

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

2023/HP/1380



BETWEEN:

IN THE MATTER OF:

**AN ARBITRATION PURSUANT TO
THE ARBITRATION ACT NO. 19 OF
2000 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF:

**A DISPUTE IN RESPECT OF A
PROJECT FINANCING
AGREEMENT DATED 7TH OF JULY,
2016**

AND

IN THE MATTER OF:

**SECTION 18 AND 20 OF THE
ARBITRATION ACT NO. 19 OF
2000 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF:

**AN APPLICATION FOR AN ORDER
REGISTERING AN ARBITRAL
AWARD DATED 31ST JULY, 2023**

BETWEEN:

LAISON PHIRI

APPLICANT

pursuant to Order 49 Rule 1 and 2 of the Rules of the Supreme Court 1999 Edition.

1.2 A brief history of the matter is that the matter was commenced by way of Originating Summons with an Affidavit in Support filed on 15th August 2023. The Applicant sought an Order for Leave to Register an Arbitral Award dated 31st July, 2023.

1.3 The Applicant in his affidavit deposed that the Arbitration Agreement was contained in a Project Financing Agreement that was entered into by both parties on 7th July, 2016 and they attended the Arbitral proceedings. An Arbitral Award was issued on 31st July, 2023, wherein the Respondent was asked to comply with the award within fourteen (14) days from the date of the award. The Respondent's Advocates were served and reminded of the orders in the Award in a letter from the Applicant dated 9th August, 2023. There was no response from the Respondent. He thus implored this Court to register the

Arbitral Award and this Court registered the Arbitral Award on 18th August, 2023.

2.0 THE APPLICANT'S AFFIDAVIT EVIDENCE

2.1 The present application is supported by an affidavit deposed by Laison Phiri, the Applicant herein. He deposed that the dispute in this matter was between him and the Respondent for the payment of USD \$127, 703.02, being the outstanding principal sum owed to him under a financing agreement dated 7th July, 2026. There was an additional payment of USD \$55, 347.11 being the agreed profits on the principal. The parties executed a Project Financing Agreement dated 7th July, 2026, and expressed their desire to resolve any disputes that would arise between them through arbitration.

2.2 The deponent averred that the Arbitral Tribunal was appointed by the Chairperson of the Chartered Institute of Arbitrators by a Letter dated 23rd May, 2023. Mrs. Dimple

Ranchhod from Messrs. Ranchhod Advocates was appointed as the sole arbitrator. Mrs. Ranchhod accepted her appointment as sole arbitrator and the preliminaries to the arbitration took off.

2.3 The Applicant maintained that the Final Arbitral Award was passed on 31st July, 2023, where the Arbitrator ordered the Respondent to pay him the sum of USD\$127, 703.02 being the balance of money outstanding on the sum advanced. This amount was inclusive of the sum of USD\$55, 347.11 being the agreed profit on the sum advanced in full and final settlement of his claim. Produced and marked "**LP1**" was a copy of the Final Arbitral Award.

2.4 The deponent revealed that a *writ of fisa* was issued following the Final Arbitral Award and upon its execution, it was discovered that the Respondent did not have any property to enforce the said execution. Produced and marked "**LP2**" was the Sheriff's Debit and Advice Note

dated 2nd January, 2014. That the Respondent had no means to settle the sums due other than by a Garnishee Order granted herein.

- 2.5 The deponent was informed and verily believed that the Garnishee of Lusaka Arcades Branch off Great East Road maintained a business account for the Respondent under Account Number 913000506796. The Deponent believed it would be just for the Applicant to be allowed to collect the money owed by the Respondent by the Garnishee until the debt owed plus interest was settled in full.

3.0 HEARING

- 3.1 At the hearing of the application, learned counsel for the Applicant Mrs. S. Mushibwe-Newa relied on the summons and affidavit in support, list of authorities and skeleton arguments filed into Court on 24th January, 2024.
- 3.2 It was submitted that the Applicant's application was premised on Order 49 Rule 1 and 2 of the Rules of the Supreme Court 1999 Edition.

3.3 Counsel submitted that the Garnishee Order would enable the enforcement of an Order or Judgment for payment of money by a Judgment Debtor to a Judgment Creditor. The enforcement was effected by ordering any person (referred to as a Garnishee) who was within the jurisdiction and was indebted to the Judgment debtor to pay the Judgment creditor the amount of any debt due or accruing to settle the Judgment order and costs of the Garnishee proceedings.

3.4 It was further submitted that the key consideration in a Garnishee application was that there must be an attachable debt which could be resorted to in order to enforce a payment and through which a relationship of creditor and debtor had assumed existence between the Judgment Debtor and the Garnishee.

3.5 Counsel placed reliance on the case of **Breza Engineering Limited v. G.M. International Limited, Konkola Copper Mines PLC**⁽¹⁾ which was illustrative and instructive on the

applicable standard for granting a Garnishee Order. In that case, it stated as follows:

“The test whether a debt is attachable is that there must be a debt of which the judgment debtor can enforce payment if he desires to”.

3.6 It was further submitted that the Respondent maintained a business account with the Garnishee for services rendered and the payment for the said services had been invoiced and was due but not settled by the Garnishee to date.

3.7 The Applicant prayed that the Court grant the Garnishee Order Nisi.

4.0 DECISION OF THE COURT

4.1 I have carefully considered the evidence adduced by the Applicant and their submissions herein.

4.2 The application for a Garnishee Order Nisi is made pursuant to **Order 49 of the Rules of the Supreme Court (White Book)**. This provision gives the Court the discretion

to order the garnishee to show cause and to attach the debt due and accruing to the Judgement debtor.

4.3 **Paragraph 49/2/3** provides that:

“In every case, the sources of the deponent's information or the grounds of his belief must be stated.”

4.4 Furthermore, **Order 49 rule 2 (d)** provides that:

“(d) Stating, where the garnishee is a deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or if it be the case that all or part of the information is not known to the deponent.”

4.5 To expound on the ***Brezer Engineering Limited*** case that has been relied on by the Applicant, it instructs that:

“In order to obtain a Garnishee Order Nisi, it is not enough for the judgment creditor to merely inform the Court that the judgment debtor is awaiting payment from the

garnishee. The test whether a debt is attachable is that there must be a debt of which the judgment debtor can enforce payment if he desires to.”

- 4.6 What is clear from the foregoing is that the test to be met before a Court can grant a Garnishee Order Nisi attaching a debt is that there is a debt due from the garnishee on which the judgment debtor can enforce payment.
- 4.7 The affidavit in support should also include the name and address of the branch at which the judgment debtor's account is believed to be held and the number of the account if the garnishee is a deposit-taking institution.
- 4.8 I have considered the evidence adduced by the judgement creditor in support of this application. I am satisfied that there is an outstanding debt in the sum of USD\$127, 703.02 being the balance of money outstanding on the sum advanced. This amount was inclusive of the sum of USD\$55, 347.11 being the agreed profit on the sum advanced.

4.9 Based on what is contained under paragraph 12 of the affidavit in support, I am also satisfied that the judgment debtor has a bank account with the Garnishee at the Lusaka Branch off Great East Road under account No. 9130005026796. Thus, since the garnishee is a bank depositing institution, there exists a creditor and debtor relationship between the judgment debtor and the garnishee.

4.10 However, I have noted that the Applicant seeks to attach money owing to the judgement debtor by the garnishee until such a time when the sum of USD \$127,703.02 and US\$ 55,347.11 plus interest would have been fully paid.

4.11 What I discern from the foregoing is that the Applicant seeks an order to attach debt which is currently due and also which will be due in future. The explanatory notes under paragraph 49/1/14 and 15 of the Rules of the Supreme Court are very clear in that if it is a deposit taking institution, the sum standing to the credit of a person in

an account is the sum that is due or accruing due to that person and therefore attachable. If a debt is not due, there is nothing to be attached.

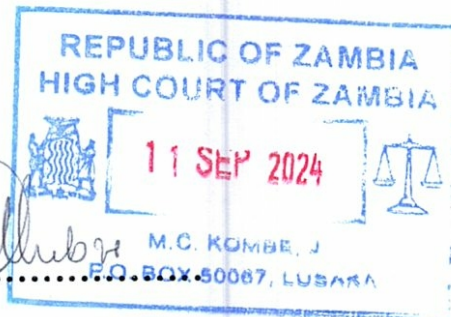
4.12 It follows from the above and I find that a garnishee order only affects debts in existence at the date of service of the garnishee order nisi.

4.13 Given the foregoing, I find that the Applicant has met the test for the attachment of debt as ordered herein. In this regard, the application for a Garnishee Order Nisi is **HEREBY ORDERED** as follows:

- (i) The sums standing to the credit of the Respondent's (judgment debtor) account number 9130005026796 held at the Garnishee Bank **STANBIC BANK (Z) LIMITED**, Lusaka Branch Off Great East Road, less the bank charges, are attached in order to satisfy the of USD \$127,703.02 and USD \$ 55,347.11 following the Final Arbitral Award passed against the Respondent on 31st July, 2023.

- (ii) It is **FURTHER ORDERED** that the named Garnishee attends Court on 8th October, 2024 at 09:45 hours on an application by the Applicant that the said Garnishee Order Nisi be made absolute.
- (iii) Costs be in the cause.

DELIVERED AT LUSAKA THIS 11TH DAY OF SEPTEMBER, 2024



M.C. KOMBE
JUDGE