

IN THE SUBORDINATE COURT OF THE FIRST CLASS

2016/CRMP/1500

FOR THE LUSAKA DISTRICT

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

ANDREW A MITI

PLAINTIFF

AND

BEATRICE ZULU

DEFENDANT

FOR THE PLAINTIFF

IN PERSON

FOR THE DEFENDANT

IN PERSON

BEFORE MAGISTRATE G.MALUMANI

(SENIOR RESIDENT MAGISTRATE)

JUDGMENT

CASE LAW REFERRED TO:

1. Edward Ntinda V. Charles Sipeteka (2004) unreported H/C

LEGISLATION REFERRED TO:

Money lenders Act Cap 398 of the laws of Zambia.

By a default writ of Summons the plaintiff is claiming for K23, 400 with costs. The defendant disputed the claim. I bear in mind at the outset that in Civil matters the burden lies with the Plaintiff to prove his claim on a balance of probabilities.

I now turn to the evidence, only the parties testified. The evidence in brief is to the effect that on 25th January, 2016 the defendant borrowed a sum of K3000 from the plaintiff. It was agreed that it be paid with interest of 30 percent as the defendant had no collateral to give. And that it was to be paid in a month. It was calculated to K4, 200 by the following month. The plaintiff produced the said contract herein marked **AAMI** which is attached with the defendant's national registration card.

The plaintiff testified that no other payment was made until September 2016 when she paid K3000. After the writ was filed she paid another K3000 which I note was deducted when default Judgment was entered. According to the Plaintiff the defendant still owes a total of K20, 400 because of interest accrued over the period.

On cross examination, the plaintiff denied the assertion that after the second K3000 was paid, parties agreed for a full settlement terminating the proceedings before Court.

On her part, the defendant's testimony is to the effect that she borrowed K3000 from the plaintiff in 2016 to be paid within 30 days. Owing to funding Challenges with her organization she failed to perform that obligation. When she found money she paid K3000, K1000 and another K3000 after the writ was filed. She claimed that it was agreed that the claim was now finished.

In her testimony, she made a very interesting revelation regarding service of the default writ of summons in this matter. She recalled that she met with the Plaintiff's agent at Puma filling station at the time. He gave her the summon but did not read it. She got it and gave it back to him. This is a sign of dishonest on her part because I earlier set aside Judgment on the premises that she was not served. In terms of order VII of the subordinate Court rules Cap 28 r3 of the laws of Zambia, the fact that she was given the Summon and received it satisfies service.

Anyhow, from the evidence adduced, I perceive no dispute that in January 2016, the parties entered into a contract where the defendant borrowed K3000 to attract 30 percent interest. This is clearly indicated on exhibit AAM 1. It is not in dispute that later the defendant paid a total of K6000 in 2 installments as earlier noted. That the money attracted interest is not in dispute.

The dispute is on K1000 purportedly paid later and that after K3000 was paid following this action parties agreed for full settlement, implying that the proceedings were going to be terminated or withdrawn.

I have examined the purported defence by the defendant but find no merit in it. The evidence on record is quite clear. When she borrowed the sum of K3000, it was agreed that it would attract interest in a period of 30 days or a month. So, I see nothing wrong with the Plaintiff having continued to add interest for the rest of the months the money remained unpaid. This fact is signified or fortified by the fact that even after paying the first K3000 the defendant later paid another K 3000, I implying that they had agreed for interest otherwise she would not agree to pay more than the K3000 she initially borrowed. As for the K1000, it appears it is a mere claim by the defendant. There is nothing to showing that Plaintiff could refuse to acknowledge it when he acknowledged the higher sums of K3000 she paid.

On matters of contractual nature, the duty of the court is to put to effect the intention of the parties. And on the matter in *casu*, the contract herein entered poses no ambiguity. It was agreed that the defendant would pay interest for the money borrowed. The argument that they later opted for a settlement to terminate the proceedings upon payment of the second installment of K3000 cannot hold.

It is a fact that this agreement was between 2 individuals. The Plaintiff is neither a bank nor a money lender. So, the agreement is not subject to the money lenders Act Cap 398 of the laws of Zambia. In the case of **EDWARD NTINDA V. CHARLES SIPETKA** (1), Madam Justice **E.N.C. MUYOVWE**

recognized the view that agreements of this nature are not subject to the money lenders Act which govern interest charged for borrowed sums of money.

I will thus hold that the plaintiff has proved his claim on a balance of probabilities. I uphold his claiming of K20, 400 balance to be paid with costs.

Costs to be agreed or taxed in default,

DELIVERED IN COURT THIS 10TH DAY OF AUGUST, 2017.



G. MALUMANI ESQ

SENIOR RESIDENT MAGISTRATE

10/08/2017

