IN THE HIGH COURT FOR ZAMBIA **2018/HPC/0324**
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

RAPID GLOBAL FREIGHT INTERNATIONAL LIMITED **PLAINTIFF**

AND

TAURUS INTERIORS LIMITED **DEFENDANT**

Before the Honourable Lady Justice Dr. W. S. Mwenda in Chambers at Lusaka this 19th day of February, 2020.

For the Plaintiff: *Mr. M. Nzonzo of Messrs. SLM Legal Practitioners.*

For the Defendant: *Ms. E. Diningu of Messrs. Kapungwe Nchito Legal Practitioners.*

RULING

Cases referred to:

1. *China Henan International Economic Technical Cooperation v. Mwange Contractors Limited SCZ Judgment No. 7 of 2000.*
2. *Choitan v. Nazari [1984] KLR. 327.*
3. *First Capital Bank Zambia Limited v. Zambia Co-operative Federation (2017/HPC/0295).*
4. *Muyuni Estate Limited v. MPH Chartered Accountants (2013) 2 ZR. 120.*

Legislation referred to:

1. *Order 21, rule 6 of the High Court Rules Chapter 27 of the Laws of Zambia.*
2. *Order 27, rule 3 of the Rules of the Supreme Court of England and Wales 1999 Edition (the White Book).*

Publication referred to:

1. *Patrick Matibini, Zambian Civil Procedure: Commentary and Procedure, Volume 1 (LexisNexis, 2017) at page 609.*

By summons dated 21st January, 2019, the Plaintiff applied for entry of judgment on admission pursuant to Order 21, rule 6 of the High Court Rules, Chapter 27 of the Laws of Zambia as read together with Order 27, rule 3 of the Rules of the Supreme Court of England and Wales, 1999 Edition (the White Book).

The summons was accompanied by an affidavit of even date sworn by Martin Siwale, a Director in the Plaintiff Company. He deposed that the Plaintiff and the Defendant executed an agreement for the transportation by the Plaintiff of various containers imported by the Defendant. He exhibited "MS1", being a copy of the said agreement.

It was deposed that on 16th May, 2016, the Plaintiff issued a demand notice to the Defendant for payment of USD24,000.40 relating to 7 out of 12 containers that had been delivered to the Defendant. He produced a copy of the demand notice marked "MS2".

The deponent further stated that on 29th May, 2018, the Defendant acknowledged receipt of the demand notice and promised to pay the USD24,000.00 due then as follows: USD10,000.00 on 30th May, 2018 and the balance of USD14,000.00 by 7th June, 2018. He produced a copy of the letter of admission as exhibit "MS3". It was further deposed that the Defendant did remit USD10,000.00 on 30th May, 2018 but has neglected to pay the balance due of USD14,000.00 in respect of 7 containers. That despite the

admission and commitment to pay the sum, the Defendant has failed or neglected to pay the outstanding USD14,000.00.

The Defendant filed an Affidavit in Opposition dated 15th April, 2019 and sworn by Piyush Chandarana, the Managing Director of the Defendant Company. He deposed that in or about February, 2018, the Defendant engaged the Plaintiff to transport various containers from Dar es salaam to Lusaka. That, the Plaintiff delayed the deliveries of the containers into Lusaka resulting in clients cancelling the orders for the goods being transported by the Plaintiff. He deposed that the first container was received after 52 days and that on arrival, the Defendant was asked to pay ZMW6,500 cash for logistics and ZMW32,000 for customs duty and VAT, which was paid in cash.

It was further deposed that the Defendant paid ZMW78,000 to the Plaintiff being logistics and a further ZMW192,000 for clearance for the 12 containers. He produced and exhibited as "PC1", a copy of the clearance payment. Further, that despite the Defendant having paid ZMW78,000 for logistics and ZMW192,000 for customs, the Plaintiff has not paid the Zambia Revenue Authority (ZRA) to clear customs for the 12 containers. That, 3 of the containers were offloaded in his yard in Northmead, whilst the remaining containers are in the Plaintiff's yard in Chinika, industrial area.

The deponent further stated that sometime in June 2018, it was agreed that 2 containers were to be released to the Defendant to enable the Defendant sell some of the contents to raise the cash needed. That, the goods could not be sold as the Plaintiff had not

cleared them with ZRA despite the Defendant having paid ZMW192,000 to the Plaintiff towards customs clearance.

In response to paragraphs 7 to 10 of the Plaintiff's Affidavit in Support asserting that a demand notice was issued to the Defendant for the payment of USD24,000.40 which the Defendant acknowledged and offered to pay in instalments, the deponent stated that the Defendant paid USD10,000.00 on condition that the Plaintiff released container number CAXU3376422 as exhibited in paragraph 4 of Exhibit "MS3". That, the said container was not, and has never been released. Further, that in response to the contention in paragraph 11 of the Plaintiff's Affidavit in Support that the Defendant has neglected to pay the USD14,000 balance, the Plaintiff has not released container number CAXU3376422 which was the subject of the USD10,000. That, further, in response to paragraph 12 of the Plaintiff's Affidavit demanding payment of USD14,000, the Defendant has paid a total of USD30,000 and ZMW271,000 to the Plaintiff. It was further deposed that despite the Defendant having paid the Plaintiff USD30,500 and ZMW274,000.00, the Plaintiff has not paid customs for any of the containers which have remained bonded to ZRA making it impossible for the Defendant to trade, resulting in loss of income.

The Plaintiff filed a combined List of Authorities and Affidavit in Reply to the Affidavit in Opposition of Summons for Entry of Judgment on Admission dated 25th April, 2019. The Plaintiff submitted that the Defendant admitted to being indebted to the Plaintiff in the amount of USD24,000 in its letter dated 29th May,

2018 exhibited as "MS3". It was submitted that the Defendant unequivocally admitted to owing the USD24,000 out of which USD10,000 was paid leaving a balance of USD14,000.

It was the Plaintiff's further submission that the issue for determination before this Court is whether or not the Defendant admitted part of the Plaintiff's claim. That, Order 21, rule 6 of the High Court Rules, Chapter 27 of the Laws of Zambia and Order 27, rule 3 of the White Book, pursuant to which the application is made, is self-explanatory. That, the said provisions are to the effect that the court will enter judgment on admission when there is a clear admission of the debt by the defendant. To augment this argument, the Plaintiff placed reliance on the case of *China Henan International Economic Technical Cooperation v. Mwange Contractors Limited*[1], which case, the Plaintiff submitted, stresses that judgment ought to be entered when there is an admission of the debt. Further, that in *Choitan v. Nazari*[2], cited in the High Court case of *First Capital Bank Zambia Limited v. Zambia Co-operative Federation*[3], it was held that:

> *"... admissions have to be plain and obvious and as plain as a pikestaff and clearly readable because they may result in judgment. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning... the admissions must leave no room for doubt..."*

The Plaintiff reiterated its submission that the Defendant in its letter of response dated 29th May, 2018 admitted to owing the Plaintiff the sum of USD24,000 without any qualifications or reservations. That, the fact that the Defendant admitted to owing USD24,000 and making a part payment of USD10,000 is enough

to enable this Court to enter judgment on admission for the balance of USD14,000.

It was the Plaintiff's further submission that the Defendant's depositions in the Affidavit in Opposition should not preclude this Court from entering judgment on admission as the averments in the said affidavit are neither a defence nor relevant to the application. The Plaintiff prayed that judgment on admission for the USD14,000 balance of the sum admitted be entered with costs to the Plaintiff.

When the application came up for hearing on 29th April, 2019, Mrs. M. Kapapula-Miyoba for the Plaintiff submitted that they would rely on the Affidavit in Support of the application and the List of Authorities, both filed on 21st January, 2019, as well as the combined List of Authorities and Skeleton Arguments in Reply to the Affidavit in Opposition filed on 25th April, 2019.

Ms. Chisengalumbwe for the Defendant submitted that despite this Court having the power to enter judgment on admission, judgment on admission is not a matter of right but is in the discretion of the court. She submitted that the court has power to pronounce judgment on admission only if the court is satisfied that the admission is certain and clear. In support of this submission, reliance was placed on the learned author Patrick Matibini's book, Zambian Civil Procedure: Commentary and Procedure, Volume 1 at page 609, where the author cites Ray's Textbook on the Code of Civil Procedure at page 138. According to Ray, the essential conditions that must be satisfied before a court can pronounce judgment on admission are: (a) the admission must have been

either in a pleading or otherwise; (b) the admission must have been made either orally or in writing; (c) the admission must be clear and unequivocal; and (d) the admission must be taken as a whole and it is not permissible to rely on the part of the admission, ignoring the other part.

Ms. Chisengalumbwe also cited the case of *Muyuni Estate Limited v. MPH Chartered Accountants*[4], in which it was held that Order 21, rule 6 applies when there is a clear admission of facts. She submitted that it is on the basis of the authorities cited that the Plaintiff's application was strongly opposed. That, the alleged admissions are not certain and clear and require further investigation. She further submitted that the agreement was that the Defendant would pay USD10,000 to the Plaintiff and upon that payment, the Plaintiff would release container number CAXU3376422, but that the said container was not, and has never been released. Thus, it was submitted that condition (c) and (d) as indicated in P. Matibini's book were not satisfied and therefore, this Court should refuse the application with costs to the Defendant.

In reply, Mrs. Kapapula-Miyoba submitted that the Defendant's submission that the USD10,000 was paid to the Plaintiff upon which the Plaintiff was to release the container was not the correct position. That, a perusal of Exhibit "MS3" reveals that the release of the container was not a condition of any agreement but rather a request by the Defendant after admitting to owing the Plaintiff a total of USD24,000 and proposing to pay the amount in instalments. That, therefore, the requirements for judgment on

admission were satisfied and that the Court should find that the Defendant has admitted owing the Plaintiff USD24,000 of which a balance of USD14,000 remains unpaid.

I have considered the parties' arguments for and against the application. The law providing for judgment on admission is that captured under Order 21, rule 6 of the High Court Rules Chapter 27 of the Laws of Zambia and Order 27, rule 3 of the White Book. Order 21 rule 6 of the High Court Rules provides as follows:

> *"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."*

Order 27, rule 3 of the White Book provides as follows:

> *"Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court 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 and the Court may give such judgment, or make such order, on the application as it thinks just."*

I have perused Exhibit "MS3" in the Plaintiff's Affidavit in Support. This is a letter of reply dated 29th May, 2018, generated by the Defendant and addressed to the Plaintiff. It is the letter which the Plaintiff alleges contains an admission by the Defendant of its indebtedness to the Plaintiff. In countering this assertion, the Defendant did state in paragraph 15 of its Affidavit in Opposition to the Plaintiff's Affidavit in Support of this application, that the Defendant "requested for the release of Container number CAXU3376422 which was subject of the payment of USD10,000."

Paragraph 4 of the said letter marked "MS4" reads as follows:

> *"Further to this we humbly request you to please release the Container No. CAXU3376422. This release will help us pay you the amount of US$10,000. We humbly request you to please release the other two Containers once you have received the money".*

It is my considered view that the use of the word "request" in the above quote is not synonymous with attaching a condition. I therefore, hold the view that there was no condition attached to the payment of the US$10,000. In paragraph 2 of the same letter, the Defendant categorically offered a payment plan for liquidating what it believed was its indebtedness to the Plaintiff. Thus, I find that the Defendant unequivocally admitted its indebtedness to the Plaintiff and it is my opinion that this is a case in which judgment on admission can and should be entered.

In the premises, I allow the Plaintiff's application and enter judgment on admission in its favour for the outstanding balance of US$14,000. Costs of and incidental to this application are awarded to the Plaintiff, to be agreed or taxed in default of agreement.

Dated at Lusaka this 19th Day of February, 2020.

DR. W.S. MWENDA
JUDGE.