

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

2022/HP/0790

BETWEEN:

**HANDSOM INVESTMENT LIMITED****PLAINTIFF**

AND

**ACK GENERAL SUPPLIERS LIMITED  
DONGGUAN BAICHANG CO LIMITED  
ACK LOGISTICS LIMITED**

**1<sup>st</sup> DEFENDANT  
2<sup>nd</sup> DEFENDANT  
3<sup>rd</sup> DEFENDANT**



**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 30<sup>th</sup> DAY OF  
OCTOBER, 2025**

*For the Plaintiff* : Mr S.M. Lungwebungu, Messrs Lengwebungu  
Legal Practitioners  
*For the 1<sup>st</sup> & 3<sup>rd</sup> Defendants* : Mr M. Mpempa, Messrs Muma Mpempa Legal  
Practitioners  
*For the 2<sup>nd</sup> Defendant* : Messrs Lisutu Chambers

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

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CASES REFERRED TO:

1. *Printing and Numerical Registered Company v Sampson* 1875 LR 19 462
2. *Montgomerie v UK Mutual SS Assn Ltd* 1891 1 QB 370
3. *Monarch Steamship Company Limited v Karishaamns Olhefabriker and others* 1949 1 ALL ER 1
4. *Hely-Hutchinson v Brayhead Ltd* 1968 1 QB 549
5. *Attorney General v D.G Mpundu* 1984 ZR 8
6. *Cavmont Merchant Bank Limited v Amaka Agricultural Development Company Limited* SCZ No 12 of 2001
7. *National Drug Company Limited and Zambia Privatisation Agency v Mary Katongo* SCZ Appeal No 79 of 2001
8. *Kennington v B&Q Plc* 2005 UK
9. *York Farms Limited v Cee Cee Freight and Suppliers Limited* SCZ No 11 of 2013
10. *Madison General Insurance Company Limited v Avril Cornhill and Michael Kakoma* Appeal No 19 of 2017

**11. Anna Anthony Mross v BHM Enterprises Limited Appeal No 58/2023  
(2024) ZMCA 116**

OTHER WORKS REFERRED TO:

1. **Black's Law Dictionary 8<sup>th</sup> Edition by Bryan A. Garner Thomson Reuters, 2004**
2. **Black's Law Dictionary by Bryan A. Garner, 9<sup>th</sup> Edition, Thomson Reuters, 2009**
3. **Cheshire and Fifoot's Law of Contract, 10<sup>th</sup> Edition**
4. **Chitty on Contract Volume 2**
5. **Chitty on Contracts, Volume 1 General Principles, 33<sup>rd</sup> Edition, Sweet and Maxwell Thomas Reuters, 2018**
6. **Freidman on Commercial Law**
7. **Halsbury's Laws of England 4<sup>th</sup> Edition Vol 1 (2)**

**1. INTRODUCTION**

1.1 Following a dispute over alleged contractual obligations, the Plaintiff herein, Handsom Investment Limited, commenced this action on 24<sup>th</sup> May, 2022, by Writ of Summons which is accompanied by a statement of claim and the other requisite documents, which were amended on 15<sup>th</sup> March, 2023.

1.2 It seeks the following reliefs:

- i. *The immediate delivery of 5 containers of Mukula Timber or refund of the sum of US\$137, 500.00 by ACK General Suppliers Limited, Dongguan Baichang Co Limited and ACK Logistics Limited being the total purchase price as per the contract of sale dated 3<sup>rd</sup> August, 2021;*
- ii. *An Order for damages for breach of contract;*
- iii. *An Order for special damages under paragraph 10 of the statement of claim;*
- iv. *An Order for damages for loss of business opportunity;*
- v. *Interest on all amounts found due;*

- vi. *Any other relief that the Court may deem fit, proper and just in the circumstances;*
- vii. *Costs of this suit.*

## **2. STATEMENT OF CLAIM**

- 2.1 In the statement of claim, Handsom Investment Limited stated that it is a company that is incorporated under the Companies Act, and has its' registered office at Plot No 3094 along the Lusaka-Mongu Road in Kaoma in the Western Province of Zambia.
- 2.2 The averment was that Handsom Investment Limited is primarily involved in the business of buying, selling, and exporting rose wood timber.
- 2.3 It was also stated that ACK General Suppliers Limited is a company that is incorporated in Zambia, and was an agent for Dongguan Baichang Co Limited, a company that is also incorporated in Zambia.
- 2.4 ACK General Suppliers Limited was stated as being a company that is also incorporated in Zambia, and has the same majority shareholders and directors as ACK General Suppliers Limited.
- 2.5 In respect of the claims that are before this Court, Handsom Investment Limited contended that ACK General Suppliers Limited disclosed itself as being an agent for Dongguan Baichang Co Limited, and that it had due authority and power to sell 5 containers of Mukula Timber to Handsom Investment Limited on behalf of Dongguan Baichang Co Limited.

- 2.6 Further averment was made, that ACK General Suppliers Limited represented themselves to Handsom Investment Limited as duly qualified and sufficiently authorized to lawfully produce, transport and sell Mukula Timber.
- 2.7 Thus, on the strength of the above, Handsom Investment Limited and ACK General Suppliers Limited on 3<sup>rd</sup> August, 2021, entered into a contract of sale in which Handsom Investment Limited and ACK General Suppliers Limited agreed for the sale and supply of 5 containers of Mukula Timber at a total purchase price of US\$137, 520.00.
- 2.8 It was stated that upon execution of the contract of sale, Handsom Investment Limited paid the sum of US\$20, 000.00 by way of electronic/bank transfer and US\$95, 520.00 cash to ACK General Suppliers Limited leaving a balance of US\$22, 000.00 which was to be paid upon completion.
- 2.9 Further averment was made, that the balance of US\$22, 000.00 was paid to ACK Logistics Limited on the instructions of ACK General Suppliers Limited, after indicating that ACK Logistics Limited was its' sister company.
- 2.10 However, ACK General Suppliers Limited did not deliver the timber to Handsom Investment Limited as the said timber was impounded by the Government, as ACK General Suppliers Limited and Dongguan Baichang Co Limited did not have permits to deal in the said timber.

- 2.11 Therefore, Handsom Investment Limited suffered great loss of business opportunity and inconvenience, as it had been unable to deliver the timber to its' clients in China.
- 2.12 It was also stated that the US\$20, 000.00 was paid to ACK Logistics Limited's bank account on the instructions of ACK General Suppliers Limited, and the same had not been refunded to Handsom Investment Limited after the failure to deliver the timber.

### **3. DEFENCE BY ACK GENERAL SUPPLIERS LIMITED**

- 3.1 ACK General Suppliers Limited in an amended defence which was filed on 27<sup>th</sup> March, 2023, stated that the capacity in which Handsom Investment Limited had sued was in its' peculiar knowledge. The capacity in which ACK General Suppliers Limited and Dongguan Baichang Co Limited had been sued was admitted.
- 3.2 However, the capacity in which ACK Logistics Limited had been sued was said to be within Handsom Investment Limited's peculiar knowledge.
- 3.3 ACK General Suppliers Limited denied that it had ever represented that was duly qualified and sufficiently authorized to lawfully produce, transport and sell Mukula Timber, as its' dealing with Handsom Investment Limited was limited to being an agent for Dongguan Baichang Co Limited, and not as an independent entity.
- 3.4 Thus, ACK General Suppliers Limited stated that it entered into the contract with Handsom Investment Limited as an agent for Dongguan Baichang Co Limited, adding that this
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- was a fact that was well known to Handsom Investment Limited as pleaded in paragraph 5 of the statement of claim.
- 3.5 The assertions made as regards the payments that were made were admitted, with repetition being made, that the payments were received by ACK General Suppliers Limited as an agent for Dongguan Baichang Co Limited through the account for ACK Logistics Limited.
  - 3.6 It was stated that ACK General Suppliers Limited requested for assistance from ACK Logistics Limited, as it did not possess a foreign currency account at the time. Therefore, in order to avoid losses that came with exchange rates, the parties were agreeable to using the account for a third party and a stranger to the transaction for ACK General Suppliers Limited, to receive the funds from Handsom Investment Limited.
  - 3.7 ACK General Suppliers Limited admitted having received the sum of US\$20, 000.00 electronically, stating that it did not receive any cash payments. The further averment was that no other payments were made.
  - 3.8 Thus, ACK General Suppliers Limited denied having received any payment from Handsom Investment Limited in cash.
  - 3.9 The assertion that the timber was not delivered to Handsom Investment Limited as ACK General Suppliers Limited, Dongguan Baichang Co Limited and ACK Logistics Limited did not have permits to deal in timber was denied.
  - 3.10 The defence was that this was because the Government seized the timber as the exporter ZAFFICO Limited had not
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obtained proper documentation which fact, Handsom Investment Limited was aware of.

- 3.11 Further averment was made in defence, that the timber was seized whilst it was in the custody of Handsom Investment Limited by the Government.
  - 3.12 It was also stated that when Dongguan Baichang Co Limited sued ZAFFICO for the recovery of the timber on its' own behalf, and on behalf of persons that its' agent had sold to, including Handsom Investment Limited, Handsom Investment Limited decided not to appear at arbitration despite, being advised by ACK General Suppliers Limited to join the proceedings as an interested party.
  - 3.13 It was denied that Handsom Investment Limited had suffered great loss of business opportunity and inconvenience, with it being stated that it was incumbent upon Handsom Investment Limited to know that the law only allowed the Government under ZAFFICO to contract for Mukula.
  - 3.14 Therefore, as such any transaction for Mukula had to be done with or under the name of ZAFFICO, and not any of ACK General Suppliers Limited, Dongguan Baichang Co Limited or ACK Logistics Limited, as such a contract would be illegal.
  - 3.15 No comment was made as regards the contention that US\$20, 000.00 was paid to the bank account for ACK Logistics Limited on the instructions of ACK General Suppliers Limited in relation to the contract, and that the
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same had not been refunded to Handsom Investment Limited after failure to deliver the timber, as the same was within the peculiar knowledge of Handsom Investment Limited.

3.16 It was denied that Handsom Investment Limited was entitled to any relief.

#### **4. DEFENCE BY DONGGUAN BAICHANG CO LIMITED**

4.1 Dongguan Baichang Co Limited in an amended defence which was filed on 17<sup>th</sup> March, 2023, made no comment to the capacity in which Handsom Investment Limited had sued. It denied that ACK General Suppliers Limited was its' agent.

4.2 Dongguan Baichang Co Limited further denied that it is incorporated in Zambia, stating that it is incorporated in China. As such, it contended that the proceedings against it were irregular, as Handsom Investment Limited did not obtain leave to issue and serve process against out of jurisdiction.

4.3 Further denial was made, that Dongguan Baichang Co Limited gave a power of Attorney to ACK General Suppliers Limited to sell containers of Mukula Timber to Handsom Investment Limited on its' behalf or at all.

4.4 It denied that by itself or through ACK General Suppliers Limited, it entered into any contract for the sale of 5 containers of timber or at all.

4.5 Dongguan Baichang Co Limited further denied that it received any money from Handsom Investment Limited at

any point, and that neither did it instruct ACK General Suppliers Limited to receive any money as alleged by Handsom Investment Limited. The defence was that ACK General Suppliers Limited transacted with Handsom Investment Limited on its' own volition, and it should be directly accountable to Handsom Investment Limited.

- 4.6 Dongguan Baichang Co Limited also contended that ACK General Suppliers Limited and ACK Logistics Limited had in their defences, admitted having received payment from Handsom Investment Limited, but they had not stated that the same payment was remitted to Dongguan Baichang Co Limited.
- 4.7 Thus, Dongguan Baichang Co Limited did not benefit from the transaction that independent entities voluntarily entered into.
- 4.8 That Handsom Investment Limited had endured great suffering, loss and inconvenience was denied, with the defence being that what Handsom Investment Limited was going through, was because it transacted with ACK General Suppliers Limited without the consent of Dongguan Baichang Co Limited, and Dongguan Baichang Co Limited had never known about the transaction between Handsom Investment Limited and ACK General Suppliers Limited.
- 4.9 The averment was that Dongguan Baichang Co Limited is not in the business of selling Mukula Timber, but that it is a legally licenced exporter of timber, and is therefore in essence, a buyer, that was placed in the same position as

Handsom Investment Limited, who claimed to be a buyer of timber.

4.10 All the claims as made by Handsom Investment Limited were denied.

#### **5. DEFENCE BY ACK LOGISTICS LIMITED**

5.1 ACK Logistics Limited stated that the capacities of the parties as contended by Handsom Investment Limited was within its' peculiar knowledge.

5.2 ACK Logistics Limited pleaded ignorance over the contract, stating that it was between Handsom Investment Limited on the one hand and ACK General Suppliers Limited and Dongguan Baichang Co Limited on the other.

5.3 It did however state that the sum of US\$20, 000.00 was received by ACK General Suppliers Limited through its' bank account which was held at ABSA Bank Plc.

5.4 The assertion was that the said sum of money was immediately withdrawn by ACK General Suppliers Limited, a fact that ACK General Suppliers Limited had not disputed.

5.5 No comment was made with regard to the allegation that ACK General Suppliers Limited received US\$20, 000.00 in cash, and that the timber was not delivered as ACK General Suppliers Limited had no permit to deal in timber, stating that ACK Logistics Limited was not privy to the said transaction which was between Handsom Investment Limited and ACK General Suppliers Limited as well as Dongguan Baichang Co Limited.

- 5.6 The assertion was that Handsom Investment Limited had no claim against ACK Logistics Limited, as ACK Logistics Limited was an alien to the transaction, and that it only availed its' bank account for purposes of ACK General Suppliers Limited to receive funds.
- 5.7 Further contention was made, that ACK Logistics Limited had no relationship legal or otherwise with Handsom Investment Limited, and it did not derive any benefit or a detriment in the transaction which led to these proceedings.
- 5.8 Thus, the claims as made by Handsom Investment Limited were denied.

## **6. EVIDENCE LED TRIAL**

- 6.1 At trial, Handsom Investment Limited called one witness, while ACK General Suppliers Limited and ACK Logistics Limited called two witnesses, while Dongguan Baichang Co Limited did not call any witnesses.

### **PW1-GAMMARIEL LUNGU**

- 6.2 This witness, who is the Managing Director of Handsom Investment Limited, produced his witness statement as his testimony, in which he stated that Handsom Investment Limited deals in the processing and exporting of rose wood timber, mainly to China where it had a lot of clients.
- 6.3 He stated that as China wanted to be supplied with Mukula timber, he looked at ways in which Mukula timber could be exported to the clients in China.
- 6.4 Gammariel Lungu stated that he came to know Ackson Tembo, a shareholder and Director of ACK General Suppliers

Limited, which company had export permits for Mukula timber through the Zambia Forestry and Forest Industries Corporation (ZAFFICO).

- 6.5 Thus, when Gammariel Lungu contacted Ackson Tembo in July, 2021, Ackson Tembo confirmed that ACK General Suppliers Limited had an export permit for timber.
- 6.6 His evidence was that, that was how a meeting was arranged so that an agreement could be signed as the terms and conditions were agreed to by phone.
- 6.7 Gammariel Lungu testified that he travelled from Kaoma to Lusaka to meet Ackson Tembo, who gave him a contract of sale for 5 containers of mukula timber at a total purchase price of US\$137, 520.00, as agreed.
- 6.8 It was his evidence, that the contract of sale indicated that ACK General Suppliers Limited was an agent of Dongguan Baichang Co Limited.
- 6.9 Gammariel Lungu further stated that the contract was signed by himself on behalf of Handsom Investment Limited and Ackson Tembo on behalf of ACK General Suppliers Limited on 3<sup>rd</sup> August, 2021, with the purchase price of US\$137, 520.00, as evidenced by the contract of sale which was at pages 1-7 of Handsom Investment Limited's bundle of documents.
- 6.10 He testified that in pursuance of the agreement, Handsom Investment Limited made payment of US\$20, 000.00 by bank transfer to ACK General Suppliers Limited in an account that was provided to Handsom Investment Limited,

which was held at ABSA bank under the name ACK Logistics Limited, on the basis that ACK General Suppliers Limited represented that ACK Logistics Limited was a sister company to ACK General Suppliers Limited.

- 6.11 The computer printouts from PACRA were stated as being at pages 8-10 of Handsom Investment Limited's bundle of documents.
- 6.12 In still giving evidence, Gammariel Lungu testified that US\$95, 520.00 was paid in cash to ACK General Suppliers Limited as agreed in the contract, and that further agreement was made that the balance of US\$22, 000.00 would be paid upon completion, that is when the Mukula timber was to be placed in the possession and control of Handsom Investment Limited at Walvis Bay port, after which the trucks and containers would be handed over to Handsom Investment Limited to ship the Mukula timber to its' clients in China.
- 6.13 He also stated that it was agreed that Handsom Investment Limited would organize the containers and trucks to transport the Mukula timber, which was to be loaded in North-Western Province of the Republic of Zambia.
- 6.14 It was also Gammariel Lungu's averment, that the cost of each of 5 trucks of Mukula timber together with the containers from Namibia through an agent, New Force Logistics CC of CMA CGM Shipping Agency was about ZMW103, 700.00.

- 6.15 He testified that on 19<sup>th</sup> August, 2021, the trucks with the containers reached Kaoma, and they were refilled with diesel, as shown on the customer requisition slip dated 19<sup>th</sup> August, 2021, and the amount of diesel as refueled, which documents were at pages 12-16 of Handsom Investment Limited's bundle of documents.
- 6.16 The evidence that Gammariel Lungu further gave, was that Handsom Investment Limited provided the trucks and containers, and the loading of the Mukula timber which was to then be handed over to ACK General Suppliers Limited to transport as they had the export permit, and ACK General Suppliers Limited would hand over the Mukula timber to Handsom Investment Limited at the port of Walvis Bay after which the trucks and containers would be handed over to Handsom Investment Limited to ship to China to its' clients.
- 6.17 He testified that the trucks were loaded with Mukula timber and ACK General Suppliers Limited took charge of the said trucks, and it requested that the US\$22, 000.00 be paid. Gammariel Lungu stated that the US\$22, 000.00 was paid to ACK General Suppliers Limited through Ackson Tembo.
- 6.18 He went on to state that five days later, he was called by one of the drivers and was informed that the trucks had been impounded. It was also his evidence, that when he got in touch with ACK General Suppliers Limited, he was informed that the people who were in charge of the process were busy with the general elections in Zambia.
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- 6.19 Then thereafter, Gammariel Lungu heard that the Anti-Corruption Commission had impounded the trucks. He stated that time passed, and the trucks were not being released despite promises from ACK General Suppliers Limited, and there was pressure from the owners of the trucks and containers, and Handsom Investment Limited was being charged demurrage, with tax invoices for the said demurrage being issued on 5<sup>th</sup> January, 2022 and 22<sup>nd</sup> February, 2022, which were at pages 17-18 of Handsom Investment Limited's bundle of documents.
- 6.20 Gammariel Lungu in continued evidence, stated that he was appointed agent for New Force Logistics CC to get the trucks released after engagement with the Anti-Corruption Commission and the Forestry Department. He stated that this followed a charge letter for the illegal possession of Mukula logs by the Ministry of Green Economy and Environment which was dated 1<sup>st</sup> February, 2022, which was at page 19 of Handsom Investment Limited's bundle of documents.
- 6.21 Then as there was pressure from the owners of the trucks, Handsom Investment Limited requested the Anti-Corruption Commission that the mukula logs be offloaded, so that the trucks and the containers could be released.
- 6.22 It was his testimony that the Anti-Corruption Commission by the letter dated 25<sup>th</sup> January, 2022, which was at pages 20-26 of Handsom Investment Limited's bundle of documents, ordered that ZMW60, 000.00 be paid as a
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penalty fee per truck, which was imposed by the Forestry Department.

- 6.23 Thus, Handsom Investment Limited paid a total sum of ZMW300, 000.00 as the penalty for illegal possession of Mukula timber.
- 6.24 However, as seen from the letter that the Anti-Corruption Commission wrote, which was at page 6 of Handsom Investment Limited's bundle of documents, it refused to release the containers as they were tainted properties.
- 6.25 Gammariel Lungu's evidence was that in order to stop paying demurrage charges for the containers, Handsom Investment Limited was forced to buy the containers.
- 6.26 In that regard, his testimony was that Handsom Investment Limited paid US\$17, 440.00 to CMA CGM Shipping Agency for the five containers, by bank transfer at ABSA bank on 28<sup>th</sup> January, 2022. Pages 27-29 of Handsom Investment Limited's bundle of documents were identified as the documents evidencing the payment.
- 6.27 In still testifying, Gammariel Lungu stated that when Handsom Investment Limited continued engaging ACK General Suppliers Limited, they were informed that the matter was subject of arbitral proceedings.
- 6.28 Then on 20<sup>th</sup> February, 2022, Handsom Investment Limited wrote a demand letter, which was at pages 30-32 of Handsom Investment Limited's bundle of documents to ACK General Suppliers Limited.
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- 6.29 It was stated that ACK General Suppliers Limited's lawyers responded, stating that the agency that was used to issue a Power of Attorney to ACK General Suppliers Limited was revoked by Dongguan Baichang Co Limited, and ACK General Suppliers Limited advised Handsom Investment Limited to pursue the matter with Dongguan Baichang Co Limited.
- 6.30 Further testimony was given, that the lawyers for ACK General Suppliers Limited advised Handsom Investment Limited to write to Mak Partners who were representing Dongguan Baichang Co Limited in the arbitration proceedings, and the matter that was in the High Court under cause number 2022/HPC/0097.
- 6.31 Gammariel Lungu stated that the Mukula timber had not been delivered to date, and that no refund had been given. Thus, Handsom Investment Limited had continued to suffer loss, injury, damage, special damage and greater loss considering the circumstances of the case.

**CROSS EXAMINATION OF GAMMARIEL LUNGU BY  
COUNSEL FOR ACK GENERAL SUPPLIERS LIMITED AND  
ACK LOGISTICS LIMITED**

- 6.32 In cross examination, Gammariel Lungu testified that when Handsom Investment Limited engaged ACK General Suppliers Limited, it was aware that ACK General Suppliers Limited was acting under a Power of Attorney which was granted to it by Dongguan Baichang Co Limited.

- 6.33 His evidence was that only Zambian companies were being given contracts, and that was why they had dealt with ACK General Suppliers Limited, which was an agent for Dongguan Baichang Co Limited.
- 6.34 As to the period that Handsom Investment Limited dealt with ACK General Suppliers Limited, Gammariel Lungu testified that it was from 3<sup>rd</sup> August, 2021 to February, 2022.
- 6.35 When referred to page 1 of Dongguan Baichang Co Limited's bundle of documents, Gammariel Lungu testified that it was revocation of the Power of Attorney that Dongguan Baichang Co Limited granted to ACK Investment Limited, effective 18<sup>th</sup> November, 2021.
- 6.36 Gammariel Lungu's testimony was that he dealt with ACK General Suppliers Limited during the period of the Power of Attorney. His position was that post 28<sup>th</sup> November, 2021, Handsom Investment Limited did not make any payments.
- 6.37 He stated that he made payments to ACK General Suppliers Limited, and that he was aware that ACK General Suppliers Limited had authority to deal on behalf of Dongguan Baichang Co Limited.
- 6.38 Gammariel Lungu testified that he was aware that Dongguan Baichang Co Limited had sued ACK General Suppliers Limited claiming that it owned the timber, part of which ACK General Suppliers Limited sold to Handsom Investment Limited.
- 6.39 On being referred to ACK Logistics' defence, Gammariel Lungu's evidence was that Handsom Investment Limited
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deposited the sum of US\$20, 000.00 into the account for ACK Logistics Limited and that ACK General Suppliers Limited had admitted having withdrawn that money on behalf of Dongguan Baichang Co Limited.

**CROSS EXAMINATION OF GAMMARIEL LUNGU BY  
COUNSEL FOR DONGGUAN BAICHANG CO LIMITED**

- 6.40 It was Gammariel Lungu's evidence, when he was referred to the contract of sale which was at pages 1-7 of Handsom Investment Limited's bundle of documents, that the parties to the contract were ACK General Suppliers Limited and Handsom Investment Limited.
- 6.41 He testified that Dongguan Baichang Co Limited appeared in the contract as a seller at page 2, as there was a Power of Attorney.
- 6.42 Gammariel Lungu agreed that he had not mentioned Dongguan Baichang Co Limited in paragraph 4 of his witness statement. It was also agreed that Dongguan Baichang Co Limited was not part of the meeting that he had mentioned in paragraphs 4 and 5 of his witness statement.
- 6.43 Gammariel Lungu testified that according to paragraph 6 of his witness statement, he reached an agreement with Ackson Tembo, and not Dongguan Baichang Co Limited. He stated that he signed the contract.
- 6.44 Further in cross examination, Gammariel Lungu testified that the date of the contract was at page 2. His evidence was that he did not request to meet the principal, ACK General Suppliers Limited having been an agent.

- 6.45 He explained that initially they wanted to sign a contract with ZAFFICO, but it informed them that it had a limitation in terms of the people that it could contract with. Thus, ZAFFICO had referred them to ACK General Suppliers Limited, as an agent for Dongguan Baichang Co Limited.
- 6.46 Gammariel Lungu when referred to pages 8-10 of Handsom Investment Limited's bundle of documents testified that it was a PACRA document for ACK Logistics Limited, which was owned by Ackson Tembo. It was his evidence that ACK Logistics Limited was not owned by Dongguan Baichang Co Limited.
- 6.47 Still in cross examination, Gammariel Lungu stated that ACK General Suppliers Limited did not show him the Power of Attorney.
- 6.48 His evidence was that the receipts which were at pages 12-16 of Handsom Investment Limited's bundle of documents were used to refuel the five trucks which loaded the Mukula timber.
- 6.49 Gammariel Lungu testified that the five trucks were not refueled at the instance of Dongguan Baichang Co Limited. It was his evidence that all payments were made to ACK General Suppliers Limited, and not Dongguan Baichang Co Limited.
- 6.50 Further testimony was given, that when the transaction failed, Handsom Investment Limited did not see Dongguan Baichang Co Limited, as it did not deal with it. Gammariel Lungu nevertheless testified that Handsom Investment

Limited wrote to Dongguan Baichang Co Limited, but he did not know where to find them.

- 6.51 He went on to further testify that after time passed, Handsom Investment wrote to ACK General Suppliers Limited requesting for a refund. However, in response, ACK General Suppliers Limited stated that Dongguan Baichang Co Limited had withdrawn the Power of Attorney, and referred Handsom Investments Limited to the lawyers for Dongguan Baichang Co Limited.
- 6.52 Gammariel Lungu when referred to the letter which was at page 32 of Handsom Investment Limited's bundle of documents, which was dated 7<sup>th</sup> April, 2022, testified that Handsom Investment Limited did not engage Mak Partners as advised in the letter. He explained that there was no need to engage Mak Partners as this matter had been commenced.
- 6.53 It was also his testimony, that he had never met anyone from Dongguan Baichang Co Limited.
- 6.54 He agreed that paragraph 5 of ACK Logistics Limited's defence stated that ACK General Suppliers Limited withdrew the money.
- 6.55 Gammariel Lungu also agreed that according to paragraph 9 of the amended witness statement, Dongguan Baichang Co Limited did not receive any of the money that Handsom Investment Limited paid.
- 6.56 It was further Gammariel Lungu's evidence, when he was referred to page 30 of Handsom Investment Limited's bundle of documents, that it was the letter of demand that Handsom

Investment Limited wrote on 20<sup>th</sup> February, 2022. He agreed that in the second paragraph, it was indicated that all the documentation, being the export permits were in ACK General Suppliers Limited's name.

6.57 As to why that was so, Gammariel Lungu stated that it was because Handsom Investment Limited believed that the export permits were either in ACK General Suppliers Limited or Dongguan Baichang Co Limited's name after the Anti-Corruption Commission impounded the trucks in Mongu.

6.58 He however stated that unfortunately, there were no documents.

6.59 Gammariel Lungu in concluding the cross examination, testified that he did not believe that Dongguan Baichang Co Limited did not cause any loss to Handsom Investment Limited.

#### **RE-EXAMINATION OF GAMMARIEL LUNGU**

6.60 The evidence that Gammariel Lungu gave in re-examination, was that ACK General Suppliers Limited contracted on behalf of Dongguan Baichang Co Limited and that the licence was an import or export licence.

6.61 He further clarified that Handsom Investment Limited suffered loss as a result of the contract that it had with ACK General Suppliers Limited as an agent of Dongguan Baichang Co Limited.

6.62 That marked the close of the case for Handsom Investment Limited.

**DW1-ACKSON TEMBO**

- 6.63 On behalf of ACK General Suppliers Limited, Ackson Tembo testified that ACK General Suppliers Limited was an agent for Dongguan Baichang Co Limited in the sale of Mukula timber. He stated that at no point did he ever represent that ACK General Suppliers Limited was duly qualified and sufficiently authorized to lawfully produce, transport and sell Mukula timber, as its' dealings with Handsom Investment Limited were limited to ACK General Suppliers Limited being an agent of Dongguan Baichang Co Limited, and not it dealing independently with Handsom Investment Limited.
- 6.64 Ackson Tembo acknowledged that ACK General Suppliers Limited entered into a contract with Handsom Investment Limited, but stated that this was on the basis of the agency agreement with Dongguan Baichang Co Limited, a fact which was well known to Handsom Investment Limited as pleaded in the statement of claim.
- 6.65 Ackson Tembo also agreed that ACK General Suppliers Limited received payment in the sum of US\$137, 520.00 for the sale and supply of five containers of Mukula timber, again testifying that was on the basis that of it being an agent for Dongguan Baichang Co Limited.
- 6.66 He stated that the money was received through the bank account for ACK Logistics Limited.
- 6.67 Ackson Tembo testified that the timber was seized by the Government on account of the fact that ZAFFICO the

exporter, had not obtained proper documentation and that Handsom Investment Limited was aware of that fact.

6.68 His evidence was that the timber was in the hands of Handsom Investment Limited when it was confiscated, and that Dongguan Baichang Co Limited had a legitimate claim over the said timber, and it sued ZAFFICO for the recovery of the timber on its' behalf and on behalf of the person that its' agents had sold to, including Handsom Investment Limited.

6.69 In further testimony, Ackson Tembo stated that Handsom Investment Limited decided not to appear at the arbitration proceedings, despite being advised by ACK General Suppliers Limited to join the proceedings as an interested party.

6.70 It was stated that Handsom Investment Limited ought to have known that the law only allowed Government through ZAFFICO to contract for Mukula timber. Thus, any transaction for Mukula timber had to be done with or under the name of ZAFFICO, and not with any of the Defendants before Court, as the same would be illegal.

**CROSS EXAMINATION OF ACKSON TEMBO BY COUNSEL  
FOR HANDSOM INVESTMENT LIMITED**

6.71 Ackson Tembo in cross examination, testified when he was referred to paragraphs 2 and 3 of ACK General Suppliers Limited's defence, that he did not deny that the transaction was entered into with Handsom Investment Limited, and

that the money was paid into an account for ACK General Suppliers Limited.

6.72 He agreed that the Mukula timber that Handsom Investment Limited paid for was not delivered. Ackson Tembo explained that the said timber as of that date, was in the hands of the Government.

**RE-EXAMINATION OF ACKSON TEMBO**

6.73 There was no re-examination.

**DW2-CASPER SANYAMANDWE**

6.74 This witness also produced his witness statement as his evidence.

6.75 He testified in that witness statement, that ACK General Suppliers Limited approached ACK Logistics Limited to receive funds as ACK General Suppliers Limited had no foreign currency account.

6.76 He stated that ACK Logistics Limited did not object even though it had no interest in the transaction leading to the payment that was received by ACK General Suppliers Limited through its' account.

6.77 Also, in his testimony, Casper Sanyamandwe told the Court that ACK Logistics Limited had no idea that the source of the funds that ACK General Suppliers Limited received through its' account came from Handsom Investment Limited, and what the payment was for, as a request was only made to receive the money through the account, and there was no transaction between the parties.

6.78 In still testifying, Casper Sanyamandwe stated that ACK General Suppliers Limited requested that the money be paid through ACK Logistics Limited's bank account in order to avoid losses that came with foreign currency exchanges.

6.79 As for the amount that was paid into the account which was held at ABSA Bank, it was stated that it was US\$20, 000.00 and Casper Sanyamandwe testified that no cash payments were made to ACK General Suppliers Limited by Handsom Investments Limited.

6.80 He told the Court that on the US\$20, 000.00 being paid electronically, ACK General Suppliers Limited immediately withdrew it.

**CROSS EXAMINATION OF CASPER SANYAMANDWE BY  
COUNSEL FOR HANDSOM INVESTMENT LIMITED**

6.81 There was no cross examination.

6.82 That marked the close of the case for ACK General Suppliers Limited and ACK Logistics Limited.

**7. DECISION OF THIS COURT**

7.1 I have considered all the evidence in this matter, as well as the submissions.

**FACTS NOT IN DISPUTE**

7.2 It is common cause that ACK General Suppliers Limited and Handsom Investment Limited in the capacity as agent for Dongguan Baichang Co Limited, on 3<sup>rd</sup> August, 2021, entered into a contract of sale for five (5) containers of Mukula timber at a cost of US\$137, 520.00.

- 7.3 It is further not in dispute, that a sum of US\$20, 000.00 was paid to ACK General Suppliers Limited by Handsom Investment Limited through an account that was held at ABSA Bank, which was held by ACK Logistics Limited.
- 7.4 The facts which are further not in contention, are that the five (5) containers of Mukula timber were confiscated by the Anti-Corruption Commission whilst they were in the custody of Handsom Investment Limited.

**ISSUES IN DISPUTE**

- 7.5 The questions for determination are whether ACK General Suppliers Limited, Dongguan Baichang Co Limited and ACK Logistics Limited should deliver the mukula timber to Handsom Investment Limited or refund the sum of US\$137, 520.00 to Handsom Investment Limited being the contract price.
- 7.6 It is also in contention, whether Handsom Investment Limited is entitled to be paid damages for breach of contract, damages for loss of business opportunity and the special damages as pleaded in paragraph 10 of the statement of claim.

**ANALYSIS**

- 7.7 Gammariel Lungu, who testified on behalf of Handsom Investment Limited told the Court that Handsom Investment Limited deals in the processing and exporting of rose wood timber, mainly to China where it had a lot of clients.

- 7.8 He stated that as China wanted to be supplied with Mukula timber he looked at ways in which Mukula timber could be exported to the clients in China.
- 7.9 Thus, he came to know Ackson Tembo a shareholder and Director of ACK General Suppliers Limited which company had export permits for Mukula timber through the Zambia Forestry and Forest Industries Corporation (ZAFFICO).
- 7.10 Gammariel Lungu told the Court that he contacted Ackson Tembo in July, 2021, who confirmed that ACK General Suppliers Limited had an export permit for timber. He stated that a meeting was arranged so that an agreement could be signed as the terms and conditions were agreed by phone.
- 7.11 Gammariel Lungu testified that he travelled from Kaoma to Lusaka to meet Ackson Tembo, who gave him a contract of sale for 5 containers of mukula timber at a total purchase price of US\$137, 520.00, as agreed.
- 7.12 His evidence was that the contract of sale indicated that ACK General Suppliers Limited was an agent of Dongguan Baichang Co Limited.
- 7.13 Gammariel Lungu also stated that the contract was signed by himself on behalf of Handsom Investment Limited and Ackson Tembo on behalf of ACK General Suppliers Limited on 3<sup>rd</sup> August, 2021 with the purchase price of US\$137, 520.00.
- 7.14 It was his testimony that in pursuance of the agreement, Handsom Investment Limited made payment of US\$20, 000.00 by bank transfer to ACK General Suppliers Limited

in an account that was provided to Handsom Investment Limited, which was held at ABSA bank under the name ACK Logistics Limited, on the basis that ACK General Suppliers Limited represented that ACK Logistics Limited was a sister company to ACK General Suppliers Limited.

- 7.15 Gammariel Lungu further testified that US\$95, 520.00 was paid in cash to ACK General Suppliers Limited as agreed in the contract, and that further agreement was made that the balance of US\$22, 000.00 would be paid upon completion, that is when the Mukula timber was to be placed in the possession and control of Handsom Investment Limited at Walvis Bay port, after which the trucks and containers would be handed over to Handsom Investment Limited to ship the Mukula timber to its' clients in China.
- 7.16 He told the Court that it was agreed that Handsom Investment Limited would organize the containers and trucks to transport the Mukula timber, which was to be loaded in the North-Western Province of the Republic of Zambia.
- 7.17 Gammariel Lungu testified that the cost of each of 5 trucks of Mukula timber together with the containers from Namibia through an agent, New Force Logistics CC of CMA CGM Shipping Agency was about ZMW103, 700.00.
- 7.18 He explained that on 19<sup>th</sup> August, 2021, the trucks with the containers reached Kaoma and they were refilled with diesel, as shown on the customer requisition slip dated 19<sup>th</sup> August, 2021 and the amount of diesel as refueled.

- 7.19 Gammariel Lungu's testimony, was that Handsom Investment Limited provided the trucks and containers and the loading of the Mukula timber which was to then be handed over to ACK General Suppliers Limited to transport as they had the export permit and ACK General Suppliers Limited would hand over the Mukula timber to Handsom Investment Limited at the port of Walvis Bay, after which the trucks and containers would be handed over to Handsom Investment Limited to ship to China to its' clients.
- 7.20 He testified that the trucks were loaded with Mukula timber and ACK General Suppliers Limited took charge of the said trucks, and it requested that the US\$22, 000.00 be paid. Gammariel Lungu stated that the US\$22, 000.00 was paid to ACK General Suppliers Limited through Ackson Tembo.
- 7.21 Then five days later, he was called by one of the drivers and was informed that the trucks had been impounded. It was also his evidence, that when he got in touch with ACK General Suppliers Limited, he was informed that the people who were in charge of the process were busy with the general elections in Zambia.
- 7.22 Then thereafter, Gammariel Lungu heard that the Anti-Corruption Commission had impounded the trucks. He stated that time passed and the trucks were not being released despite promises from ACK General Suppliers Limited, and there was pressure from the owners of the trucks and containers, and Handsom Investment Limited was being charged demurrage, with tax invoices for the said

demurrage being issued on 5<sup>th</sup> January, 2022 and 22<sup>nd</sup> February, 2022.

- 7.23 Gammariel Lungu's evidence was that in order to stop paying demurrage charges for the containers, Handsom Investment Limited was forced to buy the containers.
- 7.24 His evidence was that Handsom Investment Limited paid US\$17, 440.00 to CMA CGM Shipping Agency for the five containers by bank transfer at ABSA bank on 28<sup>th</sup> January, 2022.
- 7.25 Gammariel Lungu stated that when Handsom Investment Limited continued engaging ACK General Suppliers Limited they were informed that the matter was subject of arbitral proceedings. Then on 20<sup>th</sup> February, 2022, Handsom Investment Limited wrote a demand letter.
- 7.26 It was stated that ACK General Suppliers Limited's lawyers responded, stating that the agency that was used to issue the Power of Attorney to ACK General Suppliers Limited was revoked by Dongguan Baichang Co Limited, and ACK General Suppliers Limited advised Handsom Investment Limited to pursue the matter with Dongguan Baichang Co Limited.
- 7.27 Further testimony was given that the lawyers for ACK General Suppliers Limited advised Handsom Investment Limited to write to Mak Partners who were representing Dongguan Baichang Co Limited in the arbitration proceedings, and the matter that was in the High Court under cause number 2022/HPC/0097.

- 7.28 Gammariel Lungu stated that the Mukula timber had not been delivered to date, and that no refund had been given. Thus, Handsom Investment Limited had continued to suffer loss, injury, damage, special damage and greater loss considering the circumstances of the case.
- 7.29 On the other hand, two witnesses testified for ACK General Suppliers Limited and ACK Logistics Limited.
- 7.30 Ackson Tembo testified that ACK General Suppliers Limited was an agent for Dongguan Baichang Co Limited in the sale of Mukula timber. He stated that at no point did he ever represent that ACK General Suppliers Limited was duly qualified and sufficiently authorized to lawfully produce, transport and sell Mukula timber, as its' dealings with Handsom Investment Limited were limited to ACK General Suppliers Limited, being an agent for Dongguan Baichang Co Limited, and not it dealing independently with Handsom Investment Limited.
- 7.31 Ackson Tembo acknowledged that ACK General Suppliers Limited entered into a contract with Handsom Investment Limited, but stated that this was on the basis of the agency agreement with Dongguan Baichang Co Limited, a fact which was well known to Handsom Investment Limited as pleaded in the statement of claim.
- 7.32 Ackson Tembo also agreed that ACK General Suppliers Limited received payment in the sum of US\$137, 520.00 for the sale and supply of five containers of Mukula timber,

again, testifying that this was on the basis that it was an agent for Dongguan Baichang Co Limited.

- 7.33 He stated that the money was received through the bank account for ACK Logistics Limited.
- 7.34 Ackson Tembo testified that the timber was seized by the Government on account of the fact that ZAFFICO the exporter, had not obtained proper documentation and that Handsom Investment Limited was aware of that fact.
- 7.35 His evidence was that the timber was in the hands of Handsom Investment Limited when it was confiscated and that Dongguan Investment Limited had a legitimate claim over the said timber, and it sued ZAFFICO for the recovery of the timber on its' behalf and on behalf of the persons that its' agents had sold to Handsom Investment Limited.
- 7.36 Ackson Tembo's testimony was also that Handsom Investment Limited decided not to appear at the arbitration proceedings despite being advised by ACK General Suppliers Limited to join the proceedings as an interested party.
- 7.37 He testified that Handsom Investment Limited ought to have known that the law only allowed Government through ZAFFICO to contract for Mukula timber. Thus, any transaction for Mukula had to be done with or under the name of ZAFFICO, and none of the Defendants before Court, as the same would be illegal.
- 7.38 The other witness, Casper Sanyamandwe testified that ACK General Suppliers Limited approached ACK Logistics

Limited to receive funds as ACK General Suppliers Limited had no foreign currency account.

7.39 He stated that ACK Logistics Limited did not object even though it had no interest in the transaction leading to the payment that was received by ACK General Suppliers Limited through its' account.

7.40 Also, in his testimony, Casper Sanyamandwe told the Court that ACK Logistics Limited had no idea that the source of the funds that ACK General Suppliers Limited received through its' account came from Handsom Investment Limited and what the payment was for, as a request was only made to receive the money through the account, and there was no transaction between the parties.

7.41 Casper Sanyamandwe stated that ACK General Suppliers Limited requested that the money be paid through ACK Logistics Limited's bank account in order to avoid losses that came with foreign exchanges.

7.42 His evidence was that US\$20, 000.00 was paid and that no cash payments were made to ACK General Suppliers Limited by Handsom Investment Limited.

7.43 Casper Sanyamandwe also told the Court that on the US\$20, 000.00 being paid electronically, ACK General Suppliers Limited immediately withdrew it.

#### **DECISION**

7.44 The evidence shows that when cross examined, both Ackson Tembo and Casper Sanyamandwe agreed that US\$20, 000.00 was paid into the foreign currency account that is

held by ACK Logistics Limited by Handsom Investment Limited for the Mukula timber and that ACK General Suppliers Limited immediately withdrew that money.

**CLAIM FOR THE IMMEDIATE DELIVERY OF 5 CONTAINERS OF MUKULA TIMBER OF THE IMMEDIATE REFUND OF US\$137, 520.00**

- 7.45 In the submissions, Handsom Investment Limited with regard to the claim for the immediate delivery of 5 containers of Mukula timber or the immediate refund of the sum of US\$137, 520.00 being the purchase price for the said Mukula logs, stated that a contract of sale was executed which was at pages 1-7 of Handsom Investment Limited's bundle of documents.
- 7.46 The submission was further that Gammariel Lungu testified that ACK General Suppliers Limited represented itself and transacted as an agent for Dongguan Baichang Co Limited and as per the terms of the contract, the sum of US\$20, 000.00 was paid to ACK General Suppliers Limited through the bank account for ACK Logistics Limited which was provided by ACK General Suppliers Limited, as shown by the documents evidencing the transfer, which was at page 8 of Handsom Investment Limited's bundle of documents.
- 7.47 It was further submitted that Gammariel Lungu testified that the balance of the purchase price was paid in cash to ACK General Suppliers Limited on different occasions.
- 7.48 Further submission was made, that the evidence on record showed that the Mukula timber had not been delivered to

Handsom Investment Limited which was confirmed by the witness for ACK General Suppliers Limited, Ackson Tembo.

7.49 It was also stated that Dongguan Baichang Co Limited disputed ever having appointed ACK General Suppliers Limited as its' agent and ever receiving the purchase price for the Mukula timber, which was paid by Handsom Investment Limited.

7.50 In response, ACK General Suppliers Limited and ACK Logistics Limited stated that ACK General Suppliers Limited's defence was that it was an agent for Dongguan Baichang Co Limited through the Power of Attorney, which was at pages 4-6 of ACK General Suppliers Limited and ACK Logistics Limited's bundle of documents.

7.51 It was stated that ***Black's Law Dictionary*** defines a *power of attorney* as:

***“An instrument granting someone authority to act as an agent or attorney-in act for the grantor.2. The authority so granted; specific the legal ability to change in legal relations by doing whatever acts are authorized.”***

7.52 It was argued that while Dongguan Baichang Co Limited had repeatedly denied that ACK General Suppliers Limited was its' agent, it had however produced a letter revoking ACK General Suppliers Limited as its' agent at page 1 of its' bundle of documents.

7.53 Therefore, if ACK General Suppliers Limited was not an agent for Dongguan Baichang Co Limited, then why did it write the letter revoking the agency?

7.54 Reliance was placed on the case of ***York Farms Limited v Cee Cee Freight and Suppliers Limited*** <sup>(9)</sup> stating that the Supreme Court in that matter, stated that:

***“The paradigm relationship of principal and agent arises where one party, the principal consents, that another, the agent shall act on his behalf and the agent consents so to act. The consent is said to confer authority on the agent and from this authority stems the power.”***

7.55 Premised on the above, the submission was that Handsom Investment Limited had no reason to sue ACK General Suppliers Limited, and there was therefore no cause of action against it.

7.56 Authority was also sought from the case of ***Montgomerie v UK Mutual SS Assn Ltd*** <sup>(2)</sup> stating that *Wright J* in that matter noted as follows:

***“There is no doubt whatever as to the general rule as regards an agent, that where a person contracts as an agent for the principal, the contract is the contract for the principal and not that of the agent; and prima facie at common law, the only person who may sue is the principal and the only person who can be sued is the principal.***

***In agency law, an agent cannot generally be sued for breach of contract when they are acting within the scope of their authority. The reason for this is that an agent typically acts on behalf of the principal and the principal is the party responsible for any breach of contract that arises from the agent's actions as the contract is between the principal and the third party.***

7.57 Further reliance was placed on the case of ***Kennington v B&Q Plc*** <sup>(8)</sup> stating that the holding in that case was:

***“An agent acting within the expressed authority granted by the principal could not be personally liable for obligations under the contract. The third party had to look to the principal for performance or remedy, not the agent.”***

7.58 Thus, submission was made that in the case of ***Hely-Hutchinson v Brayhead Ltd*** <sup>(4)</sup>, the Court held that the agent who was acting within his actual authority bound the principal, and the agent was not personally liable.

7.59 It was also submitted that the Court in the case of *Mwanza v Ngoma* 1967 ZR 128 held that an agent who acted outside the scope of their authority could be held personally liable for the consequences of their actions.

7.60 However, in this case, as ACK General Suppliers Limited had disclosed the principal Dongguan Baichang Co Limited, it was not liable to Handsom Investment Limited.

7.61 In that regard, reliance was placed on the case of ***Cavmont Merchant Bank Limited v Amaka Agricultural Development Company Limited*** <sup>(6)</sup> stating that the Supreme Court in that matter held that:

***“It is trite law that where an agent, in making a contract discloses both the interests and names of the principal on whose behalf it purports to make a contract, the agent, as a general rule, is not liable on the contract to the other contracting party.”***

7.62 It was submitted that Handsom Investment Limited in the statement of claim had admitted that ACK General Suppliers Limited disclosed that it was acting as an agent on behalf of Dongguan Baichang Co Limited.

7.63 On the purported revocation of the Power of Attorney, the submission was that the Power of Attorney was executed on 9<sup>th</sup> June, 2021, and it was revoked by the letter dated 18<sup>th</sup> November, 2021.

7.64 It was stated that the contract in issue in this matter was executed on 3<sup>rd</sup> August, 2021, on which date the transfer of the funds into the ABSA account was made. Therefore, even if the revocation was anything to go by, ACK General Suppliers Limited’s acts were exercised under the authority of the Power of Attorney before the said Power of Attorney was revoked.

7.65 Further submission was made, that the only role that ACK Logistics Limited played in this matter, was to receive the

US\$20, 000.00 that Handsom Investment Limited paid to ACK General Suppliers Limited into its' account.

7.66 Thus, as the principal Dongguan Baichang Co Limited was named on whose behalf ACK General Suppliers Limited acted, and ACK Logistics Limited only received the payment from Handsom Investment Limited on behalf of the said ACK General Suppliers Limited, ACK General Suppliers Limited and ACK Logistics Limited should not be liable to Handsom Investment Limited.

7.67 Dongguan Baichang Co Limited on the other hand submitted that by virtue of a special Power of Attorney, ACK General Suppliers Limited was an agent for Dongguan Baichang Co Limited for purposes of purchasing Mukula logs from Zambia Forestry and Forest Industries Corporation Plc, but not to sell the same to third parties.

7.68 ***Chitty on Contract Volume 2 at paragraph 31-001 at pages 1-2*** was stated as defining *agency* as:

***“At common law, the word agency can be said to represent a body of the general rules under which one person, the agent, has power to change the legal relations of another, the principal. The full paradigm relationship of the principal and agent arises where one party, the principal consents that another, the agent shall act on his behalf and agent consents so to act. The consent is said to confer authority on the agent and from this authority stems his power.”***

7.69 It was submitted that the specific Power of Attorney was at pages 4-6 of ACK General Suppliers Limited and ACK Logistics Limited's bundle of documents.

7.70 That the said Power of Attorney provided as follows:

***“KNOWN ALL MEN THESE PRESENTS, that the Power of Attorney is given by the Donor to the Attorney and that the Donor hereby appoints the Donee to be attorney and proxy of the said Donor and to do in its' name and on its' behalf anything that the donor can lawfully do as Attorney in respect of the purchase of Mukula logs from Zambia Forestry and Forest Industries Corporation Plc and also to do the following:***

- 1. Ask, demand sue for all necessary payments which may remain unpaid on the sale transaction;***
- 2. Within the donor's consent, sign, seal, deliver and acknowledge any documents, deeds, contracts, receipts and other instruments in writing of every kind and nature that maybe necessary or proper in the premises under the donor's hand and seal.”***

7.71 It was submitted that the Power of Attorney authorized ACK General Suppliers Limited to purchase Mukula logs from ZAFFICO and not to sell the same to Handsom Investment Limited.

7.72 That in any event, the Power of Attorney which was limited in scope was terminated.

7.73 Reference was made to ***Freidman on Commercial Law*** as stating the following as regards an agent:

***“The agent may be called by a number of terms- a representative, a broker, a factor-but whatever the name he is in practice, he is in law an agent if he is employed to effect legal relations of his principal, usually bringing a contract between his principal and the third party...***

***In all these examples, the function of the agent is to act on behalf of his principal to bring about a contract between his principal and the third party.”***

7.74 Also referred to, was ***Chitty on Contract Volume 2 in paragraph 31-006 at page 5*** which states that:

***“The consent of the principal which is regarded as the basic justification of the agent’s power to affect his principal’s legal relations may of course be implied from his conduct or from his position with regard to the agent or vice versa.”***

7.75 It was stated that Dongguan Baichang Co Limited was not liable for the contract that ACK General Suppliers Limited executed with Handsom Investment Limited, adding that there was nothing on the record which indicated that Dongguan Baichang Co Limited consented to or authorized

ACK General Suppliers Limited to enter into the said contract.

7.76 Reference was made to ***Halsbury's Laws of England 4<sup>th</sup> Edition Vol 1 (2)*** in paragraph 1, at page 4 as stating that:

***“Whether the relation exists in any situation depends not on the precise terminology employed by the parties to describe their relationship but on the nature of the agreement or the exact circumstances of the relationship between the alleged principal and the agent.”***

7.77 Whilst acknowledging that agency can be inferred from conduct, it was contended that in this matter, such an inference could not be made.

7.78 Reliance was placed on ***Cheshire and Fifoot's Law of Contract, 10<sup>th</sup> Edition at page 431*** as providing the following:

***“The general rule is that the agent drops out, but once more, whether he does so or not, depends essentially upon the intention of the parties. It is still a question of construction, dependent inter alia upon the form of the contract or the nature of the agent's business, whether they intended that the agent should possess rights and responsibilities.”***

7.79 The submission was that ACK General Suppliers Limited used the Specific Power of Attorney to mislead Handsom

Investment Limited that it had power to sell it the Mukula timber when it only had power to purchase the same.

- 7.80 It was also stated that Handsom Investment Limited ought to have known that as purchaser, it stood in the same position as Dongguan Baichang Co Limited which was also a purchaser, as revealed by the Specific Power of Attorney.
- 7.81 It was reiterated that where the agent is the contracting party, they will be personally liable even if they have disclosed the principal.
- 7.82 On the liberty to contract, the cases of ***National Drug Company Limited and Zambia Privatisation Agency v Mary Katongo*** <sup>(7)</sup> and ***Printing and Numerical Registered Company v Sampson*** <sup>(1)</sup> were relied on.
- 7.83 Before I delve into the merits of the claims, I note that Dongguan Baichang Co Limited in its' defence stated that the proceedings against it were irregular, as it is a company that is incorporated in China and no leave to issue and serve the proceedings against it was obtained.
- 7.84 However, despite making this contention, no evidence in support of that position was adduced.
- 7.85 Further, Dongguan Baichang Co Limited did not make any application to set aside the proceedings against it, on the basis that it is a company that is incorporated in China and no leave to issue and serve the proceedings against was obtained. It therefore waived any irregularity against it in these proceedings.

7.86 In terms of the substantive claims in this matter, the contention by ACK General Suppliers Limited was that it acted as an agent on behalf of Donnguan Baichang Co Limited in executing the contract of sale with Handsom Investment Limited for the Mukula timber, by virtue of the Power of Attorney that Donnguan Baichang Co Limited executed granting it the said powers.

7.87 A *Power of Attorney* is defined in ***Black's Law Dictionary 9<sup>th</sup> Edition, by Bryan A. Garner, Thomson Reuters 2009, at page 1290*** as;

***“An instrument granting someone authority to act as agent or attorney-in-fact for the grantor. • An ordinary power of attorney is revocable and automatically terminates upon the death or incapacity of the principal. — Also termed letter of attorney.”***

7.88 ***Halsbury Laws of England, 4<sup>th</sup> Edition, Vol 1 (2) in paragraph 60 at page 48*** states that;

***“An agent acting under a power of attorney should, as a general rule, act in the name of the principal. If he is authorised to sue on the principal's behalf, the claim should be brought in the principal's name. A deed executed in pursuance of such a power is properly executed in the name of the principal or with words to show that the agent is signing for him, but if the donee of the power is an individual he may, if he thinks fit and where so authorised by***

*the donor of the power, execute any instrument with his own signature, and act in his own name.”*

7.89 Further, *paragraph 21 of the said Halsbury’s Laws of England*, states that:

*“Where the authority of the agent is required to be conferred by deed, or where in any other circumstances, it is desired formally to appoint an agent to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally, the necessary authority is conferred by an instrument known as a power of attorney.”*

7.90 In this matter, the contract of sale which is at pages 1-7 of Handsom Investment Limited’s bundle of documents read in part as follows:

*“THIS AGREEMENT is made and entered on the 3<sup>rd</sup> Day of August, 2021 between ACK General Suppliers Limited a company incorporated in Lusaka and having its’ registered office at Lusaka in the Lusaka Province of the Republic of Zambia of the one part by Power of Attorney of DONNGUAN BAICHANG TRADING CO LIMITED dated 21<sup>st</sup> June, 2021 (herein after referred to as the seller) and Handsom Investment Limited, a company incorporated in Lusaka and having its’ registered office at Kaoma in the Lusaka Province of the*

***Republic of Zambia (hereinafter referred to as the buyer)***

**RECITALS**

***A. The seller is an agent of Donnguan Baichang Trading Co Limited engaged in the business of buying and selling timber and desires to supply timber hereinafter described as the seller;***

***B. The buyer desires to buy five (5) containers of the timber described below.....***

***.....***

***6. Payments***

***The parties agree that the purchase price shall be at a rate of Twenty-Seven Thousand Five Hundred and Four United States Dollars (US\$27, 504) per forty feet container bringing the total purchase price to US\$137, 520.00...”***

7.91 From the above, it is noteworthy that the contract provided that ACK General Suppliers Limited was selling Handsom Investment Limited five (5) containers of Mukula timber as an agent for Donnguan Baichang Co Limited, by virtue of the Special Power of Attorney, which is at pages 5-6 of ACK General Suppliers Limited and ACK Logistics Limited's bundle of documents.

7.92 The provisions of that Power of Attorney have been recited in paragraph 7.70 above. It is clear from that Power of Attorney, that ACK General Suppliers Limited only had authority

under the Power of Attorney to do the acts specified therein, as agent for Dongguan Baichang Co Limited, in relation to the purchase of Mukula timber from the Zambia Forestry and Forest Industries Corporation Plc (ZAFFICO).

- 7.93 There is nothing on the record to show that the Special Power of Attorney was revised to include powers in relation to other parties. Further, there is nothing in the evidence to show that Dongguan Baichang Co Limited ratified the act by ACK General Suppliers Limited of entering into a contract with Handsom Investment Limited to sell Handsom Investment Limited the five (5) containers of Mukula timber, as it was not a power that was conferred on ACK General Suppliers Limited.
- 7.94 It will be noted that Gammariel Lungu in his testimony, told the Court that he did not have sight of the Power of Attorney that ACK General Suppliers Limited acted on, in entering into the contract with Handsom Investment Limited for the sale of five (5) containers of Mukula timber.
- 7.95 Thus, Handsom Investment Limited relied on the oral representation that was made by Ackson Tembo as regards what powers ACK General Suppliers Limited had under the special Power of Attorney that was granted by Dongguan Baichang Co Limited.
- 7.96 It turns out, as has been seen from the provisions of the said Special Power of Attorney, that the powers that ACK General Suppliers Limited had were only limited to buying Mukula timber from the Zambia Forestry and Forest Industries

Corporation Plc (ZAFFICO) and exercising the acts specified therein in relation to that power.

- 7.97 That being the position, it follows that ACK General Suppliers Limited acted outside the scope of its' powers under the Special Power of Attorney, when it sold the Mukula timber to Handsom Investment Limited, and I so find.
- 7.98 The authorities that have been cited state that where an agent acts outside the scope of their authority, they are personally liable.
- 7.99 In this matter, the evidence shows that Handsom Investment Limited paid the sum of US\$20, 000.00 to ACK General Suppliers Limited through the bank account for ACK Logistics Limited.
- 7.100 ACK General Suppliers Limited did not in its' pleadings or even its' testimony, state that it paid that amount to Dongguan Baichang Co Limited. It admitted having withdrawn the money once it was paid into the account for ACK Logistics Limited.
- 7.101 Therefore, other than acting outside the scope of its' powers under the Special Power of Attorney, ACK General Suppliers Limited kept the money that it obtained from Handsom Investment Limited pursuant to the contract of sale of Mukula timber, which contract was not valid, as ACK General Suppliers Limited could not bind Dongguan Baichang Co Limited under such a contract, as it was outside the scope of its' authority.

- 7.102 Coming to the other payments that Handsom Investment Limited alleges that it made in pursuance of the contract of sale to ACK General Suppliers Limited, Gammariel Lungu in paragraph 9 of his witness statement, testified that US\$95, 520.00 was paid to ACK General Suppliers Limited in cash, and that it was agreed that the balance would be paid on completion, that is when the Mukula timber was in the possession of Handsom Investment Limited at Walvis Bay so that it could be shipped to the clients in China.
- 7.103 He further testified in paragraph 14 of his witness statement, that after the trucks were loaded and ACK General Suppliers Limited took charge of the trucks, it requested for the payment of US\$22, 000.00 which was paid in cash to Ackson Tembo.
- 7.104 In defence, ACK General Suppliers Limited stated that it was only paid US\$20, 000.00 by electronic transfer into ACK Logistics Limited's account. It denied having been paid any payments in cash by Handsom Investment Limited.
- 7.105 Further observation will be made that Handsom Investment Limited in its' amended statement of claim in paragraph 8 stated that it paid ACK General Suppliers Limited US\$20, 000.00 by electronic bank transfer, US\$95, 520.00 by cash, and in paragraph 10 the US\$22, 000.00 also in cash.
- 7.106 In defence to those assertions, ACK General Suppliers Limited admitted the averments in paragraph 8 of the amended statement of claim, but it denied the contents of paragraph 10 of the amended statement of claim.

- 7.107 While ACK General Suppliers Limited denied having been paid the US\$22, 000.00 in its' defence, it did not cross examine Gammariel Lungu on the assertion that it was in fact paid in cash, the US\$22, 000.00. Therefore, it did not raise any doubt on the contention as made in relation to that payment.
- 7.108 Further, by its' own defence, ACK General Suppliers Limited admitted having been paid the US\$20, 000.00 by electronic transfer and US\$95, 520.00 in cash.
- 7.109 Therefore, even though there is no documentary evidence to show payment of the sum of US\$22, 000.00 to ACK General Suppliers Limited in cash, the oral testimony regarding payment having been made as alleged went unchallenged.
- 7.110 Thus, it is more probable than not, that the US\$22, 000.00 was paid in cash to ACK General Suppliers Limited just like the US\$95, 520.00, after the initial US\$20, 000.00 was paid into ACK Logistics Limited's account, which ACK General Suppliers Limited withdrew.
- 7.111 I therefore find that the sum of US\$137, 520.00 was paid to ACK General Suppliers Limited by Handsom Investment Limited for the purchase of five (5) containers of Mukula timber under a contract that was not valid as ACK General Suppliers Limited had no authority to bind Dongguan Baichang Co Limited under the contract.
- 7.112 ***Chitty on Contracts, Volume 1 General Principles, 33<sup>rd</sup> Edition, Sweet and Maxwell Thomas Reuters, 2018 in paragraph 29-002 at page 2114*** states that:

*“The obligation to make restitution can arise in a wide variety of situations, but their common framework is that they involve a special relationship between two persons, where the law imposes a duty on one person to pay a sum of money or exceptionally, to deliver specific property to another or hold property for another. This relationship is based either upon the involuntariness of an initial payment of money, transfer of property or the provision of a service... Indeed, the law of restitution is subordinate to the law of contract in that if a contractual relationship subsists between the parties, the contractual regime will prevail. Restitutionary liability, although like tortious liability, in that it is imposed upon the defendant by operation of the law, differs from such liability, in that it need not be founded on the commission of any wrong doing, although as will be seen, such remedies are sometimes available where a defendant has profited from the commission of a tort.”*

7.113 Then in *paragraph 29-003 at page 2115*, the learned authors state that:

*“The common law has not been alone in providing restitutionary remedies. Equity independently developed some principles which are aimed at the same result of giving up to the claimant benefits*

*obtained. In equity, such restitutionary remedies may involve restoring the value to the claimant or the return of property obtained or its' traceable substitute. In equity, restitutionary principles have been influential in a number of ways. First in the constructive trust, whereby the defendant is deemed to be the trustee of the property for the claimant by operation of the law, so that the claimant as beneficiary is able to recover what is due to him.*

*Secondly, the better developed rules of tracing in equity enable the claimant to recover the property or its' substitute from the defendant despite being mixed with other property. Thirdly, there is the equitable remedy of an account of profits which involves the return of the value to the claimant when the defendant had profited from the commission of an equitable wrong. Fourthly, the equitable doctrine of acquiescence has enabled relief to be given to a person who has expended money on the property of another. Fifthly, the equitable concept of unconscionability has proved important in the development of certain grounds of unjust enrichment."*

7.114 In view of the above as retaining the funds that were paid to ACK General Suppliers Limited under the invalid contract would be unjust enrichment, I accordingly enter Judgment

in favour of Handsom Investment Limited against ACK General Suppliers Limited for the sum of US\$137, 520.00 with interest thereon at the rate at which the dollar can be borrowed from the date of issue of the Writ of Summons until payment.

**CLAIM FOR PAYMENT OF DAMAGES FOR BREACH OF CONTRACT AND DAMAGES FOR LOSS OF BUSINESS OPPORTUNITY**

7.115 As regards these claims, Handsom Investment Limited referred to the definition of breach of contract as stated in *Black's Law Dictionary 8<sup>th</sup> Edition by Bryan A. Garner Thomson Reuters, 2004* at pages 199-200 which is:

*“The violation of contractual obligations by failing to perform ones promise by repudiating it or by interfering with another’s performance. Every breach of contract gives rise to a claim for damages and may give rise to other remedies.”*

7.116 It was stated that ACK General Suppliers Limited, Dongguan Baichang Co Limited and ACK Logistics Limited failed to honour their obligations under the contract, by delivering the timber, which Handsom Investment Limited paid for.

7.117 Therefore, Handsom Investment Limited should be awarded the damages, and special damages as it failed to meet its’ obligations to sell the Mukula timber in China to its’ clients.

7.118 Reliance was placed on **Sections 51 and 54 of the Sale of Goods Act 1893** on the neglect or refusal to deliver goods

whose measure of damages, is the estimated loss directly and naturally resulting in the ordinary course of events from the seller's breach.

7.119 Further reliance was placed on the case of ***Monarch Steamship Company Limited v Karishaamns Olhefabriker and others*** (3).

7.120 I have found that the contract that was executed between ACK General Suppliers Limited and Handsom Investment Limited was not a valid contract. As such there can be no damages for breach of contract.

7.121 With regard to the damages for loss of business opportunity, other than allege that Handsom Investment Limited had clients in China which it wanted to sell the Mukula timber to, that it contracted to buy from ACK General Suppliers Limited, no evidence of such clients was tendered or indeed the amounts for which they had contracted to buy the Mukula timber at from Handsom Investment Limited.

7.122 Like I have said, the contract with ACK General Suppliers Limited was not a valid contract and payment of damages for loss of business opportunity cannot consequently arise.

7.123 I have however ordered repayment of the sum of US\$137,520.00 with interest thereon at the rate at which the dollar can be borrowed from the date of issue of the Writ of Summons until payment by ACK General Suppliers Limited to Handsom Investment Limited as retaining the said funds would be unjust enrichment.

**CLAIM FOR THE PAYMENT OF SPECIAL DAMAGES  
UNDER PARAGRAPH 10 OF THE STATEMENT OF CLAIM**

7.124 In respect of the special damages that are claimed, authority was sought from the case of *Attorney General v D.G Mpundu* <sup>(5)</sup> and *Anna Anthony Mross v BHM Enterprises Limited* <sup>(11)</sup>.

7.125 *Black's Law Dictionary by Bryan A. Garner, 9th Edition, Thomas Reuters, 2009* at page 448 defines *special damages* as:

***“Damages that are alleged to have been sustained in the circumstances of a particular wrong. • To be awardable, special damages must be specifically claimed and proved.”***

7.126 The holding by the Supreme Court in the case of *The Attorney-General v D.G. Mpundu* <sup>(5)</sup> was:

***“If a plaintiff has suffered damage of a kind which is not the necessary and immediate consequence of a wrongful act, he must warn the defendant in the pleadings that the compensation claimed would extend to this special damage, thereby showing the defendant, the case he has to meet.”***

7.127 It was further stated in that case that:

***“Special damages,' on the other hand, are such as the law will not infer from the nature of the act. They do not follow in ordinary course. They are exceptional their character and therefore, they must be claimed specially and proved strictly.”***

7.128 The Supreme Court in the case of *Madison General Insurance Company Limited v Avril Cornhill and Michael Kakoma* <sup>(10)</sup> had this to say as regards proof of special damages:

*“A claim for special damages such as loss of use must be proved through cogent evidence. This has been the consistent position of the law as restated in cases such as Zulu v. Avondale Housing Project. In Mhango v. Ngulube, we stated the position thus:*

*“It is, of course, for any party claiming a special loss to prove that loss and to do so with evidence which makes it possible for the court to determine the value of the loss with a fair amount of certainty.”*

*Later in the same judgment we observed and stated as follows:*

*“The result is that the evidence presented to the court was unsatisfactory and, in our opinion, the learned trial judge would have been entitled either to refuse to make any award or to award a much smaller sum, if not a token amount in order to remind litigants that it is not part of the judge’s duty to establish for them what their loss is.”*

*Special damages for financial outlay or loss in terms of earnings or profits are awarded on one basic principle — the imperative to properly plead,*

*particularise and prove damages. And this is universal. It even applies where, as in this case, the loss is allegedly on-going.*

....

*The point is that special damages are damages that have already crystallised before the matter is dealt with in court, and the claimant of such damages must be able to prove such damages strictly. This does not mean that such damages must be proved beyond reasonable doubt. The usual standard of proof applicable in civil matters, that is to say, on a preponderance of evidence, applies. What the requirement does mean though is that special damages cannot be presumed as may be the case with general damages.”*

7.129 In this matter, the averment in paragraph 10 of the statement of claim which is the basis upon which the special damages are claimed, is that the balance of US\$22, 000.00 was paid to ACK General Suppliers Limited in cash.

7.130 I have already awarded Handsom Investment Limited that sum of money as part of the US\$137, 520.00 Judgment sum. Therefore, it cannot be awarded as special damages. The claim for payment of special damages as pleaded in paragraph 10 of the amended statement of claim fails, and it is dismissed.

**8. CONCLUSION**

- 8.1 Handsom Investment Limited having succeeded on the claim for payment of US\$137, 520.00 with interest thereon, it is awarded costs against ACK General Suppliers Limited, which shall be taxed in default of agreement.
- 8.2 Leave to appeal is granted.

**DATED AT LUSAKA THE 30<sup>th</sup> DAY OF OCTOBER, 2025**

*ofaunds*  

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**S. KAUNDA NEWA  
HIGH COURT JUDGE**

