

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Commercial Jurisdiction)*

2019/HPC/0260

**BETWEEN:**

**ALPS INTERNATIONAL EXPORTS**

**1<sup>ST</sup> PLAINTIFF**

**MAARS UNIFORMS**

**2<sup>ND</sup> PLAINTIFF**

**DRS INTERNATIONAL**

**3<sup>RD</sup> PLIANTIFF**

**AND**

**THE ATTORNEY GENERAL**



**DEFENDANT**

**Before Honourable Mr. Justice Bonaventure C. Mbewe in  
Chambers on the 4<sup>th</sup> March, 2020.**

*For the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Plaintiffs* : *Mr. M. Chileshe of Messrs.  
Eric Silwamba, Jalasi and  
Linyama Legal Practitioners*

*For the Defendant* : *Mrs. S. Sandala – Sakala  
Acting Assistant Senior State  
Advocate, Attorney General's  
Chambers*

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**RULING EX TEMPORE**

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**Cases and Authorities Referred to:**

1. *A J Trading Company Limited v. Chilembo* (1973) ZR 55
2. *China Henan International Economic Technical Cooperation v. Mwange Contractors Limited* (2002) ZR 28
3. *Lancashire Welders Limited v. Harland & Wolff* (1950) 2 All ER
4. *Chazya Silwamba v. Lamba Simpito* (2010) ZR Vol. 1 at page 475
5. *Attorney General and Development Bank of Zambia v. Gershom Moses Burton Mumba* (2006) ZR 77
6. Order 53, Rule 6 (5) of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia
7. Order 21, Rule 6 of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia
8. Order 27 of the Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition Vol. 1

This is an application filed by way of Summons to Enter Judgment on Admission pursuant to **Order 53, Rule 6 (5)** as read with **Order 21, Rule 6 of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia** and **Order 27 of the Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition Volume 1**. The application was filed by the Plaintiffs herein on 16<sup>th</sup> January, 2020. The application is supported by an Affidavit sworn by one Rajeev Sabherwal as well as Skeleton Arguments and a List of Authorities all of even date.

The Summons plead that the Plaintiffs be at liberty to enter Judgment on Admission against the Defendant on the grounds that Paragraphs 4 and 5 of the Defence herein are admissions of

indebtedness and that the Defendant bear the costs of the application.

The affidavit of Rejeev Sabherwal deposes that he is a partner and managing director in the Plaintiffs and has authority to depose to the affidavit. That on 22<sup>nd</sup> July, 2019 the Defendant filed a defence to the action brought against it wherein in paragraphs 4 and 5, the Defendant admitted that it is indebted to the Plaintiffs in the sum of US\$1,433,366.48. That the Plaintiffs can enter Judgment on admission, the Defendant having made this admission to owing the Plaintiffs the amount in dispute.

The Plaintiffs in their Skeleton Arguments rely on **Order 53, Rule 6 (5)** as read with **Order 21, Rule 6 of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia** and **Order 27 of the Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition Volume 1** in bringing their application and set out verbatim the provisions of the Orders relied on.

The Plaintiffs also rely on the case of **A J Trading Company Limited v. Chilembo (1)** where it was stated that;

***“An admission by a Defendant of an allegation in the Plaintiff’s statement of claim means that there is no***

***issue between the parties on that point and no further evidence is admissible in reference to that point.”***

Other cases relied on are **China Henan International Economic Technical Cooperation v. Mwange Contractors Limited** (2) and that of **Lancashire Welders Limited v. Harland & Wolff** (3) which states that ***“the proper order is judgment for the Plaintiff for the amount admitted....”***. The Plaintiffs submit that this is a proper case for this Court to make an Order for Judgment on Admission to be entered against the Defendant.

At the Hearing, the Plaintiffs relied on all the documents filed into Court in support of their application.

The Defendant has not filed any documents to oppose the application and at the hearing, the Defendant submitted that it had not filed any opposition to the application because it does not oppose it. The Defendant did however, ask that costs of the application and the action should be borne by each party and asked the Court to make such order in exercise of its discretion as vested in **Order 40, Rule 6 of the High Court Rules**.

In response to the submission on costs made by the Defendant, Counsel for the Plaintiffs, Mr. Chileshe, submitted that it is in the interests of justice that the costs of the application and the action should be awarded to the Plaintiffs considering how long the debt

has been outstanding and the fact that the Defendant in its defence has conceded that it does owe the Plaintiffs.

I have considered all documents and submissions in this application especially the Defendant's submission that it does not oppose the application especially in view of the fact that there were express admissions of the indebtedness owed to the Plaintiffs contained in Paragraphs 4 and 5 of the Defence.

I am guided by the authority of the **Order 53, Rule 6 of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia.**

In the **China Henan International Economic Technical Cooperation v. Mwange Contractors (2)** the Court held that;

*“In the new dispensation in commercial matters require parties to plead their cases with precision and in detail early in the litigation in order to assist the courts in narrowing and defining the issue in contention.... 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.”*

*“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.”*

I am also guided by **Order 21, Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia** which provides as follows;

*“If any defendant shall sign a statement admitting the amount claimed in the summons of 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 see 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.”*

The case of **Chazya Silwamba v. Lamba Simpito (4)** provides additional authority on the question of when a Court can enter judgment on admission in a cause before it when the Honourable Court held;

1. *“A party may admit the truth of the whole or any part of another’s case. When a fact is admitted, it is unnecessary for a party to advance evidence in relation to the admitted fact(s) at trial.*
2. *When a fact is admitted, it ceases to be an issue and neither is required or permitted to advance evidence about it at trial.*
3. *An admission may be made expressly in a defence or in a defence to counterclaim.*
4. *An admission may also arise by virtue of the rules. For instance, where a defendant fails to traverse an allegation of fact in a statement of claim or where there is a default of defence.*
5. *If a defendant fails to address an allegation he is deemed to admit it.*
6. *The function of an admission is to ensure that the Court’s time at trial is not wasted and delay is avoided. Admissions also narrow the issues to be decided.*

Therefore, I find that the Defendant has not opposed the current application and readily admitted the debt in its Defence, in the sum of US\$1,433,366.48. **Order 53, Rule 6** as read with **Order 21 (5) of the High Court Rules of the High Court Act, Chapter 27 of the Laws of Zambia**, as also read with **Order 27, Rule 3 of the Rules of the Supreme Court of England, 1999 Edition**, which is also of similar input as Order 27, assure me that this is a proper case for me to enter Judgment on admission in favour of the

Plaintiff, which I hereby do, for the claimed sum of US\$1,433,366.48.

The Plaintiff, in its endorsement on the writ claims ***“interest on sums payable at the current Bank of Zambia lending rate.”***

The Supreme Court addressed the question of interest on foreign currency claims in great detail in the case of **Attorney General and Development Bank of Zambia v. Gershom Moses Burton Mumba (5)**. The Court held that it must always be borne in mind that the rates of interest in foreign currency are generally very low and that where the court awards judgment in a foreign currency, the court has discretion to determine a rate of interest that it considers appropriate for that currency, which will, in any event, normally be the rate at which money in that currency can be borrowed. The endorsement on the writ does not specify that the rate claimed is the Bank of Zambia lending rate for foreign currency. I will therefore be guided by the Supreme Court decision.

The question of the Court’s discretionary power to award costs is set out in **Order 40, Rule 6 of the High Court Rules** and the normal practice is that costs follow the event. However, the Court may exercise its discretion on this matter in a manner it deems fit.

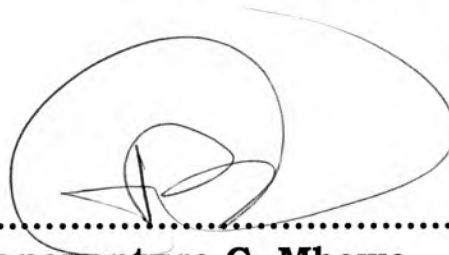
I therefore enter Judgment on Admission in favour of the Plaintiff, for the claimed sum of US\$1,433,366.48.



I Order the Defendant to pay interest on the said Judgment amount at the rate of 5%, from the date of the writ of summons until the date of final payment.

In exercise of the discretion vested on this Court, I award the Plaintiffs costs of this application only. I make no award on costs of the main action as the Defendant has readily admitted the debt and not wasted the Court's time. Each party shall therefore bear its own costs of the main action.

**Delivered under my hand at Lusaka this 6<sup>th</sup> day of March 2020**

A handwritten signature in black ink, consisting of several loops and a central vertical stroke, positioned above a horizontal dotted line.

**Bonaventure C. Mbewe  
HIGH COURT JUDGE**