

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

2022/HP/1228

BETWEEN



WALLET FREIGHT ZAMBIA LIMITED

PLAINTIFF

AND

GLAFRA ENTERPRISE LIMITED

DEFENDANT

Before Hon. Mrs Justice C. Chinyanwa Zulu in Chambers

For the Plaintiff: Ms R. Mwangulukulu –Dzekedzeke & Company

For the Defendant: Ms P. Mukela – Madammes TMN Legal Practitioners

RULING

CASES REFERRED TO:

1. Zega Limited v Zambezi Airlines Limited and Diamond General Insurance Limited SCZ Appeal No. 39 of 2014¹;
2. Finance Bank Zambia PLC v Lamasat International Limited Appeal No 175/2017 & Appeal No. 27/2018²;
3. Zambezi District Council v Zolick Kazanda Chanyika III (Suing in his capacity as Senior Chief Ishindi of the Lunda Chiefdom) Appeal No. 149 of 2018³;
4. Contract Discount Corporation Limited V Furlong & Others⁴;
5. Indeni Petroleum Refinery Company Limited V.G Limited (84/2004) [2007] ZMSC 22⁵
6. The Attorney General, Development Bank of Zambia V Gershom Moses Burton Mumba⁶

LEGISLATION AND OTHER MATERIALS REFERRED TO:

1. **The High Court Act, Chapter 27 of the Laws of Zambia¹;**
2. **Zambian Civil Procedure, Commentary and Cases. (Volume 1) Patrick Matibini P609⁵**

1.0 INTRODUCTION

1.1 This is a Ruling on the Plaintiff's application to enter Judgment on Admission Pursuant to *Order 21 of the High Court Rules Chapter 27 of the Laws of Zambia and Order 27 Rule 3 of the Supreme Court Rules 1999 Edition*. The application was supported by an Affidavit sworn by one **Uthaya Kumar** the Finance Manager in the Plaintiff Company and filed into court on 19th January, 2023.

2.0 AFFIDAVIT EVIDENCE

2.1 The deponent deposed that the Plaintiff took out a Writ of Summons and Statement of Claim against the Defendant on 12th August, 2022. Subsequently, on 8th September, 2022, the Defendant herein filed a Defence. That the Defendant has, in paragraph 1 of its Defence admitted owing the Plaintiff a sum of US\$7,340.00.

2.2 The Deponent went on to depose that he had been advised by his Advocates, which advice he equally verily believes to be true, that where a Defendant has expressly or impliedly admitted the amount owing or part thereof, the Court may enter Judgment on Admission in respect of the amount admitted.

2.3 That the Defendant has voluntarily admitted to owing and therefore, this is a proper case for this Honourable Court to exercise its jurisdiction to

enter Judgment on Admission. That the Plaintiff has accordingly applied to this Honourable Court to enter Judgment on Admission against the Defendant in the sum of US\$7,340.00.

3.0 AFFIDAVIT IN OPPOSITION

3.1 On 17th May, 2023 the Defendant filed into Court an Affidavit in Opposition deposed by Francis Mukuka, the Director in the Defendant Company. He averred inter alia that it is not disputed that the admission was made, based on the facts obtaining at the time of filing of the defence. Furthermore, that the parties were engaged in exploring a possible settlement out of Court. That following the attempt to settle the matter out of Court, the Defendant carried out an inspection of its goods at the Plaintiff's warehouse. He went on to depose that the inspection revealed some shortages and missing parts of the Defendant's goods. That as a result of the foregoing, the Defendant has sought leave of Court to amend its Defence, as shown by exhibit marked "FM1" a copy of the Affidavit in Support of Summons for leave to amend Defence. It was thus his averment that he had been advised by his Advocates which advice he equally, verily believes that this is not a proper case for this Honourable Court to enter Judgment on Admission based on the above stated reasons.

4.0 LIST OF AUTHORITIES AND SKELETON ARGUMENTS

4.1 I am highly indebted to both Counsel for the List of Authorities and Skeleton Arguments filed herein. I shall definitely take the same into consideration as I decide this application.

5.0 HEARING IN COURT

- 5.1 When the matter came up for hearing on 24th May, 2023 the Plaintiff's Counsel, Mr. Mwangulukulu, relied on the documents filed into Court in support of the said application. In addition, Counsel submitted that the Defendant had opposed the application and had further filed into court an application to amend their defence. He went on to tell the Court that the Plaintiff was not opposing the said application. Counsel, however, prayed for costs for the application to amend the defence.
- 5.2 Counsel for the Defendant Ms. Mukela equally relied on the documents filed into court opposing the Plaintiff's application for leave to enter judgment on admission on 17th May, 2023 which she augmented with oral submissions. She submitted that the Defendant had filed an application for leave to amend its defence as a result of the outcome of a recent search at the Plaintiff's warehouse. Counsel submitted that the admission in the defence was hence made based on the facts obtaining at the time of filing the defence. That as a result of the foregoing this is not a proper case for this Honourable Court to enter judgment on admission and Counsel prayed that costs for this application be in the cause.
- 5.2 This Court granted the Defendant's application for leave to amend the defence. In the said amended defence filed into court on 23rd June, 2023 the Defendant indicated that following the ex-curia discussions between the parties, the Defendant carried out an inspection of the goods at the Plaintiff's warehouse. That during this inspection, it came to her attention that there were some shortages and missing parts on the Defendant's goods. That the total value of the missing goods and parts

thereof amounts to ZMW315,000.00 which amount the Defendant is now counterclaiming from the Plaintiff.

6.0 CONSIDERATION AND DECISION OF THIS COURT

6.1 I will start by directing my attention to what the Law provides concerning Judgments on Admission. Order 21 Rule 6 of the HCR¹ states that:-

“The Courts are empowered to pronounce judgment upon admission made by the party without waiting for the determination of any other questions between the parties. Thus, where admission of fact or part of a case are made by a party to a matter either by his pleading or otherwise, any other party to the matter may apply to the Court for such judgment or order upon those admissions.”

6.2 Similarly, Order 27 Rule 3 of the RSC² states that:-

“Where admission of fact or of part of a case are made by a party to a cause or matter either by his pleadings 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”.

Rule 3.2 further provides that:-

“Such admission may be express or implied but they must be clear” and that such admissions may be made either by his pleadings or otherwise e.g expressly in a defence or in letter before or since the action has been brought.”

6.3 In the case of Zega Limited v Zambezi Airlines Limited and Diamond General Insurance Limited SCZ Appeal No. 39 of 2014¹ the Supreme Court held that:

“We wish to state from the outset that it is true that under both Order 21/6 HCR and Order 27/3 RSC, the court is empowered to enter Judgment in favour of a party based on admissions of fact made by the other party on its claim(s).”

However, we must hasten to mention that the position of the law as spelt out under Order 21.3/2 RSC is that admission of liability by the party against whom Judgment on admission is sought to be entered may be express and or implied and the admission must be clear. This position was echoed in the case of Himani Alloys Limited in which, the Supreme Court of India made it clear inter alia that the admission must be a conscious and deliberate act of the party making it and showing an intention to be bound by it and that unless the admission is clear, unambiguous and unconditional, the discretion of the court should not be exercised to deny the valuable right of a defendant to contest the claim against him."

6.4 The Supreme Court went on to state that:

"The purpose and applicability of the rule relating, to admissions which may be relied upon in an application for Judgment on admission was discussed in the Ellis case and from the above, it is clear that the admissions relied upon must be unconditional and/ or unequivocal. The learned authors of Black's Law Dictionary at page 1663 and 1667 define the terms "unconditional and unequivocal" respectively as follows:

"Unconditional - not limited by a condition, not depending on uncertain event or contingency absolute"

Unequivocal - unambiguous, clear, free from uncertainty"

6.5 In the case of Finance Bank Zambia PLC v Lamasat International Limited Appeal No 175/2017 & Appeal No. 27/2018² the Court of Appeal held that:

- i. 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.*
- ii. 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.*

6.6 Further Patrick Matibini in his book, Zambian Civil Procedure Commentary and Cases on page 609³ states that the essential conditions that must be satisfied before a Court pronounces judgment upon admission are:-

- (a) *The admission must have been made either in pleadings or otherwise;*
- (b) *The admission must have been made orally or in writing;*
- (c) *The admission must be clear and unequivocal, and;*
- (d) *The admission must be taken as a whole and it is not permissible to rely on a part of the admission, ignoring the other part;*

6.7 The Court's jurisdiction to pronounce judgment upon admission made by a party is discretionary but, in the absence of reason to the contrary, the judgment ought to be pronounced in order to save time and costs.

6.8 To this effect, in the case of Zambezi District Council v Zolick Kazanda Chanyika III (Suing in his capacity as Senior Chief Ishindi of the Lunda Chiefdom) Appeal No. 149 of 2018³ the Court of Appeal held:

"The case of Ellis v Allen confirmed the object of the rule as being to enable a party obtain a speedy Judgment where the other party has made a plain admission entitling the plaintiff to succeed and that it applies where there is a clear admission on the face which it is impossible for the party making it to succeed."

6.9 In the case at hand, the Plaintiff is claiming, inter alia, for payment of the sum of US\$9,185.00 being money owed by the Defendant to the Plaintiff for cost of freight services and storage charges rendered by the Plaintiff to the Defendant. It is the Plaintiff's assertion that the Defendant admitted in paragraph 1 of its defence that it owes the Plaintiff a sum of US\$ 7, 340.00. The said paragraph is couched as follows:-

1. **The Defendant admits the contents of paragraphs 1 to 5 of the Statement of Claim.**

6.7 Paragraphs 1 to 5 of the Statement of Claim read as follows:

1. The Plaintiff is and was at all material times a company incorporated under the repealed Company's Act, Chapter 388 of the Laws of Zambia having its registered office at Lusaka.
2. The Defendant is and was at all material times a Client of the Plaintiff running business in Lusaka.
3. That sometime in 2015 and 2018, the Defendant contracted the Plaintiff to transport goods from Dubai, United Arab Emirates to Lusaka, Zambia under shipment numbers SF 82061B, SF 822241, SS 180632, SS 182832 and SS 184892.
4. The Cost of transporting the Defendant's goods from Dubai, United Arab Emirates to Lusaka, Zambia was US\$12, 545.00.
5. Upon being issued with the tax invoice, the Defendant only paid US\$5, 205.00 to the Plaintiff leaving a balance of US\$7, 340.00.

6.8 The Defendant having unequivocally admitted paragraphs 1 to 5 of the Statement of Claim wherein the Plaintiff plainly stated that the Defendant had left a balance of US\$7, 340.00 on the amount that the Defendant owed the Plaintiff, I am of the considered view that the Defendant did indeed unequivocally admit owing the Plaintiff the said sum of US\$ 7, 340.00.

6.9 In the amended defence, the Defendant has, however, stated that this admission in the defence was made based on the facts obtaining at the time of filing the defence. That it later came to their attention that some of their goods which were being kept in the Plaintiff's warehouse, were actually missing. The total value for the missing goods was indicated to be ZMW315,000.00. As a result, the Defendant is counterclaiming the aforementioned amount from the Plaintiff and has urged this Court not to grant the Plaintiff's application for judgment on admission on that basis.

6.10 I, however, do not agree with the Defendant that simply because they have a counterclaim against the Plaintiff for its missing goods, this Court must not grant the Plaintiff's application for judgment on admission when the Plaintiff clearly admitted owing the Plaintiff the amount of US\$7, 340.00. They admitted that the Cost of transporting their goods from Dubai, United Arab Emirates to Lusaka, Zambia was US\$12, 545.00. It is thus, not in dispute that the transportation of the goods, in whatever state that they may have been, took place at the indicated cost of US\$12, 545.00. Further, that out of this amount, a sum of US\$5, 205.00 was paid to the Plaintiff leaving a balance of US\$7, 340.00. I am of the considered view that the Defendant having admitted owing the Plaintiff the said amount of US\$ 7, 340.00, this Court ought to enter judgment on admission on that amount and let the matter proceed to trial on both the balance on the Plaintiff's claimed amount as per the statement of Claim and the Defendant's Counterclaim.

6.11 Consequently, I find that this is a proper case for this Court to enter judgment on admission because the Defendant clearly and unequivocally admits owing the Plaintiff the sum of US\$ 7, 340.00. I do not see what would be there for this court to determine in relation to the admitted amount of US\$ 7, 340.00 if this matter was to proceed to trial. In the case of Contract Discount Corporation Limited V Furlong & Others⁴ it was held that:-

"Where a definite sum is admitted by the Defendant, Summary Judgment is perfectly in order because he puts up no defence to that amount."

6.12 Accordingly, I hereby enter Judgment in favour of the Plaintiff against the Defendant for the payment of the sum of US\$ 7, 340.00 being money

owed by the Defendant to the Plaintiff for cost of freight services. In addition, since the Defendant has kept the Plaintiff out of their money, the Defendant ought to compensate the Plaintiff for it, in line with the Supreme Court case of Indeni Petroleum Refinery Company Limited v V.G Limited⁵. However, considering the fact that the amount found to be due to the Plaintiff is in United States Dollars, a foreign currency, the interest rate applicable is generally low and on this I place reliance on the case of Attorney General, Development Bank of Zambia V. Gershom Moses Burton Mumba⁶. I therefore order that the said amount of US\$ 7, 340.00 shall attract interest at the London Interbank Offered Rate (LIBOR) from the date of Writ until full payment.

6.13 I further grant Costs to the Plaintiff to be taxed in default of agreement.

6.14 Leave to appeal is granted.

Dated at Lusaka this 28th Day of June, 2024.



**C. Chinyanwa Zulu
HIGH COURT JUDGE**