

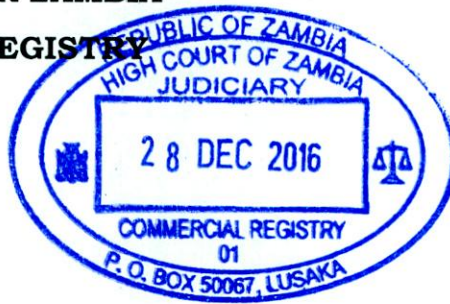
IN THE HIGH COURT FOR ZAMBIA

2016/HPC/228

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

ZAMBEEF PRODUCTS PLC

1ST JUDGMENT CREDITOR

ZAMCHICK LIMITED

2ND JUDGMENT CREDITOR

AND

KEDAKA INTERNATIONAL HOLDING

COMPANY LIMITED

JUDGMENT DEBTOR

ATTORNEY GENERAL

GARNISHEE

Before the Hon Justice Irene Z Mbewe in Chambers

For the Plaintiffs:

Mr Weshimanga of Messrs A.M. Wood & Co.

For the Defendant:

Mr D.K. Kasote of Messrs Chifumu Banda & Associates

R U L I N G

Legislation Referred to:

1. *Rules of the Supreme Court, 1999 Edition*
2. *Civil Courts (Attachment of Debts) Act Chapter 78 of the Laws of Zambia*
3. *State Proceedings Act Chapter 71 of the Laws of Zambia*

This is a Ruling on the Judgment Creditor's application for issuance of a Garnishee Order Absolute for the attachment of the funds due and or accruing from the Garnishee to the Judgment Debtor.

The application was supported by an affidavit deposed by Samantha Dale, the Group Head-Debtors and Credit Control in the employ of the 1st Judgment Creditor.

She deposed that on 16th May 2016, the Judgment Creditor's commenced an action against the Judgment Debtor in which this Court entered a Judgment on Admission dated 29th July 2016 in favor of the Judgment Creditor in the sum of ZMW663,002.20 plus interest and costs. She further deposed that the Judgment Debtor has failed to pay the judgment debt, but that she was aware that the Judgment Debtor was owed the sum of ZMW781,749.50 by the Zambia Army represented by the Garnishee; that the basis of this information was the fact that the Garnishee acknowledged its indebtedness to the Judgment Debtor in a letter dated 1st April 2016, produced and marked as **Exhibit "SD1"**.

The Garnishee also filed in an affidavit in opposition sworn by Colonel Setty Kabongu, the Director in the Ordinance Directorate in the employ of the Zambia Army.

It was deposed in the Garnishee's affidavit that the Judgment Debtor was a registered supplier with Zambia Army engaged to supply rations periodically as shown on the copy of the running contract marked **Exhibit "SK1"**. That the amount due to the

Judgment Debtor are paid at monthly intervals as and when funds are available, further that the Garnishee currently owed the Judgment Debtor a sum of ZMW506, 746.50. Further that it has not neglected to pay but intends to continue making installments to the Judgment Debtor until the outstanding balance was liquidated as was agreed.

At the hearing Counsel for the Judgment Creditors relied on the supporting affidavit and skeleton arguments. Counsel stated that upon perusal of the Garnishee's affidavit in opposition and skeleton arguments he was of the view that there was an admission by the Garnishee that it owed the Judgment Debtor some money. Counsel then prayed that under those circumstances this Court grants the application and make the Garnishee Order Absolute save that the amount due from the Garnishee be amended to read ZMW506, 746.50 as admitted by the Garnishee.

In response, Counsel for the Garnishee placed reliance on the affidavit in opposition and skeleton arguments filed into Court on the 19th September 2016. Counsel submitted that the Garnishee's bone of contention was based on the fact that although there were monies payable to the Judgment Debtor, the Garnishee had not defaulted and that monies that were due were not currently due for payment to the Judgment Debtor. It was submitted that there was currently no debt attachable and the Judgment Debtor could not enforce the judgment at this stage. Counsel prayed that the application be dismissed.

In reply, Counsel for the Judgment Creditor argued that the Garnishee had admitted owing the Judgment Debtor some money as shown in a letter that was exhibited in the affidavit wherein the Garnishee did not dispute its indebtedness. Counsel further submitted that it was surprising that in one breath the Garnishee claimed that it had not defaulted in payment whilst in the other breath it disputed that there were no monies due for payment. It was Counsel for the Judgment Creditor's request that instead of the money owed being paid to the Judgment Debtor it should be paid directly to the Judgment Creditors. With that it was submitted that the Judgment Creditors had shown that monies were due and attachable, hence the Court should confirm the Garnishee Nisi into a Garnishee Absolute for the amount of ZMW506,746.50 and further that the Garnishee pays the costs of this proceedings.

I have carefully considered the affidavits, arguments and oral submissions by both Counsel. I have been invited to grant a Garnishee Order Absolute for the attachment of funds due and/ or accruing from the Garnishee to the Judgment Debtor. **Order 49 of the Rules of the Supreme Court (White Book)** and Section 3 of the **Civil Courts (Attachment of Debts) Act Chapter 78 of the Laws of Zambia** gives the Court the discretion to order the Garnishee to show cause and to attach the debt due and accruing to the Judgment Debtor. Section 24 of the **State Proceedings Act Chapter 71 of the Laws of Zambia** empowers the Court in an instance where a person who is liable to pay any money to another

person, is owed money by the State; to make restraining the first-mentioned person from receiving that money and directing payment to that person or to that receiver.

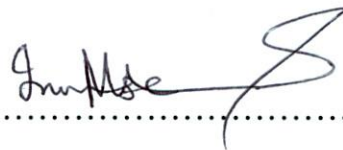
The essence of the Garnishee Order Nisi is to direct the Garnishee to appear in Court to show cause why an order should not be made for the payment to the Judgment Creditor the amount of debt owed to the Judgment Debtor. From the documents filed before this Court and the oral submissions made by Counsel for the Garnishee it is evident that the Garnishee has not denied its indebtedness to the Judgment Debtor and is willing to pay the money owed.

I am therefore of the view that the Judgment Creditors' application has merit and as such I order that the Garnishee Order Nisi granted by this Court be made and is hereby made Absolute save for the amendment on the amount payable directly to the Judgment Creditors to read as ZMW506,746.50 instead of ZMW781,749.50.

I further Order that the Garnishee bears the costs of this proceeding.

Leave to appeal is granted.

Dated at Lusaka this 28th December, 2016



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HON JUSTICE IRENE Z MBEWE
HIGH COURT JUDGE