

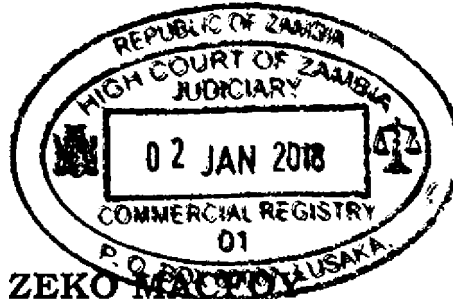
IN THE HIGH COURT FOR ZAMBIA

2012/HPC/0019

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

CELLINE GWENDOLINE ZEKO MACHOTO

PLAINTIFF

AND

TONLEX INVESTMENTS LIMITED

DEFENDANT

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

*For the Plaintiff: Ms. S. Namusamba – Messrs Shamwana and
Company*

For the Defendant: No Appearance

RULING

LEGISLATION REFERRED TO:

1. **Order 36 Rules 9 and 10 of the High Court Rules, Chapter 27 of the Laws of Zambia.**

This is the Defendant's application to liquidate the Judgment Debt in installments made pursuant to **Order 36 Rule 9 of the High**

Court Rules Chapter 27 of the Laws of Zambia and further to Stay Sale of Seized Goods.

According to the supporting Affidavits filed into Court on 20th January, 2016 by the Consent Judgment dated 12th September, 2013 the total Judgment Sum of K145,000.00 was to be paid in two equal monthly installments of K72,500.00. That there is an agreement between the Plaintiff and the Defendant for the latter to pay the Judgment debt in 3 monthly installments commencing January, 2016.

The Plaintiff opposed the application. According to the Affidavit in Opposition filed into Court on 23rd March, 2016 deposed by the Plaintiff she accepted the contents of paragraph 5 of both Affidavits in Support as being true confirmed by the Consent Judgment dated 12th September, 2013. She did not however accept the assertion that there was an agreement between herself and the Defendant for the latter to pay the Judgment Debt in 3 monthly installments commencing January 2016. That the Defendant has made no attempts to satisfy the Judgment debt from the time of the signing of the Consent Judgment in September, 2013.

It is deposed that the Plaintiff received the sum of K30,000.00 through her Advocates only after the seizure of the Defendant's goods in execution of the Consent Judgment. That as there was not any agreement for the Defendant to pay the Plaintiff in 3 monthly installments commencing January, 2016 the Defendant has not demonstrated to the Court why it has failed to pay the Judgment

debt since September 2013. That to the best of the Plaintiff's knowledge the Defendant has a running contract with the Ministry of Local Government and Housing to the value of K6,525,174.35.

It was submitted on behalf of the Plaintiff that the Defendant's application to Stay the Sale of Seized goods is founded upon **Order 36 Rule 10 of the High Court Rules, Chapter 27 of the Laws of Zambia** which provides that:

“Except as provided for under rule 9, the Court or Judge may, on sufficient grounds, order stay of execution of judgment.”

It was pointed out that the application before the Court is for the '*stay of sale of seized goods*' and not '*stay of execution of Judgment*'. It was therefore submitted that the application for stay of sale of seized goods, is not properly before the Court, as the Court is not clothed with jurisdiction, to order a stay of seized goods pursuant to **Order 36 Rule 10 of the High Court Rules Chapter 27, of the Laws of Zambia** as prayed by the Defendant. That for this reason alone, the Stay cannot be upheld and should be dismissed.

I agree with the Plaintiff's submission. I would on the basis of lack of jurisdiction alone discharge the *Ex-parte* Order Staying Sale of Seized Goods that I granted on 1st February, 2016.

The matter does not however end there. As regards the application for an Order to Settle the Judgment Sum by Installments, same is

made pursuant to **Order 36 Rule 9 of the High Court Rules, Chapter 27 of the Laws of Zambia** which reads as follows:

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

Provided that where there is a default in paying one installment, there shall be no order for stay of execution on the balance.”

The issue is simply whether the Defendant has shown sufficient cause as regards ability to discharge the debt.

At the time of signing the Consent Judgment, the Defendant was given leeway to settle the Judgment debt by installments. However as submitted by the Plaintiff the Defendant has lamentably failed to make any payments to the Plaintiff from the time of the execution of the Consent Judgment on 12th September, 2013. The only payment of K30,000.00 was made after seizure of the Defendant's goods in execution of the Consent Judgment and more than 2 years after the Consent Judgment.

I am therefore of the view that there are no grounds warranting an Order that the Judgment Sum be paid in installments. This is not a proper case in which I can exercise my discretion and allow the Defendant to pay the Judgment debt in installments. For the foregoing reasons the application to liquidate the Judgment sum by monthly installments is dismissed.

The *Ex-parte* Order Staying Sale of Seized Goods that I granted on 1st February, 2016 is hereby discharged.

Costs to the Plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

Dated the 2nd day of January, 2018.



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**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**