IN THE COURT OF APPEAL OF ZAMBIA **CAZ Appeal No. 03/2021**
HOLDEN AT LUSAKA **CAZ/08/312/2020**
(Civil Jurisdiction)

BETWEEN:

GOOD MARKS INVESTMENTS LIMITED **APPELLANT**

AND

WU XINGHUA **RESPONDENT**

CORAM : Kondolo, Chishimba and Ngulube JJAs
On 16th June, 2021 and 4th August, 2021

For the Appellant : Mr. L.C Banda of Messrs Iven Mulenga & Co.
For the Respondent : Ms. M. Seketi of Messrs Chalwe & Kabalata Legal Practitioners

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J U D G M E N T

Chishimba JA, delivered the Judgement of the Court.

CASES REFERRED TO:

1. China Henan International Economic Technical Cooperation v Mwange Contractors Limited (2002) ZR 28
2. Chazya Silwamba v Lamba Simpito (2010) 1 ZR 475
3. Ellis v Allen (1914) 1 Ch. P.904
4. Rohini Varshnei v R. B. Singh RFA 829 2005
5. BOC Gases Plc v Phesto Musonda (2005) Z.R. 119
6. Steak Ranch Limited v Steak Ranches International BV 2011/HP/188
7. Zega Limited v Zambezi Airlines and Diamond General Insurance Limited SCZ Appeal No. 39/2014

8. Cavmont Merchant Bank Limited v Amaka Agricultural Development Company Limited (2001) ZR 73
9. Salomon v Salomon & Company (1897) A.C. 22
10. Associated Chemicals Limited v Hill & Delamain Zambia Limited & Others (1998) ZR 9

LEGISLATION CITED:

1. The High Court Rules Chapter 27 of the Laws of Zambia.
2. The Rules of the Supreme Court of England, 1999 Edition.
3. The Authentication of Documents Act Chapter 75 of the Laws of Zambia.

1.0 INTRODUCTION

1.1 This appeal emanates from the entry of judgment on admission by Justice K. E. Mwenda-Zimba dated 2nd October, 2019 on the basis that the appellant's defence, had failed to meet the requisite standard set under **Order 53 rule 6 of the High Court Rules (HCR)**.

1.2 We shall refer to the respondent as plaintiff and the appellant as the defendant, which designations they were in the court below for ease of reference.

2.0 BACKGROUND

2.1 The facts leading to this appeal are that the plaintiff in the court below) commenced an action against the defendant in the Commercial Division of the High Court by way of writ of

summons and statement of claim which were subsequently amended on 19th July, 2019. The claims endorsed on the amended writ of summons were as follows:

1) ***Payment of the sum of US$185,800.00 (One Hundred and Eighty-five Thousand United States Dollars) and ZMK986,000.00 (Nine Hundred and Eighty-Six Thousand Kwacha) being the full refund value of the deposits paid to the defendant/respondent for the supply of Rosewood and Mukula Logs;***
2) ***Damages in the sum of US$57,917.90 (Fifty-Seven Thousand Nine Hundred and Seventeen United States Dollars and Ninety Cents) for repudiation of the agreements;***
3) ***Interest at the current bank lending rate to be calculated from the date of payment by the plaintiff to the defendant to the date of actual payment by the defendant to the plaintiff;***
4) ***Costs; and any other relief deemed fit***

2.2 In its amended statement of claim, the plaintiff had averred as follows:

3. ***By a written Agreement dated 8th January, 2017 and made between the plaintiff and the defendant, the plaintiff agreed to purchase Rosewood logs weighing 28 tons from the defendant for which deposits of US$19,900.00 and ZMK350,000.00 were paid to the defendant on 30th January, 2017.***
4. ***By a second written Agreement dated 14th February, 2017 and made between the plaintiff and the defendant, the plaintiff agreed to purchase Mukula logs weighing 25 tons from the defendant for which deposits of ZMK143,000.00 and***

US$73,000.00 were paid to the defendant on 14th February, 2017, respectively.

5. ***To-date the defendant has not delivered the goods agreed to be purchased and has not honoured the terms of both Agreements despite deposit payments being made to the defendant all of which the defendant's director personally received and acknowledged.***
6. ***Notwithstanding repeated demands by the plaintiff therefor, the defendant has wrongfully and in breach of the said Agreements failed and refused to pay back the deposits made and by its said conduct has evinced an intention to no longer be bound by the said Agreements and repudiated the same.***
7. ***Upon a unilateral default either party is entitled to double the value of the contract deposits that were paid on the said written Agreements.***
8. ***The plaintiff, as he is entitled to do, accepted the said repudiation by fluxion of time and by issue and service of the writ herein.***
9. ***By reason of the matters aforesaid, the plaintiff has lost the benefit of the said Agreements and lost revenue he would otherwise have received thereunder and has suffered loss and damage.***
10. ***The defendant is truly and justly indebted to the plaintiffs.***

2.3 The defendant filed an amended defence on 1st August, 2019 and averred as follows:

3. ***Paragraph 3 of the amended statement of claim is admitted to the extent that the plaintiff and defendant entered into an agreement dated the 8th of January, 2017 for the plaintiff to purchase Rosewood logs from the defendant but it is denied***

that the plaintiff paid a deposit of US$19,900 and ZMK350,000 or any deposit or at all and the plaintiff will be put to strict proof.

4. ***Paragraph 4 of the amended statement of claim is admitted to the extent that the plaintiff and defendant entered into an agreement dated 14th February, 2017 for the plaintiff to purchase Mukula logs but it is denied that the plaintiff paid deposits of ZMK143,000.00 and US$73,000 or any deposit or at all, and the plaintiff will be put to strict proof.***
5. ***No admission is made regarding paragraph 5 of the amended statement of claim because no deposits have been paid to the defendant nor acknowledged by the defendant's director as alleged.***
6. ***No admission is made regarding paragraph 6 of the amended statement of claim because the defendant is not in breach of the said Agreements and the defendant has not failed to pay back the alleged deposits or any deposits or at all.***
7. ***Paragraph 7 of the amended statement of claim is denied and the plaintiff will be put to strict proof.***
8. ***No admission is made regarding paragraphs 8 and 9 of the amended statement of claim because they are within the peculiar knowledge of the plaintiff.***
9. ***Paragraph 10 of the amended statement of claim is denied and the plaintiff will be put to strict proof.***
10. ***Save as herein before expressly admitted, the defendant denies each and every allegation of fact contained in the amended statement of claim as if the same were set forth hereunder and traversed seriatim.***

2.4 In this regard, on 8th August, 2019, the plaintiff proceeded to issue Summons for judgment on admissions pursuant to **Order 21 Rule 6 and Order 53 Rule 6 of the High Court Rules**. The plaintiff sought an order directing that judgment be entered in the action for the plaintiff against the defendant upon the admissions contained in the amended defence of the defendant dated 1st August, 2019.

3.0 **AFFIDAVITS FILLED IN THE LOWER COURT**

3.1 The plaintiff filed an affidavit dated 8th August, 2019 in which he deposed that the amended defence filed by the defendant does not deny the existence of the two agreements executed between the parties. Further, the amended defence did not specifically traverse the facts contained in the amended statement of claim but that it contained bare denials of the fact that the defendant received deposits from the plaintiff through its director and puts the plaintiff to strict proof. The two agreements were also exhibited and marked "WX1" and "WX2".

3.2 The defendant opposed the application and filed an affidavit dated 23rd August, 2019 deposed by Xiaoli Peng, the Managing Director of Good Marks Investments Limited. The deponent

stated that to the extent that he does not specifically respond to the issues raised in the plaintiff's affidavit, the same must be taken to be denied. He began by explaining the relationship between the parties stating that there were two agreements that were entered into between Shanghai Zhao Zi International Trading Limited Company and Good Marks Investments Limited for the supply of Rosewood and Mukula logs. That the said agreements were made under Chinese law. The plaintiff made amendments to the two agreements which had been signed in 2016 by Shanghai Zhao Zi International Trading Limited Company and the defendant by changing the year to 2017.

3.3 He further deposed that the plaintiff also changed the buyer's name on one of the agreements from Shanghai Zhao Zi International Trading Limited Company to Wu Xinghua. Changes to figures in both documents as well as dates, were made after the agreements had already been signed. The changes were made in pen and were unauthorized by the defendant. It was deposed that the plaintiff commenced the action without establishing his relationship with Shanghai Zhao Zi International Trading Limited Company who contracted with

the defendant, and as such, lacked the requisite *locus standi* and basis to make the claim. There was no contract between the plaintiff and the defendant.

3.4 The defendant stated that since the agreements were made in Chinese law, any dispute arising between the parties is subject to Chinese law. It was also stated that the agreements had been changed from Chinese to English without being notarized by a notary public.

3.5 It was further stated that the amended defence does traverse the facts contained in the amended writ of summons and amended statement of claim, and that the amended defence was an unequivocal denial and not mere denials. That judgment on admission can only be entered were a party has made a clear and unequivocal admission. There has been no admission made by the defendant to amount to entering judgment on admission.

3.6 In his affidavit in reply, the plaintiff deposed that the changes made in pen on the Agreements and signed for by both parties, were initially in the names of parties stated by the defendant. However, upon changes being made and execution thereof, the Agreements were thereafter binding between the parties. The

Agreement of 8th January, 2017 bearing the name of Shanghai Zhao Zi International Trading Limited Company, was an inadvertent mistake but that the contract was signed and intended to be between the parties herein.

3.7 While admitting that there was a change in dates from 2016 to 2017 on one of the agreements, the plaintiff deposed that the change was made on the date of execution and was duly authorized. All the other changes to the figures and dates were countersigned by both parties to the Agreements.

3.8 The plaintiff admitted that he is not affiliated in any way to Shanghai Zhao Zi International Trading Limited Company and that the mention of the name is inadvertent. That the two agreement were not executed under Chinese law and there was no mention of this fact in the said contracts. The translation into English was for the benefit of the plaintiff and his advocates. That the agreements were executed by the plaintiff in his personal capacity and the defendant. He stated that the defendant does not deny that it received monies from the plaintiff on the said agreements as deposits which were duly acknowledged by the Managing Director of the defendant.

4.0 **ARGUMENTS ADVANCED IN THE LOWER COURT**

4.1 On behalf of the plaintiff, it was submitted that in terms of **Order 53 Rule 6 of the High Court Rules Chapter 27 of the Laws of Zambia**, the defendant had not traversed every allegation of fact to deny the respondent judgment on admission, which order is in the discretion of the court. That a perusal of the amended defence revealed statements of bare denial, which on the strength of **Order 53 Rule 6**, were an admission. As authority, the case of **China Henan International Economic Technical Cooperation v Mwange Contractors Limited** [1] was cited where the Supreme Court held that:

(i) The new dispensation in commercial matters require parties to plead their cases with precision and in detail early in the litigation in order to assist the courts in narrowing and defining the issues in contention.

(ii) Judgment on admission can in appropriate cases, be entered at the scheduling conference because this is the time when the court considers, the pleadings and directions the matter should take.

4.2 The plaintiff contended that the defendant did not plead its defence with precision and in detail, which offered no assistance to the court for it to narrow down and define the issues in contention. That even if the defendant's contention was that it was denying receipt of the deposits paid by the plaintiff, the said denials are bare in nature with the defendant simply putting the plaintiff to strict proof. As authority, the plaintiff cited the case of **Chazya Silwamba v Lamba Simpito** [2] on the function of an admission. The plaintiff submitted that it would impractical for him to present evidence at trial proving a debt which is admitted and which evidence is in any event attached to the application for an order for judgment on admission.

4.3 In its arguments, the defendant referred to **Order 27 Rule 3(2) of the Rules of the Supreme Court, 1999 Edition** which provides that:

> ***"Admission of fact – such admissions may be express or implied, but must be clear."***

The cases of **Ellis v Allen** [3] and **Rohini Varshnei v R. B. Singh** [4] were relied on which hold that to obtain a judgment on admission, there must be a clear admission of facts in the face

of which it is impossible for the party making them to succeed in denying the admitted facts.

4.4 The defendant submitted that the amended defence that the plaintiff is relying on to make the application for judgment on admission does not contain any admission on the part of the defendant. It was submitted that the amended defence contains unequivocal denials and not mere denials, and has specifically traversed the facts contained in the amended writ of summons and amended statement of claim.

4.5 It was further submitted that the defendant had not made any admission and it would be in the interest of justice for the court to dismiss the application.

4.6 In its arguments in reply to the affidavit in opposition, the plaintiff maintained that the question for determination by the court below is whether or not the defendant's amended defence sufficiently traverses every allegation of fact as contained in the plaintiff's amended statement of claim. The plaintiff submitted that the defendant admitted in paragraphs 3 and 4 of its amended defence that two agreements were executed between the plaintiff and the defendant and which bore the same dates

as the disputed contracts. The argument that the said agreements were changed by the plaintiff is an afterthought as all the changes were countersigned by the parties on all pages.

4.7 He maintained that the omission of the parties to cancel out the name of Shanghai Zhao Zi International Trading Limited Company in the exhibit marked "WX1" and replace it with that of the plaintiff, was inadvertent and does not go to the root of the contract nor the claims of the plaintiff. Reliance was placed on the case of **BOC Gases Plc v Phesto Musonda** [5] for the exception to the extrinsic evidence rule that:

> ***"It is fundamental rule of English law that extrinsic evidence is not admissible to vary or contradict the terms of the written document. To this basic proposition an important exception exists. Where owing to some error a written document fails to record accurately the terms of the parties true agreement, equity will rectify the document to make it accord with their agreement."***

4.8 As to the argument that the original documents were in Chinese and made under Chinese law, and ought to have been notarized, the plaintiff submitted that a party is entitled to have a document translated, not for the purpose of showing the meaning of the words embodied in the contract, but to assist

his advocates and the court to be able to read the said contract. In any case, that there is no requirement under **section 3 of the Authentication of Documents Act Chapter 75 of the Laws of Zambia**, for notarization of any translation. The plaintiff contended that even though the original contracts are in Chinese, the said Agreements do not provide anywhere that they were made under Chinese law.

4.9 On the defendant's argument that an admission must be clear and unequivocal, the plaintiff submitted that the application is premised on **Order 53 Rule 6 of the High Court Rules** which applies to pleadings in commercial matters.

5.0 **DECISION OF THE COURT BELOW**

5.1 Judge Mwenda-Zimba considered the application, evidence and arguments before her. She reasoned that since the matter is in the Commercial Court Division, it followed that the applicable rules is **Order 53 Rule 6 of the High Court Rules**.

5.2 The court below observed that the affidavit of the defendant, showed that it admitted entering into the two contracts in the amended defence but denied doing so in the affidavit in opposition. Further, the learned judge found the plaintiff's

explanation reliable and reasoned that the parties used an old contract between Shanghai Zhao Zi International Trading Limited Company and the defendant, adopted clauses and amended the names of the parties and the amounts, among other clauses, by signing against the changes. This explained why the name on the exhibit marked **"WX1"** remained as Shanghai Zhao Zi International Trading Limited Company.

5.3 The agreements in Chinese show that changes were made and signatures appended against the changes a fact not disputed by the defendant does not dispute. This, according to the court below, explained why the defendant failed to dispute signing the agreements or the contents.

5.4 The learned judge stated that the defendant admitted entering into two agreements bearing the same dates as the ones marked and exhibited as **"WX1"** and **"WX2"** attached to the plaintiff's affidavit in support. Though the amended defence denied that the plaintiff made any deposits payment in respect of the agreements, there are acknowledgements of receipt of deposits by the director of the defendant company which had not been disputed.

5.5 The learned judge was of the view that the defendant's amended defence had failed to meet the requirements of **Order 53 Rule 6 of the High Court Rules** because the defence does not give details of the two agreements it admitted entering into with the plaintiff. She noted that if the plaintiff's claim was not true, then the defendant would have given details of the alleged agreements entered into instead of just disputing that deposits were never made.

5.6 She rejected the defendant's version as unreliable in that the amended defence makes bare denials while in the affidavit in opposition, it suddenly seems to have an explanation regarding the agreements in dispute. Therefore, the learned judge took the view that the issues raised in the affidavit in opposition are an afterthought as they would have been brought out earlier on in the amended defence.

5.7 On the issue of the translation, the court below rejected the defendant's argument that the translation of the agreements ought to have been notarized for the reason that **section 3 of the Authentication of Documents Act** applies to documents

executed outside Zambia. In this case, the agreements and the deposits attached to them are not disputed.

5.8 In relation to whether the agreements were made under Chinese law, the lower court held that there is nothing in the translated agreement to this effect, and even if it were so, the fact that the agreements were made under Chinese law is not the only consideration to be had in deciding this. To succeed in such an argument, the party should show that there was an alternative and appropriate forum under which the matter can be resolved; and that the choice of law is merely one of the elements to be considered as per the case of **Steak Ranch Limited v Steak Ranches International BV** [6].

5.9 The lower court found that based on the evidence before it that the parties entered into the agreements in Zambia, and that the plaintiff and Managing Director of the defendant, who executed the agreements, both reside in Lusaka, Zambia, the argument that Chinese law applies is untenable.

5.10 The learned judge held that the defence admitted the claim as it has failed to meet the standard set under **Order 53 Rule 6**; that the plaintiff had proved its case to the required standard

and accordingly entered judgment on admission for the plaintiff with costs to be taxed in default.

6.0 **GROUNDS OF APPEAL**

6.1 The defendant has appealed against the decision of the High Court and has advanced three grounds of appeal couched as follows:

a. ***The court below erred in law and fact when it held that the defendant's amended defence failed to meet the requirements of Order 53 Rule 6 of the High Court Rules Chapter 27 of the Laws of Zambia when the amended defence was within the required threshold under the law;***
b. ***The court below erred in fact and misdirected itself by misapprehending the pleadings, evidence and arguments when it held that the defendant's amended defence made bare denials and therefore had admitted the claim when that was not the case; and***
c. ***The court below misdirected itself and failed to objectively consider documentary evidence as a whole but chose to find that the defendant had made bare denials without contrasting the findings with evidence on record which supported the fact that the defendant had denied the plaintiff's claim.***

7.0 **APPELLANT'S ARGUMENTS**

7.1 In ground one, the defendant contends that its amended defence was within the threshold of the requirements of **Order 53 Rule 6 of the High Court Rules**. The defendant submits

that its amended defence and affidavit in opposition clearly show that there are serious disputes between the parties which can only be settled by a trial and not through an interlocutory application; and that the said amended defence was within the law.

7.2 The contention being that for the court to grant a judgment on admission, the admission must be clear. As authority, the case of **Zega Limited v Zambezi Airlines and Diamond General Insurance Limited** [7] was cited which held that the purpose and applicability of the rule relating to admissions which may be relied upon in an application for judgment on admissions is to enable a party to obtain a speedy judgment where the other party has made a plain admission entitling the former to succeed. Further that the rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed. The case further held that an admission must not be qualified, conditional or equivocal for it to succeed. In the above cited case, the Supreme Court made reference to the Indian court decision in the case of **Himani Alloys Ltd vs Tala Steel Limited** on admissions, that they

must be clear, unambiguous and unconditional which should not be exercised to deny the valuable right of a defendant to contest the claim against him.

7.3 Ground two and three were argued together. The defendant submits that its admission that it entered into two agreements must not be taken to mean that it is admitting the claims against it, and so cannot be the basis of entering judgment on admission against the defendant. It was contended that while the court below relied on the acknowledgements of the payment of the deposits to Peng Xiaoli by the plaintiff, the defendant denied having received such purported sums of money from the plaintiff and had put the plaintiff to strict proof of the allegation.

7.4 It was contended that the acknowledgements demonstrate that Peng Xiaoli had received the monies in her personal capacity and not as Managing Director of the defendant or on its behalf. The plaintiff, in his amended statement of claim and application for judgment on admission did not disclose any reason why he made the purported payments to Peng Xiaoli in her personal capacity and not direct to the defendant, with whom he had entered into the agreements. The defendant can only be held

liable if the acknowledgements demonstrate that Peng Ziaoli received the purported payments on behalf of the defendant or that there is evidence that the defendant gave her consent to receive the payments on its behalf.

7.5 For this, we were referred to the case of **Cavmont Merchant Bank Limited v Amaka Agricultural Development Company Limited** [8] which held that:

> ***"Where an agent, in making a contract, discloses the interest and names of the principal on whose behalf he makes the contract, the agent, as a general rule, is not liable on the contract to the other contracting party"***.

It was argued that the evidence of payments to Peng Xiaoli in her personal capacity on behalf of the defendant can only be tested via a trial and not by an interlocutory application.

7.6 The defendant, being a limited company which is a legal entity distinct from its members, directors and shareholders, was capable of receiving the alleged payments from the plaintiff on its own and in its names. For this reason, the defendant is not liable for the payments made to its Managing Director who is alleged to have received in her personal capacity in the absence of evidence showing that she received it on behalf of the

defendant. The defendant relied on the cases of **Salomon v Salomon & Company** [9] and **Associated Chemicals Limited v Hill & Delamain Zambia Limited & Others** [10] on the principle of law that a company is at law a different person altogether from those forming the company i.e the corporate existence of a company as a distinct legal person. It was further submitted that the court below misapprehended the pleadings, evidence and arguments by the appellant.

7.7 Lastly, the defendant submitted that the matter should be allowed to proceed to trial as no injustice, prejudice and irreparable damage will be occasioned to the plaintiff as he will have opportunity to prove his claims at trial. The cases of **Stanley Mwabazi v Forrester farms Limited, Zambia Breweries vs Central and Provincial Agencies and John Chisala v Attorney General were drawn to our attention on the allowing of triable issues to come to trial in order to determine actions on merits**

7.8 We were urged to uphold the appeal with costs and remit the matter back to High Court for trial before a different judge.

7.9 The respondent did not file any heads of arguments on record. At the hearing Ms. Seketi, the learned Counsel stated that they wished the court to proceed without any input from them.

8.0 **DECISION OF THE COURT**

8.1 We have considered the appeal, the arguments advanced by the appellant and the authorities cited. We had earlier in the judgment recited the pleadings namely the amended statement of claim and the defence in issue.

8.2 Though three grounds have been raised, they all deal with the issue of the defence subject of entry of judgment admission and will be dealt with as one. We are of the view that the issue for determination is whether the defence by the appellant had failed to meet the requirements under **Order 53 Rule 6 of the High Court Rules.** In a nutshell,

(i) Whether the averments in the defence do not traverse every allegation pf fact or was a general/bare denial of allegations of fact.

(ii) Whether the admissions by the appellant are clear and unequivocal warranting entry of judgment on admission.

8.3 It is trite that the court has power to enter judgment on admission where a party has made a clear plain and

unequivocal admission of fact. This may be entered at any stage of a suit where the admission of facts has been made either on the pleadings or otherwise. The authors of the book **Pleadings and Practices 22nd Edition** page 136 states as follows:

> ***"It is not sufficient for a defendant in his defence to deny generally the allegations in the statement of claim or for the plaintiff in his reply to deny generally the allegation in a counter claim but each allegation of fact which he does not intend to admit"***

Therefore an admission must be sufficiently clear that the issue in question can be said to be closed. See **O'Hare & Hill: Civil Litigation 10th Edition** page 311.

8.4 In ground one, the defendant contends that its amended defence was within the threshold set by **Order 53 Rule 6 of the High Court Rules**. **Order 53 Rule 6** provides as follows:

> ***6 (1) A statement of claim or counter-claim, as the case may be, shall state in clear terms the material facts upon which a party relies and shall show a clear cause of action, failing which the statement of claim or counterclaim may be struck out or set aside or the action dismissed by the Court, on its own motion or on application by a party.***

(2) The defence shall specifically traverse every allegation of fact made in the statement of claim or counter-claim, as the case may be.

(3) A general or bare denial of allegations of fact or a general statement of non-admission of the allegations of fact shall not be a traverse thereof.

(4) A defence that fails to meet the 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.

8.5 From the above, it can be seen that in matters before the Commercial Division of the High Court, applicable to all defences; the defendant is enjoined to file a defence that specifically traverses every allegation of fact made in the statement of claim or counter-claim, as the case may be. A general or bare denial of allegations of fact or a general statement of non-admission of the allegations of fact is deemed to be an admission of the allegations not specifically traversed.

8.6 Thus, in **China Henan International Economic Technical Cooperation v Mwange Contractors Limited** [(1)] the Supreme Court guided that:

(i) The new dispensation in commercial matters require parties to plead their cases with precision and in detail early in the litigation in order to assist the courts in narrowing and defining the issues in contention.

(ii) Judgment on admission can in appropriate cases, be entered at the scheduling conference because this is the time when the court considers, the pleadings and directions the matter should take.

8.7 We have perused the plaintiff's amended statement of claim, in particular, paragraphs 3 to 10 which we have reproduced at paragraph 2.2 of this judgement. The parties had entered into two agreements for the defendant to supply Rosewood and Mukula for which it allegedly paid deposits in Zambian Kwacha and United States Dollars directly to the Managing Director of the defendant company. We have also perused the amended defence by the defendant. In paragraph 3 and 4, the defendant admits entering into the two agreements for the supply of Rosewood and Mukula but denies that the plaintiff paid any deposits of K143,000, USD 73,000, 19,900 and K350,000. The defendant goes on to aver that the plaintiff will be put to strict proof at trial. In paragraph 5, the defendant denies failing to deliver the goods because no deposits were paid to it nor

acknowledged by the defendant as alleged. Further, that the defendant is not in breach of the two agreements and has not failed to pay back the alleged deposits or any deposits or at all. The defendant further denied that the plaintiff as a result of unilateral default is entitled to double the value of the contract deposit paid on the written contracts. Paragraph 9 of the defence as to the suffered loss and damages was not admitted. Paragraph 10 of the amended defence states that:

> ***"Save as herein before expressly admitted, the defendant denied each and every allegation of fact contained in the Amended stamen of claim as if the same were set forth hereunder and traversed seriatim".***

8.8 The basis of the lower court entering judgment on admission being that the defendant had admitted entering into the two contracts in the amended defence and that there are acknowledgment of receipts of deposits by the director of the defendant company which had not been disputed. Therefore the defence failed to meet the requirements under **Order 53 Rule 6** of the **High Court Rules** and constituted bear denials.

8.9 We are of the view that the issue of the fact that the parties had entered into two contracts is not in dispute. The defence admits

in the amended defence to the extent that the parties entered into an agreement of 8th of January 2017 for the plaintiff to purchase Rosewood logs from the defendant.

8.10 The defendant went on to aver that:

> ***"But it is denied that the plaintiff paid a deposit of US$ 19,900 and ZMK 350, 000 or any deposit or at all and the plaintiff will be put to strict proof".***

Further the defendant denies being paid by the plaintiff the deposit sums of K143,000 000 and US$ 73,000.

8.11 We are of the view that the court below erred in law and fact by entering judgment on admission because the defence by the defendant did not constitute a bare denial or fail to specifically traverse every allegation of fact made in the statement of claim.

8.12 The defendant in its affidavit in opposition even refuted having received the alleged deposits paid directly to one of its directors a Mr. Peng Xiaoli who is stated to have acknowledged receiving the said sums of deposits in issue.

8.13 We have perused the acknowledgment of receipts of K143,000 and USD 73,000. The same simply states that:

"I Peng Xiaoli received deposit for one container from Mr. Wu Xinghua, ZMK 143,000 (Cannot read) as to the other 5 containers, the deposit will be paid subsequently."

These acknowledgements appear to us to have been made to an individual and not the appellant entity. Perusal of the FBZ bank deposit slip at page 84 indicates a cheque deposit made in the sum of US$ 73,000 indicating Peng Xiaoli as payee.

8.14 In our view, this lends credence to the contention that the amounts claimed are disputed and denied. As regards whether the monies acknowledged by Peng Xiaoli were on behalf of the company, these are issues for determination at trial, the appellant having denied receiving the deposits in issue.

8.15 We hold the view that the admissions are not clear, and unequivocal. The lower court was not on firm ground when she entered judgment on admission. The learned judge further over looked the denial contained in the defence, which denied all allegations contained in the plaint as if they had been set out and traversed seriatium except where expressly or impliedly admitted. We do not find any express admission in the defence. The defence sufficiently denied the primary averments contained in the plaint one by one of every allegation of facts in

the statement of claim. The defence on record cannot be said to amount to a clear admission on the basis alleged of it being a bare denial of allegations of fact. We hold that the defence complies with the requirements stipulated under **Order 53 Rule 6 of the High court Rules.**

8.16 For the going reasons, we hereby set aside the judgment on admission entered by the court below and uphold the appeal. The matter is remitted back for trial to be heard before another judge. Costs to the appellant to be taxed in default of agreement

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M. M. Kondolo

COURT OF APPEAL JUDGE

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F. M Chishimba

COURT OF APPEAL JUDGE

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P. C. M. Ngulube

COURT OF APPEAL JUDGE