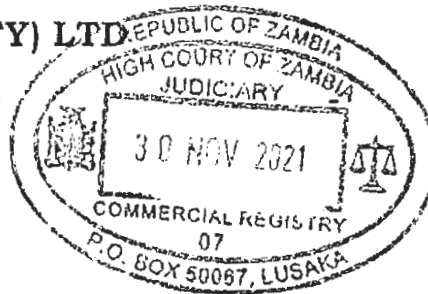


IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

2021/HPC/0374

BETWEEN:

KUTASHA INDUSTRIES (PTY) LTD  
(T/A Liquid Solutions RSA)



PLAINTIFF

AND

RAVASIA PETROLEUM LIMITED

DEFENDANT

BEFORE: HON. MR JUSTICE E. L. MUSONA ON THE 30<sup>TH</sup>  
DAY OF NOVEMBER, 2021

For the Plaintiff: Ms. C. katele of Messrs Nchito and Nchito  
Advocates

For the Defendant: Mr. G. Pindani of Messrs Chonta Musaila and  
Pindani Advocates

---

**RULING**

---

**Cases referred to:**

1. Commonwealth Development Corporation v Central African Power Corporation (1968) ZR
2. Chief Mwanatete v Innocent Lushato and another – 2014/HP/1045

The history of this case is clear. The history is that the Plaintiff commenced this action by writ of summons on 28<sup>th</sup> June 2021 accompanied by a statement of claim.

The Plaintiff's claim was for the following reliefs;

- i. Payment of the sum of USD 1,157,047.04 being the cost for the supply of petroleum products
- ii. Interest for late payment
- iii. Costs
- iv. Any other relief as the court may deem fit.

The Defendant entered defence on 12<sup>th</sup> July, 2021. On paragraph 9 of that defence the Defendant partially admitted the debt in the following terms;

***“The Defendant shall aver at trial that it is willing to pay the outstanding balance of USD765,666.68 in monthly instalments of USD20,000 due to the exchange loss it has suffered and severe financial constraints it is experiencing in this covid pandemic era and that the within action is highly premature as the Defendant has not breached any agreed payment period”***

Based on this partial admission the Plaintiff on 23<sup>rd</sup> July, 2021, applied for entry of judgment of the admitted sum.

Accordingly, judgment of the admitted sum was entered in favour of the Plaintiff on 28<sup>th</sup> July, 2021, and the balance to be determined at trial. The formal order for entry of judgment on admission was filed on 4<sup>th</sup> August, 2021 and signed by court the same day.

On 16<sup>th</sup> August, 2021, the Defendant filed summons for an order for stay of execution of judgment on admission pending application to pay the judgment debt in instalments.

The grounds upon which the Defendant applied to liquidate debt in instalments, inter alia, are that the Defendant has other obligations such as its 44 employees who have families to look after, recurring expenditure, statutory obligations to NAPSA and Zambia Revenue Authority (ZRA) and other financial commitments to other creditors and that currently, is not capable of paying the admitted debt in one lump sum. The Defendant further stated that settlement of the debt at once is likely to cripple the Defendants' operations and that any execution on the Defendant will trigger other creditors to immediately call their respective facilities thereby, winding up the company. The Defendant seeks to pay USD 20,000 per month for the first 12 months with effect from end of September, 2021 until August, 2022, thereafter, the balance in equal instalments.

The Plaintiff has opposed the Defendant's application to pay judgment debt in instalments. In their affidavit in opposition to the Defendant's application to pay judgment debt in instalments filed on 25<sup>th</sup> August, 2021, the Plaintiff has averred inter alia that the Defendant cannot rely on the basis that it has employees with families to feed and various other expenditures as a justifiable basis

for its application to liquidate debt in instalments because the Plaintiff who has been deprived of USD 765,666.68 by the Defendant also has a large number of employees and vast financial, statutory and other obligations. Also, that the exhibits to the affidavit in support of summons to settle judgment sum in instalment marked "FS1" prepared by the Defendant showing the supposed income, expenditure and other information are irrelevant documents. That affidavit in opposition by the Plaintiff attracted an affidavit in reply.

The Plaintiff raised issue with that affidavit in reply. The Plaintiff argued viva voce that the Defendant filed their affidavit in reply without leave of court. the Plaintiff further argued that an affidavit in reply is not a matter of right and that the Defendant needed to apply for leave of court in order to file their affidavit in reply but did not. In support of their proposition, the Plaintiff cited the case of ***Commonwealth Development Corporation v Central African Power Corporation*** (1) and also the case of ***Chief Mwanatete v Innocent Lushato and another*** (2).

The Defendant argued that a litigant is entitled as a matter of right in every interlocutory application or any matter to file an affidavit in reply to the affidavit in opposition.

They argued further that the authorities cited by the Plaintiff have been quoted out of context because they relate to further affidavit, meaning, an affidavit other than an affidavit in support, an affidavit in opposition and an affidavit in reply.

I have looked at the authorities cited. I have also heard the arguments by the parties. What I discern is that an affidavit in reply need not be with leave of court. it is a further affidavit which needs leave of the court. Now, therefore, I shall consequently consider that affidavit in reply.

Regarding the application to liquidate debt in monthly instalments, the order allowing a debtor to liquidate debt in instalments should be fair to both parties and also realistic of the rights of the creditor. The amount of monthly instalments must be within the range of affordability of the debtor having regard to his other obligations and the need not to be pushed out of business. In the same vein, the

amount of monthly instalments must be such that the creditor is not unduly denied the reasonable enjoyment of the fruits of his judgment. Here in lies the balancing act. The interest of the parties must be balanced against each other, and it must be a fair and equitable balance.

Against the debt of USD 765,666.68, the Defendant has proposed a monthly instalment of USD 20,000.00. This would take at least 3 years to liquidate. I do not consider this as fair to the creditor. I do not consider it realistic either. The balancing act would fail because it would take the creditor morethan 3 years to realise the full fruits of his judgment. It is also not fair because the Debtor received the petroleum products from the Creditor. The Debtor sold those petroleum products but pocketed all the money.

In the circumstances, I order that the Debtor shall liquidate the debt in monthly instalments of USD 40, 000 effective January, 2022 monthend. In default of any one instalment, the, the whole amount shall become due and payable forthwith.

I order interest at the short term bank deposit rate from the date this matter was filed into court until full payment and thereafter, at the current Bank of Zambia lending rate.

I award costs in favour of the Plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

In view of the phobia for covid 19 and its attendant health guidelines, this ruling shall not be read to the parties, parties shall, therefore, proceed to uplift their judgment.

**DATED AND SIGNED AT LUSAKA THIS THE 30<sup>TH</sup> NOVEMBER,  
2021**

  
.....  
**HON MR JUSTICE E.L. MUSONA  
HIGH COURT JUDGE**