

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

2017/HPC/0026

B E T W E E N:

ALLAN SIMUTELE

KAPEPO CHIBANDA

AND

ZAMBIA DEVELOPMENT AGENCY

(Henan Guoji Corporation)



1ST PLAINTIFF

2ND PLAINTIFF

DEFENDANT

EX TEMPORE RULING

I have considered the affidavit evidence on record, skeleton arguments and submissions of the parties herein. The Court has the discretion pursuant to **Order 36 Rule 9 of the High Court Rules, Cap 27 of the Laws of Zambia** to grant an Order for a Judgment debtor to pay the Judgment sum in instalments upon sufficient cause or reason being shown. (Cases of **Zambia Export and Import Bank v Mkuyu Farms SCJ No. 28 of 1993** and **Kawayu and another v First Alliance Bank Zambia Limited SCZ/8208 of 1997**) are instructive on this aspect. The Court does not make it a practice of depriving a successful litigant the fruits of its

Judgment unless sufficient cause is shown. (Case of **Monk v Batram (1891) 1 Q.B 346**). The Plaintiff opposed the application and averred that it will suffer further financial loss if the judgment debt is paid in two (2) instalments and that no financial records have been filed to show or indicate the Defendant's financial instability. On the other hand the Defendant is ready to pay the judgment sum in two(2) instalments commencing on the 10th April 2017. The Defendant revealed in its affidavit in support of its application that is currently undergoing financial difficulties due to the compressed real estate market, and the depreciation of the Kwacha against the dollar.

I agree with the Plaintiffs that the Defendant has failed to disclose its financial records so that the Court can make an informed decision as to whether or not to grant an Order for settlement of the judgment debt as required under **Order 47 of the Rules of the Supreme Court**. Notwithstanding in the circumstances of the case, I find the Defendant's proposal to settle in two instalments is unreasonable.

I find that this is a proper case within which to exercise my discretion and grant the Defendant's application to pay the judgment sum in instalments. I order that the first instalment of British Pounds Sterling 13,000 or its Kwacha equivalent plus accrued interest and costs shall be paid on 10th April 2017 and the second and final instalment on 10th May 2017. In the event of default on the part of the Defendant, the whole

amount remaining unpaid shall become due and the Plaintiff shall be at liberty to execute.

The Judgment sum herein is denominated as British Pounds Sterling 26,000. Where any contract is denominated in foreign currency, if converted into Kwacha, then the Kwacha equivalent shall be at the ruling rate on date of payment or enforcement the judgment.

The ex parte stay of execution granted on the 14th March 2017 is hereby discharged.

Costs to the Plaintiff to be taxed in default of agreement.

Leave to appeal granted.

Dated in chambers this 29th March 2017.



HON. IRENE ZEKO MBEWE
JUDGE OF THE HIGH COURT