

**IN THE HIGH COURT FOR ZAMBIA**

**2019/HKC/TR001**

**AT THE COMMERCIAL REGISTRY**

**HOLDEN AT KITWE**

**(CIVIL JURISDICTION)**

**BETWEEN:**

**AMIS LIMITED**



**PLAINTIFF**

**AND**

**TECTONIC DRILLING SOLUTIONS LIMITED DEFENDANT**

***Before the Hon. Lady Justice Abha Patel., S.C. in Open Court***

For the Plaintiff: Mr. E. Chibeluka  
Messrs Douglas & Partners

For the Defendant: Ms. T. Kaemba  
Messrs Ilunga & Company

---

**JUDGMENT**

---



**List of Authorities**

- 1. The High Court Act Chapter 27 of the laws of Zambia.**
- 2. The Rules of the Supreme Court 1999 Edition.**
- 3. Michael Furmston, Cheshire, Fifoot & Furmstons Law of Contract (16<sup>th</sup> edition).**

**Cases Referred to:**

1. **G4 Secure Solutions Zambia Limited vs Lupupa K Lewis SCZ Appeal No.170 of 2015.**
2. **Jamas Milling Company Limited vs Imex International (pty) Limited SCZ No. 20 of 2002.**
3. **Colgate Palmolive (Z) Inc vs Abel Shemu Chuka and 110 others Appeal No. 185 of 2005.**
4. **Finance Bank Zambia Limited and Rajan Mahtani vs SimataaSimataa SCZ Judgment No. 21 of 2017.**
5. **Zambia Bata Shoe Company Limited vs Vin-Mas Limited (1993-1994) ZR 136.**
6. **National Airports Corporation Limited vs Reggie Ephraim Zimba and Saviour Konie SCZ Judgment No. 34 of 2000.**
7. **John Paul MwilaKasengele and Others vs Zambia National Commercial Bank Limited SCZ Judgment No. 11 of 2000.**
8. **Madison Investment, Property and Advisory Company Limited and Peter Kanyinji SCZ Judgment No. 48 of 2018.**
9. **Salomon v Salomon and Company (1897) AC 22.**
10. **Associated Chemicals Limited vs Hill and Delamin Zambia and Ellis and Company (Third Party)(1998) ZR 9.**
11. **Anderson Mazoka&anr vs Mwanawasa and others (2005) ZR138.**
12. **Mhango v Ngulube(1982) Z.R. at 61.**

**INTRODUCTION AND BACKGROUND**

1. The Plaintiff commenced this action by way of a Writ of Summons and Statement of Claim filed in this Court in the Principal Registry on 23 September 2019, (amended on 6<sup>th</sup> August 2020), claiming the following:
  - 1.1 An Order for payment of the sum of K1,539,705.65 being the amount due in respect of material of various

- descriptions sold and delivered by the Plaintiff to the Defendant;
- 1.2 Damages for breach of contractual obligations by the Defendant;
  - 1.3 Damages for loss of use of the Plaintiff's money;
  - 1.4 Interest on all amounts found due at current bank lending rates;
  - 1.5 Any other relief the Court may deem fit;
  - 1.6 Costs.
  - 1.7 The Defendant entered appearance through Counsel and filed its Memorandum of Appearance and Defence and Counter Claim on 22 October 2019.
  - 1.8 On 30<sup>th</sup> October 2019, the Plaintiff filed an Ex Parte Summons For an Order of Interim Mareva Injunction pursuant to Order 27 rule 4 of the High Court Rules, Cap 27 of the Laws Of Zambia and Order 29 Rule 1 of the Rules of the Supreme Court 1999 Edition. This was filed together with the Affidavit in Support, a certificate of Urgency and Skeleton Arguments.
  - 1.9 It is noted that the Court then seized with conduct endorsed the application with a return date returnable on 27<sup>th</sup> November 2019, on which date the Court did after hearing from both Counsel make an Order for the removal

of the proceedings from the Commercial division Principal Registry, to the Commercial Division District Registry, in accordance with section 42 (2) of the High Court Act Cap 27.

1.10 This Court did issue a Notice of Hearing for the application for Mareva Injunction on 29<sup>th</sup> November 2019, returnable on 16<sup>th</sup> January 2020 at 10:00 hours.

1.11 On 15<sup>th</sup> January 2020, Plaintiff's Counsel caused a Notice of Appointment of Agents to be filed, and on the same day, counsel acting for the Defendant purported to file their Notice of Withdrawal as Advocates. The Court takes a moment to pause to express its displeasure in the manner and form of the Notice to withdraw filed by the Advocates on record, which offends the rules of practice and procedure of the Court, and in light of an urgent application, and one day before the return date.

1.12 On the return date on 16<sup>th</sup> January 2020, counsel for the Plaintiff beseeched the Court to proceed to hear its application which had been filed with a Certificate of Urgency on 30<sup>th</sup> October 2019, and that it placed reliance on its skeleton arguments and the Affidavit in Support.

1.13 In the interest of justice, and noting the contents of the Affidavit in Support, the Court did grant the Ex Parte Order of Mareva Injunction, and cautioned the Defendant, through its Administrative Manager, one Chanda Mulenga,

to engage Counsel immediately, and adjourned the matter for Inter Partes hearing of the Mareva Injunction to 30<sup>th</sup> January 2020.

1.14 On the said return date, there being no appearance for the Defendant, the Court allowed the Plaintiff to proceed with its application. The Plaintiff relied on its application on record, and prayed for an Order of Mareva Injunction to protect the interest of the Plaintiff pending the final determination of the matter.

1.15 The Court noted that the Defendant having been aware of this application from the date it was filed on 30<sup>th</sup> October 2019, and having been present in Court on 16<sup>th</sup> January 2020, wherein the Ex Parte Order of Mareva Injunction was granted and Defendant advised to engage Counsel immediately and before the inter parte hearing of 30<sup>th</sup> January 2020, allowed the Plaintiff to proceed with its application.

1.16 The Court allowed the Plaintiffs application, which was unopposed and by its Ruling, confirmed the Order of Mareva Injunction with costs to the Plaintiff.

1.17 The matter proceeded with various applications made by both Parties, and orders for directions were complied with although extensions of time granted along the way. The matter was initially scheduled for trial on 2<sup>nd</sup> September 2020, which date was vacated by a consent order filed on

31<sup>st</sup> August 2020 and the matter scheduled for status conference on 12<sup>th</sup> October 2020, on which date the Court directed parties to proceed to trial, noting the effect of the global pandemic and the travel restrictions and advised Counsel to make any application as appropriate in accordance with **Order V rule 30** of the High Court Rules.

1.18 The trial was scheduled to 17 and 18 November 2020 which dates were again enlarged to 31<sup>st</sup> November and 1<sup>st</sup> December 2020, on which date Counsel for the defendant made an application to adjourn citing ill health, and the date of trial was adjourned once again, to 11<sup>th</sup> December 2020.

## **2 THE TRIAL**

2.1 At the commencement of the trial, the Defendant made an application to proceed to trial by hearing the Plaintiffs case and thereafter to adjourn the matter indefinitely to allow the Defendants instructing witness to attend Court in person. This application was made viva voce by Counsel, who also informed the Court that although there were two other witnesses for the defendant and who had filed their respective witness statements, it was the position of the Defendants primary witness, Mr Daniel Holmes, that he ought to be the first witness and had not allowed the other witnesses to attend Court on the day scheduled for trial.

2.2 The Court took a dim view of this application, as the record will reveal that the matter had been adjourned several times to accommodate the Defendant, who was reported to be in Australia and under lock down due the global pandemic. The Court took judicial notice of the state of the pandemic and the rigorous travel restrictions imposed in Australia at several status and compliance conferences up to the compliance conference of 12<sup>th</sup> October 2020, wherein the Court did adjourn the matter for the last time and directed Counsel to prepare for Trial by invoking the provisions of **Order 5 rule 30** of the Rules of The High Court Cap 27 of the Laws of Zambia.

2.3 In ruling on the application for an adjournment to present the case of the defendant on an unknown date, but after March 2021, the Court did refuse the said application and directed the matter to proceed even in the absence of the Defendant. The Court is not obliged to cajole unwilling litigants to defend themselves. I was guided by the pronouncement of the Supreme Court of Zambia in the case of **G4 Secure Solutions Zambia Limited vs Lupupa K Lewis** wherein the Supreme Court stated as follows:

*"We must emphasise that proceedings before our courts are court-driven and the court is expected to be in control of the proceedings and ensure that matters are not delayed by unnecessary adjournments. It is trite that adjournments are one of the major causes of delays in the dispensation of*

*justice. Proper case management, therefore, requires that the Court should only grant an adjournment in the most deserving of cases, bearing in mind all the relevant circumstances of the case. An application for an adjournment should not be granted as a matter of course and neither should it be rejected without judicious consideration by the Court of all relevant circumstances in the case.”*

2.4 The Plaintiff called three witnesses in support of its case **PW1** was **Mansukh MawjiVekaria**. He gave evidence in his capacity as a director of the Plaintiff company and relied on his Witness Statement and Bundles of Documents which were admitted into evidence. Under cross examination, he was subjected to explaining the genesis of the relationship between the Plaintiff and Defendant company and the manner in which procurements were made and Invoices issued. He was further questioned at length as to the propriety of the method used whereby the same named officer would raise the requisition and also authorise the procurement of the items requisitioned. It was his explanation that the relationship between the two companies developed over several years and was based on mutual trust and respect and that the Defendant company enjoyed extensive credit facilities not only with the Plaintiff company but also with a sister company of the Plaintiff, where they ran and operated a hotel and guest house in Lumwana. It was his evidence that the relationship was an old one and even before the Defendant company was know



as Tectonic Drilling Solutions Limited. He confirmed that **Daniel Holmes** and **Jerry Cloete** were known to the Plaintiff and that they would often supply their requirements on an urgent basis, and that the paper work would sometimes follow after the event.

2.5 **PW1** was referred to several documents in the Bundle of Documents such as on *pages 8, 9, 11, 17, 25, 26, 29, 42, 56, 62, 75, 81*, to establish the pattern in the procurement process. His response was that this was the normal manner of procurement for the defendant and that all similar procurements made in the past had been raised in the same way and that there was never any issue or challenge raised or disputes over any of the Invoices.

2.5 The witness further testified that the defendants account accumulated to high levels in 2018 and that they had been procuring high value items. He further testified that they had no set accounting period for submitting Invoices, and the Accountant at the Defendants company, a Miss Joyce, would periodically send e-mails requesting statements.

2.6 He was referred to **page 392** of the Plaintiffs bundle to confirm that he had been advised of the removal of Jerry Cloete from the employ of the Defendant company. His evidence was that the cut off date was with effect from 8<sup>th</sup> July 2019 and that the Plaintiff had delivered clearer copies of the Invoices where requested so to do.

2.7 **PW1** was further taken to task to prove the items supplied under certain invoices such Invoice **329** appearing at **page 216** of the Bundle. It was his evidence that the Purchase Order was the responsibility of the Defendant and that it was not practically possible to issue an Invoice to list and correspond with the delivery of about 300 items. It was his evidence that arrangements with the defendant were purely on an ad hoc basis, and there was not much attention given to documents such as a purchase order, or a delivery note. What was of concern and more relevant to both Parties was the Tax Invoice which was used for the purpose of remitting the appropriate VAT to the Revenue Authority.

2.8 The witness was also questioned on the alterations on the Invoices and referred to several documents in the bundle of documents which apparently had alterations on them. He concluded by stating that the relationship with the defendant company had started with **Daniel Holmes** from the Hotel business and then progressed with **Jerry Cloete** and that mutual trust and respect formed the basis of the relationship.

2.9 Under re-examination, **PW1** clarified that Jerry Cloete was listed as a director in the defendant company and that *page 352* was a document obtained from the Defendants website which placed both **Daniel Holmes** and **Jerry**

**Cloete** on the same management level. He explained that **Jerry Cloete** was more the hands-on person and that **Daniel Holmes** was usually out of the Country and further clarified that they would issue goods and supplies to anyone from the defendant company, based on the needs of the company at any given time. His explanation as to the need for the amended process was to reflect the relationship that subsisted between the two companies and in line with new Counsel on record.

3. **PW2** was **Jeremia Elia Cloete** who relied on his Witness Statement filed on 15<sup>th</sup> June 2020. He testified that he was the principal operations director based in Zambia. He was in charge of all the operations whether mine site or green field operations at the base in Ndola as well as safe and effective mobilization and de-mobilization, drilling, training, overall safety, inventories, maintenance and services, business development including client liaison. He further confirmed that it was part of his role to maintain stock levels, lubricants and procurement of supplies. He also confirmed that it was his job to approve all service items that were required for the operations of the Defendant company. With particular reference to North Western Province, he explained that the Defendant company operated both a mine site and greenfield projects, and he explained that it was normal practice for each person at the particular mine site to raise a request for whatever was needed on the ground.

3.1 He was questioned on certain Invoices and the normal accounting practice that appeared to have evolved in the manner of dealing with supplies from the Plaintiff. It was his explanation that over time, a relationship of trust had developed and that it was normal to issue lump sum payments which did not necessarily correspond to specific Invoices but which were paid on account of the Defendants running account. He further maintained that the relationship with the Plaintiff company should not suffer the internal difference he had with Daniel Holmes and that he was duty bound to give evidence as to how business with the Plaintiff had been conducted with no issues regarding the manner or procedure adopted to obtain the goods and services.

3.2 **PW3 Lungile Noel Phiri** relied on his Witness Statement which was duly admitted into evidence and marked **WS3**. Under cross examination, he confirmed that he was one of the senior managers in the maintenance department of the defendant company and that they would either raise Purchase Orders or obtain goods immediately and send the relevant paper work later, if the items were required urgently. He also confirmed that it was normal for the same person to issue the Purchase Order and approve it also. He confirmed that their relationship with the plaintiff company was such that they could call upon them on weekend or

after hours to obtain urgent goods and all the supplies were later approved and payments effected to the Plaintiff.

3.3 He also testified that his services were terminated at the end of the year in 2018 and that Daniel Holmes called him in to repair a machine that only he was qualified to repair. He also said that he was asked to assist to clear all the Invoices raised by him for the Plaintiffs account, and that he did what he was asked to do. He confirmed that his payment for services rendered which had been withheld was then released by the Defendant company. He also clarified that certain Invoices had alterations but that they were always backed and supported by documents.

3.4 This marked the end of the Plaintiffs case.

3.5 There being no witnesses present in Court for the defendant as noted above, Counsel for the defendant closed her case.

3.6. The Court directed the Plaintiff to file its written submissions by **28<sup>th</sup> December 2020** and the Defendant by **13<sup>th</sup> January 2021**. Submissions having been received from the Plaintiff and there being no submissions from the Defendant, the Court has proceeded to evaluate the evidence on record and deliver its Judgment.

#### 4. **Findings of the Court**

Having considered the pleadings and testimony tendered by the Plaintiffs witnesses certain facts are not in dispute, namely:

- 4.1 The Plaintiff and the defendant had a long history of business dealings with each other;
- 4.2 The Defendant's officers were all allowed to deal with the Plaintiff and obtain goods and services on credit as and when required for their various project sites;
- 4.3 The Plaintiff rendered Invoices on an ad hoc basis and after goods had been collected with or without Purchase orders;
- 4.4 The Plaintiffs dealings were mainly with Jerry Cloete PW2 who was the resident director and Daniel Holmes was mostly in Australia.

5. **The Issues**

- 5.1 The only issue for determination as I see it is the following: -  
  
Has the Plaintiff proved its claim as pleaded? And Further has the defendant discharged the burden of proving its counterclaim?

6. **The Law and Analysis of the facts**

- 6.1 I have noted and the record is explicit, the Defendant in its defence admits that on diverse dates from May 2016 to December 2018, the Plaintiff supplied various goods and services to the defendant. The Defendant's contention is that the goods supplied were not at the defendant's request. The Court has however noted and the plaintiff's witnesses testified to the fact that a long-established relationship of trust created over the years,

allowed the defendant to obtain goods and services while paper work sometimes followed after the event.

6.2 I am guided by the authority of **Zambia Bata Shoe Company Limited vs Vin-Mas Limited**, wherein the Supreme Court held:

*“that the company’s authorized agents bound the company to comply with the contract and that such liability cannot be avoided.”*

The Supreme Court in the case of **National Airports Corporation Limited vs Reggie Ephraim Zimba and Saviour Konie** reaffirmed its decision in the case of **Zambia Bata Shoe Company** (supra) by holding as follows:

*“An outsider dealing with a company cannot be concerned with any alleged want of authority when dealing with a representative of appropriate authority or standing for the class or type of transaction.”*

6.3 This Court has noted from the evidence of **PW1** and **PW2** that a long historical relationship had been cemented and that **Jerry Cloete** appeared to be a person in authority and whose dealings with the Plaintiff had not been challenged or questioned by the defendant. I have heard from both **PW1** and **PW2** and found their evidence

to be consistent, reliable and credible. To that extent, the evidence of **PW3** also confirmed the evidence of both **PW1** and **PW2** as to the manner and pattern of obtaining goods and supplies from the Plaintiff.

I find that **Jerry Cloete PW2** had the authority to bind the defendant and at least up to the point of the notice from the defendant dated 8<sup>th</sup> July 2019.

- 6.4 It has further been submitted and not challenged that Jerry Cloete, **PW2**, was a shareholder and director of the Defendant company and his acts and those of other authorised employees did bind the defendant company. I have also looked at the exchange of e-mails and in particular to the one that appears on **page 363** of the Plaintiffs bundle.

In this context, the Plaintiff has relied on the case of **John Paul MwilaKasengele and Others vs Zambia National Commercial Bank Limited** to support their submission that shareholders enjoy authority in the affairs of a company, even over the wishes of the Board and Managers.

- 6.5 The Court takes further note of a seminal judgment of the Supreme Court of Zambia in the case of **Madison Investment, Property and Advisory Company Limited and Peter Kanyinji** wherein the Supreme Court said:



*“the basic notion of a corporate entity being distinct and separate from its owners provides the basis of the whole fabric of company law”.* Quoting from the decision in the case of **Ben Hashem v Ali Shayif**, the Court said:

*“There has always been a judicial concern not to create commercial uncertainty and undermine the benefits of incorporation. Having incorporated, the shareholders have a legitimate expectation, as do those who deal with the incorporated entity, that the courts will respect the status of the entity and apply the principle in **Salomon v Salomon** in the ordinary way.”*

- 6.6 My attention has further been drawn to the fundamental aspect of separate and distinct corporate personality as laid down by the celebrated case of **Salomon v Salomon and Company** in countering the argument of the defendant that the debt to the Plaintiff was incurred by Jerry Cloete and was not authorised or approved by Daniel Holmes. The Supreme Court in the case of **Associated Chemicals Limited vs Hill and Delamin Zambia and Ellis and Company (Third Party)** held as follows:

*“It is wrong in principle to distinguish between old and new shareholders or between new and old management or treat business transactions giving rise the claims as one essentially between individuals. A principle of the law which is now entrenched is that a Company is a distinct*

*legal person different from its members or shareholders.”*

6.7 I have also noted that **PW1** was taken to task on the Invoices, the supporting documents such as the Purchase Orders and whether the appropriate procurement channels had been invoked in this relationship. Whilst the Court noted the several errors and or alterations in the figures on either the Invoices or in the supporting documents, there was no proof to challenge the authenticity of any of the unpaid Invoices. I have also noted that the Parties may not have employed *the best accounting practices*, but that the matter in Court was not to determine the procurement process employed by the Plaintiff, but rather to establish if the Plaintiff had proved its claim against the defendant.

6.8 I have been invited to scrutinise the Invoices and Purchase orders in the plaintiffs Bundle of Documents and find no reason to disbelieve the evidence of **PW1**, as supported by **PW2** and **PW3**. I have also had occasion to reflect on the several e-mails that appear in the Plaintiffs Bundle of Documents, all of which appear to be queries on the Plaintiffs account. I have also noted an email from Joyce dated 19<sup>th</sup> June 2019, on **page 379** of the Bundle and have further noted the assurances of the defendant to settle the debt owed to the Plaintiff. The said mail reads in part:

*"The list of invoices makes up ZMW954,493.49 of the balance owing. I am 100 % sure Daniel would like to review the invoices first before we make payment as these costs were incurred under Jerry's management in 2018 without the knowledge of Daniel."*

6.9 **PW1** was credible and his evidence was not shaken during cross-examination and it appeared consistent with the Invoices that remained unsettled and outstanding. I have looked at the summary of Invoices appearing on pages 339 to 342 of the Plaintiffs Bundle of Documents. I have subjected some of the Invoices to scrutiny and find them to have been raised in the normal fashion between the parties, and well before the Defendants Notice of 8<sup>th</sup> July 2019, appearing on page 392 was circulated and received by the Plaintiff. I have also seen an email from **Daniel Holmes** dated **11<sup>th</sup> July 2018** assuring the Plaintiff of its intention to settle the account and thanking the Plaintiff for its continued support.

6.10 I have also considered the defence and counterclaim raised by the Defendant and note that the defendant has alleged fraud on the part of the Plaintiff and connivance with a former director of the defendant company. I am guided that the burden and onus on a party alleging fraud is greater than on a simple balance of probabilities. It is trite that the party alleging fraud must prove the fraud and give distinct particulars and details of the

alleged fraud. Further **Order 15 rule 2** of the Rules of The Supreme Court (The White Book) states that a counterclaim is an action of the defendant, independent from the claim made by the Plaintiff, in the following words:

*“A counter claim is substantially a cross-action, not merely a defence to the Plaintiff’s claim. It must be of such a nature that the Court would have jurisdiction to entertain it as a separate action (Bow McLachlan & Co Ltd v Ship Camosun (1909) A.C. 597; Williams vs Agius (1914) A.C. 522.*

*“A counter-claim is to be treated, for all purposes for which justice requires it to be so treated, as an independent action.”*

6.11 The Plaintiff has also submitted that **Order 18 rule 8 (16)** of the Rules of the Supreme Court places a duty on Counsel not to plead fraud unless there is sufficient evidence to support the allegations.

6.12 I also note the guidance issued to litigants in the Commercial Court, by the Supreme Court in the case of **Jamas Milling Co Ltd vs Imex International (pty) limited**. The Supreme Court emphasised that rules of procedure are meant to facilitate the proper administration of justice, and that their breach can be visited by unpleasant sanctions against the Party who breaches them. It is in this context that I must voice my

disquiet in the manner the Defendant chose to defend this action from the onset of proceedings. I have considered the defence and find it without merit and not substantiated.

6.13 As has been noted, the evidence of **PW2** appeared credible and the witness came across as trustworthy and did not appear like he had an axe to grind. It was his evidence that he had appreciated the full support of the Plaintiff and that he confirmed all the Invoices that had been raised and those that remained outstanding. It was his firm evidence that there was no justification for withholding payment for alleged want of procedure or at all. He also confirmed that his "*falling out*" with Daniel Holmes was not a matter which should affect the Plaintiffs business and that all supplies were procured and obtained during his time with the defendant.

6.14 I am persuaded by the submissions of the plaintiff to give effect to what the parties had agreed on in their business engagement and to hold otherwise will amount to rewriting the terms of their business transactions. I have been referred to the holding of the Supreme Court in the case of **Colgate Palmolive (Z) Inc vs Abel Shemu Chuka and 110 others** which holding was reaffirmed in the recent case of **Finance Bank Zambia Limited and Rajan Mahtani vs Simataa Simataa**.

6.15 On the issue of burden and standard of proof the Supreme Court in the case of **Anderson Mazoka and others vs Mwanawasa and others** said:

*"As regards the burden and standard of proof, the evidence adduced must establish the issues raised to a fairly high degree of convincing clarity."*

I do not accept the only contention and challenge to the Plaintiffs witnesses, of probable non-adherence to standard procurement procedures, and find that the Plaintiff has proved its claims on a balance of probabilities and to a high degree of convincing clarity.

## **7. Orders of the Court**

7.1 Accordingly, I enter Judgment for the Plaintiff in the sum of Kwacha one million five hundred and thirtynine thousand seven hundred and five and sixty five ngwee **(K1,539,705.65)** being the amount due in respect of goods and services supplied by the Plaintiff to the defendant.

7.2 Further, and being mindful of the obligation of the Plaintiff to prove its claims, despite the default of the Defendant, and though I note that the Plaintiff has pleaded for damages for breach of contract and for loss of use of money, I note that no evidence or material was placed before the Court to substantiate the claim for damages. I am guided by the

clear elucidation of the law as it pertains to damages, discussed by the Supreme Court of Zambia in the cited case of ***Finance Bank and another vs Simataa Simataa***.

The Court in that case on the issue of unliquidated damages for breach of contract, confirmed that it is normally for the Court to assess the money value of the loss suffered and to award that sum as damages, noting that damages in this form are a compensatory remedy to the injured party, not punishment of the contract breaker.

7.3 In the case of ***Mhango v Ngulube***, the Supreme Court on the issue of damages payable to a party stated as follows:

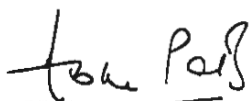
*“the result is that the evidence presented to the court was unsatisfactory and, in our opinion, the learned trial judge would have been entitled either to refuse to make any award or to award a much smaller sum, if not a token amount in order to remind litigants that it is not part of the judge’s duty to establish for them what their loss is.”*

7.4 In *casu*, the Plaintiff not having led any evidence of the loss it claims to have suffered, the pleading alone, is not a basis to make a finding of loss to justify the award of compensatory damage. Based on the forgoing, I am of the considered view that the award of interest will suffice.

7.3 The Plaintiff is awarded interest on the said Judgment debt to  
7.5 be calculated at the average shortterm deposit rate prevailing from the date of the Writ to the date of judgment, and thereafter at the current lending rate as determined by the Bank of Zambia up to the date of payment.

7.4 Costs will be for the Plaintiff.

Dated at Kitwe, the 14<sup>th</sup> day of April, 2021.



-----  
**Abha N. Patel., S.C.**  
**JUDGE**