

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2015/HPC/0189



BETWEEN:

ZIM ZAM FARMING LIMITED

PLAINTIFF

AND

ISAAC NDAHIRO (Trading as Eugene Beef)

1ST DEFENDANT

EUGENE SIMUBALI (Trading as Eugene Beef)

2ND DEFENDANT

GOLDEN MUSTAFA NGULUBE

3RD DEFENDANT

Before the Honourable. Mr. W. S. Mweemba in Chambers at Lusaka.

For the Plaintiff

*: Mrs S. Chisanga Miti from KMG :
Chisanga Advocates.*

*For the 1st Defendant and 2nd Defendants : Mr FHM Haamakanda from
Messrs Batoka Chambers.*

For the 3rd Defendant

: No Appearance

R U L I N G

CASES AUTHORITIES REFERRED TO:

- 1. CONTRACT DISCOUNT CORPORATION LIMITED V FURLONG & OTHERS (1948) 1 ALL ER 276.**
- 2. A.J. TRADING COMPANY LIMITED V CHILEMBO (1973) ZR 55.**

LEGISLATION REFERRED TO:

- 1. ORDER 21 RULE 5 OF THE HIGH COURT RULES, CHAPTER 27 OF THE LAWS OF ZAMBIA.**

2. **ORDER 27, RULE 3 OF THE RULES OF THE SUPREME COURT (WHITE BOOK), 1999 EDITION.**
3. **ORDER 27 RULE 3/4 OF THE RULES OF THE SUPREME COURT (WHITE BOOK) , 1999 EDITION.**

The delaying in delivery of this Ruling is regretted but it is on account of the Court's busy schedule.

This is an application by the Plaintiff for Judgment on Admission. It is supported by an Affidavit and Skeleton Arguments filed into Court on 8th July, 2015. The Affidavit on record is sworn by Allan McNab, the Director in the Plaintiff Company.

It is deposed by Mr McNab that on 5th May, 2016 the Plaintiff commenced an action against the Defendants by way of Writ of Summons and Statement of Claim claiming inter alia the payment of the sum of K342,396.50 for the beef cattle supplied to the Defendants by the Plaintiff upon their request.

It is also deposed that prior to commencing these proceedings, the Defendants wrote to the Plaintiffs advocates through theirs on 30th March, 2015 admitting the debt and further proposing to settle it in instalments.

Moreover that this letter showed that the Defendants acknowledged owing the sum of K342,396.50 as claimed by the Plaintiff and that they had no valid defence against the Plaintiff's claim as this case was proper for Judgment on Admission to be granted.

There is also an Affidavit in Opposition to the application. It was sworn by Eugene Simubali the 2nd Defendant in this matter and was filed on 25th September, 2016.

He deposed that he had received an Affidavit in Support of the application herein and he wished to respond that although the Defendants wrote a letter to the Plaintiff's advocates to settle the debt in instalments, they only did so

on the belief that Mostafa Golden Ngulube was going to bring the money to Eugene Beef when in actual fact the said Mostafa Golden Ngulube went and negotiated with the Plaintiff to pay them directly without their knowledge and that he also went away with their Company money.

He also stated that since the Plaintiff had negotiated with Mostafa Golden Ngulube the Defendants were not aware how much was owed to the Plaintiff and moreso since the Plaintiff had not demonstrated how they arrived on the figure being claimed.

He lastly deposes that the Defendants had actually filed in a proposed Defence and on this basis the Plaintiff's application had no basis.

Counsel for the Plaintiff filed Skeleton Arguments into Court on 8th July, 2016. He relied on Order XXI Rule 1 of the High Court Act, Cap 27 of the laws of Zambia which states that:

“Any party to a suit may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the writ of summons, statement of claim, defence or other statement of any other party”.

Order 27, Rule 3 of the Supreme Court Rules 1999 states that:-

“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 the 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. An application for an order under this rule maybe by motion or summons”.

Order 27/3/4 of the Supreme Court Rules 1999 provides inter alia that:

“...an admission may be made in a letter before or since action brought... ”.

According to the Plaintiff, this is a proper case in which this Court may grant an order to have judgment on admission as clearly the letter that was written by the Defendants' Advocates does not deny the debt owed to the Plaintiff. Moreover, that this position was fortified by Order XXI Rule 1 of Cap 27 of the Laws of Zambia.

Further that in the submissions of the Plaintiff the Defendants had through the letter written by their Advocates admitted the truth of the whole case stated in the Plaintiff's claim.

Counsel also drew the Court's attention to Order 27 Rule 3 of the Whitebook which provides inter alia that the Court may grant the order for Judgment on admission without waiting for the determination of any other questions between the parties and according to Counsel this was one such case where it could do so.

Lastly Counsel submitted that it was in the interests of justice that the Order to enter Judgment on Admission be granted with costs to the Plaintiff.

Counsel for the 1st and 2nd Defendants also filed in Skeleton Arguments on 25th September, 2015. It is contended that although they wrote a letter to the Plaintiff's Advocates to settle the debt in instalments, they only did so on the belief that Mostafa Golden Ngulube was going to bring the money to Eugene Beef but he went behind the Defendants and negotiated with the Plaintiff that he would pay them directly.

It is also submitted that since the Plaintiff negotiated with the said Mustafa Golden Ngulube the Defendants were not aware how much they owed the Plaintiff who had not demonstrated how they arrived at the figure that was being claimed.

Further that the Defendant actually filed a proposed defence and therefore the Plaintiff's application was misplaced and ought to be dismissed.

I have considered the Affidavit evidence, the Skeleton Arguments, and the Authorities cited by both learned Counsel for the Plaintiff and the Defendants.

The Plaintiff made this application pursuant to Order XXI Rule 1 of the High Court Rules, Cap 27 of the laws of Zambia, Order 27, Rule 3 of the Rules of the Supreme Court and Order 27/3/4 of the Rules of the Supreme Court (White Book 1999) as set out above.

The Statement of Claim on record shows that the Plaintiff and the 1st and 2nd Defendants agreed that the former would supply cattle beef to the latter and when this was done, the Defendants failed to effect timeous payment of the debt due to the Plaintiff and it has remained unpaid.

It has also been claimed that the Defendants even gave the Plaintiff cheques that were dishonoured for lack of sufficient funds. The Plaintiff has further stated that when it wrote to the Defendants to remind them to settle the debts owing, the Defendants through their Advocates in a letter dated 30th March, 2015 admitted owing the debt and it is on this basis that this application was commenced.

In opposing this application, the Defendants firstly stated that there was actually a Third Party who was responsible for getting the beef cattle from the Plaintiff and that this person merely used their business name and invoices to do so.

This person known as Mustafa Golden Ngulube was accordingly joined to the proceedings as the 3rd Defendant on 29th September, 2015 without an objection from the Plaintiff.

The 1st and 2nd Defendants have also told this Court that the amount being claimed by the Plaintiff is one that was agreed between it and the 3rd Defendant without the knowledge of the 1st and 2nd Defendants.

I am of the view that where a sum is admitted, summary Judgment ought to be entered. I refer to the case of **CONTRACT DISCOUNT CORPORATION LIMITED V FURLONG & OTHERS (1)** where it was held that:

“Where a definite sum is admitted by the Defendant, summary Judgment is perfectly in order because he puts up no defence to that amount”.

In the case **A.J. TRADING COMPANY LIMITED V CHILEMBO (2)** it was held that:

“An admission by a Defendant of an allegation in the Plaintiffs Statement of Claim means that there is no issue between the parties on that point and no further evidence is admissible in reference to that point”.

The 1st and 2nd Defendants have stated that the amount being claimed by the Plaintiff is one that was agreed between it and the 3rd Defendant without their knowledge. They have said that the 3rd Defendant is the one who actually got the beef cattle from the Plaintiff but in the name of Eugene Beef and ought to have given the money due and owing to the Plaintiff to them (1st and 2nd Defendants) instead of negotiating with and making payment to the Plaintiff directly. They state that the Plaintiff has not demonstrated how it arrived at the sum of K342,396.50 being claimed.

Whilst the letter from the 1st and 2nd Defendants Advocates to the Plaintiffs Advocates dated 30th March, 2015 is an admission of a definite sum of K342,396.00, I accept the explanation that liability was admitted on the basis that the 3rd Defendant would pay over to the 1st and 2nd Defendants proceeds of sale of all beef cattle he procured from the Plaintiff in the name

of the 1st and 2nd Defendants. I am of the firm view that the debt herein has not been clearly admitted by the 1st and 2nd Defendants.

I am further of the considered view that there are issues between the parties in reference to how much was due and owing to the Plaintiff by the 1st and 2nd Defendants as further evidence is required regarding how much the 3rd Defendant paid the Plaintiff for beef cattle he (the 3rd Defendant) obtained in the name of the 1st and 2nd Defendants. I am therefore of the considered view that this is not a proper case for the Court to enter Judgment on Admission.

For the foregoing reasons, I dismiss the Plaintiffs application and order that in the interest of justice the matter should proceed to trial.

I hereby Order that the Defendants shall file their respective Defences within 21 days from date hereof and that the Scheduling Conference shall be held on 16th January, 2017 at 10:00 hours.

Costs of this application to be in the Cause.

Leave to appeal is hereby granted.

Delivered in Chambers at Lusaka this 7th day of December, 2016



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WILLIAM S. MWEEMBA
HIGH COURT JUDGE