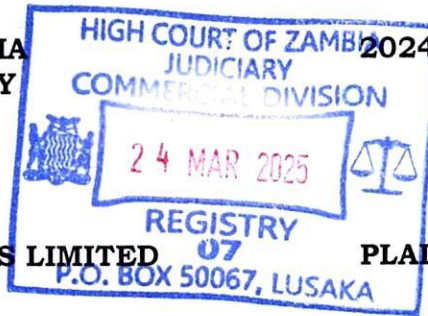


IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



BETWEEN:

SIKALE WOOD MANUFACTURERS LIMITED PLAINTIFF

AND

ACCESS BANK ZAMBIA LIMITED

DEFENDANT

Before the Honourable Mr Justice K. Chenda on 24th March 2025

For the Plaintiff : Mr J. Tembo of Linus & Partners

For the Defendant : Mr L. Phiri, Mr K. Nkunta and Mr W. Hara of August Hill & Associates

JUDGMENT

Rules of Court

- (1) The High Court Rules, under Cap. 27

Case Law

- (1) *Stanbic Bank Zambia Ltd. v A.S. & C. Enterprises Ltd. & Ors* (2008) 1ZR 259
- (2) *Richard Musenyesa v Indo Zambia Bank Limited* - Appeal 214 of 2016
- (3) *Konkola Copper Mines Plc v Mitchell Drilling International Limited and Anr.* (2015) 2 ZR 203 at p.221
- (4) *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Limited* (1942) 2 All ER 122 at page 135
- (5) *Afrope Zambia Limited v Anthony Chate & Ors* - Appeal No. 160/2013 at p.J16.

Other Texts

- (1) The Bankers Association of Zambia Code of Ethics and Banking Practice, 2020

1 INTRODUCTION AND BACKGROUND

- 1.1 This case relates to the relationship of banker and customer and in particular the aspect of closure of accounts at the instance of the customer.

1.2 The Plaintiff and the Defendant had enjoyed the relationship of corporate customer and banker incidental to the two being respectively a commercial manufacturer and commercial bank, respectively in Zambia.

1.3 The Plaintiff eventually sought to close its accounts maintained with the Defendant and differences arose with the Plaintiff suing by writ of summons and statement of claim filed on 3rd August 2024, accusing the Defendant of refusing to honour its instructions and seeking:

- (i) a declaration that the Defendant's failure and or refusal to execute the Plaintiff's instructions contained in the letter dated 18th November 2019 and the continued holding on to the Plaintiff's funds by the Defendant is unjustified and illegal;
- (ii) an order for the immediate closure of bank account 0010011550181 held with the Defendant and to transfer the funds therein in the sum of K98,845.02 to the Plaintiff's desired account as per the letter of instructions;
- (iii) an order for the immediate closure of bank account number 0330565674008 held with the Defendant and to transfer the funds therein in the sum of K249,485.03 to the Plaintiff's desired account as per the letter of instructions;
- (iv) an order for the immediate closure of bank account number 0011051550181 held with the Defendant and to transfer the funds therein to the Plaintiff's desired account as per the letter of instructions;
- (v) an order for the Defendant to render an account number of all the deductions made on the Plaintiff's account numbers 0010011550181, 0330565674008 and 0011051550181 in terms of bank charges from 18th November 2019 to the date of the Writ;

- (vi) an order for the Defendant to pay interest on the sums above at the current commercial lending rate;
- (vii) costs; and
- (viii) any other relief the Court will deem fit.

1.4 The Defendant reacted with a defence filed on 17th September 2024 cross alleging errors in the Plaintiff's initial instructions; that the Defendant actioned the Plaintiff's instructions to empty the accounts; and that the Plaintiff continued to transact on the accounts despite the closure instruction.

1.5 Pleadings closed with the Plaintiff's general reply.

2 CASE MANAGEMENT AND ISSUES

2.1 Following the close of pleadings, a scheduling conference was held on 4th October 2024 at which the following core issues were distilled for interrogation at trial:

- (i) what is the procedure for closure of bank accounts of the type maintained by the Plaintiff with the Defendant and was the procedure complied with by the Plaintiff but neglected by the Defendant;
- (ii) whether the Plaintiff acquiesced to the continued existence of the accounts in issue;
- (iii) if the preceding issues are determined in favour of the Plaintiff, did the Plaintiff suffer any injury for which the Defendant ought to atone;
- (iv) what are the current balances in the accounts pleaded in paragraph 3 of the statement of claim and has the Defendant deprived the Plaintiff of access to or use of the funds; and

- (v) ultimately, is the Plaintiff entitled to any relief against the Defendant.
- 2.2 The parties through Counsel thereafter swiftly complied with the preparatory directions and the matter was set down for trial.

3 TRIAL AND SUMMARY OF EVIDENCE

- 3.1 Trial began and concluded on 11th March 2025 in commendably streamlined and issue-based fashion.
- 3.2 Each party called one witness on relied on an agreed bundle of documents filed on 30th October 2024 reflective of the cooperation at the Bar to foster a problem-solving environment.
- 3.3 A summary of the evidence is as follows.
- 3.4 The Plaintiff called Mr. Steven Malatu (PW) an accounts assistant to testify on its behalf.
- 3.5 Mr Malatu's evidence in chief was embodied in a witness statement filed on 13th November 2024 supported by the agreed bundle of documents.
- 3.6 He stated in summary that the Plaintiff and Defendant are in a Banker and Customer relationship. The Plaintiff had three bank accounts: 0011051550181, 0010011550181, and 0330565674008. Account 0330565674008 was opened under African Banking Corporation Limited, which was later acquired by the Defendant.

- 3.7 On 18th November 2019, the Plaintiff decided to end the relationship with the Defendant and requested closure of account 0011051550181, with funds to be transferred to the Bank of China. The Defendant acknowledged the request on 21st November 2019. On the same day, the Plaintiff requested the closure of account 0330565674008, with funds to be transferred to the Bank of China. This request was also acknowledged on 21st November 2019. A follow-up letter was sent on 29th November 2019, demanding closure of account 0330565674008.
- 3.8 On 29th November 2019, the Plaintiff demanded the closure of account 0010001150181, with funds to be transferred to First National Bank Zambia Limited. This request was acknowledged on 3rd December 2019. Despite these requests, the Defendant did not act on the instructions to close the accounts.
- 3.9 On 15th February 2020, the Plaintiff requested the closure of accounts 0010011550181 and 0011051550181, with funds to be transferred to the desired accounts.
- 3.10 The Defendant acknowledged the request on 17th February 2020. However, the Defendant did not act on the instructions, allowing other clients to continue transacting on the accounts and profiting from bank charges.

3.11 In October 2022, the Defendant put account 0010011550181 on dormant status instead of closing it and transferring the balance. The Defendant continued to use the funds to its advantage. Account 0330565674008 was also put on dormant status in December 2022, with a balance of K249,485.03.

3.12 In July 2024, the Plaintiff's Finance Manager followed up on the status of the accounts. The Defendant indicated that the accounts were dormant and requested reactivation.

3.13 On 29th July 2024, the Plaintiff's Lawyers sent a letter demanding the closure of the accounts and transfer of funds within 14 days. The Defendant did not respond, leading to the matter being brought to court.

3.14 When cross examined by Mr. Nkunta, for the Defendant, Mr. Malatu testified that the Plaintiff served the Defendant with 3 initial instruction letters to transfer funds and close accounts (letters opposing at p.3, 4 and 5 bundle).

3.15 Further that on account of errors in two of the letters, the instructions were re-issued in form of the letters at p.6 and 7 bundle of documents delivered on 3rd December 2019 and 17th February 2020.

- 3.16 He testified that the statements at p.14 and 22 showed that funds on the two of the accounts were transferred to bring the balances to zero by 4th December 2019, 1st June 2020 and 29th May 2020 respectively
- 3.17 Mr. Malatu admitted when shown p.11 and 15 of the bundle of documents that the Plaintiff continued to transact on two of the accounts even after the balances were brought to zero by the Defendant.
- 3.18 He also admitted that the Plaintiff knew that the accounts had not been closed and continued to act in the ordinary course of banker customer transactions.
- 3.19 Mr. Malatu admitted that the accounts were not interested bearing accounts and that after they became dormant the Plaintiff wrote to the Defendant to reactivate them, per letter at p.9 bundle of documents.
- 3.20 He however denied that the Plaintiff's wanted the accounts to remain open but conceded that by transacting on the accounts the Plaintiff derived a benefit.
- 3.21 Mr. Malatu agreed that there was nothing on the Court record to show that after the re-issued instruction letters the Plaintiff followed up over the closure of the accounts but he believed there were same verbal communications.

3.22 Mr. Malatu acknowledged that the Plaintiff is in the writ seeking an account of all bank charges levied on the accounts but admitted that from the 3 account statements on record one could quantify the bank charges on each account.

3.23 Upon further cross examination, this time by Mr. Phiri it was Mr. Malatu's testimony that in terms of sequence of events:

- i) the Plaintiff instructed the Defendant to close the accounts;
- ii) the Plaintiff made corrections to its instructions;
- iii) the Defendant acted by transferring the funds to achieve zero balances; and
- iv) transactions then continued on the accounts, deposits by third parties, withdrawals and transfers by the Plaintiff.

3.24 He agreed that by that stage, the Plaintiff was aware that the accounts were still open and there is no record before Court of it being queried by the Plaintiff.

3.25 Mr. Malatu agreed that thereafter the accounts went into dormancy as confirmed by the Defendant's letter of 15th July 2024 at p.8 bundle of documents. He testified that the Plaintiff's response was a letter dated 20th July 2024 at p.9 bundle of documents in which it was requested to re-activate the accounts but with no complaint about them not having been closed.

- 3.26 He conceded that on 3rd August 2024 the Plaintiff sued seeking closure of the accounts relief that the funds be transferred as per Plaintiff's initial instruction letters.
- 3.27 Mr. Malatu also agreed that there was no letter from the Plaintiff changing its position of 20th July 2024 to reactivate the accounts.
- 3.28 When re-examined by Mr. Tembo, Mr. Malatu clarified that the Plaintiff wanted to reactivate the accounts to access the funds therein. Further that the Plaintiff continued transacting on the accounts because customers were paying into the accounts.
- 3.29 The Defendant opened its case with the testimony in chief of Ms. Kondwani Kahula embodied in her witness statement of 13th November 2024 supported by the agreed bundle of documents.
- 3.30 A summary of her testimony was that the Plaintiff held multiple accounts with the Defendant, including account no. 0011051550181 (Account 1), account no. 0010011550181 (Account 2), and account no. 0330565674008 (Account 3). Additionally, the Plaintiff held three other accounts with the Defendant, two of which were active and one dormant.

3.31 On 21st November 2019, the Plaintiff delivered letters dated 18th November 2019, requesting the closure of Account 1 and Account 3 and the transfer of balances to the Plaintiff's account held with Bank of China. However, the Defendant could not process the instructions due to errors in the letters, referencing First National Bank (FNB) account numbers but instructing that the funds be remitted to Bank of China.

3.32 On 3rd December 2019, the Plaintiff provided corrected instructions requesting the balance in Account 3 be transferred to the Plaintiff's desired FNB account no. 626958046776. The Plaintiff also served the Defendant with a letter requesting the balance in Account 2 be transferred to its FNB account no. 62695804677 with the sort code 260001, but this instruction could not be acted upon due to an incorrect sort code.

3.33 Corrected letters of instruction for Accounts 1 and 2 were served on 17th February 2020, requesting the balances be transferred to Account No. 62695804677, sort code 260011, and Account No. 2126800200060, sort code 190001, respectively.

3.34 Following receipt of the corrected letters, the Defendant complied with the Plaintiff's request and transferred the balances in the accounts. Account 1 was zeroed out on 1st June 2020, Account 2 on 29th May 2020, and Account 3 on 4th December 2019.

3.35 Despite the zeroing out of the accounts, the Plaintiff continued to make various debits and credits on two of the accounts. Account 1 had no further activity after being zeroed out. Account 2 saw deposits and withdrawals, including a deposit of K200,000 on 27th October 2020, and a withdrawal of K199,000 on 2nd November 2020. Account 3 saw multiple credits and debits, including a credit of K25,794 on 2nd April 2020 and a debit of K1,950,000 on 8th September 2020.

3.36 The Defendant was unable to close the Plaintiff's accounts as requested because the Plaintiff continued to actively use two of the accounts. This meant that the closure instruction became stale and could not be acted upon. The continued use of the accounts led to the accrual of bank charges.

3.37 After the Plaintiff left the accounts inactive, the Defendant informed the Plaintiff of the inactivity. On 15th July 2024, the Defendant wrote to the Plaintiff notifying it of the dormant state of the accounts and expressing a desire to continue the banking relationship. On 20th July 2024, the Plaintiff acknowledged the inactivity and requested the reactivation of the accounts.

3.38 Despite the Plaintiff's desire to continue the banking relationship, the Plaintiff disputed the accrued bank charges and demanded interest on the sums held in the accounts.

- 3.39 The Defendant refused the demand, stating that the Plaintiff was not entitled to any interest as the accounts were non-interest-bearing and the Plaintiff had access to the funds at all times.
- 3.40 When cross-examined by Mr. Tembo it was Ms. Kahula's evidence that bank charges are one of the ways in which the Defendant makes its earnings. Also that a customer has to apply in writing to open an account with the Defendant after which when open the customer banker relationship is created.
- 3.41 She testified that the relationship can be terminated by the customer at any point and if so demanded, the Defendant has to comply.
- 3.42 Ms. Kahula testified that despite the Plaintiff's letter delivered on 21st November 2019 (at p.3 bundle of documents) the account was not closed due to an error in the recipient account number. The Defendant did not respond in writing. The letter at p.4 of the bundle of documents shows that as at 21st November 2019 the Plaintiff wanted to close a second account.
- 3.43 She testified that the Defendant received a corrected letter from the Plaintiff on 3rd December 2019 (at p.6 bundle of documents) demanding immediate closure of the account but the Defendant did not do so and continued charging the Plaintiff bank charges as per statements in bundle of documents.

- 3.44 Ms. Kahula admitted that the Defendant's transferring all funds as instructed to give a zero balance was not the same as closing the accounts. Further that had the accounts been closed, the subsequent deposits would not have been credited.
- 3.45 She agreed that looking at the bank statement at p.17 bundle of documents, the only activity on the account from 31st January 2022 to 30th November 2022 was deduction of bank charges and the summary of the statement shows a credit balance of K249,485.03 as at 30th July 2024.
- 3.46 Ms. Kahula admitted that in July 2024 she signed a letter (at p.8 bundle of documents) where the Defendant gave the status of the accounts as still open but dormant.
- 3.47 She admitted that the Defendant advised the Plaintiff that the accounts needed to be reactivated for the Plaintiff to access the funds. Also that upon reactivation the Defendant would levy bank charges going back to the point of deactivation.
- 3.48 Ms. Kahula admitted that subsequent to that the Plaintiff wrote the letter at p.9 bundle of documents requesting re-activation. She admitted that the Plaintiff did not state that they wanted the relationship with the Defendant to continue.

3.49 She admitted that on 17th February 2020 per p.7 bundle of documents the Defendant received a corrected instruction letter to close a second account but did not close it but only actioned the instruction to clear funds to zero.

3.50 Ms. Kahula conceded that had the accounts been closed transactions would not have continued after clearing the funds to zero. She also conceded that had the accounts been closed they would not have gone into dormancy and there would not have been need for bank charges to reactivate them.

3.51 She agreed that one of the reasons for the demand letter from the Plaintiff's lawyers was the dispute on bank charges.

3.52 Ms. Kahula admitted that the accounts have not been closed to date.

3.53 She was not re-examined and on that note the Defendant closed its case.

4 CLOSING SUBMISSIONS

4.1 After trial, an appointment was fixed for 17th March 2025 during which Counsel addressed me *viva voce* in closing.

4.2 After further engagement with Counsel, I deferred publication of this decision to today to pave way for possible amicable resolution.

5 ANALYSIS AND FINDINGS

- 5.1 I wish to thank Counsel for rising to the occasion to prepare and advance such eloquent, well thought out and useful submissions.
- 5.2 I have closely studied the material on record, evidence and submissions. After a careful consideration thereof my decision is as follows.

The contention of the procedure for closure of bank accounts of the type maintained by the Plaintiff with the Defendant and was the procedure complied with by the Plaintiff but neglected by the Defendant

- 5.3 Neither the Plaintiff nor Defendant produced any contractual documentation said to govern their relationship of customer and banker.
- 5.4 Instead the Plaintiff drew the attention of this Court to the **Bankers Association of Zambia Code of Ethics and Banking Practice, 2020⁽¹⁾** (the “**BAZ Code**”), particularly para 14 which reads:

“14. CLOSING YOUR ACCOUNT

a) Subject to the terms and conditions of any relevant banking service and any related security, we:

• will, at your request, close an account of yours that is in credit or debit;

- *may close an account of yours that is in credit by giving you notice that is reasonable in all the relevant circumstances and paying you the amount of the credit balance or requesting you to settle the balance;*
- *will close your account at any time if it is conducted contrary to the terms and conditions of the account, in breach of applicable legislation, or in a manner likely to compromise the safety and security of our operations;*

b) Except where compelled by law or for purposes of preserving security, reasonable notice of our intention to close your account will be issued prior to effecting the closure to the last known postal address, email or phone number that you provided us.

c) We reserve the right to protect our interests should we have to act against you for defaulting/ misconduct on your account or in the event of fraud or suspected fraud on your account.”
(Emphasis added)

- 5.5 The **BAZ Code** lists the Defendant as a member of BAZ stipulates that its objective includes to ‘*define harmonised standards of best banking practice, which member banks of BAZ are expected to follow when dealing with existing and prospective customers.*’
- 5.6 The Plaintiff cited the case of **Stanbic Bank Zambia Ltd. v A.S. & C. Enterprises Ltd. & Ors.**⁽¹⁾ as authority that the Courts have recognised the **BAZ Code** as prescriptive in banking business in Zambia.
- 5.7 It follows that since there is no record of prescriptive contractual documentation to the contrary, the (corrected) letters from the Plaintiff to Defendant requesting for immediate closure of the accounts sufficed as instructions to be actioned by the Defendant.

5.8 Further, the fact that the Defendant has not closed the accounts to date amounts to non-fulfilment of the Defendant's obligation to the Plaintiff under para.14 of the **BAZ Code**.

The contention of whether the Plaintiff acquiesced to the continued existence of the accounts in issue

5.9 The Defendant drew the attention of this Court to the case of ***Richard Musenyesa v Indo Zambia Bank Limited***⁽²⁾ to buttress the point that acquiescence can be inferred from conduct.

5.10 However, the mosaic of evidence before Court portrays a different picture. Firstly, at some point the erroneous details in the instruction letters to close the accounts were corrected.

5.11 Secondly, Ms Kahula admitted that had the accounts been closed then the transactions by third parties (deposits into the accounts) would not have been processed.

5.12 Thirdly, Ms Kahula testified in cross examination that the Plaintiff's request for re-activation of the accounts was on the advice of the Defendant that it was a pre-condition for the Plaintiff to access the funds thereon.

5.13 Lastly, Ms Kahula conceded that the relevant letter at p.9 of the bundle did not state that the Plaintiff wanted to continue its relationship with the Defendant.

5.14 It follows that, on a balance of probabilities, it cannot be said the Plaintiff acquiesced to the continued existence of the accounts.

The contention of if the preceding issues are determined in favour of the Plaintiff, whether the Plaintiff suffered any injury for which the Defendant ought to atone

5.15 There is no evidence of any specific injury that the Plaintiff suffered as a result of the Defendant's lapse in actioning the instruction to close the accounts.

The contention of the current balances in the accounts and whether the Defendant has deprived the Plaintiff of access to or use of the funds

5.16 Ms Kahula admitted in cross examination that the balances were as depicted in the Defendant's letter of 15th July 2024 appearing at p.8 of the bundle which also stated that the accounts were in a dormant state. The balances shown were:

Account 1 : (USD40)
Account 2 : K98,845.02
Account 3 : K249,485.03

5.17 The paper trail shows that what followed was a letter from the Plaintiff to the Defendant on 20th July 2024 inquiring about the formalities of re-activation of the accounts (see p.9 of bundle).

5.18 Ms Kahula for her part admitted in cross examination that the Defendant had actually advised the Plaintiff that the accounts would need to be activated for the funds therein to be accessed.

5.19 There is however no evidence on record to show any official response from the Defendant to the Plaintiff's letter of 20th July 2024, nor of any follow-up attendances by the Plaintiff.

5.20 It is thus unsafe and unsound to make a finding that the Plaintiff was deprived of access to the said funds by the Defendant.

The contention of whether the Plaintiff is entitled to any relief against the Defendant

5.21 The Plaintiff is without a doubt entitled to recover its funds sitting in the accounts with the Defendant.

5.22 As for bank charges dating back to when the accounts became dormant, Ms Kahula conceded that had the accounts been closed as requested by the Plaintiff, they would not have gone into dormancy nor attracted bank charges from that point to date.

5.23 In ***Konkola Copper Mines PLC v Mitchell Drilling International Limited and Anr.***⁽³⁾ the Supreme Court endorsed the principle that a party should not be allowed to benefit from circumstances brought about by its own wrongs.

5.24 Therefore, (save for outward transaction / remittance charges) the Plaintiff's recovery of its funds cannot be subject to bank charges for the period of dormancy to date as to do so will be to allow the Defendant earn from a situation brought about by its own lapse in actioning the instruction to close the accounts.

5.25 As for interest on the monies in the accounts, Mr Malatu admitted in cross examination that the accounts were not interest bearing.

5.26 In ***Fibrosa Spoka Akcyjna v Fairbairn Lawson Combe Barbour Limited***⁽⁴⁾ Lord Wright aptly stated:

"It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep."

5.27 It follows that save for the customary interest on money judgments, to allow the Plaintiff recover extra interest on the monies would put the Plaintiff in a position above that allowed by its contractual relations with the Defendant. Such would surely be unjust enrichment and is not permissible.

6 CONCLUSION AND ORDERS

6.1 Claims a), b), c), d) in the writ of summons are successful. The Defendant is ordered to remit the credit balances on the Plaintiff's accounts (the "**judgment sum**") and to close the accounts.

- 6.2 The remittance shall be in accordance with the instruction letters on record or as modified by any updated written instruction that may be issued after this judgment and should be done within 7 days from date hereof, failing which the Plaintiff shall be entitled to levy execution. The accounts should be closed contemporaneously with the remittance.
- 6.3 Claim e) is partially successful in that save for the ordinary transaction charges, the judgment sum shall not be subjected to any bank charges dating back to when the accounts went into dormancy.
- 6.4 Claim f) is successful to the extent that the judgment sum shall bear interest at the average of the short term deposit rate prevailing per annum from date of writ to judgment and thereafter at the current lending rate determined by Bank of Zambia from date of judgment to payment.
- 6.5 The circumstances do not justify any other relief for the Plaintiff, consequently, relief h) in the writ is unsuccessful.
- 6.6 As for claim g) on costs, they are a matter of discretion for the Court in terms of Order 40 Rule 6 of the **High Court Rules**⁽¹⁾. Further, in terms of exercise of that discretion, I heed the Supreme Court's judgment in ***Afropo Zambia Limited v Anthony Chate & Ors***⁽⁵⁾.

6.7 The guidance from Wood, JS in the said authority was that a successful party should not normally be deprived of his costs unless there is something in the nature of the claim or in the conduct of the party which makes it improper for him to be awarded costs.

6.8 Given the nature and outcome of the case, complemented by the absence of any delinquent conduct on the part of the Plaintiff, I deem it fair and just to award it costs against the Defendant.

6.9 So it shall be, to be taxed in default of agreement.

Dated this 24th day of March 2025



K. CHENDA
Judge of the High Court