

**IN THE HIGH COURT FOR ZAMBIA
IN THE COMMERCIAL COURT DIVISION
HOLDEN AT LUSAKA
(Civil Jurisdiction)**



BETWEEN:

GRAHAM KILBANE

PLAINTIFF

AND

STANFORD GABRIEL MTAMIRA

DEFENDANT

**Coram: Hon. Madam Justice Dr. W. S. Mwenda in Chambers at Lusaka
this 12th day of December, 2016 Bell Equipment Zambia Limited v.
Scirocco Enterprises Limited**

For the Plaintiff: Ms. L. Maboshe of Corpus Legal Practitioners.

For the Defendant: Ms. S. Phiri of Mosha and Company.

RULING

Cases Referred to:

- 1. Zambia Export and Import Bank Limited V Mkuyu Farms Limited and Elias Andrew Spyron and Mary Langley Spyron (1993 -1994) Z.R. 36 (SC)***
- 2. Bell Equipment Zambia Limited v. Scirocco Enterprises Limited 2015/HPC/0567 (unreported)***

Legislation Referred to

- 1. Order 36 rules 9 and 10 of the High Court Rules, Chapter 27 of the Laws of Zambia.***
- 2. Order 3 rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia.***

This is the Defendants Application to pay Judgment sum in instalments pursuant to Order 36 rule 9 of the High Court Rules, Chapter 27 of the Laws of Zambia.

In support of the application, the Defendant swore an affidavit wherein he deposed that judgment on admission was entered for the Plaintiff on the 10th June, 2016 for the sum of Euro 97,915.81 and costs.

The defendant stated that while he is willing to settle the judgment amount he is incapable of paying the same in a lump sum and to that end exhibited and produced marked "SGM1" a copy of his Bank Statement. He averred that he is a shareholder in a company called Plinth Consulting Services Limited, from which he expected to earn income starting from the month of September, 2016. He exhibited a copy of a printout from the Patents and Companies Registration Agent (PACRA) for the Company as proof that he is a shareholder.

It was the Defendants evidence that Plinth Consulting Services Limited had entered into an agreement with a Ugandan Company for consulting services from which he would earn a total of US\$300,000.00. He produced a copy of the agreement and exhibited it as exhibit "SGM3". He stated that he would be able to settle the judgment sum within a period of 10 months by making monthly instalments of no less than Euro 2,000.00. However, he was confident that he would settle the whole judgment sum before the lapse of the 10 months.

It was the Defendants belief that the proposed time period is fair on both parties and will not unfairly prejudice the Plaintiff's position and for these reasons craves the indulgence of this Court to allow him to settle the judgment sum in installments.

The Plaintiff opposed the application and filed an Affidavit in Opposition to Summons to Pay Judgment Sum in Instalments sworn by himself in which he stated, *inter alia*, that the Defendant had not informed the Court the reasons for his inability to pay the judgment sum in a lump sum and had not furnished the Court with sufficient proof of his inability to pay the judgment sum in a lump sum.

It is the Plaintiff's belief that the Defendant is able to pay the judgment sum in full and has not fully disclosed to the Court the extent of his income.

The Defendant produced copies of printouts from PACRA which he marked "GK1" and "GK2" respectively, showing the Defendant as the owner of companies known as Upstreet Consultancy Services and Nakubanga Farm Limited respectively. It is the Plaintiff's belief that the Defendant could use income from the two businesses to assist in the payment of the Judgment sum.

The Plaintiff further stated that the Defendant has not shown anything tangible to justify the payment of the judgment sum in instalments and that this therefore, is not a proper case for the court to grant an order for the payment of the judgment sum in instalments.

It was the Plaintiff's evidence that the Defendant has not made any payment to show his commitment to settling the debt even though he is proposing to pay Euro 2,000.00 per month and settle the whole amount in 10 months. In addition, the Defendant has not exhibited anything before court to show that he is undergoing any financial difficulties and is unable to settle the judgment sum in a lump sum.

The Plaintiff believes that the application is calculated to buy the Defendant time at the expense and detriment of the Plaintiff who is entitled to the fruits of his Judgment.

The Plaintiff lamented that he has lost profits which he would have received under the Loan Agreement and has suffered great loss and damage. Further, that he has been put to considerable trouble, inconveniences and expense and that he will be greatly prejudiced by the granting of an order to the Defendant to pay the Judgment sum in instalments in that he is now required to pay additional legal fees for the Application. Further, that the Plaintiff requires the entire judgment sum to carry out his businesses and therefore it is desirable that the Application should fall in its entirety.

The application was heard on 7th September, 2016 at which both counsel submitted that their respective clients would rely on their Affidavits and Skeleton Arguments filed in support of their cases.

The Defendant filed his Skeleton Arguments on 22nd July, 2016 in which he stated that in making the application he was relying on the provisions of Order 3 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia which empowers this Court to make any interlocutory order in all causes and matters which it considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.

The Defendant submitted that there are compelling circumstances for the Court to grant an order for stay of the Judgment pending payments of the judgment sum and prayed that he be granted leave to pay the judgment sum in instalments.

The Plaintiff filed his Skeleton Arguments on 30th August, 2016 in which he submitted *inter alia*, that it is trite law that the condition precedent for allowing payment of a judgment debt in instalments is that sufficient cause ought to be shown by the applicant. To this end, the Plaintiff referred the Court to the case of **Zambia Export**

and Import Bank Limited V Mkuyu Farms Limited and Elias Andrew Spyron and Mary Langley Spyron (1) where the Supreme Court held:

"The Court may order that a judgment debt be satisfied by instalments upon sufficient cause being shown by the judgment debtor".

The Plaintiff submitted that the Defendant has failed to show sufficient cause to prove that he is facing financial difficulties such that he has failed to honour the order to pay the judgment sum. That he only mentioned in paragraph 6 of his Affidavit in Support of Summons for Payment in Instalments and Stay of Execution of Judgment that he is incapable of paying the judgment sum in a lump sum.

It is the Plaintiff's contention that this is not sufficient cause as envisaged by the law.

The Plaintiff also referred this Court to a High Court judgment of **Bell Equipment Zambia Limited v. Scirocco Enterprises Limited (2)** where the Court bemoaned the lackadaisical manner in which judgment debtors present their financial statements when showing 'sufficient cause', often to their detriment. The Judge in that case gave the ideal situation, which I concur with, that the Defendant as judgment debtor must provide the Court with full and comprehensive financial statements, including a comprehensive list of assets and liabilities, with documentary proof as far as possible for the Court to determine the Defendant's financial position.

I agree with the Plaintiff herein when he submits that the Defendant has not shown this Court his assets and liabilities for purposes of assisting the Court in making a determination on whether to grant the application or not. Instead he has exhibited a statement of one bank account leaving out the statements of the company where he is a shareholder, namely, Plinth Consultancy Limited and the other two companies which he owns which he did not reveal in his evidence, namely Upstreet Consultancy and Nakubanga Farm Limited.

The Court has noted that the Defendant has proposed to settle the Judgment sum in instalments of Euro 2,000 per month over a period of 10 months but has not made any payment into Court to show seriousness on his part about his proposal. This is in spite of his evidence that he would earn a total sum of US\$300,000 from an agreement which Plinth Consultancy Services Limited had entered into with a Ugandan Company for Consultancy Services where he expected to start earning income from the month of September, 2016.

In light of the above findings I am not satisfied that the Defendant has shown sufficient cause for this Court to grant an order for payment of judgment sum in instalment. The application is therefore dismissed for being without merit.

Costs of and incidental to this application are awarded to the Plaintiff to be agreed and taxed in default of agreement.

Delivered at Lusaka this 12th day of December, 2016.


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W.S. MWENDA (DR.)
HIGH COURT JUDGE