IN THE COURT OF APPEAL OF ZAMBIA **Appeal No. 025/2022**

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

QUEENS ROYALE INTERNATIONAL **1ST APPELLANT**

KENNEDY MAMBWE **2ND APPELLANT**

AND

ALPHA COMMODITIES LIMITED **RESPONDENT**

CORAM: ***KONDOLO, NGULUBE AND BANDA-BOBO, JJA.***
On 15th June, 2022 and 2nd August, 2022.

For the Appellants: *Mr. K. Mambwe and Ms. R. Nyirenda, Messrs Ferd Jere and Company*

For the Respondent: *Mr. L. Muyatwa, Messrs Muyatwa Legal Practitioners.*

J U D G M E N T

NGULUBE, JA, delivered the Judgment of the Court.

Cases referred to:

1. *Stanley Mwambazi vs Morester Farms Limited (1977) Z.R 108*
2. *R vs The University of Cambridge (1723) Istra 557, 567*
3. *Hakainde Hichilema and another vs Edgar Chagwa Lungu and 3 others (2016/CC/031)*

4. *China Henan International Economic Technical Cooperations vs Mwanga Contractors Limited, SCZ Judgment Number 7 of 2002*
5. *Finance Bank Zambia Plc vs Lamasat International Limited, CAZ Appeal Number 175 of 2017*
6. *Contract Discount Corporation Limited vs Finlong and others (1948) !All ER 276*
7. *Zega Limited vs Zambezi Airlines Limited and Diamond General Insurance Limited, SCZ Appeal Number 39 of 2014*
8. *Himani Alloys Limited vs Tata Steel Limited (2011) 15 SCC 27*

Legislation referred to:

1. *The High Court Rules, Chapter 27 of the Laws of Zambia.*
2. *The Rules of the Supreme Court Practice, 1999 Edition*

INTRODUCTION

1. This is an appeal against a Judgment on admission of the High Court delivered by The Honourable Mr Justice W. S. Mweemba on 19th May, 2021. By that Judgment, the lower court entered Judgment on admission in favour of the respondent against the appellants for the payment of the sum of Three Hundred Thousand Kwacha as at 1st October, 2018, with interest at the short-term bank deposit rate from the date of writ to date of Judgment and thereafter, at the current lending rate as determined by the Bank of Zambia till date of payment. The

court also awarded costs to the respondent, to be taxed in default of agreement.

BACKGROUND

2. The brief background to this appeal is that the respondent commenced an action before the High Court on 1st October, 2018 against the appellant and on the same date, the respondent made an application to enter Judgment on admission. It was contended that the respondent prejudiced the second appellant by filing an application to enter Judgment on admission before the first appellant had an opportunity to file a defence.

3. When the matter came up for hearing on 22nd November, 2018, the court proceeded to enter Judgment on admission, in favour of the respondent for the payment of the sum of Three Hundred Thousand Kwacha.

GROUNDS OF APPEAL

4. The appellants were dissatisfied with the decision of the lower court and on 4th June, 2021, they appealed to this court, advancing three grounds of appeal couched as follows-

1. ***The court below erred in law and fact when it entered Judgment on admission without according the appellants an opportunity to be heard.***
2. ***The trial court erred in law and fact when it entered Judgment on admission premised on Order 21 rule 6 of the High Court Rules Chapter 27 of the Laws of Zambia.***
3. ***The trial Judge erred in law and fact when he entered Judgment on admission against the appellants by relying on a settlement agreement and not Defence.***

APPELLANTS' CONTENTIONS

5. In arguing ground one, it was submitted that the lower court misdirected itself in law and fact when it decided to enter Judgment on admission without giving the appellant the right to be heard.

6. The court's attention was drawn to the case of ***Stanley Mwambazi vs Morester Farms Limited***[1] where the court held that-

> ***"It is the practice in dealing with bonafide interlocutory applications for courts to allow triable issues to come to trial despite the default of the parties. Where a party is in default, he may be ordered to pay costs, but it is not in the interest of justice to deny him the right to have his case heard."***

7. Reference was made to the case of ***R vs The University of Cambridge***[2], where the court stated that-

"The laws of God and man both give the party an opportunity to make his defence."

8. It was argued that the appellants should have been given an opportunity to be heard by advancing a defence before Judgment was delivered. It was contended that the lower court acted unfairly towards the appellants as their application was not heard when Judgment on admission was entered.

9. Turning to ground two, it was submitted that the respondent relied on the wrong provision of the law as Order LIII gives instructions on the procedure for entering Judgment on admission. It was contended that the appellants were not given fourteen days within which to file a defence, and Judgment on admission was entered without giving them time to respond as prescribed by the law.

10. According to Counsel, the correct procedure for an application to enter judgment on admission under the commercial list is stipulated under ***Order LIII of the High Court Rules***. Counsel cited ***Order LIII Rule 2(3) of the High Court Rules*** which provides that-

"If there is any inconsistency between these rules and the rules applicable on the General list in relation to commercial actions, these rules shall to the extent of the inconsistency prevail in commercial actions."

11. It was the second appellant's submission that the respondent's application is not properly before court as the law provides for circumstances when Judgment on admission may be entered. The case of ***Hakainde Hichilema and another vs Edgar Chagwa Lungu and 3 others***[3] was referred to, where the court guided on the approach to be adopted by the court when the wording of a statute is clear. It was argued that Judgment on admission was not entered on the correct grounds.

12. Under ground three, it was submitted that the wording of ***Order LIII of the High Court Rules*** is clear on how Judgment on admission is to be entered. It was contended that the appellants should have been given an opportunity to file a defence and that if the appellants did not meet the requirements as per ***Order LIII of the High Court Rules***, a party would then apply to enter Judgment on admission.

13. Reference was made to the case of ***China Henan International Economic Technical Cooperations vs Mwanga Contractors Limited***[4], where it was stated inter alia that-

> ***"Order 53 provides for a scheduling conference to be held after filing a memorandum of appearance and a defence. If a defence fails to meet the requirements of practice***

direction No. 2, the appellant may be entitled to enter judgment on admission."

14. It was submitted that the concomitant filing of the writ of summons and the application for Judgment on admission is erroneous, premature and an abuse of court process. It was argued that the appellants ought to be given an opportunity to file a defence within the prescribed 14 days before the respondent can invoke an application to enter Judgment on admission. We were urged to allow the appeal and set aside the lower court's Judgment.

RESPONDENT'S CONTENTIONS

15. The respondent filed heads of argument on 17th March, 2022. Responding to ground one, it was contended that the lower court did not err when it entered judgment on admission in favour of the respondent.

16. It was submitted that Judgment on admission in the High Court's Commercial List is premised on ***Order 53 Rule 6 of the High Court Rules*** which provides that-

"6. (2) The defence shall specifically traverse every allegation of fact made in the statement of claim or counterclaim, 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 subrule (4), the plaintiff or defendant, or the court of its own motion, may in an appropriate case, enter judgment on admission."

17. It was contended by the respondent that the appropriate provision to rely on where an admission is made other than through pleadings is ***Order XXI Rule 6 of the High Court Rules*** as read with ***Order 27 Rule 3 of the Rules of the Supreme Court of England (White Book).***

18. The court's attention was drawn to ***Order 27 Rule 3 of the Rules of Supreme Court of England (White Book)*** which provides that-

> ***"Where admissions of fact or part of a case are made by a party to a cause or matter either by his pleading 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."***

19. Reference was made to the case of ***Finance Bank Zambia Plc vs Lamasat International Limited[5]***, where this court held that-

> ***"The court has discretionary power to enter judgment on admission under Order 27 of the Rules of the Supreme Court of England."***

20. The court was further referred to the case of ***Contract Discount Corporation Limited vs Finlong and others[6]*** where the court stated that-

> ***"Where a default sum is admitted by the defendant, summary judgment is perfectly in order, because he puts up no defence to that amount."***

21. It was contended that the lower court had the power to enter judgment on admission where a party applied to the court by motion or summons indicating that the other party had admitted facts by way of their pleadings or any other documents without waiting for the determination of any other question between the parties.

22. It was submitted that the respondent and the first appellant entered into a debt settlement agreement on 14th June, 2018, in which the first appellant acknowledged and agreed to settle the debt owed to the respondent for the 1,200 bags of fertilizer that were supplied to the first appellant.

23. It was submitted that premised on ***Order 21 Rule 6 of the High Court Rules*** and ***Order 27 Rule 3 of the Rules of the Supreme Court of England (White Book),*** an admission can be made in a letter or any document signed by the parties before an action is brought to court and in default of defence.

24. According to Counsel, there is no requirement to enter a defence nor to be given an opportunity to be heard under the Rules cited above. It was contended that a matter can be dealt with summarily without delving into other questions and *in casu,* the amount owed was admitted as was envisaged in the debt settlement agreement. Counsel was of the view that no defence can be raised regarding the admitted amount, even if the appellants were given an opportunity to be heard or allowed to file a defence.

25. It was submitted that the amount owed was admitted in the debt settlement agreement that was signed between the first appellant and the respondent. Further, the agreement showed a clear intention of the first appellant's admission to being indebted to the respondent. It was contended that the

admission in the document was also clear and unequivocal as it stated that-

> *"1. Acknowledgement of debt. The debtor agrees and acknowledges that it is indebted to the creditor in the full amount of the debt."*

26. It was accordingly contended that the lower court did not err in law and fact when it entered judgment on admission without according the appellants an opportunity to be heard. We were urged to dismiss ground one of the appeal.

27. Responding to ground two, it was submitted that the lower court did not err in law and fact when it entered Judgment on admission premised on ***Order 21 Rule 6 of the High Court Rules.*** Counsel submitted that it is trite that ***Order 53 of the High Court Rules*** applies to the Commercial Division of the High Court.

28. The said ***Order 53 2(3)*** provides that-

> ***"If there is any inconsistency between these rules and the rules applicable to the general list in relation to commercial action, these rules shall to the extent of the inconsistency prevail in commercial actions."***

29. Counsel argued that there is no inconsistency between ***Order 53 Rule 6 and Order 21 Rule 6 of the High Court Rules*** as the rules complement each other. It was contended that the lower court

did not err in law and fact when it entered Judgment on admission premised on ***Order 21 Rule 6 of the High Court Rules.*** We were urged to dismiss ground two of the appeal for the aforestated reasons.

30. Responding to ground three, it was submitted that the lower court did not err in law and fact when it entered Judgment on admission against the appellants by relying on a debt settlement agreement and not a defence. Counsel contended that relying on ***Order 21 Rule 6 of the High Court Rules*** and ***Order 27 Rule 3 of the Rules of the Supreme Court of England (White Book),*** the admission can be in a letter, or any document signed by the parties and may even be in default of defence.

31. It was contended that the appellants' arguments in this ground are misconceived as the proper order to rely on in the circumstances of this case is ***Order 21 Rule 6 of the High Court Rules*** and ***Order 27 Rule 3 of the Rules of the Supreme Court of England,*** as opposed to ***Order 53 Rule 6 of the High Court Rules.***

32. Counsel maintained that the lower court did not err in law and fact when it entered judgment on admission against the appellants by relying on a settlement agreement as an

admission made in any other document apart from a defence or pleading is valid. We were urged to uphold the lower court's Judgment and dismiss the appeal with costs.

DECISION OF THIS COURT

33. We have considered the record of appeal and arguments by the parties. We shall deal with all the grounds of appeal together as they are intertwined.

34. It is common place that the court has power to enter judgment on admission of facts without determining any other question between the parties. ***Order 27 Rule 3 of the Rules of the Supreme Court, 1999 Edition (White Book)*** provides that-

> ***"Where admissions of fact or part of a case are made by a party to a cause or matter either by his pleading 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 sees just."***

35. In the case of ***Zega Limited vs Zambezi Airlines Limited and Diamond General Insurance Limited***[7], the Supreme Court cited

with approval the case of ***Himani Alloys Limited vs Tata Steel Limited***[8] where it was stated that-

> ***"The court, on examination of the facts and the circumstances has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the omission is clear, unambiguous and unconditional, the discretion of the court should not be exercised to deny the valuable right of the defendant to contest the claim. In short, the discretion should be used only where there is clear admission which can be acted upon."***

36. Further, in the case of ***Finance Bank Zambia Plc vs Lamasat International Limited (supra),*** we stated that-

> ***"The court has discretionary power to enter judgment on admission under Order 27 of the High Court Rules. This power is exercised in only plain cases where admission is clear and unequivocal. An admission has to be plain and obvious, on the face of it, without requiring a magnifying glass to ascertain its meaning. Admissions may be in pleadings or otherwise. A court cannot refuse to grant judgment on admission in the face of clear admissions."***

37. The appellants' dispute is that the lower court erred in law and fact when it entered judgment on admission without according them an opportunity to be heard. According to the appellants,

the lower court erred when it entered Judgement on admission premised on ***Order 21 rule 6 of the High Court Rules*** and by relying on a settlement agreement and not a defence.

38. For convenience, we shall refer to the debt settlement agreement upon which the lower court based its finding that the appellants had unequivocally admitted the debt to the respondent. The relevant part of the agreement dated 14th June, 2018 is as follows-

> ***"WHEREAS QUEENS ROYALE INTERNATIONAL (THE DEBTOR) is indebted to ALPHA COMMODITIES LIMITED (CREDITOR) in the amount of ZMW450,000.00.***
>
> .
> .
> .
>
> ***NOW THEREFORE*** *in consideration of the mutual covenants and promises made by the parties hereto, the debtor and creditor individually each or a party and collectively the parties, covenant and agree as follows-*
>
> *1.* ***Acknowledgement of Debt*** *- The debtor agrees and acknowledges that it is indebted to the creditor in the*

full amount of the debt. The quantity of fertilizer collected was 90 metric tonnes of urea fertilizer priced at K5,000.00 per tonne."

39. We note that the second appellant signed on behalf of the first appellant on 14th June, 2018. From the above-captioned excerpts of the settlement agreement, we decipher that the appellants acknowledged the debt owed to the respondent and even made part payment towards liquidating the said debt.

40. ***Order 21 Rule 6 of the High Court Rules*** and ***Order 27 Rule 3 of the Supreme Court Practice (White Book)*** provide that an admission can be by way of letter or a document signed by the parties even in default of defence. We are further of the view that there is no requirement to enter a defence under the rules cited above. The debt settlement agreement clearly indicates that the appellants admitted owing the respondent the sum of ZMW450,000.00.

41. The appellants could have filed a defence before the court entered judgment on admission and they were offered an opportunity to oppose the application but opted not to. We are further of the view that there is no inconsistency between ***Order***

53 Rule 6 and ***Order 21 Rule 6 of the High Court Rules***. Notably, ***Order 53 Rule 6 of the High Court Rules*** provides for applications for Judgment on admission where there are no denials to the allegations of fact made in the statement of claim or counterclaim, or where the defence is a general or bare denial of allegations of fact. However, ***Order 21 Rule 6 of the High Court Rules*** provides that-

> ***"6. A party may apply on motion or summons for judgment on admission of facts or part of a case are made by a party to the cause or matter either by his pleadings or otherwise."***

42. It is therefore clear that the lower court was on firm ground when it entered judgment on admission based on the above captioned order as there is no dispute regarding the appellants' unequivocal admission of the debt owed in the Debt Settlement Agreement.

43. On whether the lower court erred in law and fact when it entered judgment on admission by relying on a settlement agreement, we are of the view that ***Order 21 Rule 6 of the High Court Rules*** and ***Order 27 Rule 3 of the Supreme Court Practice (White Book)*** are clear that an admission can be made in a letter

or any other document by the parties. This may even be in default of defence. We opine that the lower court was on firm ground when it entered judgment on admission by relying on the settlement agreement which is clear and shows that the appellants admitted their indebtedness to the respondent in an unequivocal manner.

44. For the forgoing reasons, the appeal is bereft of merit.

CONCLUSION

45. We find no merit in this appeal and it is accordingly dismissed with costs to the respondent which should be taxed in default of agreement.

M. M. KONDOLO, SC
COURT OF APPEAL JUDGE

P. C. M. NGULUBE
COURT OF APPEAL JUDGE

A. M. BANDA-BOBO
COURT OF APPEAL JUDGE