

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Divorce Jurisdiction)  
**BETWEEN:**

**2019/HP/0001**



**JACQUELINE CHIPASHA MUTALE**

**PLAINTIFF**

**AND**

**NAMAKAU MALEMBO CHANDA**

**DEFENDANT**

**Before Honourable Mr Justice M.D. Bowa on 7<sup>th</sup> of August 2020.**

*For the Plaintiff: Mrs Mumbi of SCPM legal Practitioners*

*For the Defendant: In person*

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## ***RULING***

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### **Authorities referred to**

1. *S Brian Musonda sued as receiver of first Merchant Bank Zambia Limited* (1999) ZR
2. *Southern Cross Motors Limited vs. Nonc Systems Technologies Ltd* (2012) ZR 524
3. *Mwinga and Another vs. Zanaco SCZ Judgment No. 51/2014*
4. *Diana Lason vs. Brett Stack, Newlyn PLC* (2018) EWCA Civ 803

### **Legislation referred to**

1. *The High Court Act Cap 27 of the Laws of Zambia Order 36 r 9*

This is the Defendant's application for the payment of the judgment sum in installments dated 22<sup>nd</sup> June 2020. The background leading to the application is that this court entered judgment on admission

in favour of the Plaintiff by ruling dated 31<sup>st</sup> March 2020 in the sum of K188, 970 less K220.00 being the only disputed sum. On the 22<sup>nd</sup> June 2020 the Defendant filed an ex parte summons to stay execution of judgment pending an application to pay the judgment sum in installments. I granted the application for the stay and the matter came up on 24<sup>th</sup> July 2020 for interparties hearing.

The application was supported by an affidavit deposed by the Defendant. She stated that whilst she does not dispute the debt is due she finds herself in a position of not being able to meet her obligation to liquidate the debt in full as expected. That she is employed as a receptionist in formal employment and cannot liquidate the debt in one lump sum. It was her further averment that her income is not sufficient to enable her settle the debt at once. She exhibited her pay slip marked "**NMC1**" as proof of this statement. The Defendant deposed further that her liabilities include:

- i. School fees and needs for her two children, namely Chewe Chanda and Mulenga Chanda both attending school at Baptist School.

ii. Rentals of K2500 per month.

That due to the above, she is only able to liquidate the outstanding judgment sum in equal monthly installments of K3000 until final payment. She averred further that she has also started a small poultry business and is optimistic that she will be able to increase the installment amount if the business outflows improve. It was her belief that the Plaintiff will not be prejudiced by the grant of this application and that the court is empowered to make an order to pay in installments. She thus calls on the court to exercise its inherent jurisdiction to grant her the prayer sought.

The Plaintiff filed an affidavit in opposition dated 8<sup>th</sup> of July 2020. She deposed that before she commenced this action, she made several attempts to resolve this matter amicably with the Defendant to no avail because the Defendant made promises to make payments in installments which she did not live up to.

That after this action was commenced, there were more attempts made to resolve the matter and the Defendant offered to pay the money owed in monthly K20, 000 installments. However no single payment was made. Further that the affidavit in support does not

state the installment amount the Defendant is offering to pay. The Plaintiff thus does not believe that the Defendant is sincere in her application to pay in installments as she had made several promises before which she has failed to honour.

In her affidavit in reply dated 22<sup>nd</sup> July 2020, the Plaintiff insists that her affidavit in support actually does disclose that she offered to pay K3000 per month. She reiterates her desire to liquidate the judgment sum in installments and that to demonstrate her sincerity she has exhibited her pay slip and receipt of payment of school fees.

At the hearing the Defendant relied on her affidavits on record in total. Mrs. Mumba for the Plaintiff opposed the application. She relied on the affidavit in opposition dated 8<sup>th</sup> July 2020. She acknowledged that the affidavit in support and in reply of the application proposes a monthly payment of K3000 per month on a debt of K188,000. She argued that simple arithmetic reveals that it would take over 2 years to repay the debt if that proposal were accepted. Counsel referred me to the case of **S. Brian Musonda sued as receiver of first Merchant Bank Zambia Limited**<sup>1</sup> in which the Supreme court held that there should be reasonableness

apparent in the installment proposed by a judgment debtor. Counsel thus argued that the proposed K3000 was wholesomely unreasonable.

I was also referred to the case of ***Southern Cross Motors Limited vs. Nonc Systems Technologies Ltd<sup>2</sup>*** in which the court held that an Applicant making these type of applications should show his source of income, assets and liabilities . It was submitted that the affidavit in support of the application and in reply do not show the Applicants assets and liabilities.

Finally, it was submitted that Order 36 rule 9 of the High Court rules relied upon to move the court provides that the court may for sufficient reason grant such an application. Counsel's submission in this regard is that the affidavits filed do not disclose sufficient reason to persuade the court to exercise its discretion to grant the application. She thus prayed that the application be dismissed with costs with the net result of discharging the stay of execution granted by this court the 22<sup>nd</sup> of June 2020.

In reply the Respondent relied on the affidavits filed and reiterated her prayer to be allowed to pay in installments.

I have carefully considered the application before me. Order 36 rule 9 of the High Court rules Cap 27 of the Laws of Zambia gives discretion to the court for sufficient reason to allow a judgment debtor to pay a judgment sum in installments. The rule provides that:

***“9. 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”***

The Defendant proposes to pay K3000 per month stating she cannot afford to pay due to her inadequate income. She exhibits her pay slip and bills for schools fees and rentals to justify her plea. This I will have to state is hardly sufficiently detail. She does not disclose her full list of assets and liabilities. I further agree with the Plaintiff's submission that an installment payment of K3000 per month for a debt of K188, 000 is an unreasonable amount to offer and would take a considerable long time to liquidate.

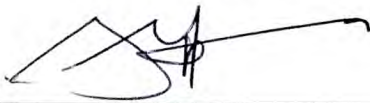
In *Mwinga and Another vs. Zanaco*<sup>3</sup>, the court highlighted the importance of payment in installments being made within a reasonable time frame. In a recent English decision of *Diana Lason vs. Brett Stack, Newlyn PLC*<sup>4</sup>, the court observed that in a case where a judgment debtor cannot really afford to pay anything towards a costs order, it could not interfere with the judgment creditor's right to seek enforcement of the judgment by whatever means that are available to them. The court went further to hold that:

***“For the court to grant an installment order, it must be presented with a realistic repayment schedule backed up by evidence that the creditor can be expected to receive the amount of principal and interest within a reasonable period of time.”***

I wholly adopt the reasoning of the court and its conclusion that the interests of the judgment creditor are perhaps more important than the parties to such a matter and thus the courts must be unwilling to interfere in a judgment creditors ability and desire to seek enforcement of a judgment by whatever means possible. Conclusively therefore, I am not satisfied that sufficient basis has been advanced to persuade the court to grant the order prayed for. I

would in the premises dismiss the application and further discharge the stay against execution of judgment granted ex parte on the 22<sup>nd</sup> of June 2020 with costs to the Plaintiff to be taxed in default of agreement.

**Dated at Lusaka this 7<sup>th</sup> day of August 2020.**



**JUDGE**