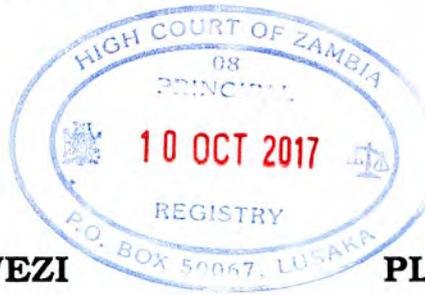


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

**2013/HP/1153**



**BETWEEN:**

**CARLSON CHINGWENGWEZI**

**PLAINTIFF**

**VS**

**SONAR INTERNATIONAL LIMITED**

**DEFENDANT**

***BEFORE HONORABLE JUSTICE MR. MWILA CHITABO, SC***

*For the Plaintiff: Mr. N. Mhanga of Messrs AKM Legal Practitioners*

*For the Defendants: Mr. M. Museba of Messrs Simeza Sangwa & Associates*

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**JUDGMENT**

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**Cases Referred to:**

- 1. Khalid Muhamed v The Attorney(1982) ZR 49*
- 2. Watteau v Fenwick (1893) 1 QB 346*
- 3. Wilson Masauso V Avondale Housing(1982) Z.R. 172.*

The Plaintiff instituted this action against the Defendant by way of Writ of Summons accompanied by a Statement of Claim. The Plaintiff claimed the following reliefs:

1. *The sum of K 369, 075.00 being the equivalent of the then US\$ 66,500 commission, calculated at the commercial bank prevailing spot selling rate of K5.54.*
2. *Interest.*
3. *Costs*
4. *Any other reliefs that the Court may deem fit*

The Plaintiff's Statement of Claim revealed that the Plaintiff was engaged in the business of brokering business deals between parties and acting as agent operating from Lusaka. It stated that the Plaintiff was requested by Avic International to source 7000 tonnes of assorted steel for their various construction works in April, 2012.

It further revealed that the Plaintiff approached the Defendant in April, 2012 through their managing Director. Subsequently they entered into a verbal agreement that in consideration of the Defendant securing the contract to supply the 7000 tonnes of assorted steel to Avic International Ltd, the Defendant would pay a sum of 2.5% commission of the value of the steel supplied upon approval by the Defendant's superiors based in South Africa.

It was finally agreed by the Plaintiff and the Defendant that the Plaintiff would be given 1% commission of the value of the steel supplied. It was revealed that the Defendant, pursuant to a verbal agreement, through its accountant Mr. Amir Shiv paid a sum of US\$3500 as an advance payment towards the first delivery of 500 tonnes of steel.

It was asserted that the Plaintiff kept discussing and reminding the Defendant for the payment of the balance of the commission, as deliveries to Avic International had continued. The Managing Director of the Defendant is stated to have intimated that the shareholders in South Africa needed to be consulted about the balance owing to SI 33 of 2012 which prohibited payments in foreign currency.

It was stated that the Plaintiff continued reminding the Defendant on the balance of the commission that was owing due to the fact that Avic International confirmed to the Plaintiff that the delivery of the 7000 tonnes of assorted steel were delivered and supplied by the Defendant. The statement of claim revealed that at one point the Defendant at one point pleaded ignorance to the Plaintiff about the Defendant's contractual arrangements with the Plaintiff in relation to the balance of the commission. The Defendant then asked the Plaintiff to personally pursue the issue with his superiors in South Africa.

In its Defence the Defendant admitted some business dealings with the Plaintiff but not to the extent alleged by the Plaintiff. It was asserted that agreement was that there was an agreement for the payment of 1% commission on the supply of 500 tonnes of steel valued at US\$540,390 to Avic International Ltd and not 7000 tonnes.

The Defendant also admitted that the US\$3500 was paid to the Plaintiff as advance payment but that the said sum was paid toward the supply of 500 tonnes of steel to Avic international which was the only order secured at the Plaintiff's instance. The

Defendant however denied that the Plaintiff contacted the Defendant regarding his claim for commission on the 7000 tonnage and that he was informed that he had already been paid his commission.

The Defendant further denied that the supply of the steel was for 7000 tonnes to entitle the Plaintiff a claim of 1% commission on it.

At trial the Plaintiff testified and called witnesses. The Plaintiff testified that he was a broker in sales who represented companies both local of foreign who were looking for general goods and services

He said he had business dealings with the Defendant three years ago when he was approached by one Mr. Lui from Avic International while in the presence of Amos Kamboyi. He gave him a list of goods and services and asked him to source the same. The said list included among other things steel used for construction, bitumen, sand and crushed stone. He said he decided to go with the steel because his friend, DW1 whom he had previously worked with would help.

Mr. Lui then gave him the list of the various types of steel and specified the quantity as 7000 tonnes. The Plaintiff then went to see DW1 who agreed that the deal was good for his company and the Plaintiff asked him to give him the best price. He got two other quotations which upon seeing, DW1 reduced his initial quotation and gave the best price.

A day later the Plaintiff and Mr. Kamboyi met with DW1 to discuss the sales commission. He proposed a 2.5% of the total cost of the steel of which DW1 calculated at US\$7,000,000. He agreed to pay the same subject to approval of his boss Mr. Arun Chandha from Allied Steel based in South Africa. He was asked to wait for three days and when he went back he was told that DW1's boss Mr. Chandha had reduced it to 1% which he accepted. The Plaintiff organized a meeting between the Defendant and Avic International Ltd where they sealed the deal for the Defendant to supply 7000tonnes of steel to Avic.

After the two companies signed the contract, the Plaintiff went to see DW1 over the terms of payment in respect of his commission and he was informed that he would be paid cash in US dollars.

He narrated that months later steel started coming in from South Africa under the Defendant Company and taken to Avic International. He was not privy to the internal documentation between the two and solely depended on his friend DW1. After delivering 500 tonnes, DW1 called him and Mr. Kamboyi and informed him that he would be paying him in stages as the delivery would take some time to complete.

He told the Court that of the 500 tonnes 1% of which was US\$5,400 and he was then paid a sum of US\$3,500 and that the balance was removed for tax purposes. He said he did not argue at that point because he did not want to jeopardize his business. A petty cash voucher was signed in the presence of The Defendant's accountant and Mr. Kamboyi, PW2.

It was his testimony that PW2, who had been appointed as a clearing agent in South Africa, months later he informed the Plaintiff that 2000 tonnes had been delivered. The Plaintiff then approached DW1 in order to balance up the new shipment of the 2000 tonnes of steel to Avic International. The Plaintiff said he was surprised when DW1 told him that for any further payment he should deal with Mr. Chandha, his boss. He also explained to the Plaintiff that the deal with Avic International was between the Zambian Government and the Chinese Government. He told him that Zambia had gotten a loan from the Chinese Government and therefore funds were coming from China. The Plaintiff said DW1 directed him to SI 33 of 2012 where the government had abolished dealing in foreign currency within Zambia.

According to him, DW1 told him that because of the Statutory Instrument they would incur a loss by the time they finally sourced the Steel from South Africa. He was further asked to deal with Mr. Chandha but the Plaintiff refused because his business was between himself that DW1. He narrated that the two then had an argument and failed to agree on the matter. According to the Plaintiff the outstanding commission was US\$70,000 less US\$ 3500 which translated to US\$66,500. It was his testimony that he tried to resolve this amicably but it did not yield any resolution.

The Plaintiff referred to the document on page 1 of the Plaintiff's supplementary bundle of documents which gave a summary of the transaction including quantities which the Plaintiff claims was calculated at 7000 tonnes and was the basis on which the

whole transaction was based. He said this document was given to him by Mr. Lui because he wanted Zambians to participate in this project as per terms and conditions given to the contractor Avic International.

He was claiming for the balance owing on the 1% of the initial 500 tonnes delivered and the commission on the remaining tonnes delivered which amount was US\$66,500. He further also sought interest on the delivery of the entire 7000 tonnes of steel.

In cross examination the Plaintiff told the Court that the agreement with Sonar International Limited was verbal and the agreed commission was 1%. He said this percentage was approved by Mr. Chandha of Allied Steel and that Allied Steel was a party to the contract. He stated that he was aware that Mr. Chandha was Director in the Defendant Company and was DW1's boss.

According to him the approving by Mr. Chandha of the 1% commission was done in his capacity as the Defendant's boss and Allied Steel. He however said that he was aware that the Defendant and Allied Steel were different companies altogether.

When asked about the document on page 1 of the bundle of documents he admitted that it was not on Avic International letterhead nor did it show that it related to the project. Further that it did not indicate that it was a transaction between Avic International and the Defendant. He told the Court that he did not know the project manager of Avic International. The Plaintiff also admitted to not being privy to the contract between the

Defendant and Avic International for the 7000 tonnes of steel. He further added that he did not follow up to verify the actual quantity of steel supplied by the Defendant and merely depended on the information from the Managing Director.

When referred to the Defendant's bundle of documents, he confirmed that there was a quotation of 502 tonnes of steel dated 23<sup>rd</sup> April, 2012. He was aware that after supplying the first 502 tonnes of steel by the Defendant, Avic International decided to source the steel directly from the supplier from South Africa and he was not privy to the contract between Avic and the South African steel company. He further stated that he was not aware that the defendant was not a party to the contract between Avic International and Allied Steel.

In reexamination he clarified that while he was not a party to the contract between Allied Steel and Avic International, the basis for his claim was the annex of the summary of BS reinforcement for road project appearing in the Plaintiff's supplementary bundle of documents. Further, he explained that while there were no similarities between the document in the Defendant's bundle of documents and the first document in the supplementary bundle of documents, there were similarities in the sizes of steel.

**PW2** was **Amos Kayombo Kamboyi** who testified that at the material time he was a clearing agent and a Mr. Lui Wang, a Commercial Manager at Major Bridge approached him and asked him where he could buy steel for the Mongu-Kalabo project. He then contacted the Plaintiff and the Plaintiff said he that he would contact DW1. The witness said he was present at the

discussions with DW1 and a commission of 1.5% or 1% was agreed upon depending on the quantity. It was verbally agreed that the contract was for 7000 metric tonnes of steel.

It was his testimony that on instruction by DW1 the Defendant started supplying steel to Avic International. He recalled that the Plaintiff was paid US\$1500 and not the agreed 1% of the value of the 7000 tonnes. According to him, the South African Company refused to pay the 1% commission because they did not want to deal with the local company, the Defendant. However, it was his assertion that the 7000 tonnes of steel was delivered and that the agreed 1% commission was on the total volume of steel delivered.

He stated that he did not know the dollar equivalent of the total commission but that he was present when the US\$ 1500 was paid to the Plaintiff. He reiterated that at the material time he was a clearing agent who actually one of the people who cleared the steel.

In cross examination he confirmed that the Plaintiff had an agreement with the Defendant relating to the supply of steel to Avic at a commission. He clarified that he was not present when the contract between Avic International and the Defendant was entered into nor was he aware that the contract was only for the supply of 502 metric tonnes of steel. He confirmed that the document on page 1 of the Defendant's bundle of documents was a proforma invoice for 502 metric tonnes of steel.

When referred to the second document in the Defendant's bundle of documents the witness confirmed that it was contract between

the Defendant and Avic International. He confirmed that the 7000 metric tonnes was delivered and he was the clearing agent for the whole 7000 tonnes. He said that he was mistaken that the Plaintiff was paid US\$1000 but it was US\$3000 and they shared US\$1500.

In reexamination the witness confirmed that he cleared 7000 tonnes of steel on behalf of the Defendant.

The Plaintiff closed its case and the Defendant called one witness.

**DW1** was **Binod Parameswa Menon** of Lusaka who testified that sometime between March and April 2012 the Plaintiff and PW2 approached him and informed him that they had a big order from Avic International. It was then agreed that the Plaintiff and PW2 would be paid 1% of value of the contract as commission. He said the two asked for an invoice for the supply of 502 metric tonnes of steel which was given and valued at US\$540,290. The said invoice was given on 24<sup>th</sup> April, 2012.

He testified that sometime in July 2012 the supply was made and the Plaintiff approached them demanding for commission. He was paid US\$ 3500 which the Plaintiff knew how it was arrived at.

He said that was the only contract that the Defendant entered with Avic International. It was hi further testimony that in 2013 they received a letter from the Plaintiff demanding commission for 7000 tonnes of steel which was K369,075 equivalent to US\$66,500. A response was made stating that the Defendant only received one contract and full supply was made and they were not party to any other delivery.

He further testified that as evidence would show the Defendant had not made any other supplies of steel under the contract other than the 502 metric tonnes of steel that had already been supplied.

In cross examination the witness told the Court that the contract that was on page 2 of the Defendant's bundle of documents was a contract between Sonar Steel and Avic International. According to him, Sonar Steel and the Defendant were two different companies. He also informed the Court that the Mr. Chandha was the shareholder in both Allied Steel and the Defendant. He further stated that Mr. Chandha in the contract signed on behalf of Sonar Steel Ltd. He admitted that there was a billboard at Lusaka Golf club advertising Allied Steel Rods and their local office is indicated as Sonar Steel International with the Defendant's phone number. According to him Allied Steel supplied the Defendant with Steel and subsequently supplied it to Avic International.

DW1 also admitted that there was a verbal contract between the Plaintiff and Sonar Steel Ltd for the supply of steel to Avic International. He also highlighted that the Plaintiff's commission was payable after paying corporate tax and this issue had been discussed and agreed upon with the Plaintiff. He however was not sure if the said 1% was a profit for the Defendant or a cost.

With regard to the claim that 7000 metric tonnes were supplied he responded that all the invoices confirming the supply of steel to Avic by Sonar was in the Defendant's bundle of documents from page 7-24 which in total equated to 502 metric tonnes of

steel. According to him the Defendant supplied 502 tonnes of steel at the value of US\$540,390 and 1% of which amounted to US\$5,407 and the Plaintiff was paid US\$3500.

He admitted that the total tonnes that were in the invoices was 529 metric tonnes. He also admitted that it was possible that there could have been additional invoices. He added that as this was a four year matter, he could not recall exactly and would have to check with accounts. He however stated that it was not possible that 7000 metric tonnes was supplied by the Defendant to Avic International.

The witness was drawn to the invoice on page 24 of the Defendant's bundle of documents which showed an additional order. He confirmed that he only mentioned the 500 metric tonnes supplied. He said he was not aware of the document in the Plaintiff's supplementary bundle of documents.

In reexamination the witness stated that Allied Chemicals and Steel was the company that supplied the steel to Avic International. He stated that the Billboard referred in cross examination had the Defendant's name because they were its major clients and because they did not have presence in Zambia they decided to put the Defendant as its local office. He further stated that the Defendant and Sonar Steel Ltd were two different companies with different directors and shareholding. DW1 was acting Director for both companies. He mentioned that Mr. Chandha was a shareholder in both Allied Steel and the Defendant but that he was not privy to the shareholding in Allied Chemical and Steel based in South Africa.

With regard to the additional invoices, he stated that the contract was based on the 502 metric tonnes of steel but subsequently the Plaintiff received a further order for a truck load of steel which was supplied which translated into the 529 tonnes. He said the Defendant had supplied all the invoices for the materials supplied to Avic. He reiterated that it was not possible that the 7000 metric tonnes was supplied to Avic International.. He added that from that time there had been no further invoices or deliveries to Avic in their books.

He stated that the reason he responded to the demand letter on the Defendant's letter head was because the demand letter was addressed to the Managing Director of the Defendant, of which he was.

The plaintiff in his submissions cited the case of **Zambia Railways Ltd. v Pauline S. Mundia and Another (2008) 1 ZR 278** and **Miller v Minister of Pensions (1974) 2ALL ER 372** on the standard of proof and the degree of probability in civil matters.

He submitted that according to the learned author **Chitty on contracts 25<sup>th</sup> Edition at page 180 paragraph 1147:**

*The Courts have also been sensitive to the fact that non-enforcement may also result in unjust enrichment to the party who had not performed his part of the bargain but who has benefited from the performance of the other party.*

He submitted that there was non-enforcement of the contract even after demands to the Defendant to perform its part of the

bargain. He said the non-enforcement was result in unjust enrichment to the Defendant. He also added that PW1 confirmed that he cleared 7000 tonnes of steel for the Defendant.

It was his contention that the summary of the BS Reinforcement for Road Project drafted by Avic International's Procurement officer Mr. Tom Liu which showed that 6,738.5311 kilograms of steel was procured. He contended that from this figure it is clear that close to 7000 tonnes of steel was supplied by the Defendant to Avic International. He submitted that the US\$3500 that he was paid was only with respect to the 500 tones supplied to Avic International.

The Defendant in its submissions submitted that it was not a party to the agreement for the supply of steel to Avic International under which the agreement for payment of commission was made. It was further submitted that the Defendant did not enter into an agreement with the Plaintiff for payment of commission on supplies of steel to Avic International.

It was the Defendant's argument that because the defendant company had separate legal capacity, it was never a party to the agreement with the plaintiff to pay commission on any of the said supplies of steel. The Defendant contended that the agreement for the supply of steel to Avic International was made with Sonar Steel Ltd. The Defendant argued that there was no evidence led to show that the Defendant was party to any agreement for the supply of steel to Avic International. Further, that there was an admission by the Plaintiff that the additional supply of 7000 metric tonnes was made by allied Steel South Africa.

The Defendant strongly contended that there was no evidence before this Court to a finding that the Defendant Sonar, International Limited supplied any steel to Avic International as it was a separate legal entity from Sonar Steel Ltd and Allied Steel Limited, the entities which supplied the steel to Avic International.

The Defendant further submitted that the Plaintiff had failed to establish that 7,000 metric tonnes of steel was indeed supplied. It was submitted that even though DW1 admitted that an additional 27.95 metric tonnes of steel that was made out, it was made out to Sonar Steel Ltd and not made out to the Defendant. The Defendant contended that the fact that there was the additional order did not prove that there was a supply of 7,000 metric tonnes by the Defendant. The case of **Khalid Muhamed v The Attorney** General was cited on the Plaintiff's duty to prove its case. The defendant argued that the Plaintiff had failed to prove that there was a supply of 7,000 metric tonnes of steel to Avic International by the Defendant of Sonar Steel Ltd and as such his claim is not justified.

I have considered the evidence on record and the submissions by both parties. I will begin by taking note of the undisputed facts in these proceedings. It is an undisputed fact that the Plaintiff was in the business as a broker which earned him commissions on the business transactions that he helped bring together. It is also an undisputed fact that the Defendant was engaged in the business of supplying steel.

It was also not in dispute that the Plaintiff and the Defendant had a verbal agreement that the Plaintiff would be paid 1% commission of the total value of steel delivered to Avic International.

However, what is in dispute is the quantity of steel that was supplied by the Defendant as this would determine how much commission the Plaintiff was entitled to. The Defendant in its submissions has further disputed having supplied steel to Avic international and have alleged that the steel was supplied by Sonar Steel Ltd. They further dispute any agreement between themselves and Avic International for the supply of steel.

The Plaintiff's case is mainly based on the verbal agreement that the Defendant agreed to supply 7000 tonnes of steel to Avic International and thereby entitling him to a commission of US\$66,546. The Defendant on the other hand strongly disputes this and maintained that the contract between Avic International and itself was only for the supply of 502 metric tonnes of steel which was delivered and the Plaintiff paid in full for this transaction.

The law is very clear as to where the onus of proof in civil cases lies and the case of **Khalid Mohamed v The attorney General** was clear which holding was restated in **Wilson Masauso V Avondale Housing**, which have been cited by the Defendant, that:

*“An unqualified proposition that a Plaintiff should succeed automatically whenever a defence has failed is*

*unacceptable to me. A Plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to Judgment. I would not accept a proposition that even if a Plaintiff's case has collapsed of its inanition or some reason or other, Judgment should nevertheless be given to him on the ground that a defence set up by the opponent has also collapsed. Quite clearly a defendant in such circumstances would not even need a defence."*

The Plaintiff in proving that there was a contract for the supply of 7000 metric tonnes of steel produced a document in the supplementary bundle of documents showing that the quantity of steel that was to be supplied by the Defendant was 7000 metric tonnes and according to the Plaintiff this steel was actually delivered to Avic International and this was supported by the evidence of PW2 who claimed that he was he was a clearing agent at the material time and he cleared all the 7000 metric tonnes of steel which was delivered by the Defendant to Avic international.

The document relied on was brought into question by the Defendant who contended that the document did not show that it was between the Defendant and Avic International as it had none of their names written thereunder. The Defendants strongly disputed the authenticity of this document and relied on the contract in their bundle of documents where it was shown that the contract was for the supply of 502 metric tonnes of steel to which the Plaintiff's commission was paid in full. PW2 supported the plaintiff testimony and added that he was the clearing agent

who was among those that cleared the 7000 metric tonnes of steel to be supplied to Avic International.

I will begin by addressing the Defendant's submissions in relation to its argument that it was never a party to the agreement with Avic International. The basis for this argument was that Sonar Steel Ltd and the Defendant are separate legal entities. While I agree that the two companies have separate legal personality, the undisputed evidence on record is that DW1 was the Managing Director of the Defendant Company and was acting Managing Director of Sonar Steel. He was approached by the Plaintiff and PW2 to supply 7000 metric tonnes of steel to Avic International. It is also undisputed from the evidence of DW1 that by virtue of that oral agreement 500 metric tonnes of steel was supplied to Avic International. The Plaintiff when cross examined conceded that the commission in relation to the supply of this 500 metric tonnes of steel was fully paid.

Further, the invoice relied on by the Defendants showing the supply of the 502 metric tonnes of steel is on Sonar Steel letterhead. However, the very bottom of that invoice clearly states that in print "*For Sonar International Ltd*". This to me clearly shows that the Defendant was at all material times involved in this transaction. Further, the agreement between the Plaintiff and DW1, though verbal and binding, was made with him as Managing Director of the Defendant Company. I therefore find the argument that the Defendant was never a party to this transaction to fly through the teeth of the Defendant. This to me also demonstrates that the Defendant is being evasive.

DW1 was at all material times holding himself out as an agent of the Defendant company. Indeed there is a wealth of authorities on the doctrine of agency under commercial transactions including the case of **Watteau v Fenwick (1893) 1 QB 346**. In that case it was held that:

*“the principal is liable for all the acts of the agent which are within the authority usually confided to an agent of that character, notwithstanding limitations, as between the principal and the agent, put upon that authority”*

I totally reject the argument by the Defendant that they were not a part of the transaction between the Avic International and Sonar Steel and as such were not part of the agreement with the Plaintiff. This argument is absolutely without merit as DW1 was acting on behalf of the Defendant.

I therefore find that there was an agreement between the Plaintiff and the Defendant that the Plaintiff would be entitled to 1% commission on the valued of the 7000 metric tonnes of steel to be supplied to Avic International. It is also worth noting that the evidence of the Plaintiff that the 1% commission was approved by Mr. Adam Chandha, who was DW1's boss was not discredited. The Contract between Sonar Steel and Avic International was signed by the same Mr. Adam Chandha. The Defendant in my view are attempting to escape liability if any by denying any involvement in this transaction.

It is important for me to highlight that an innocent passerby cannot be expected to know the internal operations of the

Defendant Company when the person he was dealing with was the Managing Director of the Defendant Company. How the Defendant finally sourced the steel cannot be expected to be in the knowledge of the Plaintiff.

What should be left for this Court to establish is if the additional steel was supplied to Avic International through the Defendant and as such if the commission being claimed is payable.

There is evidence before this Court from both sides that the Defendant supplied 502 metric tonnes of steel to Avic International for which the Plaintiff was fully paid his commission. The Plaintiff in his supplementary bundle of documents did show that the quantities and sizes of steel that was drafted by a Mr. Tom Lui. There is however no evidence that the remainder of the 7000 tonnes was supplied by the Defendant. The only evidence in support is the evidence of PW2 who said he was one of the clearing agents who cleared the entire 7000 metric tonnes of steel.

I have noted a number of inconsistencies in the Defendants evidence. Firstly, DW1 in cross examination was queried over whether there was any additional steel that was supplied apart from the 500 metric tonnes already alluded to and he was evasive and said he needed to check his records to verify this position. Secondly, there was then evidence that there was some additional 27 tonnes that was supplied which was initially denied by the Defendant had maintained that there was nothing other than the 502 tonnes supplied. There is no

mention as to whether the Plaintiff was ever even paid his commission for this shipment. Thirdly, the submissions also admit to this extra 27 tonnes of steel supplied but that it was supplied by Sonar Steel Ltd which argument I have totally rejected.

Lastly, there is the Defendant's argument to completely deny any knowledge of this transaction whatsoever. To me this showed how the Defendant, in its submissions and the evidence of DW1, attempting to escape liability when all along the evidence was that there was a verbal agreement Defendant and the Plaintiff for the payment of 1% commission on the value of the steel supplied.

Further, the evidence of PW2 that he cleared the entire 7000 tonnes of steel was not adequately demolished in my opinion. I therefore accept the evidence of PW2 that indeed there was additional steel that was supplied and delivered to Avic International by the Defendant through a South African Company they outsourced. I find the evidence of the Plaintiff to be more credible than that of the Defendant because the additional steel was never mentioned and was only raised in cross examination which helped consolidate the Plaintiff's claim that there was more steel that was in fact delivered apart from the 502 tonnes alluded to by the Defendant.

Based on the totality of the evidence before me I am satisfied the plaintiff has proven its case on a balance of probability and I accordingly award him his claims. For purposes of clarity:

- i. Judgment is entered in favour of the Plaintiff in the sum of US\$66,500 calculated at the commercial bank prevailing spot rate of K5.54 per dollar being the agreed commission under the oral contract equivalent to K369, 075.
- ii. The sum of K369, 075.00, herein called the principal amount shall attract interest at bank short term deposit rate from the date of the Writ up to the date of Judgment. Thereafter the principal amount, i.e. K369, 075 together with interest up to the date of Judgment shall form a Judgment Debt which will attract interest at bank lending rates or commercial rates but not exceeding the bank of Zambian lending rate until the liquidation of the Judgment Debt.

Costs follow the event.

Leave to appeal is granted.

**Delivered under my hand and seal this <sup>10th</sup>..... day of October,**

**2017**



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**Mwila Chitabo, SC  
Judge**