

IN THE HIGH COURT OF ZAMBIA

2008/HP/0197

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

BANK OF ZAMBIA



PLAINTIFF

AND

ELVIS MTONGA

DEFENDANT

Counsel for the Plaintiff: S. Kaingu In house – Legal Counsel
Bank of Zambia.

Counsel for the Def: M. Kapapula Muyoba.

Before: Mrs. A. M. Chulu – Registrar Chambers

JUDGMENT ON ASSESSMENT

The Plaintiff filed an application for Assessment Pursuant to Order 30 rule 10 (4) of the High Court Rules Chapter 27 of the Laws of Zambia. The Plaintiff filed an Affidavit in Support of Summons for Assessment dated 9th May, 2019. A further Affidavit in Support was filed into Court on 10th December, 2019.

It was averred that the Plaintiff commenced this action against the Defendant by Writ of Summons and Statement of Claim dated 27th February, 2008. The following were the reliefs being sought;

1. The sum of One Billion Four Hundred and Twenty Million Four Hundred and Thirteen Thousand Three Hundred and Twenty – Five Kwacha and Eighty – Nine Ngwee (K1, 420, 413, 325.89) (unrebased) payable by virtue of the Bonding Agreement signed between the Plaintiff and the Defendant which amount is the total of all sums paid in support of the Defendant's Doctor of Philosophy studies from the year June, 2002 to June, 2006;
2. Interest on the above claimed sum at such rates and for the period or periods as the Court shall deem fit, and
3. Costs of and incidental to this action.

It was further averred that on or about the 30th April, 2015, the parties entered into a Consent Judgment in favour of the Plaintiff, for the sum of K234, 705, 273.50 (unrebased) to be paid in monthly instalments of K10, 000, 000.00 (unrebased) each by the Defendant to the Plaintiff. Exhibit "MM1" is a true copy of the Consent Order.

It was deposed that on or about the 30th November, 2015, judgment was entered in favour of the Plaintiff for the sum of K1, 163, 200.52 together with interest at the rate of 6% from the 27th February, 2008 to the date of judgment and thereafter at the current bank lending rate until the whole amount is paid. Exhibit marked "MMM2" is a true copy of the judgment.

It was submitted that the Defendant is therefore indebted to the Plaintiff in sum of K234, 705.27 as agreed by the parties, and a sum of K1, 163, 200.52 as adjudged by the Court, together with

interest on the said amounts Pursuant to the Judgment Act and the Judgment dated 30th November, 2015.

A calculation of the interest at the rate of 6% per annum on the sum of K234, 705.27 as at 31st March, 2019 is K55, 171.81. Exhibit "MM3" is a true copy of the calculations.

A further calculation on the Judgment sum of K1, 168, 200.52 as at 31st March is K1, 466, 286.97. Exhibit marked "MM4" is a true copy of the calculations at 23.82% per month being the current bank lending rate as at 1st December, 2015. The witness filed a further Affidavit in Support of Summons for Assessment and exhibited "MM1" which is a true copy of the Table of Commercial Banks' Interest Rates which was the basis of the Plaintiff's calculations for the year 2015.

The witness orally augmented his Affidavit evidence. He stated that the Defendant owes the Plaintiff a sum of K1.4 Million. The amount includes Tuition fees and salaries paid to the Defendant while he was on study leave.

He contended that it was a sponsorship requirement that the Defendant should sign the Bonding Agreement. The Defendant signed the Agreement. The Bonding Agreement required that the Defendant should work for the Bank of Zambia for at least four (4) years. Unfortunately, upon return, the Defendant resigned from employment after two months. The Bonding Agreement required that the Defendant pays back the Bank the Tuition fees including all the salaries paid to him by the Bank. The witness reiterated what he deposed in his Affidavit. He contended that

the Defendant should be compelled to pay the outstanding amount on the Judgment of K2, 629, 487.49. He stated that this amount does not include the amount stated in the Consent Order.

There was no cross-examination, because the learned Counsel for the Defendant was not in attendance despite having been present when the matter was adjourned on 12th December, 2019.

Reference is made to **Order 30 rule 4 of the High Court Rules** which allows proceedings ex-parte where a party fails to attend.

In assessing the amounts being sought, I referred to **Clause 2 of the Bonding Agreement** which provides that;

“Should you decide to leave the Bank during the period of bonding, you will pay all expenses incurred by the Bank during your training period.”

Further, **Clause 5 and 7 of the Bonding Agreement** provides as follows;

“5. All.....the monies paid to or on behalf of the student in terms of this agreement shall, subject to the provisions of Clause 7, become immediately repayable by the student.

- a) The grant to student is cancelled by the Bank as in Clause 4 provide, or***
- b) The student fails to enter or return to the service of the Bank as in Clause 4 provided; or***
- c) Within the period specified in paragraph***

d) Of clause 3, the student resigns or is dismissed from the services of the Bank on grounds of misconduct or inefficiency.”

7 If, by virtue of the provision of Clause 5, the grant becomes repayable by the student by reason of his failure to enter or return to the service of the Bank on grounds of misconduct or inefficiency, the amount which shall be repayable by the student to the Bank shall not exceed the total granted to the student.....”

It is common cause that from the provision cited above, there are consequences in an event one resigns from the Bank and failure to complete the period of bonding service. The consequences are that all amounts paid to the Defendant during the period of his study become due and payable upon his resignation.

The Judgment in favour of the Plaintiff states as follows;

“I therefore order that the disputed amount of salary allowance and bonus in the sum of ZMK1, 163, 200.52 shall be paid by the Defendant at the rate of 6% interest from 27th February, 2008 up to the day of Judgment and thereafter at the current Bank lending rate until the whole amount is payable.”

I have noted from the submissions availed to me that the Plaintiff is demanding to be paid as follows;

a) K234, 705.27 Pursuant to the Consent Order of April, 2015.

b) K1, 163, 200.52 Pursuant to the Court Judgment dated 30th November, 2015.

It is clear that the order of the Honourable Judge did not stipulate that an amount of K234, 705.27 Pursuant to the Consent Order should be paid. The Judgment clearly states that a sum of K1, 163, 200.52 should be paid by the Defendant. In line with the Judgment, delivered on 30th November, 2015 I order that a sum of K1, 163, 200.52 be paid to the Plaintiff.

I further Order that Interest shall be calculated in accordance with the Judgment dated 30th November, 2015. The Judgment explicitly stated that interest shall be calculated at the rate of 6% from 27th February, 2008 to the date of Judgment.

The Judgment does not state that the Plaintiff is entitled to interest on the amount awarded by way of Consent Order of K145, 590.67. The judgment explicitly ordered that a sum of K1, 163, 200.52 shall be paid by the Defendant at the rate of 6% interest. Therefore $K1, 163, 200.82 \times 6\% \div 100 = K69, 792.03$.

The Honourable Judge went on to state that interest shall thereafter be at the current lending rate until the whole amount is payable. Thereafter, the sum of K1, 163, 200.52 shall attract interest at the current lending rate from 30th November, 2015 until when the whole amount is liquidated. Therefore a sum of $K1, 163, 200 \times 23.82\% \div 100 = K277, 074.04$.

For avoidance of doubt the Defendant shall pay as follows;

K1, 163, 200.52 + K69, 792.03 (interest at 6%) and K277, 074.04 Interest at the current lending rate of 23.8%. Therefore a sum of K1, 510, 066.59 shall be paid to the Plaintiff.

The Honourable Judge did not order costs due to the nature of the relationship which existed between the Plaintiff and the Defendant up to the time of separation. Consequently, I order no costs.

Leave to appeal is granted.

DELIVERED ON 31st DAY OF MARCH, 2020


A. M. Chulu
Registrar - Chambers

REPUBLIC OF ZAMBIA
HIGH COURT
31 MAR 2020
REGISTRAR - CHAMBERS
P.O. BOX 50067, LUSAKA.