

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



2022/HP/1172

BETWEEN:

EBEN TRADES INVESTMENTS LIMITED

PLAINTIFF

AND

**KECHAS GENERAL DEALERS LIMITED
KEMMY CHAANDE**

**1st DEFENDANT
2nd DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 24th
DAY OF APRIL, 2025**

*For the Plaintiff : Mr. J Tembo, Messrs Bancroft Legal Practitioners
For the Defendants : 2nd Defendant in person*

R U L I N G

LEGISLATION REFERRED TO:

- 1. The High Court Rules, Chapter 27 of the Laws of Zambia**
- 2. The Rules of the Supreme Court of England, 1965, 1999 Edition**
- 3. The Debtors Act Chapter 77 of the Laws of Zambia**

1. INTRODUCTION

1.1 Eben Trades Investments Limited, as Judgment Creditor, on 14th August, 2024, applied for an Order for the committal of the 2nd Defendant, Kemmy Chaande to prison as a Judgment Debtor pursuant to **Section 4 of the Debtors Act, Chapter 77 of the Laws of Zambia**, as read together with **Order XXV Rule 1** and **Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia**.

- 1.2 The application was supported by an affidavit and a List of Authorities and Skeleton Arguments.
- 1.3 The application was made after leave was granted to Eben Trades Investments Limited to examine Kemmy Chaande as a Judgment Debtor, and Kemmy Chaande did not appear for the hearing.

2. BACKGROUND

2.1 Eben Trades Investments Limited commenced this action against Kechas General Dealers and Kemmy Chaande on 29th July, 2022, by Writ of Summons which was accompanied by a statement of claim and the other requisite documents seeking:

- i. An Order for the immediate payment of the total sum of Kwacha Two Hundred and Twenty Thousand Only (K220, 000.00) from the principal sum of Kwacha One Hundred Thousand Kwacha (K100, 000.00) plus interest in the sum of Kwacha One Hundred and Twenty Thousand only (K120, 000.00) to date due to Eben Trades Investments Limited on an agreement dated 11th March, 2022, which was entered into between Eben Trades Investments Limited and Kechas General Dealers Limited and Kemmy Chaande.*
- ii. Alternatively, an Order for the possession of the corrugated sheet making machine which was pledged by Kechas General Dealers Limited and Kemmy Chaande;*
- iii. Damages for loss of business;*

- iv. Interest on the principal sum of K100, 000.00, as allowed by the law;*
- v. Costs of the suit; and*
- vi. Further and/or alternative relief that the Court may deem fit an appropriate.*

- 2.2 No appearance was entered or a defence filed to the claims. Thus, on 5th December, 2022, Judgment in default of appearance and defence was entered for the payment of the sum of Kwacha Two Hundred and Twenty Thousand (K220, 000.00) with interest thereon.
- 2.3 On 2nd February, 2023, Kechas General Dealers Limited and Kemmy Chaande applied to stay execution and to set aside the default Judgment, which applications were declined in an Order dated 21st March, 2023, as no defence on the merits was disclosed. Then on 31st March, 2023, a Writ of Fieri Facias was filed to levy execution for payment of the Judgment sum.
- 2.4 Thereafter, on 11th July, 2023, a Notice of Claim was filed to the goods which were taken in execution by the Citizens Economic Empowerment Commission. The Sheriff Zambia on 18th August, 2023, filed Interpleader Summons, and in a Ruling dated 13th March, 2024, I directed that the goods which were seized in execution be released to the claimant, being the Citizens Economic Empowerment Commission.
- 2.5 The record further shows that an application to examine the Judgment Debtor was filed on 2nd April, 2024, pursuant to **Order 42 Rule 6 of the High Court Rules Chapter 27 of**

the Laws of Zambia. Kemmy Chaande did not appear for the hearing of the application, and thereafter, the application, which is subject of this Ruling was filed.

3. HEARING

- 3.1 At the hearing, Counsel for Ebens Trades Investments Limited stated that they were not served an affidavit of Kemmy Chaande's means to pay the Judgment sum. However, when they conducted a search on the Court record, they found that the same was filed.
- 3.2 Counsel asked to proceed to examine Kemmy Chaande on his means to pay the Judgment Debt.
- 3.3 Kemmy Chaande relied on the affidavit of means to pay the Judgment sum.

CROSS EXAMINATION OF KEMMY CHAANDE BY COUNSEL FOR EBENS TRADES INVESTMENTS LIMITED

- 3.4 In cross examination, Kemmy Chaande stated that he is a director for Kechas General Dealers Limited. He added that he had held that position since 1994. He was aware that Judgment was entered against himself and Kechas General Dealers Limited.
- 3.5 Kemmy Chaande further told the Court that he had not produced the bank statement for Kechas General Dealers Limited, to show the funds that were held in its' account. His position was that he had just produced a personal statement. He explained the default as being because his advocates did not guide him to do so.

- 3.6 Still in cross examination, Kemmy Chaande testified that there were rolling machines which Kechas General Dealers Limited was sharing with the Citizens Economic Empowerment Commission, as he obtained a loan from the said Citizens Economic Empowerment Commission, and he was sued for non-payment of the loan.
- 3.7 The testimony that Kemmy Chaande further gave in cross examination, was that Judgment was entered against him stating that the Citizens Economic Empowerment Commission owns the equipment, and that an appeal had been lodged against the same. He added that the equipment was still in his possession.
- 3.8 In respect of whether there are other properties that are owned by Kechas General Dealers Limited, Kemmy Chaande stated that there is a family house, which was not part of Kechas General Dealers Limited.
- 3.9 As to where Kechas General Dealers Limited operates from, Kemmy Chaande testified that it was from 5781 off Chilubi Island Avenue in Kabwe. His evidence was that the said property does not belong to Kechas General Dealers Limited, but rather it was rented from Zambia Railways Limited.
- 3.10 He stated that there had been difficulties in paying rent to Zambia Railways Limited, as business was not moving. Kemmy Chaande agreed that he had not produced any documents to show how much was owed to Zambia Railways Limited in rentals even though Kechas General Dealers Limited was still operating from there.

- 3.11 Kemmy Chaande told the Court that he owned personal property, but that when his wife died Two (2) years earlier, he had given her relatives most of the properties.
- 3.12 It was agreed that the Judgment sum which was outstanding had not been paid, with Kemmy Chaande explaining that this was on account of the business having gone down. He agreed that he had not exhibited any evidence of the same.
- 3.13 In conclusion, Kemmy Chaande stated that a company called Collins Mucho owed Kechas General Dealers Limited K309, 000.00, and that the matter was in Court.

4. DECISION OF THIS COURT

- 4.1 I have considered the application.
- 4.2 ***Section 4 of the Debtors Act, Chapter 77 of the Laws of Zambia*** provides that:

“4. Subject to the provisions hereinafter mentioned and to prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court: Provided that-

(i) the jurisdiction by this section given shall, in the case of any court other than the High Court, be exercised only by a subordinate court of the first or second class, and by an order made in open

court and showing on its face the ground on which it is issued;

(ii) such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same."

4.3 **Order XXV Rule 1 of the High Court Rules** states as follows:

"1. An order to arrest under section ten of the Debtors Act shall be made upon affidavit and ex parte; but the defendant may at any time apply to the Court or a Judge to rescind or vary the order or to be discharged from custody, or for such other relief as may be just."

4.4 The provisions of **Order 3 Rule 2 of the High Court Rules**, on the other hand are:

"2. Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not."

- 4.5 In the affidavit which was filed in support of the application by Moses Mulenga, a director in Ebens Trades Investments Limited, averment was made that this Court entered Judgment for the sum of K220, 000.00 with interest thereon and costs.
- 4.6 It was also deposed that a Writ of Fieri Facias was filed to recover the Judgment sum that is owing, but execution did not yield anything as Kechas General Dealers Limited had no goods worth seizing. Thereafter, an application was made to examine Kemmy Chaande on the means to pay the Judgment Debt. Averment was made, that no opposition was filed to the application.
- 4.7 Moses Mulenga deposed that there had been willful neglect and failure to pay the Judgment Debt.
- 4.8 In the List of Authorities and Skeleton Arguments in support, the law in **Section 4 of the Debtors Act** and **Sections 8 and 9 of the said Act** was cited. Also cited were provisions of the **Order XXV Rule 1 of the High Court Rules** and **Order 3 Rule 2 of the said Rules**.
- 4.9 An affidavit of means was filed on 12th February, 2025 in which Kemmy Chaande, as Managing Director of Kechas General Dealers Limited admitted that default Judgment was entered against himself and Kechas General Dealers Limited. He also agreed that an application to examine him as Judgment Debtor was filed on 2nd April, 2024.
- 4.10 Kemmy Chaande averred that he was committed to Kamwala Correctional Facility as Judgment Debtor, where he stayed

for a period of Forty-Nine (49), days from 27th August, 2024 to 14th October, 2024. He stated that on that date, he was directed to file an affidavit of his means by 12th February, 2025.

4.11 In doing so, he produced as 'KC2', a bank statement for his account which is held at First National Bank at Kabwe, under account number 62922849437, for the period 1st July, 2024 to 31st January, 2025.

4.12 The averment was that, as at that date, the balance in the account was negative K294.83. Kemmy Chaande deposed that sometimes he receives Three Hundred Kwacha (K300.00) from Mr. Kumar, and that his other sources of income are not predictable. He asked to pay the Judgment sum in monthly instalments of K1, 500.00.

DECISION

4.13 It has been seen from the examination of Kemmy Chaande that his position, is that himself and Kechas General Dealers Limited do not have the means to pay the Judgment sum as the business has gone down. He proposed to pay the Judgment sum in monthly instalments of K1, 500.00. Kemmy Chaande agreed that he had not exhibited any evidence to support the assertion relating to the inability to pay the Judgment sum, stating that he was not guided by his advocates to do so.

4.14 **Section 5 of the Debtors Act** states the following as regards proof of means to pay:

“5. Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules.”

4.15 It has been seen that the application to arrest Kemmy Chaande was made after he did not appear in Court to be examined on his means to pay the Judgment debt, pursuant to ***Order 42 Rule 16 of the High Court Rules.***

4.16 That Order provides that:

“16. The Court may, at any time, issue a summons to the judgment debtor calling on him to appear and be examined respecting his ability to satisfy the judgment, as to the existence and value of his property and of any debts owing to him; and the judgment debtor may be examined as to the same upon oath.”

4.17 It will further be seen that ***Order 48 Rule 1 of the Rules of the Supreme Court of England*** provides that:

“1) Where a person has obtained a judgment or order for the payment by some other person hereinafter referred to as "the judgment debtor" of money, the Court may, on an application made ex parte by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer

thereof, to attend before such Master, Registrar or nominated officer as the Court may appoint and be orally examined on the questions –

(a) whether any and, if so, what debts are owing to the judgment debtor, and

(b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order;

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

In this paragraph "registrar" includes the registrar of a district registry or county court, and where the Court appoints such a registrar without specifying him personally, the examination may, if he thinks fit, be conducted on his behalf by a nominated officer of that registry or county court."

4.18 As for the purpose of the examination, the explanatory notes in *Order 48/3/12 of the said Rules of the Supreme Court of England* state the following:

"An examination under this rule "is not only intended to be an examination, but to be a cross-examination and that of the severest kind," and is not confined to answering the simple question "what debts are owing," but the debtor must

answer all questions "fairly pertinent and properly asked" with a view of ascertaining what debts are owing to him, and from whom they are due and must give "all necessary particulars to enable the plaintiff to recover under a garnishee order"

- 4.19 In this matter, Kemmy Chaande has not produced any books of accounts, as well as bank statements for Kechas General Dealers Limited. His evidence in cross examination, was that the roller equipment is being shared by Kechas General Dealers Limited and the Citizen's Economic Empowerment Commission who have obtained Judgment for possession of the equipment, although it is still in his possession.
- 4.20 Kemmy Chaande by the cross examination, did not establish how much money is being received from the business and how it is being shared with the Citizens Economic Empowerment Commission, which would have enabled me to establish whether Kechas General Dealers Limited and Kemmy Chaande have the means to pay the Judgment sum and have just neglected to do so.
- 4.21 Further, while Kemmy Chaande stated that Kechas General Dealers Limited is owed K309, 000.00 by Collins Mucho, and that the matter is still in Court, he did not produce any evidence to show the same. He did not explain what the K300.00 that he sometimes receives from Mr. Kumar as deposed to in the affidavit of means, is for.

4.22 As such, Kechas General Dealers Limited and Kemmy Chaande have not provided proof of their means to pay the Judgment sum.

5. CONCLUSION

5.1 In view of the above, I direct that the current bank statements and books of accounts for Kechas General Dealers Limited, as well as the lease agreement with Zambia Railways Limited for the property that Kechas General Dealers Limited is renting, and a statement of the rentals owed shall be filed in Court by 21st May, 2025. Failure to do so, shall amount to Kemmy Chaande being in contempt of Court and a warrant shall issue for his arrest.

5.2 On the books of accounts, bank statements, the lease agreement and statement of the amounts owed to Zambia Railways as rent being filed into Court, I will make a further appropriate Order. Costs shall be in the cause.

DATED AT LUSAKA THE 24th DAY OF APRIL, 2025

S. Kaunda
**S. KAUNDA NEWA
HIGH COURT JUDGE**

