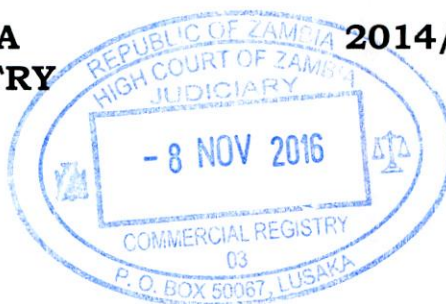


**THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**
(Commercial Jurisdiction)



2014/HPC/0170

BETWEEN:

**ASTRO HOLDINGS LIMITED
SANMUKH R. PATEL
FURNITURE HOLDINGS T/A OFFICE WORLD
RONAC SUPPLIES LIMITED**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT**

AND

**THE COURTYARD HOTEL LIMITED
AYUB MULLA
GAZELLE LIMITED
SKYWAYS TRUCKS INN LIMITED
ZABUNISSA ISMAIL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT**

**Delivered in Chambers before Hon. Mr. Justice Sunday B. Nkonde, SC at
Lusaka this 8th day of November, 2016**

For the Applicants : Mr. L. Zulu of Messrs Malambo & Company
Ms A. Theotis of Messrs Theotis Mataka Sampa Legal
Practitioners

For the Respondents : Mr. K. Nchito of Messrs N. Makayi & Company

R U L I N G

CASES REFERRED TO:

- 1) *Zega Limited vs Zambezi Airlines Limited, Appeal No. 39/2014 (2016) ZMSC*
Delivered on 15th April, 2016

LEGISLATION REFERRED TO:

- 1) *High Court Rules, Chapter 27 of the Laws of Zambia*
- 2) *Supreme Court Practice Rules, 1999 Edition , Volume 1*

This is the Applicant's application for Judgment on Admissions pursuant to **Order 21 Rule 5** of the **High Court Rules** and **Order 27 Rule 3** of the **Supreme Court Practice Rules**. It came by summons and supporting affidavit sworn by the Executive Chairman of the 1st Applicant herein, SANMUKH RAMANLAL PATEL, and was filed into Court on 7th September, 2016.

In the affidavit, the deponent stated that on 30th August, 2010, the 2nd Respondent signed an acknowledgment that the amount outstanding to the Applicants as at 30th August, 2010 was US\$8, 596, 220-00 and further that there was to be a return on investment on the agreed sum at 3% per month to be compounded. The deponent went on to state that this acknowledgment, which is produced and marked "SRP1" in the supporting affidavit, was an admission of the facts by the 2nd Respondent.

In the affidavit in opposition deposed to by the 2nd Respondent, AYUB MULLA, dated 19th September, 2016, the 2nd Respondent denied signing "SRP1" and further stated that he only first saw "SRP1" for the first time when it was produced by the Applicants as part of their evidence in this action.

In the Replying affidavit, the Applicants expressed surprise on the denial of "SRP1" by the 2nd Respondent because, according to the Applicants, until the application for Judgment on Admissions, "SRP1" had never been questioned as to its authenticity by the 2nd Respondent.

The parties also filed respective Skeleton Arguments and List of Authorities which I have found useful and duly considered in determining the application before me.

The application was heard on 4th October, 2016 after the Applicants had closed the case and before the Respondents could open theirs.

The relevant Rules are **Order 21 Rule 6** of the **High Court Rules** and **Order 27 Rule 3** of the **Supreme Court Practice Rules** which respectively provide as follows:

“(6) 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.”

“(3) Where admissions of fact or part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to Court 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 and the Court may give such judgment or make such order, on the application as it thinks just.”

The question which this application, therefore, raises is whether in the circumstances of this case this Court should exercise its discretion and enter Judgment on Admissions.

There is no contention that this Court has the discretion to enter Judgment on Admissions in appropriate cases. Indeed, in the case of **Zega Limited v Zambezi Airlines Limited¹**, our Supreme Court held that the power of the Court to enter Judgment on Admissions is a discretionary one but in order for the Court to exercise its discretion, the admission (s) relied upon must not be limited by any condition (s) and must be clear. Can it, therefore, be said that the admission in this case, which is "SRP1", is clear?

I have carefully looked at "SRP1" being the document upon which the application for Judgment on Admissions was anchored. It has complex figures which include principal and investment return. I see no useful purpose in re-producing this complex document in its entirety. Suffice it to state that it was on a plain paper and on top it read:

***"Att : Mr. Mulla
Court Yard Hotel***

Investment (work 11)"

At the bottom, it also had the figure 8, 596, 220-00 - without any currency denomination - with the following accompanying words:

- "1) Return on all investment to be 3% per month.***
- 2) All investment amount to be compounded yearly.***
- 3) Goods charged the month following delivery.***

***I confirm that the above statement is correct/acceptable
and is for the period to 30/06/2010 including
investment return payable***

The bill for furniture is to be added from 1st July, 2010"

There was also a signature after the above quoted words, next to the date 30/08/10 (sic). This is the signature the 2nd Applicant alleged was the signature of the 2nd Respondent.

In my view, "SRP1" is not a clear admission of facts by the Respondents for Judgment on Admissions to be entered in the sum of US\$8, 596, 220-00 in favour of the Applicants. I say so because there is denial by the 2nd Respondent that he ever signed "SRP1" and a finding on the authenticity of "SRP1" may have to be made by this Court. This can only be done after hearing all the witnesses, that is for the Applicants and the Respondents and not after hearing witnesses for the Applicants only as is the case now. Further, a finding on authenticity may also hinge wholly or partly on the question of credibility after hearing the Applicants' version and the Respondents' version including carefully observing the demeanor of the witnesses at trial.

As I also see it from the pleadings, the legality of the transactions in issue are also under question and this is yet to be determined.

For the foregoing reasons, therefore, the Applicants' application for Judgment on Admissions totally fails with costs to the Respondents.

Leave to appeal is granted.

Dated at Lusaka this 8th day of November, 2016.



Hon. Mr. Justice Sunday B. Nkonde, SC
HIGH COURT JUDGE