IN THE HIGH COURT FOR ZAMBIA **2013/HPC/0475**

AT THE COMMERCIAL LIST REGISTRY

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)

BETWEEN

CAA IMPORT AND EXPORT LIMITED	**APPLICANT**
AND	
BIDVEST FOOD ZAMBIA LIMITED	**1ST RESPONDENT**
CHIPKINS BAKERY SUPPLIES (PTY) LTD	**2ND RESPONDENT**
CROWN NATIONAL (PTY) LIMITED	**3RD RESPONDENT**
BIDFOOD INGREDIENTS (PTY) LIMITED	**4TH RESPONDENT**
BIDVEST GROUP LIMITED	**5TH RESPONDENT**

Before the Hon. Justice P. M. Nyambe, SC., at Lusaka.

For the Applicant:	**Mr. V. C. P. Chuula**
	Mr. R. Peterson
	Messrs Chibesakunda & Company
For the Respondent:	**Mr. S. Chisenga**
	Mr. John Kawana
	Messrs Corpus Legal Practitioners

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J U D G M E N T

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By Writ of Summons filed into Court on 1st October, 2013, the Plaintiff commenced this action seeking the following:-

i. A declaration that the termination of the Plaintiff's relationship with the Second and Third Defendants by the Fourth and/or Fifth Defendants was null and void and of no effect whatsoever.

ii. Against the Second and Third Defendants
   a. Specific Performance of the distribution contracts
   b. Alternative to a.
      i. Damages for breach of Contract;
      ii. Damages for loss of earnings
   c. Damages for injury to commercial reputation.

iii. Against the Fourth and Fifth Defendants
   a. Damages for unlawful interference; and
   b. Damages for procuring a breach of contract.

iv. Against the Defendants jointly and severally, compensation for the transfer of the benefits of the goodwill from the Plaintiff to the First Defendant;

v. Interest on sums payable at the current Bank of Zambia lending rate;

vi. Any other order the Court may deem fit; and

vii. Costs of and incidental to this action.

The Writ of Summons was accompanied by a Statement of Claim, the longest I have dealt with; replete with interlocutory application upon interlocutory application.

Then on 19th December, 2013 a defence was filed by all Defendants. Further, interlocutory applications were filed, including one to amend the Writ of Summons filed into Court on 9th January, 2014. Again on 25th January, 2015, the Plaintiff issued a summons for leave to amend the Statement of Claim filed into Court on 9th January, 2014 pursuant to Order XVIII of the High Court Rules Chapter 27 of the Laws of Zambia. This was followed yet by another application to adduce Expert Evidence at trial pursuant to Order 38 Rule 36 (1) of the Rules of the Supreme Court of England 1999 Edition.

On 20th October, 2014, the Statement of Claim was further amended by Consent Order dated 14th October, 2014, which entailed and/or necessitated further application to file Supplementary List and Buddle of Documents pursuant to Order 3 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia.

Finally, the case was set for trial on 16th and 17th May, 2016. Each party called one witness, both of them filed witness statements. The Plaintiff's Witness Statement was filed on 21st August, 2014, and the Defendant's on 12th December, 2014. Both parties filed written submissions. The Plaintiff filed final written submissions on 31st May, 2016 and the Defendant's on 13th June, 2016, together with List of Authorities. I am grateful to Counsel for the written submissions and List of Authorities filed herein, which I have taken into consideration in this judgment.

The Plaintiff has raised issues in its final written submissions with reference to Order LIII. The letter and spirit of the Commercial Division is anchored in Order LIII.

The Plaintiff contends that by their defence the Defendants admit that there was an exclusive distribution agreement between the Plaintiff and the 2nd and 3rd

Defendants and this admission is contained in paragraph 6 of the Amended Defence filed into Court on 8th December, 2014.

According to paragraph 6 of the Amended Defence the Defendants state:-

> ***"Paragraph 8 of the Amended Statement of Claim is admitted only to the extent that the 2nd and 3rd Defendant had an exclusive distribution agreement. (the agreement)". The Defendant's then put the Plaintiff to strict proof regarding the rest of the averments."***

As per paragraph 6 of the Amended Defence, the Defendants, clearly admit that the 2nd and 3rd Defendant had an exclusive distribution agreement with the Plaintiff.

In accordance with Section 6 (2) of Order LIII of the High Court Rules, Chapter 27 of the Laws of Zambia:

> ***"(2) The Defence shall specifically traverse every allegation of fact made in a Statement of Claim, or Counter-Claim as the case may be;***
>
> ***(3) A general or bare denial of allegations of fact or a general statement of non-admission of the allegations of fact shall not be a traverse thereof;***
>
> ***(4) A defence that fails to meet the requirements of this rule shall be deemed to have admitted the allegations not specifically traversed;***
>
> ***(5). Where a Defence fails under sub-rule (4), the Plaintiff or the Defendant, or the Court on its own motion, may in an appropriate case enter judgment on admission".***

The above provisions of the law have been affirmed by the Supreme Court in the case of ***China Henan International Economic Technical Corporation vs Mwange Contractors Limited, Supreme Court Judgment No. 7 of 2002***[1].

It is trite law that parties shall be bound by their pleadings. Therefore, by their own admission, the Defendants have admitted as indicated in paragraph 6 of their Amended Defence filed on 3rd November, 2014 that the 2nd and 3rd Defendants had an exclusive distribution agreement with the Plaintiff.

The Defendants not only failed to traverse the allegations of fact in the Amended Statement of Claim neither did the Defendants address this fact in their final written submissions. The Defendants only offered a general statement of non-admission and put the Plaintiff to strict proof regarding the rest of the averments. In accordance with Order LIII 6 (3) a general or bare denial of allegations of fact or general statement of non-admission of the allegations of fact shall not be a traverse thereof, and, in accordance to Order LIII 6 (4) a defence that fails to meet the requirements of this rule shall be deemed to have admitted the allegations not specifically traversed. Furthermore, where a defence fails under sub-rule (4) the Plaintiff or the Defendant, or the Court on its own motion, may in an appropriate case enter judgment on admission.

On the above cited authorities, taking in account the Defendants' admission contained in paragraph 8 of their Amended Defence, I am satisfied that this is a proper case to enter judgment on admission.

Accordingly, it is a finding of the Court that indeed there was an exclusive distribution agreement, between the Plaintiff and Chipkins Bakery Supplies

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[1] China Henan International Economic Technical Corporation vs Mwange Contractor's Limited Supreme Court Judgment No. 7 of 2002

(PVY) Limited the 2nd Defendant and Crown National (Pty) Limited the 3rd Defendant.

In 1999, the 2nd Defendant addressed a letter to the Plaintiff dated 12th July, 1999 shown at page 1 of the Plaintiff's Bundle of Documents filed into Court on 11th August, 2014 which shows that there was an exclusive relationship between the parties. The Defendant's assertion is that this letter acted as a variation of the terms agreed to by the parties and that the agreement between the parties was not a continuous agreement but rather an annual one renewed yearly. I am not persuaded by this proposition and it cannot be sustained as it is evident from the course of dealings between the parties that this was a continuing agreement and not a one off annual agreement renewable every year. Moreover, the Defendants have not adduced evidence to support their arguments that this was not a continuing agreement.

The Plaintiff also contended that the letter of 12th July, 1999 could not constitute an enforceable variation of the agreement between CAA and Chipkins on account of the fact that it does not satisfy the requirements governing the formation of a Contract and referred the Court to the case of ***Esquire Roses Farm Limited vs Zega Limited, Supreme Court judgment No. 3 of 2013***[2] where the Supreme Court when considering what amounts to a variation quoted ***Chitty on Contracts,***[3] which provides that:-

> ***"The parties to a contract may effect a variation of the contract by modifying or altering its terms by mutual agreement. In Berry vs Berry a husband and wife entered into a separation deed whereby the husband covenanted to pay the wife a certain sum of money each year for her support. His earnings proved***

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2 Roses Farm Limited vs Zega Limited, Supreme Court judgment No. 3 of 2013

3 *Chitty on Contracts,*[3] vol. 1, page 1465, paragraphs 22 - 32

insufficient to meet this obligation, so they agreed in writing to vary the financial provisions. It was held that this variation was valid and enforceable, and that it could be set up by the husband as a defence to an action against the original deed. A mere unilateral notification by one party to the other, in the absence of agreement cannot constitute variation of contract. The agreement which varies the terms of an existing contract must be supported by consideration. In many cases, consideration can be in the mutual abandonment of the existing rights or the conferment of new benefits by each party on the other ... in order for a variation to be a valid defence at law, it must be by mutual agreement of the parties to the contract. The variation must also be supported by consideration".

The letter at page 1 of the Plaintiff's Bundle of Documents dated 12th July, 1999 alluding to an Agency Agreement commencing on the 1st of each calendar year, (renewable yearly) cannot amount to a variation as there was no mutual agreement to vary the original agreement. The Defendants by their Amended Defence admitted that the agreement between CAA and Chipkins was continuing contract, one that automatically renewed. I accept the letter for what it is: evidence of the existence of a continuing and the exclusive relationship between CAA and Chipkins.

In support of its case the Plaintiff's led evidence of how the relationship was established; as contained in paragraph 20 of PW1's Witness Statement filed into Court on 21st August, 2013.

In response to the Plaintiff's evidence regarding the relationship with Crown National, alluded to above, the Defendants apart from admitting the existence of the exclusive distribution agreement between the Plaintiff and the 2nd and 3rd

Defendants simply put the Plaintiff to strict proof regarding the rest of the agreement saying:-

> "***Paragraph 8 of the statement of Claim is admitted only to the extent that the 2nd and 3rd Defendant had an exclusive distribution agreement (the agreement). The Plaintiff is put to strike proof regarding the rest of the agreement".***

Further, in paragraph 10 of the Amended Defence the Defendants assert that:

> *"In relation to paragraph 10 of the Statement of Claim, the Plaintiff is put to strict proof that in 2014 it granted the Plaintiff ... exclusive rights to distribute the Crown National Products throughout Zambia",* and went on to state in paragraph 11, *"... that the 4th and 5th Defendants knew that the Plaintiff had entered into agreements with the 2nd and 3rd Defendants."*

The above does not amount to a traverse as contemplated by the Commercial Court Rules. In terms of Order LIII, I consider this not to be a traverse but rather this translates into an admission by the Defendants that there was an exclusive distribution agreement between the Plaintiff and the 2nd and 3rd Defendants and that CAA the Plaintiff herein was the sole distributor for Bidvest Crown and Bidvest Bakery Solutions products (Chipkins) throughout Zambia. Moreover, on perusal of the documentary evidence, Crown's actions throughout their relationship with CAA lends credence to the argument that CAA was the exclusive distributor for the Crown Products, in particular the email exchanges between CAA and Crown at pages 83 through to 96 of the Plaintiff's Bundle of Documents, and those at pages 140 to 142 and 163 to 167 confirmed this fact.

1. **<u>Did the 2nd and 3rd Defendants breach their agreement with the Plaintiff</u>**?

Breach of contract occurs when a party to the said contract fails to perform an obligation of the contract as required by its terms. In *casu*, the term in issue is

that over termination of the agreements herein and whether the termination was in accordance with the terms of the agreements or in breach thereof.

Where a contract contains no express provision for termination as in *casu*, it maybe determined by reasonable notice on the part of one or both the parties. What constitute "*reasonable notice*" must be determined in light of all the available evidence and in light of what the parties have said or omitted to say in the agreement and in light of what the intension of the parties was at the relevant time when they entered into the agreement.

It is common cause that the 2nd and 3rd Defendant terminated their relationship with the Plaintiff. The issue is whether the termination was in accordance with terms of the respective agreements or not.

It is the Defendants' disposition that the agreements with the Plaintiff were terminated by notice communicated to the Plaintiff by their agent, the 4th Defendant herein as indicated in paragraphs 11 to 15 of the Amended Defence dated 3rd November, 2014. The question then is whether the Defendants' termination amounted to a breach of contract.

The Defendant's proposite is that the letter at page 168 of the Plaintiff's Bundle of Documents constituted notice. The contents of the sad letter are reproduced hereunder:

> *"Dear Annastasia*
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> *Distributions Arrangement with CAA Import and Export Limited.*
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> *Following on your telephone conversation with John Manthey yesterday, this email is to confirm that Bidvest Group made a decision to incorporate a company in Zambia that will distribute ingredients and spices to the meat processing industry in*

Zambia, (Crown National Product), as well as Bakery ingredients to the bakery industry (Chipkins Bakery products). The company will also distribute branded products related to Bidvest Parlteys to the retail market in Zambia.

As a consequence the current informal arrangement with CAA whereby CAA was the sole distributor of Bidvest Crown and Bidvest Bakery solutions (Chipkins) products is hereby terminated effective 1st October, 2013.

We are ready to discuss an orderly transfer of customer based as well as non-expired stock to the new entity. Please indicate when you could be ready to discuss the transfer in detail.

Kindly regards

Karel Meyer

MANAGING DIRECTOR)."

Looked at in the context of the letter dated 13th December, 2013, addressed to Anastasia from Karel Meyer, it seems to me that the 2nd, 3rd, and 4th Defendants recognised that the letter at page 168 of 8th August, 2013 was not notice to terminate their relationship with the Plaintiff and purported to remedy the situation by serving a second letter of termination or non renewal on 13th December, 2013.

In the said letter of 13th December, 2013 appearing at page 259 of the Plaintiff's Bundles of Documents Mr. Karel Meyer states *inter alia* that '*we will not renew the exclusive distribution agreement between our respective companies in 2014 or any time thereafter'.*

In effect the breach by the 2nd and 3rd Defendant occurred when the 4th Defendant whilst acting as agent for the 2nd and 3rd Defendants, informed the Plaintiff that it would, from that date no longer be able to place orders with it for the 2nd and 3rd

Defendants. The 2nd and 3rd Defendant's refusal to supply the Plaintiff was a clear and plain breach of contract.

It is accepted that every contract is capable of being terminated with notice. The question being - what constitutes reasonable notice between principal and distributor where there is no agreement on termination. This point was considered in the case of ***Martin-Barker Aircraft Company Limited Vs Canadian Flight Equipment Limited; Martin-Barker Aircraft Company Limited Vs Murison***[4] ***(1995) to QB 556,578.***

The brief facts of that case were that Martin-Barker manufactured ejector seats for Aircraft which Murison distributed in North America. The agreement was capable of summary termination on breach or non-observerance of the terms, but was silent as to termination for other reasons. When Martin-Barker wanted to end the agreement, it sought a declaration on the length of the notice required.

The Court declared that the contract was capable of being terminated by reasonable notice and that the length of reasonable notice was to be decided with regard to the facts existing at the time when notice was given, and not at the time when the contract was made. Therefore neither party can determine what is reasonable notice until it comes to give notice. At such a time, the party wanting to give notice must look at the existing situation between the parties in order to determine the reasonable notice period. It was noted that as a sole distributor, Murison had to expend much time and money, and that under the agreement Murison was subject to an express non-compete clause. The Court held that on those facts, the agreement was terminable on 12 months' notice given at any time.

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[4] Martin Barker Aircraft Company Limited Vs Canadian Flight Equipment Limited; Martin Barker aircraft Company Limited Vs Murison (1995) 2 QB 556,578.[4]

Some 15 or so years after the Martin-Barker Case, the English Court of Appeal dealt with the duration of reasonable notice in a distribution agreement in the case ***Decro -Wall Vs Practitioners in Marketing Limited***.[5] The brief facts of the case being that a distribution agreement between Decro-Wall, a French Manufacturer of tiles, and an English distributor was terminable by reasonable notice on either side.

In order to develop the bathroom tile market in the UK, the English Company spent a considerable amount of money on national advertising campaign, increasing its warehouse capacity, and training new sales staff. The net profits were expected to be low in the first few years owing to the substantial startup costs, with greater records anticipated subsequently. Within three years the French tile business constituted 83% of the distributor's turn over. The court held that, in view of the expenditure and work which the distributor had put into carrying out the agreement, reasonable notice to terminate was twelve months.

Further in the case of ***Alpha Lettings vs Neptune Research and Development Inc*** [6], Neptune Manufactured specialist medical and scientific valves which Alpha distributed exclusively in the UK. Alpha also distributed similar products for other manufacturers. An association between Neptune and Alpha began prior to 1983 but formalised into an agreement in November, 1983. Their agreement, however, was silent as to the requisite notice period. Neptune terminated it by giving one month's notice.

At first instance it was held that reasonable notice in the circumstances would have been one year. Neptune appealed to the Court of Applied on the basis that the notice period awarded by the trial judge was excessive. The Court of Appeal

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5 Decro -Wall vs Practitioners in Marketing Limited (1971) to or ER 216.

6 Alpha Lettings vs Neptune Research and Development Inc (2002) ALL ER (D) 178

found that the twelve month notice period awarded by the judge was in the circumstances, outside the range of notice period reasonably open to him to award. The right range being three and six months. Since there was a non-compete covenant on Alpha either during or after the agreement, it was held that four month's notice was sufficient time for the parties to bring the business to an end and for Alpha to find another supplier.

I am very much alive to the fact that the cases cited above are from outside the Zambia jurisdiction and as such are not normally binding on this Court. However, I find them to be relevant and persuasive in relation to the case in *casu*. In light of the above cited authorities, taking into account that the Plaintiff spent considerable amount of money and time on campaigns, training of staff, countrywide, developing customer data base, including time which the Plaintiff put in to carry out the agreements herein, I find that reasonable notice to terminate each agreement to be twelve months for each agreement.

Further, in my view failure by the Defendants to grant adequate notice to the Plaintiff constituted a breach of the contract. As stated by the Court of Appeal in the **Alpha Letting Limited vs Neptune research Development Inc (2003)**[7];

> *"The means of terminating the agreement is irrelevant when determining the length of the notice period. A termination with no notice or with less than due notice will be a breach of contract and damages must be appropriately assessed. However, it is irrelevant if the breach of contract was deliberate, or whether the termination is accompanied by untrue allegation. These will not affect the question of how long reasonable notice is."*

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[7] Alpha Letting Limited vs Neptune research Development Inc (2003) All ER (D) 273

On the facts herein, the breach by the 2nd and 3rd Defendants occurred when the 4th Defendant whilst acting as agent for the 2nd and 3rd Defendants informed the Plaintiff that it would no longer be able to place orders with it for the 2nd and 3rd Defendants. The resultant refusal by the 2nd and 3rd Defendants to supply the Plaintiff was a breach of contract in that they terminated the contract between them and the Plaintiff without notice.

2. **Did the Bidfood Ingredients (Pty) Limited and Bidvest Group Limited unlawfully interfere in the agreement between CAA and Crown and Chipkins, and was the breach of contract procured by them.**

With regard to the above, the 4th Defendant's letter dated 8th August, 2013 addressed to CAA Import and Export at page 168 of the Plaintiff's Bundle of Documents filed into Court on 11th August, 2014, sheds some light.
It states:

> *"Dear Annastasia*
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> *Distribution Arrangement with CAA Import and Export Limited.*
>
> *Following on your telephone conversation with John Manthey yesterday, this email is to confirm that Bidvest Group made a decision to incorporate a company in Zambia that will distribute ingredients and spices to the meat processing industry in Zambia, (Crown National product), as well as bakery ingredients to the bakery industry (Chipkins Bakery products). The company will also distribute branded products related to Bidvest Parleys to the retail market in Zambia.*
>
> *As a consequence the current informal arrangement with CAA whereby CAA was the sole distributor of Bidvest Crown and Bidvest Bakery solutions (Chipkins) products is hereby determined effective 1st October, 2013.*

We are ready to discuss an orderly transfer of customer based as well as non-expired stock to the new entity. Please indicate when you could be ready to discuss the transfer in detail.

Kindly regards

Karel Meyer
Managing Director".

From the above letter and the testimony of Plaintiff's witness, PW1 at page 22 and 23 of the Witness Statement filed into Court on 12th December, 2014, it is clear that the termination of the 2nd and 3rd Defendants relationship with the Plaintiff was based on the decision by the 5th Defendant to incorporate a company in Zambia that would distribute the same products the subject of the subsisting agreements between the Plaintiff and the 2nd and 3rd Defendants, a decision from which the 5th Defendant has gained and will continue to gain economic advantage. From evidence on record it is clear that the 5th Defendant was the master mind of the mischief in this case. The action by the 5th Defendant was a deliberate interference with the agreement subsisting between the Plaintiff and the 2nd and 3rd Defendants, calculated at inducing a breach of contract between the Plaintiff and the 2nd and 3rd Defendants.

The case of ***Kayanje Farming Limited Vs Rintoul Limited T/A Tobacco[8] Leaf Brokers Limited, Tobacco Association of Zambia, and Sancom Tobacco Alliance Services Limited T/A Alliance One International***, citing ***OBG Limited and Others Vs Allen and Others 2006 to 2007 UK HL 21[9]*** sets out the essential elements for the tort of inducing a breach of contract as follows:

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[8] Kayanje Farming Limited vs Rintoul Limited T/A Tobacco, Tobacco Leaf Brokers Limited, Tobacco Association of Zambia and Solution Tobacco Alliance Services Limited T/A Alliance One International, 2006 HPC/0390

[9] OBG Limited and Others vs Allen and Others House of Lords Session 2006 to 2007 UK HL 21

(a) *Breach of contract is the essence - there can be no secondary liability without primary liability;*

(b) *Participation in the breach of contract which satisfies the general requirements of accessory liability for the wrongful act of another person;*

(c) ***An intension to cause breach of contract is necessary and sufficient. The tortfeaser must know that he is inducing the breach of contract and intends to do so with knowledge of the consequences.*** (emphasis added)

From the evidence above it is accepted that the 5th Defendant had the intention to cause breach of contract between the Plaintiff and the 2nd and 3rd Defendants, and knew or ought to have known that it would cause or induce a breach of contract between the Plaintiff and 2nd and 3rd Defendant and was well aware of the consequences. Thus the first limb of the tort of inducing a breach of contract is proved.

The second limb is satisfied in that the evidence shows that 5th Defendant pulled the strings of 2nd and 3rd Defendants, from behind the scenes inducing them to breach their contracts with the Plaintiff in the manner outlined above.

As regards the third limb, the Board of Directors of the 5th Defendant must have had in their contemplation when making the decision that 2nd and 3rd Defendants terminate their relation with the Plaintiff that 2nd and 3rd Defendant would be in breach of their obligation to the Plaintiff to provide adequate notice of termination to the Plaintiff.

The evidence infers beyond the required standard of a balance of probabilities that there was a deliberate interference by the 5th Defendant in the contracts between the Plaintiff and 2nd and 3rd Defendants for the purpose of inducing a

breach of contract from which as stated above the 5th Defendant has gained an economical and financial advantage.

The learned Author of Clerk and Lindsell on Torts[10], states that:

> ***"so, where the Defendants commits an actionable wrong such as inducing a breach of contract, or authorizing or procuring breach of copyright, deliberately to harm the claimant, he commits a tort".***

As set out above, the 5th Defendant did induce the breach of contract by the 2nd and 3rd Defendants. On the strength of the above cited passage, the 5th Defendant having induced the breach of contract, concurrently committed the tort of unlawfully interference in the contracts.

3. Was good will transferred from the Plaintiff to the Defendants, and should the Defendant pay for the transfer of goodwill.

The learned Authors of Halsbury's Laws of England[11] define goodwill as follows:

> ***"the goodwill of the business is the whole advantage of the reputation and connection formed with customers together with the circumstances, whether of habit or otherwise, which tend to make that connection permanent. It represents in connection with any business or business product the value of the attraction to customers which the name and reputation possesses".***

The case of ***IRC Vs Muller's Co. Margarine Limited*** [12] a stamp duty case where in answer to the question "what is goodwill" Lord Macnaghten said:

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[10] Clerk and Lindsell on Torts, 19th Edition paragraphs 25 – 89 at pages 1580 - 1581
[11] Halsbury's Laws of England[11] 4th Edition Vol. 35 at page 1206
[12] IRC Vs Muller's Company Margarine Limited (1901) AC 217

> ***"It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings custom. It is the one thing which distinguishes an old established business from a new business at its first start".***

In the same case Lord Lindley said at page 235:

> ***"Goodwill regarded as property has no meaning except in connection with some trade, business or calling. In that connection, I understand the term to include whatever adds value to a business by reason of situation, name reputation, connection, introduction to old customers and agreed absence from competition".***

In the same case Lord Macnaghten indicted that:

> ***"Goodwill is composed of a variety of elements. It differs in its composition in different trades and in different businesses in the same trade. One element may preponderate here; and another there".***

In *casu* the elements of goodwill of the Plaintiffs' business extended beyond the goodwill of the products it distributed. The Zambian customers of the 2nd and 3rd Defendant's products were acquired solely through the Plaintiff's marketing effects and efforts. The Plaintiff invested considerable time and money on countrywide advertising campaigns of the 2nd and 3rd Defendant's products, periodically reported on its sales and over the years provided information about and access to customers. In essence the Plaintiff became closely integrated in the 2nd and 3rd Defendant's sales and distribute network.

As is typical in the case of branded consumer goods, there is an expectation to buy the suppliers' brand of goods rather than follow the distributor upon

termination of the distribution contract. Hence in the case of branded consumer goods, as in the case under consideration, the goodwill generated by the distributor will always remain with manufacturer or supplier.

Moreover, during the conduct of its business the Plaintiff contributed immensely to the extension of the Defendant's customer portfolios and generated a great deal of goodwill. As a result, the Plaintiff improved the 2nd and 3rd Defendant economic status. No doubt, to date the Defendants continue to maintain their commercial relations with the customers generated by the Plaintiff after the termination of the distribution agreement and will continue to benefit financially from these customers. Clearly, goodwill was transferred from the Plaintiff to the Defendants. As such and in accordance with the principle of equity, a reasonable amount of customer portfolio compensation is due to the Plaintiff in an amount roughly corresponding to the economic contribution made by the Plaintiff to the Defendants business during the term of their relationship, to be assessed by the Deputy Registrar.

With all the above in view, I am satisfied that the Plaintiff is entitled to the reliefs, as endorsed on the Writ of Summons.

Costs incidental, to this action shall follow the cause, and are awarded to the Plaintiff. To be taxed in default of agreement.
Right to appeal granted.

Dated at Lusaka this 29th day of December, 2016.

P. M. Nyambe, SC.,
JUDGE