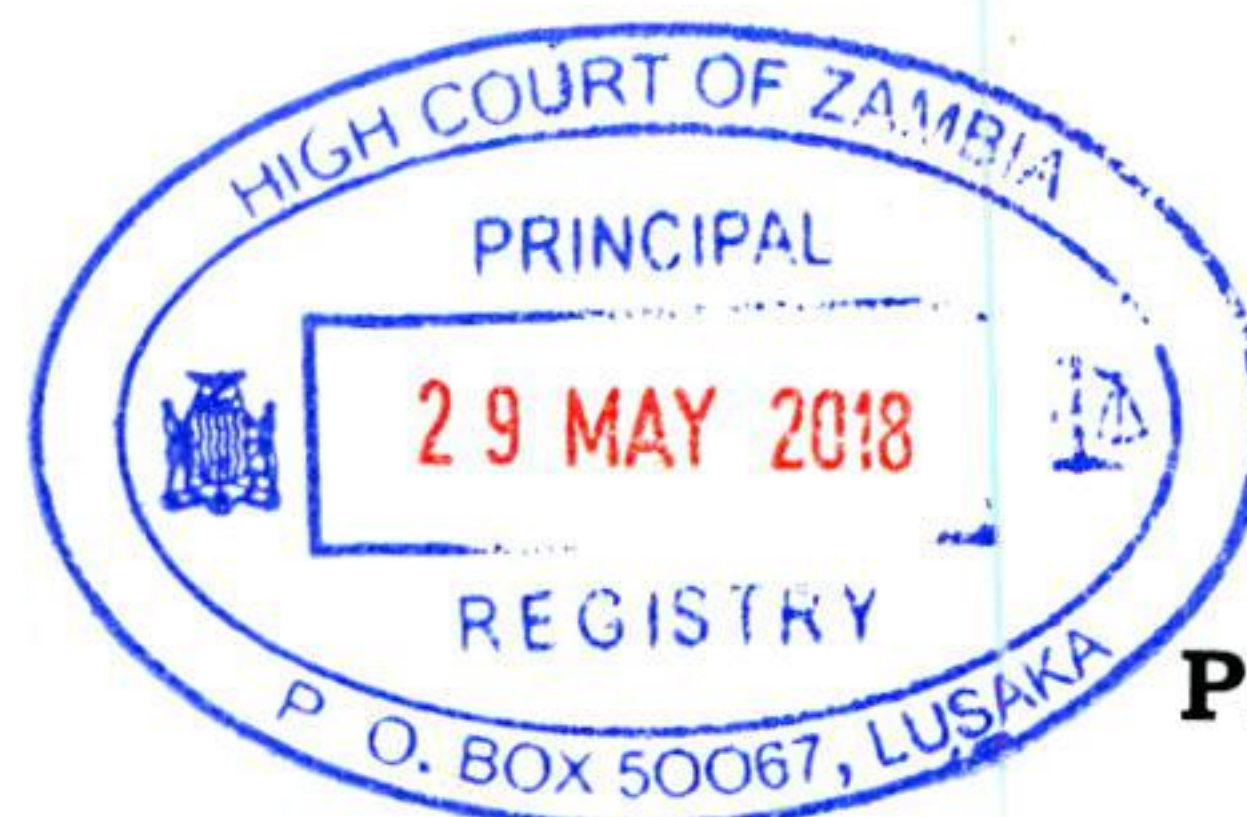


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**2015/HP/0171B**

**BETWEEN:**

**SPARLITE CANDLE LIMITED**



**PLAINTIFF**

**AND**

**JANVI INDUSTRIES LIMITED**

**DEFENDANT**

Before the Hon Mr. Justice Mathew L. Zulu in Open Court on the <sup>29<sup>th</sup></sup> day of  
*May* .....2018

For the plaintiff : Mr. G. Katupisha and Mrs. P.C Hampungu ~~and~~ of Milner &  
Paul Legal Practitioners

✓ For the defendant : N/A

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**J U D G M E N T**

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**Cases cited:**

1. Panorama Alarm System and Security Services Limited v. Dar Farms Transport Limited (2012) ZR 392 Vol. 1
2. Salomon v Salomon and Company Limited (1895-1899) ALL E. R 33
3. Khalid Mohamed V The Attorney General (1982) ZR 49



**Legislation referred to:**

**1. The High Court Rules, Order XXXV rule 3**

By amended writ of summons and statement of claim, the plaintiff sued the defendant to recover the sum of K734, 000.00 for goods supplied to the defendant at their request.

That facts of this case can be deduced from the detailed pleadings filed by the parties. On or about 27<sup>th</sup> October, 2010, the defendant under sale invoice number 08157 purchased 3000 cases of candles from the plaintiff on credit at a unit price of K112 per case amounting to K336,000.00. On delivery, the defendant returned 1,000 cases because it lacked storage space at its premises. This reduced the credit balance to K224, 000.00. The defendant issued two postdated cheques for K100, 000.00 each under cheque numbers 000151 and 000152 but cheque number 000152 bounced. The defendant issued a replacement cheque number 000174 postdated to 20<sup>th</sup> December, 2010, which also bounced. The defendant then made a cash deposit of K132, 000 into the plaintiff's account leaving a balance of K8, 000.00 to its credit.



On or about 7<sup>th</sup> January, 2011 the defendant made an order for 2400 cases at a unit price of K110 under invoice number 08268 amounting to K264,000.00. On 22<sup>nd</sup> December, 2010 the cash advance of K8,000.00 was adjusted and the defendant made other payments of K130,000.00, K78,400.00 and K30,000.00 between 5<sup>th</sup> January and 31<sup>st</sup> January, 2011, bringing the total payment to K246,400 leaving a balance of K17,000.00.

On or about 27<sup>th</sup> January, 2011, the defendant collected 2300 cases of candles at K110 each amounting to K253,000.00 escalating the debt to K270,000.00 after adding the outstanding K17,000.00.

The plaintiff alleges that the defendant approached it that it had a contract to supply 4200 cases of candles to Zambia Air Force and that if the order was fulfilled, regular orders would be made monthly. The defendant collected 700 cases on 29<sup>th</sup> January, 2011 and 3500 cases on 31<sup>st</sup> January, 2011 at K110 each. A total of 4200 cases worth K463, 400.00 were collected by the defendant. The defendant issued a cheque of K385, 000.00 to the plaintiff with a promise to bring cash in lieu later. This brought the outstanding debt to K734,



000.00 which the defendant has failed or neglected to settle despite numerous reminders.

The defendant denied the plaintiff's claims. The defendant accepted that there was an oral agreement to supply candles but that it would put the plaintiff to strict proof as regards the value of the agreement and the actual quantity of goods supplied. The defendant asserted that the goods supplied were paid for in full and that the plaintiff was given cash for cheques that bounced.

At trial, the plaintiff was represented by Mr. Katupisha while the defendant was represented by Mr. Banda who was holding brief for Mr. Mosha.

The plaintiff called its general manager, Murugesan Karuppasamy, to testify on its behalf. His evidence was that the parties entered into an agreement for the plaintiff to supply candles on credit to the defendant payable within 30 days. In October, 2010, the defendant asked for 3000 cases at a unit price of K112.00 per box translating to K336, 000.00 as shown on page 12 of the plaintiff's bundle of documents. Delivery was done using the plaintiff's truck. The defendant did not have enough space on its premises, so they only



offloaded 2000 out of the 3000 cases. 1000 cases were returned as shown by the credit note on page 4 of the plaintiff's bundle of documents.

After the return, the amount owing was K224, 000.00. The defendant issued two postdated cheques of K100, 000.00 each under cheque numbers 000151 and 00152 dated 8<sup>th</sup> and 10<sup>th</sup> December, 2010, respectively. One cheque cleared while the other (000152) bounced and was returned by the bank. He approached the defendant who issued another cheque number 000174 which also bounced. The following day, the defendant deposited K132, 000.00 cash into the plaintiff's account. This brought the total amount paid to K232, 000.00 against the K224, 000.00 owed. The difference of K8, 000.00 was treated as an advance payment for the next order.

PW1 testified that the defendant's representative, while representing another company called Eyemax Opticians, collected goods on 20<sup>th</sup> October, 2010 at K112 per case translating to a debt of K168,000.00. Thereafter, two cheques were issued in amounts of K68, 000.00 and K100, 000.00 respectively. He deposited the cheques on 22<sup>nd</sup> November, 2010, but they both bounced. When he followed up, the



defendant's representative said he did not have money in his company but would pay through Janvi Industries Limited, the defendant in this matter. Two cheques amounting to K84, 000.00 were issued in the defendant's name but they both bounced. When the defendant asked for more goods, PW1 advised them to clear the debt before any more goods could be released.

On 5<sup>th</sup> January, 2011, the defendant paid K130, 000.00 and pleaded with the plaintiff's director to release the goods. On the same date, he received 700 cases at K110 translating to K770, 000.00. On 27<sup>th</sup> January, 2017, he collected another consignment worth K185, 600.00. The defendant collected another consignment on the same day of 2400 cases at K110.00 amounting to K264, 000.00 as shown by the tax invoice on page 13 of the plaintiff's bundle of documents. Against this invoice, the plaintiff deducted K8, 000.00 and received cash of K130, 000.00 on 5<sup>th</sup> January, 2011. The defendant subsequently made payments in installments of K78, 400.00 and K30, 000.00 on 28<sup>th</sup> and 31<sup>st</sup> January, 2011, respectively. These adjustments amounted to K246, 400.00 against the debt of K264, 000 leaving a balance of K17, 000.00.



It was PW1's testimony that on 27<sup>th</sup> January, 2011, the defendant collected 2600 more cases at K110.00 under invoice number 08269 on page 14 amounting to K253,000.00 as shown by the invoice on page 14 of the plaintiff's bundle of documents. When added to the outstanding amount of K17, 000.00, the debt increased to K270, 000.00. Thereafter, on 29<sup>th</sup> January, 2011, the defendant got cases valued at K78, 000.00. On 31<sup>st</sup> January, 2011, the defendant got 3000 cases more amounting to K385, 000.00. This brought the total amount owed to K734, 000.00.

PW1 testified that when they asked for security, the defendant provided the cheque on page 15 of the plaintiff's bundle of documents. For the outstanding debt of K734, 000.00, the defendant issued a total of 6 postdated cheques as security.

Further, that there was an amount of K168, 000.00 outstanding from Eyemax Opticians which then brought the grand total owed to K902, 000.00.

It was PW1's testimony that the cheques which the defendant issued as security all bounced as shown by the plaintiff's bank statements on pages 20 and 21 of the plaintiff's bundle of documents. No action



was taken for the bounced cheques. However, the defendant acknowledged the debt and promised to settle it by a letter dated 29<sup>th</sup> June, 2011 on page 22 of the plaintiff's bundle of documents.

That was PW1's evidence in chief.

Mr. Banda who was holding brief for the defendants counsel, Mr. Mosha, applied for an adjournment so that counsel seized with conduct of the matter on the defendant's behalf could have an opportunity to cross examine the witness. The application for an adjournment was granted. The matter was accordingly adjourned to 19<sup>th</sup> May, 2017. On 19<sup>th</sup> April, 2017, this Court issued Notices of Hearing which were served on the respective advocates for the parties on record. On 19<sup>th</sup> May, 2017, counsel for the defendant did not attend court. The plaintiff's counsel, Mr. Katupisha, applied to close the case and file submissions. Upon considering that the defendant's counsel was aware of the hearing date and time but did not attend court, without any excuse, Mr. Katupisha's application was granted. The matter was accordingly closed for judgment.

The plaintiff's counsel, Mr. Katupisha, filed written submissions in aid of the plaintiff's case. He submitted that even if there was no



written contract between the parties for their long standing arrangement, each invoice constituted a separate and distinct agreement for the supply of goods and failure to pay in accordance with the provision of each particular order constituted a breach. The defendant in its defence does not dispute the oral agreement and has not substantiated his averments in the defence. Counsel referred to the case of **Panorama Alarm System and Security Services Limited v. Dar Farms Transport Limited**<sup>1</sup> in which Mulongoti J, as she then was, held as follows:

1. *There was a contract between the parties. And it was immaterial that the same was not signed by the defendant.*
2. *The conduct of the parties showed that they acted in accordance with the terms and conditions of the contract.*
- 3...
4. *If whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that other party upon that belief enters into the contact with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.*



It was counsel's contention that the cheques issued by the defendant is proof that the defendant attempted to settle the debt but the cheques bounced. This is supported by the letter on page 22 of the plaintiff's bundle of documents which shows that the defendant admitted its indebtedness to the plaintiff.

Counsel further submitted that the plaintiff had proved its case by its evidence that remains unchallenged. The plaintiff has demonstrated that the defendant is indeed indebted to it. He urged the court to grant the plaintiff the reliefs sought with costs.

I have considered the pleadings, evidence on record and the submissions by the plaintiff's counsel. As can be deduced from the facts of this case, the parties entered into a series of credit sale transactions whereby the plaintiff supplied and the defendant received boxes of candles. Although the defendant did not cross examine PW1 or give any oral evidence, it made it clear in its defence that it was disputing the amounts allegedly owed and claimed that it paid for all the supply. Thus, the issue that falls for determination is whether the plaintiff is owed the sums claimed for the goods supplied.



I note from the statement on pages 1 and 2 of the plaintiff's bundle of documents that the plaintiff tabulated how much the defendant owed it and added another sum of K168, 000.00 owed by Eyemax bringing the total amount owed to K902, 000.00. Although this was not pleaded by the plaintiff, it was led into evidence by PW1 and there was no objection by counsel representing the defendant during the testimony of PW1. In order to determine the amount owed to the plaintiff it is necessary that all the issue in controversy are adjudicated upon.

PW1 testified that the K168, 000.00 which was bringing the total of the sum claimed to K902, 000.00 was outstanding from Eyemax Opticians and not the defendant. The plaintiff in its statement of claim categorically stated that the defendant is a limited liability company which has its own separate legal persona such that the debt of another company cannot be imputed on it unless by some other legal technicality, the defendant adopted the debt and treated it as its own. In the celebrated English case of **Salomon v. Salomon and Company Limited**<sup>2</sup>, the House of Lords laid down the following principle:



***“A company which has complied with the requirements relating to the incorporation of companies contained in the Companies Acts is a legal entity separate and distinct from the individual members of the company. It matters not that all the shares in the company are held by one person, excepting one share each held by the persons who, as required by the Acts, have subscribed their names to the memorandum of association to enable the company legally to be formed, nor does it matter that those persons are merely the nominees of the principal shareholder. Once a company has been legally incorporated it must be treated like any other independent person with rights and liabilities appropriate to itself, and the motives of those who promote the company (e.g. to enable them to trade with the benefit of limited liability) are absolutely irrelevant in discussing what those rights and liabilities are. A company is not the agent of the shareholders to carry on their business for them, nor is it the trustee for them of their property”.***

In view of the foregoing, I find that the defendant, Janvi Industries Limited is a separate entity from Eyemax Opticians. As such, the defendant cannot be made liable for a debt contracted by another person. The plaintiff's claim for K168, 000.00 can only properly lie against Eyemax opticians. Thus, the plaintiff has not proved its case against the defendant for the K168, 000.00 on a balance of probability. The fact that the defendant did not buttress the issue in its defence is immaterial. I am fortified by the holding of the Supreme



Court in **Khalid Mohammed v. Attorney General**<sup>3</sup> that the plaintiff must prove its case despite what may be said of the defendant's defence. The plaintiff, therefore, is not entitled to the claim of K168, 000.00.

As regards the claim for K734, 000.00, the plaintiff went to great length to tabulate the transactions and the amounts owed at every stage. The plaintiff through PW1 narrated how the defendant obtained goods and incurred a debt of K253,000.00. The tax invoice signed by the defendant for that amount appears on page 14 of the plaintiff's bundle of documents. There is also evidence of the amount of K17, 000.00 being owed by the defendant to the plaintiff as can be seen on page 18 of the plaintiff's bundle of documents. A cheque for that amount was issued but it was returned without being honoured as shown on page 21 of the plaintiff's bundle of documents. The plaintiff also claims that the amount of K463, 400.00 is also owed to bring the total to K734, 000.00 and the evidence pointed to is the cheque issued by the defendant on page 15 of the plaintiff's bundle of documents. However, the amount on that cheque is only K385, 000.00. The plaintiff claims that the defendant undertook to pay the



balance in cash but there is no evidence to that effect. In addition, the evidence of PW1 that from goods worth K78, 000.00 that were collected by the defendant on 29<sup>th</sup> January, 2011 does not have any backing and does not tally with the amounts claimed. Therefore, the amount proved as owed on that portion is only K385, 000. This would then bring the total amount owed to K655, 000.00 and not K734, 000.00 as claimed. Having analysed the amounts claimed against the documentary evidence, I find that the sum proved as owed by the plaintiff is K655, 000.00 and not K734, 000.00. It is clear that the defendant owes the plaintiff because attempts were made at paying the debt through the issuance of cheques which were unfortunately returned dishonoured by its bank. This is sufficient proof that the defendant owed the plaintiff. However, the plaintiff did not adduce sufficient evidence to prove that the other monies were undertaken to be paid in cash. The documentary evidence is clear as to how much was acknowledged as owed and signed for on the respective invoices. In view of the foregoing, I find that the plaintiff has proved its case on a balance of probabilities that the defendant owed it money for goods supplied at different times, albeit, only to the tune of K655,



000.00 and not K743, 000.00 as claimed. I accordingly, enter judgment for the plaintiff in the sum of K655, 000.00 with interest at short term deposit rate from the date of the writ to judgment and thereafter at the current Bank of Zambia lending rate until full and final payment.

I award costs to the plaintiff to be taxed failing agreement.

Delivered at Lusaka this 29<sup>th</sup> day of May.....2018.



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**MATHEW L. ZULU**  
**HIGH COURT JUDGE**