IN THE HIGH COURT FOR ZAMBIA **2019/HP/0242**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

REPUBLIC OF ZAMBIA
PRINCIPAL
29 DEC 2023
REGISTRY - 9
PO BOX 50067, LUSAKA

BETWEEN:

CHEMSOL LIMITED **APPELLANT**

AND

INDUSTRIAL COMMODITIES HOLDINGS (PVT) LIMITED **RESPONDENT**

BEFORE THE HONOURABLE JUSTICE MRS. M. C. KOMBE

For the Appellant: *Ms. M. Moonga - Messrs. Tembo Ngulube & Co.*

For the Respondent: *Mrs. M. Chibesakunda – Messrs. Chibesakunda & Co.*

J U D G M E N T

Cases referred to:

1. **ZEGA Limited v. Zambezi Airlines and Diamond General Insurance Limited (SCZ No. 39/2014).**
2. **George Kakoma v. The State Lotteries Board of Zambia (1981) Z.R. 111.**
3. **Ellis v. Allen (1914) CH 904.**
4. **Hughes v. London, Edinburgh and Glasgow Assurance Co. (1891) 8 TLR 81 (CA).**

Leaislation and other work referred to:

1. **Bryan Garner's Black's Law Dictionary Eighth Edition.**
2. **The High Court Rules, Chapter 27 of the Laws of Zambia.**

3. **The Rules of the Supreme Court, 1999 Edition, (White Book).**

1.0 INTRODUCTION

1.1 This is an appeal against the ruling of the District Registrar Hon. Lameck Ngambi dated 28th February, 2020 in relation to an application to enter judgment on admission made by the Respondent in the sum of ZAR 732,212.24 being monies owed by the Appellant. The Deputy Registrar entered judgment on admission in favour of the Respondent and referred the matter for assessment of the quantum.

2.0 GROUNDS OF APPEAL

2.1 Dissatisfied with the ruling of the Deputy Registrar, the Appellant on 7th August, 2022 filed a Notice of Appeal pursuant to Order XXX rule 10 of the High Court Rules, Chapter 27 of the Laws of Zambia on the following grounds:

(1) The learned District Registrar erred in law and in fact when he made a ruling wherein he relied on paragraph 4

of the Appellant's affidavit in opposition to the Respondent's for judgment on admission without having regard to the other paragraphs which show that at no point did the Appellant through any documents or otherwise expressly admit to owing the Respondent the sum of ZAR 732,212.24.

(2) *The learned District Registrar erred in law and in fact when it held on page R3 that the further trail of emails marked GF1 shows that there was an admission by the Defendant.*

3.0 APPELLANT'S SUBMISSIONS

3.1 The Appellant argued both grounds together. It was submitted that the District Registrar erred in law and in fact when he made a ruling wherein he relied on paragraph 4 of the Appellant's affidavit in opposition to the Respondent's for judgment on admission without having regard to the other paragraphs which show that at no point did the Appellant through any documents or otherwise expressly admit to owing the Respondent the sum of ZAR 732,212.24 and that on page R3, the further trail of emails marked GF1 showed that there was an admission by the Defendant.

3.2 The Court was referred to Order 27 rule 3 (2) of the Rules of the Supreme Court which gives the Court the powers to enter judgment on admission and that the admission must be express or implied but must be clear.

3.3 It was submitted that the above point was re-emphasised in the case of **ZEGA Limited v. Zambezi Airlines and Diamond General Insurance Limited** [1] where it was stated that judgment on admission can only be entered on admissions that are clear.

3.4 Counsel submitted that it was evident from the ruling rendered that the Court had entered judgment on admission without having regard to all the other paragraphs in the Appellant's affidavit in opposition to the application for judgment on admission. The Appellant expressly denied liability in the sum of K732,212.24 which was the amount claimed in the statement of claim.

3.5 It was further submitted that the paragraph relied on by the Respondent was a typographical error which could be confirmed by the fact that the contents in the other paragraphs in the affidavit in opposition were contrary to paragraph 4.

3.6 Furthermore, it was submitted that reliance was made on an email which had a document not prepared by the Appellant.

3.7 Counsel thus submitted that this matter needed to proceed to trial due to the fact that there were contentious issues which still needed to be dealt with and that the Appellant would be prejudiced if the matter did not proceed to trial.

4.0 RESPONDENT'S SUBMISSIONS

4.1 It was submitted that the Respondent would show with relevant facts that the District Registrar was on firm ground and that the appeal had no real prospect of success. That at the heart of the District Registrar's decision was that he agreed with the Respondent that what was in contention was not that there were monies owed by the Appellant but what amount was owed.

4.2 Counsel submitted that the District Registrar's decision was made based on Order 27 of the Rules of the Supreme Court. That the Registrar stated that the Respondent had proved that the Appellant unequivocally admitted to being indebted to the Respondent and as such a full trial was

not warranted in a matter in which there was no dispute as to the debt.

4.3 It was further submitted that the basis for the decision was based on the admissions by the Appellant in its affidavit. At paragraph 4 of the Appellant's affidavit in opposition to the affidavit in support of the application for judgment on admission, the Appellant admitted the contents of paragraph 3 and 4. The admission was to the following paragraphs in the Respondent's affidavit.

4.4 That between 25 October, 2016 and 1 November, 2016, the Plaintiff and the Defendant entered into an oral contract in which they agreed as follows:

(a) "The Plaintiff would supply the Defendant with caustic produce;

(b) The Defendant would supply these on to the third companies;

(c) The Plaintiff would be paid the cost of the goods by the Defendant; and

(d) The gross profits from the supply to the third parties would be shared equally between the Plaintiff and the Defendant.

All profits were agreed to be shared between the parties.

That in light of the agreement, the Defendant company owed the Plaintiff the sum of ZAR 802, 212.24."

4.5 On the contention that the District Registrar relied on paragraph 4 which had a typographical error, it was submitted that that was not the sole basis on which the Registrar made his decision as there were clear admissions made in emails which the Court relied on.

4.6 It was added that an affidavit was conclusive as to its contents and it was inappropriate for counsel to assume what was intended by the deponent of the affidavit. If the deponent truly did not intend to admit owing the Respondent, an appropriate action would have been for counsel to apply to amend the affidavit. Since this was not done, the Court had to accept the evidence before it.

4.7 While it was admitted that the affidavit contained contradictory statements, that did not invalidate the admission made by the Appellant.

4.8 Counsel for the Respondent also submitted that apart from the admission in the affidavit, the Appellant also admitted by email dated 29th May, 2017 wherein it was stated that the Appellant was asking for a consolidation

of the full amount owed so that a payment plan could be drawn.

4.9 Following the proposal made, the Respondent made a payment proposal which the Appellant amended to better suit their operations. This was the communication that the District Registrar relied upon which was exhibited as **'GF1'.**

4.10 In response to the Appellant's submission that the email was not unequivocal admission on their part, the Court was referred to the case of **George Kakoma v. The State Lotteries Board of Zambia** (2) where it was stated that under the law of contract, it was trite that a legally binding agreement could be inferred from the conduct of the parties. If regard had to be given to the conduct of the Appellant's representative, it was possible to infer that the Appellant had unequivocally admitted to owing the Respondent as the Appellant would not have stated that they were committing to sticking to the attached plan and if they were able to make bigger payments in the event that things drastically improved, they were making

commitment to increase the payments and they would come back to adjust the plan.

4.11 In view of the foregoing, it was submitted that there was no shred of doubt that the Defendant admitted owing the Plaintiff the sum of ZAR 732,212.24 which owing to interest became ZAR 802,212.24.

4.12 In addition, counsel submitted that the Appellant continued to make written admissions of their debt and in an email dated 8th August, 2017 exhibited in the Respondent's affidavit, the Appellant's Director of Finance admitted not only that the monies were owed but was requesting further time to make payments.

4.13 The Respondent also submitted that the Appellant made an admission by conduct in that it made a promise of a payment plan and even began making payments in respect of the payment plan described in the emails. The Appellant made one payment in the sum of ZAR 70,000 in respect of the payment on 9th September, 2017. This was made in compliance with the first payment plan. Thus the Appellant by their conduct in making the

payment evidenced their admission of debt and their commitment to liquidate the debt.

4.14 In this regard, the Appellant could not back out at this stage that this payment was not a commitment to a plan that they amended. It was argued that the Respondent reasonably relied on this promise of payment and should not be disadvantaged because the Appellant wished to deny these promises at this late stage.

4.15 In conclusion, it was submitted that the District Registrar stood on solid ground when he granted the Plaintiff judgment on admission. The Court was beseeched to uphold the same.

4.16 At the hearing of the appeal, learned counsel for the Appellant Ms. M. Moonga relied wholly on the Heads of Arguments filed, the affidavit in opposition to the affidavit in support.

4.17 On behalf of the Respondent, learned counsel Mrs. M. Chibesakunda also relied on the Heads of Arguments filed affidavit in support. The same were augmented with oral submissions.

5.0 THIS COURT'S DECISION

5.1 I have carefully considered the clashing arguments of counsel on the two grounds of appeal. The Appellants grievance at the risk of repetition is that the learned District Registrar erred in law and fact when he entered judgment on admission against the Appellant by relying on paragraph 4 of their affidavit in opposition to the Respondent's affidavit in support without having regard to the other paragraphs which showed that at no point did the Appellant through any documents or otherwise expressly admit to owing the Respondent ZAR 732, 212.24.

5.2 It is also contended that the District Registrar erred when it held on page R3 that the further emails marked GF1 showed that there was an admission by the Defendant.

5.3 I shall therefore consider these grounds of appeal together as they are interrelated.

5.4 From the arguments by the Appellant, the District Registrar's decision has been attacked on the basis that there was no unequivocal admission of the debt by the Appellant.

5.5 In this regard, it is pertinent to consider the law pertaining to such applications. The Respondent herein made an application to enter judgment on admission against the Appellant for the sum of ZAR 732,212.24. The application was made pursuant to Order 21 rule 6 of the High Court Rules, Chapter 27 of the Laws of Zambia.

5.6 Paragraph 314 of the **Halsbury's Laws of England Volume 37, Fourth Edition** provides that:

> **"Where admissions of fact or part of a case are made by the party to a cause or matter either by his pleadings or otherwise, any other party may apply to the court by motion or summons for such judgment or order as upon those admissions he may be entitled to without waiting for the determination of any other question between the parties."**

5.7 Thus Order 27 rule 3 of the White Book is couched in similar words. Further, Order 21 rule 6 of the High Court Rules provides that:

> **"A party may apply, on motion or summons, for judgment on admissions where admissions of facts or part of a case are made by a party to**

the cause or matter either by his pleadings or otherwise."

5.8 The admission may be express or implied but it must be clear (see footnote 1 under paragraph 314 at page 236 of the Halsbury's Laws of England). In the case of **Ellis v. Allen** [3] judgment on admission was entered against the Defendant by Sargant J. In doing so, he made the following observation:

> **"I cannot conceive any circumstances which the Defendant Allen could rely on as a defence to the action having regard to the admissions by the letter."**

5.9 What is clear from the above case is that if there is no defence conceivable on which the Defendant can rely on to the action having regard to the alleged admission, then the court can enter judgment on admission.

5.10 Furthermore, in the case of **Huges v. London, Edinburgh and Glasgow Assurance** [4], it was held that:

> **"The court will not allow final judgment to be signed upon admissions in a pleading or affidavit unless the admissions are clear and unequivocal."**

5.11 In the present case, the District Registrar in his ruling therefore stated that there was a clear admission on the part of the Appellant in the affidavit in opposition in paragraph 4. Further that the trail of emails marked GF1 showed that there was an admission by the Appellant owing money to the Respondent.

5.12 The crucial question I ask is whether the District Registrar can be faulted in arriving at this conclusion.

5.13 Paragraph 4 in the affidavit in contention which was sworn by the Director in the Appellant company reads as follows:

> **"That the contents of paragraph 3 and 4 of the affidavit in support are admitted."**

5.14 This paragraph was in response to paragraphs 3 and 4 of the Respondent's affidavit in support of the application to enter judgment on admission which reads as follows:

> **"That between 25th October, 2016 and 1st November, 2016, the Plaintiff and the Defendant entered into an oral contract in which they agreed as follows:**

(a) The Plaintiff would supply the Defendant with caustic produce;

(b) The Defendant would supply these on to third party companies;

(c) The Plaintiff would be paid the cost of the goods by the Defendant; and

(d) The gross profits from the supply to the third parties would be shared equally between the Plaintiff and the Defendant.

All profits were agreed to be shared between the parties.

That in light of the agreement the Defendant company owed the Plaintiff the sum of ZAR 802, 212.24."

5.15 In relation to these paragraphs, counsel for the Appellant contends that there was a typographical error in paragraph 4 of the affidavit in opposition which appeared to admit the contents of the above paragraphs in the affidavit in support.

5.16 The view I hold is that if there was an error in the affidavit in opposition as contended by the Appellant, an application to amend the affidavit as provided for in the

rules should have been made before the hearing of the application.

5.17 Since no such application was made, the District Registrar cannot be faulted for having relied on the said paragraph in the Appellant's affidavit.

5.18 While an issue was made to this particular paragraph 4 that the District Registrar did not have regard to the other paragraphs in the affidavit in support, it is clear from the impugned ruling that this was not the only reason why judgment on admission was entered.

5.19 The District Registrar also made reference to a trail of emails where there seemed to be proposals of a payment plan. The first email was exhibited GF1 and it reads that:

> **"Thanks for the email and the amended proposal. We accept your 8 months' payment plan on the rand amount outstanding commencing end of July, 2017 with the final payment on 28th February, 2018..."**

5.20 The Appellant's representative responded by saying that:

> **"Please find attached payment plan proposal. I have twerked it a little to fit into the projected business cycle and I am requesting to push it by a further month. Should this be acceptable kindly insert the applicable interest amounts and send me the final schedule.**
>
> **I am committed to sticking to the attached plan and if we are able to make bigger payments in the event that things drastically improve I am making commitment to increase the payments and we can come back and adjust the plan."**

5.21 Based on this response, the District Registrar concluded that there was an admission by the Appellant's representative.

5.22 From the affidavits on record, it is not in dispute that there were emails exchanged between the Appellant and the Respondent wherein proposals were made concerning payment plan.

5.23 The crucial question is what did those emails entail? Counsel for the Appellant contends that the payment plan was not in any way an admission that the Appellant owed the Respondent money but was aimed at ensuring that the business relationship was maintained.

5.24 It is common cause that a payment plan allows a party to make smaller payments to pay off a debt. Thus the plan depicts the solution for paying off all outstanding debts.

5.25 In this regard, if the intention by the Appellant was to keep the business relationship, this would have clearly come out in the emails that the plan did not in any way depict admission of liability. However, all the emails are silent on that aspect.

5.26 In light of the foregoing, I cannot accept so bold an argument by the Appellant that the plan was intended to keep the business relationship. What is evident from the said emails is that the Appellant's representative depicted an acknowledgment that money was owed and thus by making a payment plan, he was providing a solution of how the money was going to be paid. This is the reason why the appellant stated in the event that he was committed to show to the attached plan and if they were able to make bigger payments.

5.27 I cannot therefore assign any other interpretations or meaning to the emails exchanged other than that the Appellant's representative admitted owing the Respondent

money by proposing a payment plan. The representative could only have made a commitment to stick to the plan and make even bigger payments in recognition that they owed the Respondent money and they wanted to fulfil their contractual obligation.

5.28 In this regard, I accept the Respondent's argument that the Appellant cannot at this stage turn around and claim that it did not admit owing the Respondent any money because proposals made where a clear admission of liability.

5.29 As I have earlier stated, an admission may be express or implied but it has to be clear. On the evidence adduced by the Respondent, it is clear that the Appellant by accepting to make a payment proposal impliedly admitted that it owed the Respondent money. Therefore, I cannot conceive of any defence on which the Appellant can rely on which would warrant this Court proceeding to trial.

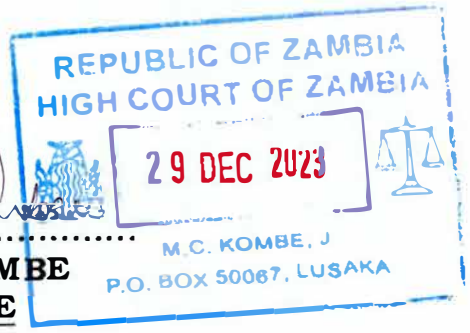
5.30 Given the foregoing, I find that the District Registrar cannot be faulted for coming to the conclusion that the trail of emails marked GF1 showed that there was an admission by the Appellant owing the Respondent money.

As the District Registrar rightly pointed out, there was no dispute of debt, the doubt was on the quantum owed and that is why he referred the matter for assessment.

6.0 CONCLUSION

6.1 Based on the evidence adduced and the submissions by the parties, I find no merit in the appeal by the Appellant as the District Registrar was on firm ground when he entered judgment on admission in favour of the Respondent and referred the matter for assessment. The ruling is thus upheld and the appeal is dismissed with costs to the Respondent.

DELIVERED AT LUSAKA THIS 29th DAY OF DECEMBER, 2023.



.....

M. C. KOMBE
JUDGE