

IN THE HIGH COURT FOR ZAMBIA

2020/HKC/004

AT THE COMMERCIAL REGISTRY

HOLDEN AT KITWE

(Civil Jurisdiction)

BETWEEN:

CECIL CHAMS LIMITED



PLAINTIFF

AND

ZAMBIA RAILWAYS LIMITED

DEFENDANT ✓

JUDGMENT ON ADMISSION
 Pursuant to Order LIII rule 6 of the High Court
 (Amendment) Rules S.I No. 27 of 2012



Rules of Court and Statutes

- (i) *Order LIII of the High Court (Amendment) Rules S.I No.27 of 2012*
- (ii) *Rule 2 of the Practice Directions governing Commercial Matters*

Case Law

- (i) *China Henan International Economic Trade Cooperation vs Mwange Contractors Limited (SCZ Judgment No. 7 of 2002)*

Other Works

- (i) *Matibini, on Zambian Civil Procedure: Commentary and Cases*

1. Introduction

1.1. In an action filed on 23rd January, 2020, the Plaintiff seeks the following:

- i. An Order for payment of the sum of Kwacha Three Hundred and Two Thousand three hundred and forty nine and seventy seven ngwee (K302, 349.77) being the outstanding amount on Invoice Number 027;
- ii. Damages for breach of contract;
- iii. Interest on (i) and (ii) above at the current Bank of Zambia lending rates;
- iv. Legal costs;
- v. Any other order of the Court may deem fit.

1.2. The Defendant filed a Memorandum of Appearance and Defence on 19th February, 2020.

1.3 In accordance with *Order LIII rule 6 of the High Court (Amendment) Rules S.I No.27 of 2012*, the Court has considered the defence filed.

2.0 The Law on Judgment on Admission

2.1 The facts and the Law

According to the Statement of Claim, the Plaintiff has pleaded the following facts (of relevance to the Judgment):

“3. The Plaintiff was selected by the defendant company as a contractor and supplier by tender sometime in 2019 and it was a

term of the Agreement between the Plaintiff and the Defendant, that the Defendant must pay for services rendered by the Plaintiff within 30 days after delivery of goods to the Defendant Company.

4. On 26th March 2019 the Defendant raised Purchase Order Number KBE No. 1285 in favor of the Plaintiff for the construction of a culvert at Chikululu at the total cost of K302,349.77.

5. The Purchase Order stated in paragraph 4 above was executed by the Plaintiff and the Plaintiff subsequently raised Invoice No. 027 which was delivered to and acknowledged by the Defendant on 4th October 2019.

6. The Defendant generated and delivered the completion certificate to the Plaintiff dated 7th October 2019 which stated the 4th October 2019 as the final completion date of the project and confirming the completion of the satisfactory works by the Plaintiff in conformity with the engineer's specifications.

7. The Plaintiffs Invoice No. 027 was due for payment within 30 days from 4th October, 2019 but the Defendant has failed/refused or neglected to settle the same and to date it remains unpaid.

3. In its Defence, the defendant has purported to traverse every allegation in the statement of claim, (as relevant to the Judgment) as follows:

“3. Paragraph 3 of the Statement of Claim is disputed as far as it states that it was term of the agreement between the parties that the defendant must pay for the services rendered by the Plaintiff within 30 days after delivery of goods (sic) to the Defendant Company. The Defendant will aver that what was in fact agreed by the parties was that the defendant would ensure that the payment was ready within 60 days from the date of the certification of the works and that further that the Defendant would withhold a 10% retention of the amount certified works for a defect liability period of 6 months.

4. Paragraph 4 of the Statement of Claim is disputed. The Defendant will aver that it raised Purchase Order Number KBE No. 1285 in favour of the Plaintiff for the construction of the culvert at Chikululu at the total cost of K302,349.77 on 27th May 2019 and not 26th March 2019, as claimed by the Plaintiff.

5. Paragraphs 5 and 6 of the statement of Claim are not materially disputed.

6. Paragraph 7 of the Statement of Claim is disputed and the Defendant repeats paragraph 3 above.

7. Paragraph 8 of the Statement of Claim is controverted to the extent that it states that the Defendant has refused/denied and or neglected to settle the outstanding amount. The Defendant has not refused/denied and/or neglected to settle the outstanding amount. Rather the Defendant has indicated to the Plaintiff that, given its many financial commitments at present, the Defendant be allowed to settle the outstanding contractual amount in manageable monthly instalment payments.”

4. The Law

The Court has noted the provisions of Order LIII rule 6 (4) and (5) of the High Court (Amendment) Rules S.I No.27 of 2012 which reads as follows:

(4) A defence that fails to meet the requirements of this rule shall be deemed to have admitted the allegations not specifically traversed.

(5) “Where a defence fails under sub rule (4), the Plaintiff or Defendant, or the Court on its own motion, may in an appropriate case, enter Judgment on admission.

The Court therefore has the power to enter judgment, *suo moto*, upon any admission of fact or of part of a case made by a party to

a cause either by his pleadings or otherwise, without waiting for the determination of any other question between the parties.

It is cardinal to note that in the Commercial division, the function of an admission is to ensure that the Courts time at trial is not wasted and delay is avoided. A defence must not be evasive, nor must it be superficial.

The Court has further considered the decision of the Supreme Court in the case of **China Henan** where the Court stated as follows:

“The new dispensation in commercial matters is that Parties must place their cards on the table early in the litigation to assist in narrowing issues of contention and for the real issues in the dispute to surface. It is not prudent for a party to wait for trial before exposing their side of the story...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”

5. Analysis of the Law and Defence

5.1 I have meticulously perused the statement of Claim and the Defence and note the categoric and unequivocal acknowledgment of the debt by the Defendant. I note the Defendant in **paragraph**

3 of the Defence avers that payment would be processed after 60 days, as opposed to 30 days as pleaded by the Plaintiff.

5.2 Further, **paragraph 4** of the Defence, confirms the issuance of the Purchase Order in the sum of K302,349.77 in favour of the Plaintiff save only to take issue with the date of issuance being 27th May 2019 and not 26th March 2019.

5.3 **Paragraphs 3, 4 and 5** of the defence (as quoted above), houses an express admission to the Purchase Order, its subsequent value of the claim, confirms the issuance of the certificate of completion, and merely pleads inability to settle the dues to the Plaintiff.

6. Findings:

In my view, there being no denial by the Defendant, the admission is clear, unambiguous and unconditional.

I therefore consider since the admission sits in the defence, a pleading, that this is a proper case for the Court to exercise its jurisdiction, *suo moto*, and enter judgment on admission pursuant to *Order LIII rule 6 (5) of the High Court (Amendment) Rules S.I No.27 of 2012*

7. Conclusion

In light of my being satisfied that the defendant has admitted indebtedness in its pleadings, Judgment on admission is entered against the defendant in the sum of Kwacha Three Hundred and Two Thousand three hundred and forty nine and seventy seven ngwee (K302, 349.77) being the outstanding amount on Purchase Order No. KBE 1285 and Invoice Number 027.

The Judgment debt shall attract interest at the average of the short-term deposit-rate per annum prevailing from the date of commencement of this action to date of Judgment and thereafter at the Bank of Zambia short term lending rate until date of full and final settlement.

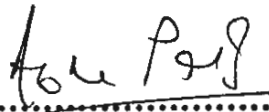
Lastly, I note that the defence states that the defendant is incapable of discharging the indebtedness at once.

To avoid perpetuating the conclusion of this matter by leaving it open for the defendant to apply to pay the judgment debt by instalments, I consider it appropriate to order, as I now do, that the judgment debt be paid by three (3) consecutive equal monthly instalments, inclusive of interest. The first instalment shall be paid no later than 30th May, 2020.

Upon the failure of any instalment, the whole amount outstanding shall immediately become due.

Costs are awarded to the Plaintiff, to be taxed in the event of default of agreement. Leave to appeal is granted

Dated at Kitwe this^{12th}..... day of May, 2020.



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Abha N. Patel, SC.
Judge of the High Court