

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2020/HP/0556

(Civil Jurisdiction)

BETWEEN:

HEADSAI ENTERPRISS LIMITED

AND

IGBAL BAHADAR



PLAINTIFF

DEFENDANT

Before the Hon. Mrs. Justice M.M. Bah-Matandala,

On the 19th day of April 2024.

For the Plaintiff: Mr. B. Mosha Messrs.- Mosha & Co.

For the Defendants: Mr. H Munsenje Messrs. H. Musenje & Co.

J U D G M E N T

LIST OF AUTHORITIES REFERRED TO:

1. *Chitty on Contracts General principles, Vol.1, 20th edition*
2. *Phipson on Evidence, 17th Edition*

CASE LAW:

1. *Nkongolo Farms Limited v Zambia National Commercial Bank (2007) ZMSC 119*
2. *Colgate Palmolive (Z) Inc v Abel Shemu Chika and 110 Others Appeal No. 181 of 2005*
3. *Printing and Numerical Registering Company v Sampson (1875) CA 19 EQ 462*
4. *Printing and Numerical Registered Company v Simpson 1875 LR19 464*

1.0 INTRODUCTION

1.1 By a Writ of Summons dated 2nd June, 2020, the Plaintiff claimed against the Defendant the following:

- a. *The sum of US\$25,400.00 being the outstanding debt on two Trucks;*
- b. *Interest on the claimed amount;*
- c. *Costs;*
- d. *Any other relief the court may deem fit;*

1.2 In the accompanying Statement of Claim, it was averred that on 19th October 2019 the Plaintiff did at the request of the Defendant give the Defendant written permission to sale its Scania Truck and Trailer chassis number YS2R6X40001282346 and Engine number 1011238 on the strength of the representation that he had a prospective buyer in the name of Danait Transport at the price of US\$ 40,000.00

1.3 Further that the Defendant collected a Scania Truck and Trailer from the Plaintiff wherein he later paid the sum of US\$14,000.00 and US\$6,000.00 on two separate occasions, leaving a balance of US\$20,000.00.

1.4 It was further averred that while the Plaintiff was still waiting for the payment of US\$20,000 as the balance from the Defendant, the Defendant advanced him a sum of

US\$7000.00 and subsequently took his truck and delivered it to a Mr. Mohamed Waghat whom Plaintiff had claimed was the prospective buyer.

1.5 Consequently, the Defendant was owing the Plaintiff US\$5,400.00 as money which was paid by the Plaintiff through a third-party purchaser who had paid off US\$12,000.00 which was due to Mr. Waghat, leaving the balance of US\$5,400.00 on the second truck after considering the US\$7000.00 advance for its clearance.

2.0 DEFENCE

2.1 In Defence, the Defendant denied owing the Plaintiff the sum of US\$25,400 as claimed.

2.2 The Defendant agreed to have collected and sold the Plaintiff's Scania Truck and Trailer upon finding a buyer who agreed to buy at a price of US\$ 40,000.00 to be paid in 3 to 4 installments.

2.3 He further averred that the buyer (Danait Transport Limited), on 10th September 2019, 17th October 2019, 19th November 2019 and on 24th December 2019, through the Defendant did pay PW1 the sum of ZMW52, 000.00

equivalent to US\$4,000, ZMW150,480.00 equivalent to US\$14,000.00, US\$12,000.00 and US\$7,000 as first, second, third and fourth installments respectively.

2.4 It was further averred that after the last installment was paid, PW1 acknowledged receipt of the same and disclaimed in writing any further claim pertaining to the sale of the Scania Truck and Trailer.

2.5 As regards the assertion on the second truck, the Defendant averred that it was PW1 who approached the Defendant with a view of borrowing a sum of US\$7000 and he informed him that he could only assist him by taking him through to a Mr. Mohamed Waghat who charges interest on money lend and that the second truck Volvo was to form part of the collateral.

3.0 THE PLAINTIFF'S CASE AT TRIAL

3.1 At the hearing of the matter, **PW1** was **James Mwang'amba** a businessman of Zanimuone West in Lusaka. In a sworn testimony, he told the Court that sometime in 2019 he imported a vehicle in the Plaintiff Company's name. He further testified that the vehicle was

imported for resale and when it arrived in Lusaka, he was told by a friend that there was a customer who wanted the vehicle and they would come through to see it.

3.2 Consequently, the said customer was the Defendant who had gone to see the truck in the company of a person he introduced as the representative for Danait Transport the prospective buyer and they went ahead and negotiated the price for the truck to be sold at USD\$40,000.00.

3.3 It was his further testimony that the following day, the Defendant called him and asked him to take the truck to Danait Transport and later they met at Odds Filling Station in Matero compound.

3.4 When they meet at the aforesaid place, the Defendant asked him to write a letter to confirm that the Plaintiff had allowed him to sale the vehicle as an agent. And upon consulting the Plaintiff, he prepared the letter in question and he was told that the buyer would pay the full amount.

3.5 At the same meeting, the Defendant later excused himself to go and collect the money and to PW1's surprise, he only came with ZMW180, 000.00 which at the time was

equivalent to USD\$14,000.00 and the Defendant told him that they will clear the balance gradually.

3.6 After that, the Defendant kept giving him fake promises until after two weeks when he again brought ZMW80,000.00 which was equivalent to US\$6,000.00 and after that the Defendant again continued giving him fake promises and did not settle the balance.

3.7 Testifying on the second transaction, he stated that whilst waiting for the other payment from the Defendant, he ordered another truck and he followed the Defendant to give him money to clear the vehicle which had been imported. The Defendant did not have money as he had told him that he was waiting to clear Tax Turn Over issues with Zambia Revenue Authority (ZRA) before he could access his account.

3.8 The Defendant told him that he had a friend who could give the Plaintiff money to clear the vehicle but needed surety or collateral and further requested for the photos of the truck which was awaiting to be cleared off at the port of entry and PW1 sent them.

- 3.9 The Defendant further informed PW1 that he was informed that Mr. Muhamed really liked the truck from the photos sent and that he was going to buy it. Mr. Muhamed advanced the USD\$7000 to him and he cleared the vehicle.
- 3.10 When the said truck arrived, it was taken to Mr. Muhamed's residence and they agreed that he will buy the vehicle at US\$ 55,000 but the transaction did not materialize as the Defendant kept giving him fake promises.
- 3.11 When he finally made a follow up to collect his second truck from Mr. Muhamed's residence, he learnt from Mr. Muhamed that actually the Defendant had left the truck as collateral since the Defendant was the one who owed Mr. Muhamed the sum of US\$12,400.00.
- 3.12 It was stated that during that same time, PW1 was trying to contact the Defendant's phone but it was not going through so the Plaintiff paid Mr. Muhamed the US\$12,400 through the third-party purchaser and as a result, the Defendant owed the Plaintiff the balance of US\$20,000.00 from the first transaction and US\$12,500.00 less

US\$7000 which he had advanced to him to clear second vehicle.

3.13 Under cross examination, he said that the letter at page 1 of the Plaintiff's bundle of documents was just an agreement for him to sale the vehicle on behalf of the Plaintiff and that was why the purchase price didn't reflect in the letter.

3.14 He also said that he did not indicate in the statement of claim that the purchase price was to be paid at once because it was to be paid at once. He denied having received ZMW52, 000.00 from the Defendant. He also stated that the letter showing that he received US\$7000 was a forged letter.

3.15 In re-examination, he said that he did not indicate in the statement of claim that the purchase price was to be paid in full because the first agreement for payment in full was affected so they started waiting for the next payment.

3.16 **PW2** was **Steven Banda** the Director at the Plaintiff's Company who in his sworn testimony testified that his name was appearing on pages 5 and 6 of the Plaintiff's

carried out his forensic examinations on the aforementioned documents and his conclusion was that the signature on the acknowledgment letter was forged as the signatures purported to have been made by PW1 did not match with the specimens provided.

3.20 Under cross examination he said that he did not know where the specimen signatures were collected from and also that they were not collected in his presence. In further cross examination, he said that he was provided with the original document of the image appearing at page 18 of the Plaintiffs supplementary bundle of documents.

3.21 In re-examination he said that the samples he used were the affidavit in support compared with the signature on the acknowledgement letter. He further said that the samples on chart one column B were collected from the affidavit, NRC and provided specimen samples.

4.0 THE DEFENDANT'S CASE AT TRIAL

4.1 **DW1** was **Iqbal Bahadir** the Defendant herein who testified that sometime in October 2018 he received a call from Denis Masawa who informed him that he had a

Scania Truck for sale. They agreed that he should contact him once it was in Lusaka since at that time it was at the Namibian border.

4.2 When the vehicle was in Lusaka, DW1 went to see the vehicle and met Mr. Denis Masawa who was in the company of PW1. It was his further testimony that he organized Mr. Petrous the owner of Danait Transport as the buyer, and after negotiations, Mr. Petrous agreed to buy the vehicle at US\$40,000 and that he would pay in installments.

4.3 It was his further testimony that Mr. Petrous gave him the first installment of ZMW50, 000.00 equivalent to US\$ 4,000 the following day; which money he gave to PW1. The next payment was equivalent to US\$14,000.00 which was transferred to his account and he called PW1 whom he gave the kwacha equivalent to US\$14,000.00 on 17th October 2019. He further said that a month after he paid him a kwacha equivalent of US\$12,000.00.

4.4 It was his further testimony that in between the payment of the second and third installment, he had received

US\$10,000.00 in his account from Mr. Petrous but due to ZRA tax issues he could not use his account until after sorting out the Tax Turn Over issues. After he was able to use his account, he called PW1 with a view of giving him his money but he was in Tanzania at that time until sometime in December 2019 when PW1 went to his home and DW1 paid him US\$7,000.00 as the last installment after which PW1 signed an acknowledgment letter.

- 4.5 He further testified that contrary to PW1's assertion that he had left PW1's Truck with Mr. Waghat as collateral for an advance of US\$ 12,400, which money was cleared by PW1 in order to retrieve the truck, he testified that Mr. Waghat loaned PW1 through him, DQ1, US\$8000 which comes to US\$12,400 with the inclusion of US\$ 2,000.00 as commission, plus US\$2,400.00 interest and moneys spend when the truck ran out of fuel in Monze respectively.
- 4.6 Under cross examination, he confirmed that he was working on commission on behalf of a client. He further said that there was only one truck involved.

4.7 He also confirmed that the first truck was a scania and it was bought by Danait Transport Limited, further that he was not signing for the money when he received it from Danait but he would make an acknowledgment note.

4.8 In further cross examination he said that it was not true that when PW1 went to see Mr. Muhamed Waghat, and that Mr. Waghat was shocked to hear about the transaction. He also said that he would not call Mr. Waghat as a witness.

4.9 In re-examination, he said that Mr. Waghat refused to meet PW1.

4.10 **DW2** was **Moses Phiri** who testified that from 2013 to 2020 he was a garden boy working for DW1. He further testified that on 24th December 2019, a friend to DW1 came and DW2 witnessed DW1 giving the friend money after which he was asked to sign as a witness. He also said that he was told that the friend to his boss was given US\$7000.

4.11 There was no cross examination for this witness.

5.0 SUBMISSIONS

5.1 In the final submissions on behalf of the Plaintiff, it was submitted that the acknowledgment letter dated 14th December, 2019 alleged to have been signed by the Plaintiff's witness when it was subjected for forensic analysis; it was found that the signatures of the PW1 were different thereby suggesting fraud.

5.2 Reference was made to the case of **Nkongolo Farms Limited v Zambia National Commercial Bank (2007) ZMSC 119¹**. It was further submitted that the handwriting expert was called to speak to the facts of the forensic report and the witness reiterated that the signature on the letter of acknowledgement and the sample signatures of PW1 were different.

5.3 Counsel urged this Court to find that the Defendant was justly indebted to the Plaintiff.

5.4 There were no submissions for the Defendant.

6.0 ANALYSIS AND CONCLUSION

6.1 From the evidence on record it is common cause that the Plaintiff Company authorized PW1 to sale a Scania Truck and trailer to a third-party through the Defendant.

- 6.2 The Scania Truck and trailer was delivered to the Defendant on the strength of the representation that the Defendant had a prospective buyer who was willing to buy the truck at the price of US\$40,000.00.
- 6.3 It is further not in dispute that the Defendant advanced an amount of US\$7,000.00 to PW1 which money was provided by Mr. Mohammed Waghat and to whom the Plaintiff's truck was delivered as collateral.
- 6.4 It also common cause that the Plaintiff retrieved the vehicle from Mr. Waghat upon paying off a sum of US\$12,400.00 due to Mr. Waghat through a third-party purchaser.
- 6.5 On the other hand, the Plaintiff alleges that he was only paid US\$20,000.00 out of the agreed purchase price of US\$40,000.00 for the Scania Truck. This fact has been disputed by the Defendant as he asserts that he paid the whole US\$40,000.00 and that the last installment of US\$7000.00 was made at the Defendant's residence in the presence of DW2 his garden boy.

6.6 According to PW1, after the Defendant remained with a balance of US\$20,000.00 to be cleared for the purchase price of the Scania Truck and Trailer, he ordered a Volvo truck and asked the Defendant for US\$7000.00 from his balance. But the Defendant got the money from a third-party namely Mr. Muhamed Waghat who required it as collateral.

6.7 The Defendant's version on this fact is that he had no balance remaining to pay the Plaintiff at the time PW1 asked for US\$7000 but that the amount was only borrowed from Mr. Muhamed Waghat to be paid by PW1.

6.8 Having established the facts herein, following are the questions for determination.

- i) *Whether or not the Defendant did pay the entire sum for the purchase of the Scania Truck and Trailer;*
- ii) *Whether or not the Defendant paid PW1 US\$7000.00 exhibited on the disputed acknowledgment document;*

- iii) *Whether or not the Plaintiff is entitled to a refund on the US\$7,000 loan the Defendant obtained from Mr. Muhamed;*
- iv) *Whether or not the Defendant is indebted to the Plaintiff on the US\$12,400.00 paid to Mr. Muhamed Waghat.*

6.9 Let me now address the above questions of fact and apply the law. The first one being; *whether or not the Defendant did pay the entire sum for the purchase of the Scania Truck and Trailer.* In order to arrive at my finding on this question, I have decided to begin by referring to the undisputed facts.

6.10 The undisputed fact is that an amount of US\$20,000 was paid to PW1. However, the parties dispute is on how the how the US\$ 20,000 was paid.

6.11 The Plaintiff claims that there were two installments made the first being equivalent of US\$14,000.00 paid in kwacha and the second one being equivalent to US\$6,000.00 also paid in kwacha.

6.12 The Defendant in his testimony said that he paid four installments on particular dates as follows; the sum of ZMW52, 000.00 equivalent to US\$4,000, ZMW150, 480.00 equivalent to US\$14,000.00, US\$12,000.00 and US\$7,000 on the first, second, third and fourth installments.

6.13 The fact that the Defendant claims that he made other installment payments, apart from the US\$ 20,000, a fact which has been agreed to, by the Plaintiff, the onus of proving at this stage is upon the Defendant to adduce evidence to convince me that indeed the payments were made.

6.14 The perusal of the evidence on record will show that other than the word of mouth, no evidence has been adduced to confirm that indeed the disputed amount was paid. And upon evaluation of the demeanor of witnesses and the evidence as a whole, I am inclined to believe that only a total of US\$20,000 was paid towards the purchase price of the Scania Truck and Trailer and I shall dismiss the Defendant's argument because he has not led evidence to

show that this money was actually delivered to PW1 apart from his word of mouth and there is a dispute.

6.15 Let me turn to the second question which is *whether or not the Defendant paid PW1 US\$7000.00 exhibited on the disputed acknowledgment document*. My perusal of the evidence on record reveals that there was purported letter of acknowledgment where PW1 signed acknowledging that he received the last installment for the payment of the Scania Truck from the Defendant. This letter was disputed by the Plaintiff and was actually subjected to forensic handwriting examination.

6.16 I have further examined the evidence of PW3 whose conclusion on the analysis of handwriting examination was that PW1 did not sign on the aforementioned document. The challenge posed for my determination by the Defendant is that the collection of handwriting samples from PW1 was not done in the presence of either party or the police officer.

6.17 I have analysed the testimony of PW3, he says that as part of his job description, he would receive complaints from

Zambia Police Stations, Drug Enforcement Commission and Law firms. Furthermore, it is not in dispute that the specimens for PW1 were sent for forensic examination by the Plaintiff's lawyers' Law firm following an application made before Court after PW1 disputed having signed the acknowledgement letter.

6.18 Furthermore, the Defendant has not brought evidence to the contrary to show that the specimen claimed to be for PW1 were not collected from PW1. It still gets back to the principle of he who alleges must prove.

6.19 I shall therefore receive the evidence by the Forensic Expert and I am inclined to believe that PW1 did not sign on the letter of acknowledgment. Consequently, the claim that PW1 was paid the US\$ 7000 in December 2019 is dismissed.

6.20 The third question for determination is whether *or not the Plaintiff is entitled to recover the amount of US\$7000 obtained as a loan from Mr. Muhamed Waghat*. The record will show that PW1 does not deny that the Defendant got a loan of US\$7000 from Mr. Muhamed Waghat.

6.21 From the evidence herein, it is clear that PW1 asked for the aforementioned amount from the Defendant because according to him the Defendant still owed him but the Defendant made alternative arrangements to borrow money from Mr. Muhamed Waghat who was referred to as potential buyer.

6.22 Later when Mr. Muhamed Waghat demanded for that money to be paid before PW1 could collect his truck, PW1 was informed that it was actually US\$12,400 that was owed to Mr. Muhamed Waghat by the Defendant. Therefrom, the Plaintiff had to pay back the money through a third-party purchaser which he is now demanding amounting to US\$5,400 after reducing the sum of US\$ 7,000 which PW1 knew was borrowed from Mr. Muhamed Waghat by the Defendant from the US\$12,400 being claimed as the amount which was actually borrowed by the Defendant.

6.23 The Defendant also does not deny that the money he borrowed was actually a sum of US\$12,400. And the same sum was to be paid to Mr. Waghat Muhamed, although the

Defendant claims that what he borrowed for the Plaintiff to clear the second vehicle was US\$8000. There was also a sum as his commission and fuel charges which brought the total sum to US\$12,400. This is the same amount the Plaintiff cleared off through the third-party purchaser.

6.24 It is my considered view that the Plaintiff is entitled to recover the money paid to Mr. Muhamed Waghat for the following reasons;

- a) the Plaintiff was only following up his money owed to him by the Defendant when he went to ask from him for money to clear another truck.
- b) the Plaintiff was not privy to the other charges the Defendant is referring to as he has not demonstrated that the Plaintiff agreed to those terms.

6.25 From the foregoing, I therefore agree that the Plaintiff is entitled to the refund of US\$ 12,400 paid to Mr. Muhamed considering the US\$7000.00 advance which he got for the clearance of the vehicle hence bringing the balance to US\$5,400.

6.26 In arriving at the foregoing findings, I have considered the arguments advanced by both parties and the authorities referred to by Counsel for the Plaintiff.

6.27 And in terms of the applicable law, the contract herein is governed by the general principles of a contract. The case of **Colgate Palmolive (Z) Inc v Abel Shemu Chika and 110 Others Appeal No. 181 of 2005²** where the Supreme Court adopted a passage from **Printing and Numerical Registering Company v Sampson (1875) CA 19 EQ 462³** brings in the principle that for contracts to be entered in 'freely and voluntarily' in order of it to be to be construed as the intention of the parties. In the above case, the Court held that:

"If there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracts and that contracts when entered into freely and voluntarily, shall

*be sacred and shall be enforced by the Courts
of justice...”*

6.28 In the instant case it is clear from the facts herein that the Plaintiff voluntarily entered into an agreement for the sale of the scaña truck with the Defendant on an understanding that the Defendant had a prospective buyer. It is very clear that there was the meeting of minds as PW1 even after learning that the buyer was a third-party, he still accepted.

6.29 Furthermore, in the case of ***National Drug Company Limited and Zambia Privatization Agency v. Mary Katongo SCZ Appeal No. 79/2001***⁴ it was held that:

“It is trite law that once parties have voluntarily and freely entered into a legal contract, they become bound to abide by the terms of contract and that the role of the Court is to give efficacy to the contract when one party has breached it by respecting, upholding and enforcing the contract”

6.30 In another case of **Printing and Numerical Registered Company v Simpson 1875 LR19 464** it was decided that:

“if there is one thing more than another which public policy require, it is that men of full age and competent understanding shall have the utmost liberty in contracting and that their contract when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice”

6.31 This is an oral contract and I am quick to state that oral contracts are enforceable in Zambia, provided they meet the essential requirements of a valid contract. However, while oral contracts are enforceable, proving the existence and terms of such contracts may be more challenging than with written contracts. Parties may need to rely on witness testimony, documentary evidence, or other forms of proof to establish the terms of the agreement.

6.32 I also found comfort from the learned Authors of ***Phipson on Evidence, 17th Edition in paragraph 6 - 06 at page***

151 where the following was stated as regards the burden of proof in civil cases:

"So far as that persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts that affirmative of the issues. If, when all the evidence is adduced by all parties, the party who has this burden has not discharged it, the decision must be against him. It is an ancient rule founded on considerations of good sense and should not be departed from without strong reasons."

6.33 Having found that the parties entered into a contract for the sale of a Scania Truck and according to the evidence before me only US\$20,000 was paid thus left a balance of US\$20,000. I have further found that, the Plaintiff paid off US\$ 12,400 to Mr. Muhamed Waghat after considering the US\$7000.00 which was given as an advance to clear the second truck. Thereby leaving a balance of US\$5,400.

6.34 In line with the foregoing and in conclusion, the reliefs sought by the Plaintiff are granted as prayed for. Thus, in the premise, the following orders are made:

- a. *The Defendant to pay the sum of US\$20,000.00 being the outstanding amount on the purchase price for the scania truck and trailer;*
- b. *The Defendant to pay US\$5,400 being the refund from the US\$12,400 paid to Mr. Muhamed Waghat less the US\$7000 advanced to the Plaintiff for the clearance of the second truck.*
- c. *The monies to be paid shall attract simple interest at the average of the short-term deposit rate from the date of the action to the date of judgment and thereafter at the current Commercial Bank lending rates as determined by the Bank of Zambia from time to time until full payment.*

7.0 Costs are for the Plaintiff.

8.0 Parties informed of the right to appeal.

Dated at Lusaka, this 19th day of April 2024.


M.M. BAH-MATANDALA
HIGH COURT JUDGE.

