

IN THE HIGH COURT FOR ZAMBIA

2019/HP/1829

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

MOTHERLAND ENTERPRISES LIMITED

PLAINTIFF

AND

TRUMPET SECURITY SYSTEMS LIMITED

DEFENDANT

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, IN
CHAMBERS, ON 2ND JULY, 2020.**

For the Plaintiff: N/A

For the Defendant: N/A

RULING

CASES REFERRED TO:

1. *China Henan International Economic Technical Cooperation vs. Mwange Contractors Limited* (2002) Z.R. 28, 31;
2. *Ellis vs. Allen* (1914) 1 Ch. 904 at 909;
3. *FMC Finance Zambia Limited vs. Bapo Bakery Limited and others* - 2016/HPC/0288;
4. *Zega Limited vs. Zambezi Airlines and Diamond General Insurance Limited* - SCZ Appeal No. 39 of 2014; and
5. *Himani Alloys Limited vs. Tata Steel Limited* (2011) 3 Civil Cases 721.

LEGISLATION REFERRED TO:

1. *The High Court Act, Chapter 27, Volume 3 of the Laws of Zambia*; and
2. *The Rules of the Supreme Court (White Book)*, 1999 Edition, London Sweet & Maxwell.

1 **INTRODUCTION**

- 1.1 By Writ of Summons and Statement of Claim, filed herein on 15nd November, 2019, the Plaintiff claims against the Defendant an order for immediate payment of the sum of One Million Four Hundred and Ninety Thousand, Seven Hundred and Twenty-Four Kwacha and Ninety-Nine Ngwee (ZMW 1,490,724.99) being compensation for loss of Plaintiff's goods under the physical security and protection of the Defendant; Damages for breach of contract and loss of business from 7th October, 2018, to the date the Defendant settles in full the compensation in the amount stated above; interest; and costs.
- 1.2 The Plaintiff has now applied to enter Judgment on Admission. The application is made pursuant to **Order XXI, Rules 6** of **The High Court Rules**¹ and **Order 27, Rule 3** of **The Rules of the Supreme Court**².
- 1.3 Upon considering that Zambia is currently faced with Covid-19, a global pandemic which demands social distancing and that this is a matter which can be disposed of on Affidavit evidence whilst adhering to the social distancing guidelines given by the Judiciary and relevant government authorities, on 5th June, 2020, I directed the parties herein to file their respective Affidavits and Skeleton Arguments, upon which the Court would render its Ruling. The record shows that only the Plaintiff filed its Skeleton Arguments as directed.

I have thus dispensed with hearing submissions *viva voce* and rendered this Ruling based on the Affidavit evidence of both parties and Skeleton Arguments filed by the Plaintiff.

2 AFFIDAVIT EVIDENCE

- 2.1 The application is supported by an Affidavit deposed to by Godfrey Mwanza, the Managing Director of the Plaintiff company, in which it is averred *inter alia*, that by letters dated 11th and 27th September, 2019, the Defendant agreed to sell a house and make specific staggered payments to the Plaintiff until complete liquidation of the Defendant's debt, as shown by exhibits marked "GM2" and "GM3".
- 2.2 It is further averred that the said letters constitute an express admission of liability and that the Defendant does not have a defence on merits, thus this Court may enter Judgment on Admission.
- 2.3 The Defendant filed herein an Affidavit in Opposition to Summons for an Order to enter Judgment on Admission, deposed to by Manyando Muyangwa, the Director in the Defendant company, in which it is averred *inter alia*, that by letter exhibited marked "MM1", the Defendant revoked its earlier commitment after a full investigation revealed that the Plaintiff's worker was involved in the theft and based on the new contract between the parties exhibited marked "MM2", which did not provide any liability. That

since the letters written to the Plaintiff were revoked, they do not constitute an express admission.

3 LEGAL SUBMISSIONS

3.1 The Plaintiff filed herein written submissions, in which it is submitted *inter alia* that the Defendant has made an admission of the Plaintiff's case, by its letters dated 11th and 27th September, 2019 and paragraph 3 of its Defence, in line with **Order XXI, Rule 6** of **The High Court Rules**¹, upon which this application is anchored. To fortify its submission, the Plaintiff relied on the case of **China Henan International Economic Technical Cooperation vs. Mwange Contractors Limited**¹, where the Supreme Court held as follows: -

"The new dispensation in commercial matters requires parties to plead their cases with precision and detail early in the litigation in order to assist the Courts in narrowing and defining the issues in contention... in keeping with the practice directions, where a defence in a commercial matter does not satisfy the requirements of rule 2, the Court is entitled to enter Judgment on Admission in an appropriate case." (Counsel's emphasis)

3.2 It is further submitted that the Defendant's purported Defence does not dispute the Plaintiff's claim, except by specious argument. Reference was made to **Order 27, Rule 3** of **The Rules of the Supreme Court**² and the notes under **Subsection 1**, which provide further guidance that "...such admissions may be express or

implied, but they must be clear." It is contended that a mere perfunctory denial without substance is wholly inadmissible and does not affect express admission of fact. It is also contended that the use of the term "*Either by his pleadings or otherwise*" includes an admission made in a letter before or since the action brought. To fortify this contention, the case of **Ellis vs. Allen**² was cited for the following: -

"I cannot conceive any circumstances which the defendant Allen could rely on as a defence to the action, having regard to the admissions made by the letter, and I hold that the Plaintiff is entitled to judgment against him under (this rule)." (Counsel's emphasis)

4 THE LAW

4.1 I have considered the application to enter Judgment on Admission, the Affidavit evidence, the written submissions and list of authorities, which have been of great assistance to this Court. The issue for determination is whether the Defendant has clearly admitted the amount being claimed to warrant the entry of Judgment on Admission. In a nutshell, whether or not this is a proper case fit for this Court to exercise its discretion to enter Judgment on Admission in favour of the Plaintiff on the basis of the letters written by the Defendant and relied upon by the Plaintiff in its application.

4.2 In determining the application to enter Judgment on Admission before this Court, it is worth considering the effect of **Order XXI, Rule 6** of **The High Court Rules**¹ from the onset. The said Order provides as follows: -

"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..."

4.3 I also refer to **Order XXI, Rule 5** of **The High Court Rules**¹, which states as follows: -

"Admission by defendants

If any defendant shall sign a statement admitting the amount claimed in the summons or any part of such amount, the Court or a Judge, on being satisfied as to the genuineness of the signature of the person before whom such statement was signed, and unless it or he sees good reason to the contrary, shall, in case the whole amount is admitted, or in case the plaintiff consents to a judgment for the part admitted, enter judgment for the plaintiff for the whole amount or the part admitted, as the case may be, and, in case the plaintiff shall not consent to judgment for the part admitted, shall receive such statement in evidence as an admission without further proof." (Court's emphasis)

4.4 I wish to further state that **Order 27, Rule 3** of **The Rules of the Supreme Court**² empowers the Court to enter Judgment in favour of a party based on admissions of facts made by the other party on its claims. The said order is couched as follows: -

"Judgment on admissions

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.

An application for an order under this rule may be made by motion or summons." (Court's emphasis)

- 4.5 I also make reference to **Order 27, Rule 3 (4)** of **The Rules of the Supreme Court**² which gives guidance as follows: -

"Either by his pleadings or otherwise"

Such admissions may be made expressly in a defence or in a defence to a counterclaim, or they may be admissions by virtue of the rules, as where a defendant fails to traverse an allegation of fact in a statement of claim... (Court's emphasis)

5 ANALYSIS AND FINDINGS

- 5.1 In my humble view, **Order XXI, Rule 5** of **The High Court Rules**¹ empowers the Court to exercise its discretion to enter Judgment on Admission, upon being satisfied that there is a statement of admission by the Defendant, with the genuine signature of the Defendant appended to it.

5.2 My first consideration at this stage, is to determine whether this application properly sits under the authorities cited in paragraph 4 above. In view of that, I must be satisfied that the Defendant herein has made an admission of fact or an admission of part of the Plaintiff's case, either in his pleadings or otherwise. The use of the word "otherwise" which was emphasised by the Plaintiff, clearly include other sources, other than pleadings. I am fortified by the case of **FMC Finance Zambia Limited vs. Bapo Bakery Limited and others**³, wherein it was held that: -

"Order XXI, Rule 6 does, however, encompass admissions made "otherwise" than pleadings. I take the position that the use of the term "otherwise" widens the scope of where the admission can be housed. The scope clearly transcends admissions contained in pleadings and includes other instruments or sources."

5.3 In *casu*, the Defendant settled its Defence on 29th November, 2019, in which it denies the Plaintiff's claims. According to the cited authorities, the admission that must be considered herein may be contained in the pleadings or otherwise and it is clear from the cited authorities that an admission may be made expressly in pleadings or it may be an admission arising as a result of the rules. This position was espoused in the case of **Ellis vs. Allen**², cited by the Plaintiff's Counsel, where the

Court expounded that the admission may be express or implied but it must be clear.

- 5.4 I have perused the Writ of Summons, Statement of Claim and the Defence. A careful examination of **Order 27, Rule 3 (4)** of **The Rules of the Supreme Court**² reveals that an admission may be in a letter before or since the action was brought. Accordingly, I have further carefully perused the letters dated 11th and 27th September, 2019, which are exhibited and marked as "GM 2" and "GM 3" attached to the supporting Affidavit for entry of Judgment on Admission. In the said letters, the Defendant admits to 50% of the Plaintiff's total loss in the sum of K700,000.00 and undertakes to payment of the said sum by proposed instalments. In the second letter, the Defendant retracts its initial proposal and instead offers to surrender its house to the Plaintiff in settlement of the Plaintiff's total loss. The Plaintiff strongly contends that these letters amount to admission by the Defendant.
- 5.5 The Defendant on the other hand contends that the said letters were withdrawn. He has explained the circumstances under which the letters were authored and exhibited a letter marked "MM 1" addressed to the Plaintiff dated 4th October, 2019, which was sent some 7 days after the last letter dated 27th September, 2019, attributed to the Defendant. In the letter of 4th October, 2019, the Defendant revokes its earlier letters which are

relied on by the Plaintiff, after discovering that that the Plaintiff's workers may have been involved in the Plaintiff's loss. In addition, the Defendant has exhibited a contract dated 6th April, 2013, marked "MM 2" which did not provide for liability.

- 5.6 In my view, the Defendant does not dispute having penned and signed the letters exhibited by the Plaintiff but states that the same were revoked.
- 5.7 The entire application rests on the letters of 11th and 27th September, 2019, which were revoked before this action was commenced. In my view, the said letters cannot be taken as admission of liability by the Defendant in the claimed sum. My view is further fortified by the fact that not only did the Defendant revoke the said letters, but it has not admitted being indebted in the claimed sum in its Defence. Admissions of this nature must be clear to warrant entry of Judgment on Admission.
- 5.8 It is my view that, the letters having been revoked and the amount having been disputed in the Defence, there is no clear admission of liability as contended by the Plaintiff. An Order of Judgment on Admission should only be made by the Court where there are either clear express or clear implied admissions by a Party. Entering Judgment on Admission in *casu* will deny the Defendant an opportunity to contest the claims against it.

5.9 I am fortified by **Order 27, Rule 3 (2)** of **The Rules of the Supreme Court**², which provides that such admissions may be express or implied but they must be clear, which position was confirmed and echoed in the case of **Zega Limited vs. Zambezi Airlines Limited and Diamond General Insurance Limited**⁴ as follows: -

"The power of the Court to enter Judgment on Admission is discretionary and that in order to exercise its discretion to enter Judgment on Admission, the admission relied upon must not be limited by any conditions and that it must be clear." (Court's emphasis)

5.10 Further, in the case of **Himani Alloys Limited vs. Tata Steel Limited**⁵, the Supreme Court of India made it clear *inter alia* that: -

"...the admission must be a conscious and deliberate act of the party making it and showing an intention to be bound by it And that unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim against him." (Court's emphasis)

6 CONCLUSION

6.1 I am not satisfied that there is a clear enough statement of admission by the Defendant. In fact, the Defendant withdrew the letters relied upon by the Plaintiff. It is, therefore, my view that this is not a proper case for the Court to exercise its discretion to enter Judgment on

Admission, the Defendant having not clearly admitted the sum being claimed.

- 6.2 In the circumstances of this case, each party shall bear its own costs.
- 6.3 Leave to Appeal is granted.

Dated this 2th day of July, 2020.



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P. K. YANGAILO
HIGH COURT JUDGE