

IN THE SUBORDINATE COURT
OF THE FIRST CLASS
FOR THE LUSAKA DISTRICT
HOLODEN AT LUSAKA
(Civil Jurisdiction)

CAUSE: 2016/CRMP/127

BETWEEN:

IDAH C. MWALE CHILESHE

AND

GERSHOM M. CHISHIMBA



PLAINTIFF

DEFENDANT

JUDGMENT

In this case, the Plaintiff claims the sum of K30, 000.00 being money owed to her by the Defendant arising out of a document dated 30th March, 2015. She also claims costs, interest and any other relief the court might deem fit.

The suit was commenced by way of Default writ of Summons supported by an affidavit dated 28th June, 2016 to which is exhibited an exhibit marked "IMC1," a document referred to above as and which hereafter I shall be referring to as "the document."

As I have found it from the evidence of both parties that the facts are not in dispute save for the intention of the parties in the said document I will not reproduce their testimonies in my judgment.

The facts, on the totality of the evidence on record, are that the Plaintiff entered into an agreement for the purchase of a property (plot) with one Felix Chishimba the younger brother to the Defendant at a cost of

K40,000.00 which she paid in full. Later it was discovered that the property was already sold to another person and the said Felix Chishimba had disappeared until he was apprehended, arrested and charged with the offence of Obtaining Money by False Pretences where for he was detained in police custody.

As it were, the police refused to admit the said Felix Chishimba to police bond.

Because the said Felix Chishimba was apparently sick, the defendant offered to settle the amount of K40, 000.00 if the Plaintiff withdraw the complaint of Obtaining Money by False Pretences before the police. It is apparent that upon the execution of the document the Plaintiff withdrew the complaint.

The document which was made before one Mwila C.I.O read in part, so far as is relevant:

"I Gershom M. Chishimba of NRC 206070/67/1, I have paid the sum of K10, 000 towards the settling of amount of K40, 000 belonging to Mrs. Idah C. Chileshe to settle the matter of Obtaining Money by False Pretences involving my younger brother Felix Chishimba. Next payment will be made after 2 weeks."

The Defendant now disputes that the document was not a contract as he was merely helping his brother who was in police custody.

The question I have to resolve is whether this document constitutes an enforceable agreement between the Plaintiff and the Defendant?

The answer to that question is that I should think that it does. For as long as it was made in consideration that the Plaintiff withdraws the complaint of Obtaining Money by False Pretences against one Felix Chishimba, it constitutes part of a valid contract between the Plaintiff and Defendant. The fact from the evidence is that the Plaintiff accepted the K10, 000 from the Defendant and withdraw the complaint before the police. This constitutes sufficient consideration and binds the parties in the contract. The parties having exchanged those promises are obligated to fulfil them. Of what benefit it might have been to the defendant or another is irrelevant.

On a balance of probabilities, therefore, I find the Defendant liable in the sum of K30, 000 and I accordingly grant the Plaintiff the relief sought. I further award the plaintiff the sum of K173 for costs as endorsed on the default writ.

Taking into consideration of the circumstances of the case, I award no interest on the sums due.

DELIVERED IN CHAMBERS THIS DAY OF 2017 AT LUSAKA



HON. D. G. SIMUSAMBA

PRINCIPAL RESIDENT MAGISTRATE