

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

2019/HP/0905

BETWEEN:

CHRINE HAPOMPWE

AND

CASSIDY MUKUKA



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 27th
DAY OF AUGUST, 2020**

For the Plaintiff : Messrs L.M Chikuta Legal Practitioners

For the Defendant : Messrs Robson Malipenga & Co

R U L I N G

CASES REFERRED TO:

- 1. China Henan International Economic Technical Cooperation v Mwange Contractors Limited SCZ No 7 of 2002**
- 2. Chazya Silwamba v Lamba Simpito 2010 Vol 1 ZR 475**
- 3. Milfora Dairy Suppliers Inc v Varun Food and Beverages (Zambia) Limited 2016 HC 121**

LEGISLATION REFERRED TO:

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

This is the plaintiff's application for the entry of judgment on admission, which was filed on 27th March, 2020, pursuant to Order

XXI Rule 6, as read together with Order XXVII Rule 3 of the Rules of the Supreme Court of England, 1999 edition.

The background leading to the application is that the plaintiff commenced this action on 13th June, 2019, by way of writ of summons and statement of claim, seeking the following reliefs;

- i. An order of specific performance of the contractual obligations on the part of the defendant herein.*
- ii. An order that the defendant pays the contractual interest on the defaulted instalments each as from the date of default to the date of settlement, together with the outstanding principal amount, which amount is in excess of K704, 905.44.*
- iii. Damages for inconvenience caused by the defendant's actions.*
- iv. Damages.*
- v. Any other relief that the court may deem fit.*
- vi. Costs.*

The claim as revealed by the statement of claim is that by a contract dated 11th July, 2018, the plaintiff and the defendant entered into an agreement where the plaintiff agreed to sell and the defendant agreed to purchase the property known as subdivision F/32a/E/1348/H Ranchdale, in the sum of K90, 000.00. That it was a term of the agreement that the purchase price would be paid by way of deposit into the plaintiff's account at the Zambia National Commercial bank Avondale Branch, with the number 1862669200157.

However, only K70, 000.00 has been paid to date, and that it was agreed that the defendant would pay interest at 30% fortnightly on any instalment remaining outstanding until full and final settlement. The plaintiff further claims that upon the defendant paying K70, 000.00 out of the purchase price of K90, 000.00, the plaintiff yielded vacant possession of the property to the defendant on or about 11th July, 2018. The defendant then proceeded to construct a house on the property, in which he currently resides.

The plaintiff further avers that on 24th September, 2018, the defendant wrote to him acknowledging his contractual obligations to pay interest on the defaulted sum, but asked for a waiver, which was denied by the plaintiff. That due to the default, the amount has accrued to K704, 950.44, which the plaintiff claims.

The defendant entered appearance and filed a defence on 3rd July, 2019. In that defence, the defendant admitted having entered into a contract of sale with the plaintiff for the purchase of the property known as subdivision F/32a/E/1348/H Ranchdale, in the amount of K90, 000.00. He however denies that he paid only K70, 000.00 out of the K90, 000.00 agreed as the purchase price. He further denies that it was agreed between the parties that the defendant would pay interest at a rate of 30% fortnightly on the amount outstanding until full and final settlement.

The defendant also denies that upon paying K70, 000.00, the plaintiff yielded vacant possession of the property on or about 11th July, 2018, and the defendant moved on site, and he constructed the house in which he resides. The defendant further denies that he asked for a

waiver of the payment of interest on the outstanding amount on 24th September, 2018, only to the extent that he asked for a waiver of the payment of compound interest. He disputes that the amount owing to date is K704, 950.44.

In the affidavit in support of the application for entry of judgment on admission which is deposed to by the plaintiff, he avers that the defendant does not dispute having entered into a contract of sale with him for the sale of the property subdivision F/32a/E/1348/H Ranchdale. He contends that the defence contains bare denials and does not dispute paragraphs 4, 5, 6 and 7 of the statement of claim.

The plaintiff's contention is further that at page 10 of the defendant's bundle of documents under special condition number 9, the defendant is liable to pay as stipulated in the statement of claim. It is stated that the defendant should pay the outstanding K20, 000.00 on the purchase price with interest as agreed.

In the skeleton arguments filed on 27th March, 2020, reference is made to Order XXI Rule 6 of the High Court Rules, as empowering a party to apply for the entry of judgment on admission where admissions of fact or part of a case are made by a party, by their pleadings or otherwise. It is argued that Order XXVII Rule 3 of the Rules of the Supreme Court of England has similar provision.

The argument is that a perusal of paragraph 4 of the defence, shows that the defendant does not dispute having executed a contract of sale with the plaintiff for the sale of the property, as claimed by the plaintiff at K90, 000.00. That page 10 of the defendant's un-numbered

bundle of documents shows that special conditions 6 and 9 show that the parties expressly agreed that interest at 30% per fortnight would be payable on the amount defaulted to be paid, until settlement of the same.

Reference is also made to page 8 of the plaintiff's bundle of documents which is a letter from the defendant to the plaintiff dated 24th September, 2018, where he expressly admitted to having defaulted on the payments to the plaintiff, and he asked for a waiver of the payment of the fortnightly interest.

To support the application, reliance is placed on the case of ***China Henan International Economic Technical Cooperation v Mwangi Contractors Limited*** ⁽¹⁾ stating that the Supreme Court in that matter held that;

“Judgment on admission can in appropriate cases, be entered at the scheduling conference because this is the time when the court considers, the pleadings and directions the matter should take”.

Also relied on, is the case of ***Milfora Dairy Suppliers Inc v Varun Food and Beverages (Zambia) Limited*** ⁽³⁾ where the court held that where a sum is admitted, summary judgment ought to be admitted. The case of ***Chazya Silwamba v Lamba Simpito*** ⁽²⁾ is also relied on in that regard.

On 24th July, 2020, the defendant filed an affidavit in opposition, which is deposed to by himself. In that affidavit, he admits that he entered into a contract of sale with the plaintiff for the purchase of

subdivision F/32a/E/1348. However, he denies the plaintiffs claim for the entry of judgment on admission, stating that he intends to prove his case at trial, as he has denied the allegations that the plaintiff is entitled to the payment of over K700, 000.00 as compound interest.

It is also his averment that page 10 of the defendant's bundle of documents does not show an unequivocal admission of the compound interest in the amount of K704, 950.44, and further that the parties did not agree that compound interest would be charged on the outstanding amount.

There was no affidavit in reply that was filed.

I have considered the application. It was brought pursuant to Order XXI Rule 6 of the High Court Rules, Chapter 27 of the Laws of Zambia, as well as Order XXVII Rule 3 of the Rules of the Supreme Court of England, 1999 edition. **Order XXI Rule 6 of the High Court Rules** provides that;

“6. A party may apply, on motion or summons, for cancelled 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 XXVII Rule 3 of the Rules of the Supreme Court of England, 1999 edition on the other hand states that;

“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”.

Thus, the question that arises in this application, is whether the defendant by his pleadings or otherwise has admitted the plaintiffs claim for the payment of K704, 950.44? In making the application, the plaintiff has argued that the defendant does not dispute having entered into the contract with him for the sale of the property as alleged in the statement of claim.

Reference has been made to page 10 of the defendant's un-numbered bundle of documents, which in special conditions 6 and 9 clearly stipulate that 30% interest is payable every fortnight on the amount due on default. However, the defendant in the affidavit in opposition states that while he admits to having entered into the contract of sale with the plaintiff, he does not admit that the plaintiff is entitled to charge compound interest on the sum outstanding.

At pages 6-11 of the defendant's un-numbered bundle of documents is the contract of sale that was entered into between the plaintiff and the defendant for the sale of the property, which is dated 11th July, 2018. The purchase price is stated as K90, 000.00. On the special conditions at page 10 of the said bundle of documents, Clause 6 states that;

“That the full purchase price is Zambian Kwacha Ninety Thousand [K90, 000.00] only which shall be paid to the vendor in the following instalments:-

6.1 *Zambian kwacha Seventy Thousand (K70, 000.00) upon the signing of these presents and the vendor hereby acknowledges receipt thereof.*

6.2 *Second instalment of Zambian kwacha seven thousand (K7, 000.00) payable on or before 30th August, 2018.*

6.3 *Third and final instalment of seven thousand (K7, 000.00) and six thousand (K6, 000.00) payable on or before 30th September, 2018 and on or before 30th October, 2018 respectively.*

Clause 9 on the other hand provides as follows;

9.0 *the vendor shall not charge any monthly interest on outstanding balances except 30% fortnightly interest surcharge on any defaulted amount per deadline until liquidation”.*

The plaintiff relies on the letter at page 8 of his bundle of documents to argue that the defendant has admitted the sum claimed. That letter is dated 24th September, 2018 which the defendant wrote to the plaintiff admitting that he had defaulted on payment as per the agreed payment schedule. The defendant further asked for a waiver of the 30% interest due fortnightly, which is contained in the contract of sale.

While the defendant in the said letter admits default, and that interest is due on the amount at 30% fortnightly, he does not admit the amount of K704, 950.44 claimed by the plaintiff. The plaintiff has not explained how he arrived at the amount of K704, 950.44 claimed as

due, and the defendant in his defence contends that he did not agree that compound interest would be charged. Therefore, it cannot be said that the defendant by his pleadings or otherwise has admitted the claim for the payment of K704, 950.44.

That claim is contentious, and I accordingly decline to grant the plaintiff's application. As the parties have complied with the orders for directions, the matter shall come up for trial on 24th November, 2020 at 14:00 hours. Costs shall be in the cause, and leave to appeal is granted.

DATED AT LUSAKA THIS 27th DAY OF AUGUST, 2020

 S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE