

IN THE HIGH COURT FOR ZAMBIA

2012/HP/1421

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

CHIYANZU SIBAFUZI SIKANETA

PLAINTIFF

AND

JACINTA MULWANI
PAUL CHANDA MULENGA

1st DEFENDANT
2nd DEFENDANT



Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 5th September, 2016

For the Applicant : Mr. M. Mulele, Messrs G.M. Legal Practitioners

R U L I N G

Legislation Referred To:

1. *Rules of the Supreme Court (1999) Edition*

This application is made *ex parte* for leave to issue committal proceedings for contempt of court pursuant to Order 52 of the Rules of the Supreme Court (1999) Edition.

An affidavit in support of the application was sworn by **CHIYANZU SIBAFUZI SIKANETA** on 28th October, 2016. He deposes that the Court entered Judgment against the 1st Defendant on 31st May, 2013, in the sum of K55,000.00. He also deposes that efforts to get the 1st Defendant to liquidate the balance of the Judgment sum have proved futile because the 1st Defendant has deliberately refused to pay. Further, that the 1st Defendant has been bragging that there is nothing that can be done to her.

The deponent states that the 1st Defendant had after the Judgment purchased motor vehicles in her name, namely a Toyota registered AJC 8089, which she has sold. The deponent also states that the 1st Defendant has the means and capacity of liquidating the Judgment sum but has deliberately chosen not to do so. The deponent seeks an order of the Court to commit the 1st Defendant to prison for contempt.

At the hearing of the application on 28th August, 2016, Learned Counsel for the Plaintiff placed reliance on the affidavit in support filed into Court on 28th October, 2015. He also placed reliance on the statement in support filed on even date. Counsel prayed to the Court to grant the Plaintiff leave to commence contempt proceedings because the 1st Defendant had willfully and deliberately elected to disobey the Court's Judgment for over three years.

The statement in support reveals the following:

- "1. The Applicant who is the Plaintiff in this matter is **CHIYANZU SIBAFUZI SIKANETA**.

2. The 1st Defendant is Ms. Jacinta Mulwani who resides at Plot 2613/2297, Kwacha Road, Dambwa North Extension, Livingstone in Southern Province.

3. The Applicant who is also the Plaintiff obtained a Court Judgment dated the 31st May, 2013 against the 1st Defendant Ms. Jacinta Mulwani. In that Judgment the Court ordered the 1st Defendant to pay the Plaintiff the sum of K55,000.00.

4. The 1st Defendant has to date only paid the Plaintiff a sum of K13,000,00 through the 2nd Defendant herein. Further, that all efforts to get the 1st Defendant to pay the balance on the Judgment sum have proved futile. The 1st Defendant has on a number of occasions bragged that there is nothing the Applicant or any authority can do to compel her to pay the balance.

I have seriously considered this application together with the contents of the affidavit in support, statement in support and the oral submissions made by Counsel.

An Applicant who seeks leave to commence committal proceedings is required to comply with Order 52 (2) of the Rules of the Supreme Court, which states thus:-

- "(1) No application to a Divisional Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.**
- (2) An application for such leave must be made ex parte to a Divisional Court, except in vacation when it may be made to a judge in chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.**
- (3) The applicant must give notice of the application for leave not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit.**
- (4) Where an application for leave under this rule is refused by a judge in chambers, the applicant may make a fresh application for such leave to a Divisional Court....."**

My examination of the Plaintiff's affidavit in support and statement in support confirms that the Plaintiff has with satisfaction, demonstrated the following, that is:

- i) *The name of the Applicant (who is the Plaintiff) appears in the caption of this application and the Court's Judgment delivered on 31st May, 2013 and is described in the statement in support.*
- ii) *The name, description and address of the alleged contemnor is provided in the statement in support. The alleged contemnor resides at Plot 2613/2297, Kwacha Road, Dambwa North Extension, Livingstone in Southern Province.*
- iii) *The grounds on which leave for committal proceedings are sought are provided in the statement of support. My perusal of the said grounds bears out that they are sufficient for the purposes of Order 52 Rule 2.*

Accordingly, I grant the Plaintiff leave to commence committal proceedings against the 1st Defendant. The Plaintiff will bear its own costs.

Delivered at Lusaka this 5th day of September, 2016

M. Mapani
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Hon. Mrs. Justice M. Mapani-Kawimbe
HIGH COURT JUDGE