of the application are sufficient to enable this Court exercise its discretionary power to grant the application. With regards to the prayer to be awarded costs, Mr. Mbewe submitted that it is trite that costs are in the discretion of the Court and in the circumstances of this case, it was Counsel's prayer that each party bears its own costs.

In the Affidavit in Opposition sworn by one Reuben Mutale Malindi, the Applicant's Manager - Specialised Recoveries, the deponent asserts that the Respondent was aware of the proceedings before this Court as the proper procedure was strictly followed. Further, that on or about 19th May, 2017 the Respondent committed to settling the outstanding debt in monthly instalments of K8,000.00 per month starting in June, 2017 and that the amount would increase to K10,000.00 per month from January, 2018 until the debt is paid in full.

However, that in spite of making this commitment, the Respondent only made one payment on 30th June, 2017 and the debt continues to accrue interest as per documents exhibited as "RMM2" and "RMM3". That the Respondent has not disclosed her income or expenses or shown proof as to why she should liquidate the judgment debt in K8,000.00 monthly instalments.

I have perused the documents filed by both parties and have considered the *viva voce* submissions by learned Counsel on both sides. Order 36, rule 9 of the High Court Rules, Chapter 27 of the Laws of Zambia which the Respondent has relied upon in making the

application to settle the judgment debt in instalments is unambiguous in its requirement for sufficient reason to be provided for the Court to order that a judgment sum be paid in instalments. This entails that an applicant provides sufficient reasons to the Court to enable it make an order for payment of a judgment sum in instalments.

I concur with the submission by the Applicant that the Respondent has not provided sufficient reason to support her application to pay the judgment sum in instalments. In fact, in her Affidavit in Support she only states that she desires to settle the judgment sum in monthly minimum instalments of K8,000.00. In the letter to the Applicant Bank dated 19th May, 2017 which she exhibited in her affidavit as "BM1", the Respondent proposed to pay the judgment debt in monthly instalment of K8,000.00 due to the economic challenges beyond her control. She did not submit any evidence of her income and expenditure or assets and liabilities, which evidence would have assisted the Court in ascertaining the Respondent's means, assets and liabilities.

Counsel for the Applicant cited Order 47, rule 1 (3) of the White Book and stated that the same allows for payment of a judgment sum in instalments. Order 47, rule 1 deals with the power of the Court to stay execution by Writ of Fieri Facias. However, the principle of disclosing income, assets and liabilities still applies to applications to pay judgment sum by instalments.

I, therefore, find the Respondent's application to settle judgment sum in instalments to be without merit and dismiss the same accordingly.

The costs of and incidental to this application are awarded to the Applicant, to be agreed or taxed in default of agreement.

Delivered at Lusaka the 13th day of February, 2018.



W.S. Mwenda (Dr)

HIGH COURT JUDGE