

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

2017/HP/0814



**IN THE MATTER OF: THE RENT ACT CHAPTER 206 OF
LAWS OF ZAMBIA**

**IN THE MATTER OF: RECOVERY OF RENT ARREARS FOR
FOR PLOT No. S/D 3889/401a, 2ND
STREET BONAVENTURE ESTATES
MAKENI, LUSAKA**

BETWEEN:

KAIMBI CARGO MASTER AND COURIER
SERVICE LIMITED

APPLICANT

AND

EMMANUEL KASANGA

RESPONDENT

**BEFORE THE HON. MRS JUSTICE S. M WANJELANI IN CHAMBERS
ON THE 26TH DAY OF MARCH, 2018**

For the Applicant: Mr. L. Mwanabo, Messrs L.M Chambers

For the Respondent: In Person

RULING

Case referred to:

- 1. Zambia Export and Import Bank Limited V Mkuyu Farms Limited, Ellias Andrew Spyron and Mary Ann Langley Spyron (1993-1994) ZR 36 (SCS).*

Legislation referred to:

- 1. High Court Rules, Chapter 27 of the Laws of Zambia.*
- 2. Rules of the Supreme Court, 1999 Edition*

This is the Ruling on the Respondent's (hereinafter referred to as the "Judgment Debtor") application to liquidate the Judgment sum of K163,000.00 plus interest in monthly installments. The application was filed pursuant to the provisions of **Order 36 Rule 9 of the High Court Rules**.

The Judgment Debtor swore an Affidavit in Support of the Application in which he admitted owing the Judgment Creditor the Judgment sum awarded in a Judgment dated 18th September, 2017 but sought time to raise the said money and proposed to pay in installments.

He deposed that he had bought equipment for a Laundry which was scheduled to start operations at Arcades Shopping Mall in January, 2018 and that he had pledged his BMW X5 vehicle to the Applicant until payment of the third installment. The Deponent sought the Court to allow him pay the Judgment sum in installments of K10,000.00 per month, commencing February, 2018 month end as he did not have the financial capacity to pay the accrued amount at once.

The Judgment Creditor opposed the Application in an Affidavit sworn by **Fredrick Bwalya**, the Managing Director of the Judgment Creditor Company. He deposed that the Judgment Creditor had been kept out of its money for over two years and there had been no effort from the Judgment Debtor to liquidate the money until he was compelled by the Judgment of the Court.

He averred that the Judgment Debtor had not shown sufficient cause for the Order to be granted as he had not even filed the Affidavit of Means to disclose his inability to liquidate the Judgment sum of K163, 500.00 plus interest in a lump sum.

The Deponent further averred that he could accept an initial payment of K60, 000.00, and the balance could then be paid in the proposed installments.

During the hearing, the Judgment Debtor rehashed the contents of his Affidavit and averred that executing a Writ of *Fieri Facias* would not serve the interests of the Judgment Creditor as the assets he has would not extinguish the debt, hence the option to pay in installments as proposed and that those installments would increase once the Laundry was operational.

Counsel for the Judgment Creditor opposed the application and relied on the Affidavit in Opposition and added that the proposal by the Judgment Debtor would entail that the payments would go beyond 15 months. He further submitted that a Judgment Creditor should not be denied the fruits of his Judgment without sufficient cause and that the Judgment Debtor had not taken any steps to attempt to settle the debt despite the Judgment being delivered in September, 2017, while the Originating process was issued in May, 2017. In conclusion, Counsel contended that the Judgment Debtor had not furnished the Court with any tangible basis to grant the application as he had not filed any Affidavit to show his earning capacity; expenses per month; and any surplus.

I have carefully considered the application before me and the submissions by the Parties.

Order 36 Rule 9 of the High Court Rules pursuant to which the application was commenced provides:

“Where any judgment or order directs the payment of money, the Court or a Judge may, for sufficient reason, order that the amount shall be paid by installments, with or without interest. Such order may be made at the time of giving judgment, or at anytime afterwards, and may be rescinded, upon sufficient cause, at any time. Such order shall state that, upon the failure of any installment, the whole amount remaining unpaid shall forthwith become due”.

Further **Order 47/1/1** of the **White Book** provides:

“(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution—

(a) that there are special circumstances which render it inexpedient to enforce the judgment or order, or

(b) that the applicant is unable from any cause to pay the money, then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such

period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made by summons...

(3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.(underline for emphasis only)

In line with the above provisions the Supreme Court, in the case of **Zambia Export and Import Bank Limited V Mkuyu Farms Limited, Ellias Andrew Spyron and Mary Ann Langley Spyron**, held inter alia that:

“The Court may order that a Judgment Debt be satisfied in installments upon sufficient cause being shown by the Judgment Debtor.”

In the case in casu the Judgment Debtor has informed the Court that he is unable to pay the Judgment sum at once and proposes to pay in monthly installments of K10, 000.00 and that these will increase after the Laundry becomes operational. He has not provided any evidence or document to enable the Court make an

informed decision on his inability to settle the claim or what income he has that will enable him meet the proposed installment amount.

Thus in order for the Court to be satisfied that the Judgment Debtor should be allowed to pay in installments and thereby deprive the Judgment Creditor of his fruits of his Judgment, there is need for the Judgment Debtor to disclose all his income, the nature and value of his property and any other liabilities and expenses he has to meet.

The Judgment Debtor not having provided any such information upon which this Court could make an informed decision on the application, I find that the Judgment Debtor has not demonstrated sufficient reason or special circumstances to warrant the Court grant the application as prayed. It is accordingly dismissed and consequently I discharge the Stay of Execution that was granted pending the hearing of this application on 29th December, 2017. I make no Order as to costs.

Leave to appeal is granted.

Delivered at Lusaka this 26th day of March, 2018



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S. M. Wanjelani

HIGH COURT JUDGE