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IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Commercial Division)

2015/HPC/0448

BETWEEN:



JEAN-MARC NDAHIMANA

PLAINTIFF

AND

BONIFACE MUSABIMANA

DEFENDANT

Before Lady Justice B.G. Shonga this 17th day of December, 2020

For the Plaintiff, Ms. M. Masabo, Messrs Wilson and Partners

JUDGMENT

Cases Referred to:

- 1. National Drug Company Limited and Zambia Privatization Agency v. Mary Katongo, Appeal No. 79/2001.**
- 2. Printing and Numerical Registering Company v. Simpson (1875) L.R. 19 EQ 462.**
- 3. Mwamba v. Nthenge, Kaing'a Chekwe, SCZ Judgement No.5 of 2013.**

Legislation and Other Material Referred To:

- 1. Order XXI., Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia.***

1.0 BACKGROUND

In this action, the plaintiff claims for an order for the immediate payment of US\$ 16,100.00 and EURO €4,800.00 being the alleged total outstanding amount from a business agreement between the plaintiff and the defendant. In addition, the plaintiff seeks an order for damages for breach of the business agreement, interest at the current commercial bank lending rates and costs.

According to the statement of claim, the plaintiff and defendant entered an agreement which entailed the purchase of goods from Belgium by the plaintiff to be supplied to the defendant for the defendant to sell in Zambia, for a commission; that the plaintiff supplied goods valued at US\$ 16, 100.00 to the defendant, which goods were sold by the defendant, but that the defendant totally failed to account for the proceeds of sale.

In addition, the plaintiff averred that he loaned the defendant the sum of € 4,800.00 which the defendant has failed to repay.

The defence, briefly summarised, is that the defendant was not engaged to sell the goods for a commission, but that the parties

entered a joint venture agreement in which they agreed to share profits and losses equally. Additionally, the defendant denies having borrowed money from the plaintiff.

When the matter came up for trial on 6th November, 2017, the defendant was not in attendance. Being satisfied that the Notice of Hearing dated 8th September, 2017, had been served on the defendant, the Court proceeded to conduct the trial.

2.0 THE EVIDENCE

The plaintiff, through the unchallenged testimony of his only witness, Jean-Paul Mungezi (PW1), presented evidence in chief by dint of PW1's witness statement filed on 12th July, 2017. Through it, PW1 testified that by Power of Attorney dated 1st December, 2015, the plaintiff appointed him as his attorney to, *inter alia*, collect monies owing by the defendant to the plaintiff. In this regard PW1 adduced a document dated 27th July, 2015, in which the defendant acknowledged his indebtedness to the plaintiff.

3.0 PLAINTIFF'S SUBMISSIONS

The plaintiff contends that the plaintiff has demonstrated that he performed his obligations under the contract by sourcing, purchasing, and shipping of the said goods. The plaintiff beseeches this court to enforce the agreement.

The plaintiff referred the court to the cases of *National Drug Company Limited and Zambia Privatization Agency v. Mary Katongo, Appeal No. 79/2001*¹, *Printing and Numerical Registering Company v. Simpson*² and the case of *Mwamba v. Nthenge, Kaing'a Chekwe, SCZ Judgement No.5 of 2013*.³

4.0 DETERMINATION

Before I delve into my determination, I note that this judgment was delayed due to misplacement of the record of proceedings. The delay is regrettable.

Turning to the merits, I have considered the unchallenged evidence in the light of the submissions before Court and the applicable law. In the process, I examined the document containing the defendant's acknowledgment of debt. The translated document reads, in part, as follows:

"The undersigned, Musabimana Boniface, hereby acknowledges that he owes 16,100.00 US\$ and 4,800.00 Euro to Ndahimana Jean-Marc.

The amount of 16,100.00 US\$ represents the balance of revenues from the sale of freezers ... and 4,800.00\$ is the amount given to him in cash..."

The document is signed by the defendant and there is no challenge regarding its veracity. That being the case, I recall the

provisions of **Order XXI., Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia** which reads as follows:

“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...”

My interpretation of **Order XXI., Rule 5** is that for the Court to exercise its discretion to enter judgment on admission, the Court must be satisfied of primarily three things: Firstly, that there is a statement of admission as to the amount claimed in the summons or any part thereof by the defendant; secondly, that the statement of admission is signed by the defendant; and thirdly, that the signature appended to the statement of admission is the genuine signature of the defendant.

In this case, I am satisfied, based on the uncontested evidence before Court that the statement of acknowledgement of debt dated 27th July, 2015 constitutes a statement of admission as to the amount claimed in the writ of summons. I am also satisfied that the statement of admission is signed by the defendant and that the signature is the genuine signature of the defendant.

Given my finding that there is a statement of admission on the part of the defendant, I have no difficulty in arriving at the

conclusion that the plaintiff has proved its case on a balance of probabilities and that I enjoy jurisdiction to enter judgment on admission pursuant to **Order XXI., Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia**. Consequently, judgment on admission is entered against the defendant and the defendant is directed to immediately pay the plaintiff the outstanding balance of US\$ 16,100.00 and EURO €4,800.00.

In addition, from the text of the admission, I discern and accept that the parties entered into a business agreement which resulted in delayed payment of revenues by the defendant to the plaintiff in breach of the agreement. Consequently, I find that the defendant to be in breach of contract. Resultantly, I hold the defendant liable to pay the plaintiff damages for breach of contract.

I now turn to contemplate the measure of damages. Firstly, I draw attention to the case of **Union Bank Zambia Limited V Southern Province Co-Operative Marketing Union Limited**⁴ where, in the words of the Supreme Court:

"...we would like to recall that the general rule where there has been non-payment of money by due date, in breach of agreement, is to compensate the party owed with an award of interest which serves the same purpose as general damages."

It is, of course, axiomatic that this Court is bound, under the doctrine of *stare decisis*, to follow precedent. Thus, in line with the ratiocination advanced by the Supreme Court in *Union Bank Zambia Limited V Southern Province Co-Operative Marketing Union Limited*, I order the defendant to pay the plaintiff interest on the judgment debt. Interest shall accrue at the rate of 2% per annum from 20th October, 2015, being the date of writ, until final payment, to serve the same purpose as general damages.

Costs are awarded in favour of the plaintiff, to be taxed in default of agreement.

Dated this 17th day of December, 2020



B. G. SHONGA
JUDGE

