

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

2017/HPC/003



BETWEEN:

FOCUS FINANCIAL SERVICES LIMITED **PLAINTIFF**
AND

WEBCO ENGINEERING LIMITED
SAM MAZIMBA
WEBSTER JEMBE MAZIMBA

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT

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

For the Plaintiff: *Mr K. Wishimanga of Messrs A M. Wood
& Company.*

For the Defendants : *Mr R. Chirwa of Messrs- Messrs Willa
Mutofwe & Associates.*

JUDGMENT ON ADMISSION

LEGISLATION REFERRED TO:

1. Order 53 Rule 6 of the High Court Rules, Cap 27 of the Laws of Zambia.
2. Order 21 Rule 6 of the High Court Rules, Cap 27 of the Laws of Zambia.
3. Order 27 Rule 3 of the Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition.

CASES REFERRED TO:

1. China Henan International Economic Technical Corporation V Mwange Contractors Ltd (1998) ZR.
2. Agri- options V Jeffrey's Bakery Limited 2015/HPC/0031.

3. Thorp v. Holdsworth (1876) 3 Ch.D. 637.

4. Chazya Silwamba V Lamba Simpito (2010) 1 ZR, 475.

This is an application by the Plaintiff for Judgment on Admission.

It is supported by an Affidavit and Skeleton Arguments filed into Court on 16th June, 2017. The Affidavit on record is sworn by Kadidja Banda, the Legal Officer of the Plaintiff.

It is deposed by Mr Banda that the Plaintiff herein commenced this action against the Defendants who filed a Defence into Court dated 16th May, 2017.

That a perusal of the said Defence shows that paragraphs 3, 5, 7,8,10 and 11 contain bare denials which at law is considered an admission of the allegations that have not been specifically traversed.

It was further deposed that at paragraph 3 of the Defence the Defendants admit that they were required to pay K500,000.00 to the Plaintiff whilst at paragraph 5 the Defendants admit that the Plaintiff advanced K400,000.00 to them.

Moreover, that there was a failure to repay the amounts due on the due date and the facility was extended and in paragraph 8 the Defendants admit that they accepted the balances contained in the acceptance of customer balance dated 4th July, 2014.

According to Mr Banda, at paragraphs 10 and 11 of the Defence, the Defendants admit that they have not made any further payments to the Plaintiffs despite various reminders for them to do so.

That the Defendants had voluntarily made the same admission and this Court could enter judgment on the admitted sum.

The Defendants also filed an Affidavit in Opposition on 19th July, 2017 sworn by Sam Mazimba the 2nd Defendant herein.

It is deposed that Judgment on Admission can be made on a general or bare denial to allegations contained in a statement of claim and where the Defendant did not specifically traverse each and every paragraph.

Further that the Plaintiff alleges that he had admitted its Claim in paragraphs 3, 5, 7, 8, 10 and 11 of his Defence.

That it was a matter of record that he specifically traversed each and every paragraph of the Statement of Claim which he did not admit and where necessary put the Plaintiff to strict proof.

He also stated that he repaid the Plaintiff K356,000.00 and he exhibited "SM1" the true copies of his instructions to the bank to authorise the transfer of sums for repayment to the Plaintiff.

That he disputed the computation of interest charged by the Plaintiff and thus required an assessment of this.

Thus he had instructed his Advocates to seek that this Court should dismiss the Plaintiff's application to enter Judgment on Admission in the sum of K400,000.00.

The Plaintiff in their Skeleton Arguments relied on **Order 53 Rule 6 of the High Court Rules, Cap 27 of the Laws of Zambia** which provides thus:

“(2) the defence shall specifically traverse allegation of fact made in the Statement of Claim or counter claim as the case may be.

(3) A general or bare denial of such allegation or a general statement of non – admission of them shall not be a traverse thereof.

(4) A Defence that fails to meet 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 Defendant, or the Court on its own motion, may in an appropriate case, enter Judgment on Admission.”

Further that **Order 21 rule 6 of the High Court Rules** which provides that:

“A party may apply, on motion or summons, for cancelled judgment on admissions where admissions of facts or part of a case are made by a party to the cause or matter either by his pleadings or otherwise.”

The Plaintiff also relied on **Order 27 Rule 3 of the Rules of the Supreme Court of England, 1965 (White Book) 1999 Edition** which states that:

“Where admissions of fact or of 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."

He also cited the case of **CHINA HENAN INTERNATIONAL ECONOMIC TECHNICAL CORPORATION V MWANGE CONTRACTORS LTD (1)** where it was held that:

"This Defence clearly falls short of the standard required in commercial cases as provided by Practice Direction No. 2. It does not traverse specific allegations of fact contained in the Statement of Claim. It is a general statement of non-admission, containing bare denials.

The new dispensation in commercial matters was that the Parties must place their cards on the table early in the litigation to assist in narrowing issues of contention and for the real issues in the dispute to surface. It was not prudent for a party to wait for trial before exposing their side of the story.

Counsel also contended that the Defendants Defence and specifically paragraphs 3, 5, 7, 8, 10 and 11 contained bare denials which were admissions.

Based on the foregoing the Plaintiff prayed that Judgment be entered on the admission of the Defendants.

Counsel for the Defendants also filed Skeleton Arguments into Court on the 19th July, 2017. Counsel also relied on Rule 2 of the Practice Directions governing commercial matters which provided that:

“(2) the defence shall specifically traverse allegation of fact made in the Statement of Claim or counter claim as the case may be. A general or bare denial of such allegation or a general statement of non – admission of them shall not be a traverse thereof. A Defence that fails to meet requirements of this rule shall be deemed to have admitted the allegations not specifically traversed and in an appropriate case the Plaintiff may be entitled to enter Judgment on Admission.”

Further Counsel drew this Court’s attention to the definition of “traverse” in the ***Black’s Law Dictionary (9th Edition) by Brian A. Garner*** which defined it as “*a formal denial of a factual allegation made in the opposing party’s pleading.*”

According to Counsel, on the strength of the afore mentioned authorities this case ought to be distinguished from the dictum contained in the case of **CHINA HENAN INTERNATIONAL ECONOMIC TECHNICAL CORPORATION V MWANGE CONTRACTORS LTD (1)** where the Supreme Court stated inter alia that:

“The Defence filed by the appellant contains there paragraphs: (1) The Defendant admits paragraphs 1 and 2. (2) The contents of paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 were denied and the Defendant shall put the Plaintiff

to strict proof thereof... and the Supreme Court went on to hold that:

This Defence clearly falls short of the standard required in commercial cases as provided by Practice Direction No. 2. It does not traverse specific allegations of fact contained in the Statement of Claim. It is a general statement of non-admission, containing bare denials."

Based on this it was the argument of Counsel for the Defendant that for this Court to exercise its discretion to enter Judgment on Admission, it must be found that the Defendant's Defence does not traverse specific allegations of fact and further that it merely contained a general statement of non-admission.

Counsel further argued that the facts of this case showed that the Defendant specifically traversed each allegation made by the Plaintiff and did not expressly admit these and where necessary put the Plaintiff to strict proof.

Moreover that the Defendant was merely requesting a reconciliation and clarification of the Plaintiff's claim by putting it to strict proof and to request anything further of the Defendants of a claim they did not acknowledge would lead the Defendants to misleading this Court.

To support this submission further Counsel relied on the dictum of this Court's decision in the case of **AGRI- OPTIONS V JEFFREY'S BAKERY LIMITED (2)** where it was held that:

"there is an obligation placed upon the Plaintiff to clearly explain its claim and as such if a defendant

requested for a reconciliation or clarification of the claim, such a request must not be considered a an admission.”

Counsel also pointed out that it was a general rule of law that he who alleged must prove thus the burden of proof rested on the Plaintiff to prove his claim and not on the Defendant.

That the Defendants put the Plaintiff to strict proof of their allegation under paragraphs 5, 9 and 12 of the Plaintiff's Statement of Claim amongst others in order to reconcile and clarify the Plaintiff's claim.

Moreover that the Court's power to enter Judgment on Admission was discretionary and exercised for purposes of saving time and costs and a reading of the Defence indicated that it had raised sufficient objection to the Statement of Claim's material facts warranting the matter going to trial.

Thus Counsel urged this Court to distinguish the present case from that of **CHINA HENAN INTERNATIONAL ECONOMIC TECHNICAL CORPORATION V MWANGE CONTRACTORS LTD (1)** and dismiss the Plaintiff's application to enter judgment on admission.

Lastly that it was without prejudice that the Defendants submitted that they did in fact owe the Plaintiffs money and what they objected to was the sum claimed by the Plaintiff.

I have considered the Affidavit evidence, the Skeleton arguments, the Authorities cited and oral submissions of both learned

Counsel for the Plaintiff Mr Wishimanga as well as learned Counsel for the Defendant Mr Chirwa.

The main issue for determination is whether or not this Court should enter judgment on admission in favour of the Plaintiff in the sum of K496,473.33.

The gist of the Plaintiffs arguments was that a Bare denial in a Defence was not considered to be a traverse and so the Defendants must be deemed by this Court to have admitted the allegations they had not specifically traversed.

That Defendants admitted that they were required to pay K500,000.00 to the Plaintiff and that the Plaintiff had advanced K400,000.00 to the Defendant which they failed to repay by the due date and the facility was extended.

Further that the Defendant admitted that they accepted customer balances provided on 4th July, 2014 and that they admitted that they made no further payments to the Plaintiff despite various reminders.

The Defendant on the other hand, stated that the Plaintiff was paid K356,000.0 and that what he disputed in this matter was the computation of interest and that he required assessment and on this basis, Judgment on Admission in the sum of K400,000.00 could not be entered.

This application was commenced pursuant to **Order 53 Rule 6 of the High Court Rules, Cap 27 of the Laws of Zambia** which states that:

“(2) the defence shall specifically traverse allegation of fact made in the Statement of Claim or counter claim as the case may be.

(3) A general or bare denial of such allegation or a general statement of non – admission of them shall not be a traverse thereof.

(4) A Defence that fails to meet 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 Defendant, or the Court on its own motion, may in an appropriate case, enter Judgment on Admission.”

Counsel for the Plaintiff also cited the case of **CHINA HENAN INTERNATIONAL ECONOMIC TECHNICAL CORPORATION V MWANGE CONTRACTORS LTD (1)**.

From the foregoing legal provisions and case law, it is clear that where a Defence does not specifically traverse an allegation of fact in the Statement of Claim but merely sets out bare denials it can be deemed to be an admission by the court.

I further wish to add that as was pointed out by Jessel M.R. in **THORP V. HOLDSWORTH (3)** the main object of the rule on admissions is to bring the parties by their pleadings to an issue, and indeed to narrow them down to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.

The jurisdiction of a Court to enter Judgment on Admission is indeed discretionary and usually the Court will make the order in order to save time and costs.

I have noted it as a fact on the record that by an Equity Participation Agreement between the Plaintiff and the 1st Defendant the Plaintiff invested ZMW400, 000.00 in the 1st Defendant's Contract/Order with Zhentai Group Limited as working capital.

Moreover that the 1st Defendant was required to repay K500,000.00 by 4th July, 2014 and that in the event that any amount payable to the Plaintiff remained unpaid, it would accrue interest at 10% monthly.

I have also found it as a fact that the Defence filed into Court on the 16th May, 2017 had portions where the 2nd Defendant admitted his indebtedness to the Plaintiff by making general statements of non-admission, containing bare denials.

These portions are clear in paragraphs 3, 5, 7, 8, 10 and 11 which are set out as follows:

“3. That paragraph 5 of the Plaintiff's Statement of Claim is denied and the Defendant shall put the Plaintiff to strict proof thereof.

5. Paragraph 9 of the Plaintiff's Statement of Claim is denied and the Defendants shall put the Plaintiff to strict proof thereof.

7. Paragraph 11 of the Plaintiff's Statement of Claim is denied and is within the peculiar knowledge of the Plaintiff.

8. Paragraph 12 of the Plaintiff's Statement of Claim is denied and the Defendants shall aver at trial that the same is within the peculiar knowledge of the plaintiff and shall further put the Plaintiff to strict proof thereof.

10. Paragraph 14 of the Plaintiff's Statement of Claim is denied.

11. Paragraph 15 of the Plaintiff's Statement of Claim is denied."

Based on the foregoing, I therefore make a finding that the 1st Defendant owed the Plaintiff the sum of K500,000.00 as at 4th July, 2014.

The matter does not however end here. In the Affidavit in Opposition to Summons for Entry of Judgment on Admission filed into Court on 19th July, 2017, the 2nd Defendant states that he repaid a total sum of K356,000.00. Copies of letters of Instruction by the 1st Defendant to its bank authorising transfers of K166,000.00 on 27th August, 2014 and K190,000.00 on 12th June, 2015 to the Plaintiff are exhibited collectively marked "SM1".

Whilst an instruction to a bank to make a transfer does not necessarily mean that the transfer has been effected, I will assume that the transfers were effected and a total sum of K356,000.00 was paid by the 1st Defendant to the Plaintiff.

In view of the fact that the 1st Defendant states that it paid a total sum of K356,000.00 to the Plaintiff out of the sum of K500,000.00 which it ought to have paid on 4th July, 2014 I will enter Judgment on Admission in favour of the Plaintiff against the 1st Defendant for the payment of the sum of K144,000.00.

I accordingly enter Judgment in favour of the Plaintiff against 1st Defendant for the payment of the sum of K144,000.00 plus contractual interest from 5th July, 2014 to date of Judgment and thereafter at the current commercial bank lending rate until full payment.

While the decision in the case of **CHAZYA SILWAMBA V LAMBA (4)** is not binding on this Court, I adopt the holdings therein *inter alia* that:

- “1. A party may admit the truth of the whole or any part of another party’s case. When a fact is admitted, it is unnecessary for a party to advance evidence in relation to the admitted fact(s) at trial.**
- 2. When a fact is admitted, it ceases to be an issue, and neither is required or permitted to advance evidence about it at trial.**
- 3. The function of an admission is to ensure that the Court’s time at trial is not wasted and delay is avoided. Admissions also narrow the issues to be decided.”**

I have therefore found that the issue of whether or not the 1st Defendant owes the Plaintiff the amount in question is no longer

an issue and there will be no need for this Court to proceed to trial to determine the issue as it would merely delay the matter.

It is self-evident from the Defence and the Affidavit in Opposition to Summons for Entry of Judgment on Admission that the 1st Defendant admitted owing the Plaintiff the sum of K500,000.00 as at 4th July, 2014 but disputed the computation of interest and considers that the payment of K356,000.00 made by it to the Plaintiff was not taken into account in arriving at the sum of K496,473.33 claimed by the Plaintiff.

Having entered Judgment on Admission in favour of the Plaintiff against the 1st Defendant for the payment of the sum of K144,000.00 and interest, in terms of **Order 27 Rule 3 of the High Court Rules**, I have jurisdiction to give such judgment or make such order as I think just. In view of the issues raised by the 1st Defendant, these issues will be addressed by way of Affidavit evidence. It is accordingly Ordered as follows:

1. The Plaintiff is to file an Affidavit showing how it arrives at the sum of K496,473.33. The computation is to include the principal amount, interest charged and how it is arrived at as well as all payments made by the 1st Defendant and/or the 2nd Defendant and 3rd Defendant.
2. The Defendants are to file an Affidavit showing all payments made to the Plaintiff in connection with the Equity Participation Agreement dated 20th May, 2014. Proof of payment must be exhibited for all payments made.

3. The Plaintiff is to file its Affidavit aforesaid within 14 days from date hereof while the Defendants are to file their Affidavit within 21 days from date hereof.

The Hearing of the said Affidavits will be on 3rd November, 2017 at 10:00 hours. It is Ordered that the Deponents of the aforesaid Affidavits are to be in attendance so that they can be cross-examined on their Affidavit evidence.

Costs are awarded to the Plaintiff.

Leave to appeal is hereby granted.

Delivered at Lusaka this 5th day of October, 2017.



William S. Mweemba
HIGH COURT JUDGE