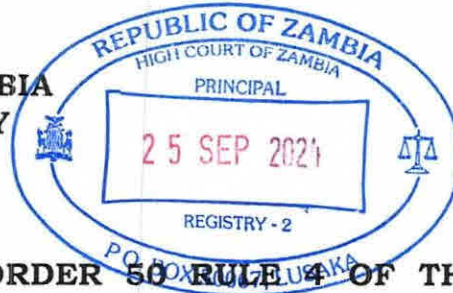


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2024/HP/0676

IN THE MATTER OF:

**ORDER 50 RULE 4 OF THE HIGH COURT
RULES CHAPTER 27 OF THE LAWS OF
ZAMBIA**

AND

IN THE MATTER OF:

**A RETAINER AGREEMENT BETWEEN FRASER
ASSOCIATES AND G4S SECURE SOLUTIONS
LIMITED**

BETWEEN:

FRASER ASSOCIATES
(Suing as a Firm)

APPLICANT

AND

G4S SECURE SOLUTIONS (ZAMBIA) LIMITED

RESPONDENT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 25th DAY OF
SEPTEMBER, 2024**

For the Applicant : Ms. C. Mwansa, Messrs Fraser Associates

For the Respondent : Ms. T. Bili and Mr. G Daka, Messrs AB & David

J U D G M E N T

CASES REFERRED TO:

1. *Indeco Estates Development Company Limited v Marshall Chambers 2002 ZMSC 14*
2. *Kenneth Kaunda and United National Independence Party v Central Chambers & 5 others SCZ Appeal No 237/2013*
3. *Martha Mushipe (T/A Mushipe & Associates and suing as Executor and Trustee of the estate of the late Funny Lungu Yolamu) v Gaudensia Rossi (Sued in his capacities as Executor and Trustee of the estate of the late Funny Lungu Yolamu Appeal No 118 of 2020)*
4. *Martha Mushipe (T/A Mushipe & Associates and suing as Executor and Trustee of the estate of the late Funny Lungu Yolamu v Gaudensia Rossi (suing as Executor and Trustee of the estate of the late Funny Lungu Yolamu) Appeal No 12 of 2022*

5. *Milimo Chooka & Associates (Suing as a Law Firm) and another v Law Association of Zambia and others [2022] ZMCC 47*

LEGISLATION REFERRED TO:

1. *The High Court Rules Chapter 27 of the Laws of Zambia*
2. *The Legal Practitioners Act, Chapter 30 of the Laws of Zambia*
3. *The Legal Practitioners Practice Rules, Statutory Instrument No 51 of 2002*

1. INTRODUCTION

1.1 The Applicant, Fraser Associates (suing as a firm) commenced these proceedings on 16th May, 2024, by Originating Summons, against G4S Secure Solutions (Zambia) Limited claiming:

1. *Taxation of Bills of Costs on an Advocate-Own Client basis in the following matters:*

- i. *G4S Secure Solutions Limited v Horizon Distributors Limited*
- ii. *G4S Secure Solutions Limited v Drake and Gorham*
- iii. *G4S Secure Solutions Limited v Inter Truck*
- iv. *G4S Secure Solutions Limited v Saturnia Regina Pension Trust Fund*
- v. *G4S Secure Solutions Limited v Fanwell Phiri*
- vi. *G4S Secure Solutions Limited v Mozambique High Commission*

2. *Costs to be borne by G4S Secure Solutions Limited.*

2. AFFIDAVIT IN SUPPORT OF THE ORIGINATING SUMMONS

2.1 In deposing to the affidavit, Fraser Chishimba, the Principal in the Firm, Fraser Associates, the Advocates for the Applicant herein, deposed that G4S Secure Solutions

(Zambia) Limited sought legal representation from Fraser Associates relating to the provision of legal services, with regard to any issues that may arise in connection with G4S Secure Solutions (Zambia) Limited's ordinary course of business in Zambia, namely but not limited to, debt collection and general litigation.

- 2.2 It was stated that in pursuance of the same, a Retainer Agreement was drafted on 23rd April, 2019, which was duly signed by both parties. Further averment was made, that the said Retainer Agreement contained the terms in relation to the legal fees that would be involved in the provision of the said legal services. Exhibited as 'FC1' was a copy of the Retainer Agreement, together with the terms of engagement.
- 2.3 It was also deposed that in furtherance of the Retainer Agreement, Fraser Associates provided G4S Secure Solutions (Zambia) Limited with the requisite legal services in various matters, and on each matter that Fraser Associates was instructed to have conduct over. It was stated that G4S Secure Solutions (Zambia) Limited was duly invoiced and availed with bills for the legal services which were rendered in the matters listed below:
- i. G4S Secure Solutions Limited v Horizon Distributors Limited
 - ii. G4S Secure Solutions Limited v Drake and Gorham
 - iii. G4S Secure Solutions Limited v Inter Truck
 - iv. G4S Secure Solutions Limited v Saturnia Regina Pension Trust Fund

v. G4S Secure Solutions Limited v Fanwell Phiri

vi. G4S Secure Solutions Limited v Mozambique High Commission

2.4 Still in deposing, Fraser Chishimba stated that subsequent to the legal services being rendered to G4S Secure Solutions (Zambia) Limited, Fraser Associates raised different invoices on various dates, and matters detailing the nature of the legal services which were rendered, and the bills which had accumulated thereon, which were collectively exhibited as 'FC2'.

2.5 However, G4S Secure Solutions (Zambia) Limited had disputed the said bills, and had declined to pay them.

3.AFFIDAVIT IN OPPOSITION

3.1 Wisted Zimba, the Credit and Billing Manager in G4S Secure Solutions (Zambia) Limited in opposing the Originating Summons, averred that G4S Secure Solutions (Zambia) Limited terminated the Retainer Agreement on 26th July, 2023, as shown on copies of the e-mail correspondence which was exhibited as 'WZ1'. This it was deposed, was on account of Fraser Associates overbilling and unsatisfactory service.

3.2 It was stated that in particular, Fraser Associates:

- i. Made decisions without the approval of G4S Secure Solutions (Zambia) Limited, such as, but not limited to, instituting Court proceedings against G4S Secure Solutions (Zambia) Limited's debtors;

- ii. Withholding monies due to G4S Secure Solutions (Zambia) Limited which were paid by its' debtors in Fraser Associates bank account; and
 - iii. Fraser Associates fees were above and beyond the fee structure which was stipulated in the Retainer Agreement.
- 3.3 Exhibited as 'WZ2' to 'WZ6' were copies of the email correspondence which was exchanged between Fraser Associates and G4S Secure Solutions (Zambia) Limited.
- 3.4 Wisted Zimba deposed that following the termination of the Retainer Agreement, G4S Secure Solutions (Zambia) Limited provided Fraser Associates with a time frame of more than Sixty (60) days to return all its' files which were in its' possession, and to issue final invoices.
- 3.5 He stated that the invoices that Fraser Associates issued were contrary to the fee structure which was stipulated in the Retainer Agreement. Then as shown by the letter which was exhibited as 'WZ7', and which was dated 27th November, 2023, G4S Secure Solutions (Zambia) Limited, through its' current advocates AB & David, demanded that Fraser Associates surrenders all its' files.
- 3.6 However, Fraser Associates had failed and/or neglected to do so to date. Addition was made, that efforts to resolve the matter amicably by requesting Fraser Associates to issue final invoices in accordance with the Retainer Agreement had failed, as Fraser Associates had insisted in overbilling for the services that it rendered, and it had also in addition, billed

for initiating Court proceedings without G4S Secure Solutions (Zambia) Limited's instructions.

3.7 In response to the matters which had been listed by Fraser Associates for taxation of the bills, Wisted Zimba deposed as follows:

i. **G4S Secure Solutions Limited v Horizon Distributors Limited**- Fraser Associates issued invoice number 102943 on the ground that it had received full payment directly from the debtor. However, G4S Secure Solutions (Zambia) Limited never received any update from Fraser Associates relating to this matter until the Retainer Agreement was terminated on 26th July, 2023.

Further, G4S Secure Solutions (Zambia) Limited had never received payment directly from the debtor. Therefore, no sum was due to Fraser Associates.

ii. **G4S Secure Solutions Limited v Drake and Gorham**- Fraser Associates issued invoice no 102947 for the collection of commission of a debt of ZMW4,561.61 which was paid directly to G4S Secure Solutions (Zambia) Limited and invoice number 102747 relating to reimbursement expenses.

However, G4S Secure Solutions Limited did not instruct Fraser Associates to initiate Court proceedings. Therefore, no reimbursable expenses were due to Fraser Associates, as the same was contrary to the Retainer Agreement. Further, Fraser Associates

was yet to revise the invoice for G4S Secure Solutions (Zambia) Limited's settlement.

- iii. **G4S Secure Solutions Limited v Intertruck**- Fraser Associates issued invoice no 73036 relating to collection commission on the recovery of ZMW20,272.44 which was paid directly to G4S Secure Solutions (Zambia) Limited by the debtor and invoice number 103244 relating to reimbursable expenses which were itemized on invoice number 73036 itself. However, no reimbursable expenses were due to Fraser Associates as the same was contrary to the Retainer Agreement, and Fraser Associates was yet to revise this invoice for G4S Secure Solutions (Zambia) Limited's settlement.
- iv. **G4S Secure Solutions Limited v Saturnia Regina Pension Trust Fund**- Fraser Associates issued invoice number 73464 for debt collection on the basis that G4S Secure Solutions (Zambia) Limited received full payment directly from the debtor. However, G4S Secure Solutions (Zambia) Limited had not yet received payment from the debtor, and it did not instruct Fraser Associates to initiate Court proceedings. Thus, there was no sum that was due to Fraser Associates.
- v. **G4S Secure Solutions Limited v Fanwell Phiri**- Fraser Associates issued invoice number 102942 on the ground that it issued a letter of demand and G4S

Secure Solutions (Zambia) Limited subsequently received payment directly from the debtor. However, G4S Secure Solutions (Zambia) Limited had not yet received payment from the debtor, and Fraser Associates was not instructed to initiate Court proceedings, and there no sum that was due to it.

vi. ***G4S Secure Solutions Limited v Mozambique High Commission***-Fraser Associates issued invoice number 31395 for collection charges and reimbursement expenses. However, no reimbursement expenses were due to Fraser Associates, as the same were contrary to the Retainer Agreement and Fraser Associates was yet to revise the invoice for G4S Secure Solutions (Zambia) Limited's settlement.

3.8 It was deposed that G4S Secure Solutions (Zambia) Limited had declined to settle the bills, as it had been overbilled and they were contrary to the Retainer Agreement. Further, Fraser Associates was yet to revise the disputed invoices for G4S Secure Solutions (Zambia) Limited's settlement.

4. SKELETON ARGUMENTS IN OPPOSITION

4.1 It was argued that Fraser Associates had commenced these proceedings against G4S Secure Solutions (Zambia) Limited for the taxation of the Bill of Costs on an Advocate-Own Client basis pursuant to ***Order 50 Rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia.***

4.2 The provisions of that Order were cited, and the argument was that the practice of Legal Practitioners, is governed by

the ***Legal Practitioners Act Chapter 30 of the Laws of Zambia*** and the ***Legal Practitioners Rules, Statutory Instrument No 51 of 2002***.

- 4.3 Reference was made to ***Section 83 (1) of the Legal Practitioners Act*** which provides that:

“83. (1) Every advocate may, subject to the provisions of this Act and to any rules of Court, sue for and recover his fees in respect of services rendered, but shall be subject to all such liabilities as attach by this Act or any other law, to an advocate, in whatever capacity his services may have been rendered.”

- 4.4 It was argued that pursuant to the above, a Legal Practitioner may recover fees in respect of legal services that they rendered to a client or a former client, as the case may be.
- 4.5 Further argument was made, that as evidenced by the averments in the affidavit in opposition, Fraser Associates and G4S Secure Solutions (Zambia) Limited entered into a Retainer Agreement for purposes of debt collection. It was also stated that the said Retainer Agreement was terminated subsequently, with the reasons for the same being advanced as overbilling and unsatisfactory service on Fraser Associates part, as deposed to, in the affidavit in opposition.
- 4.6 The reasons why the bills were disputed as stated in the affidavit in opposition were also repeated.

4.7 Reference was made to **Rule 17 (1) of the Legal Practitioners Practice Rules 2002** which states that:

“17. (1) A practitioner shall inform clients about charges or fees and the basis for such charges on taking instructions.”

4.8 Also referred to, was **Rule 16 (3) of the said Rules** whose provision is as follows:

“(3) A practitioner shall not offer services without instructions from a client.”

4.9 Reliance was further placed on the case of **Martha Mushipe (T/A Mushipe & Associates and suing as Executor and Trustee of the estate of the late Funny Lungu Yolamu) v Gaudensia Rossi (Sued in his capacities as Executor and Trustee of the estate of the late Funny Lungu Yolamu** ⁽³⁾, stating that the Court of Appeal in that matter, frowned upon Counsel acting without instructions and they held that:

“The appellant’s conduct clearly violated the provisions of Rules 3(2)(b) and 16(3) of the Legal Practitioner’s Rules, 2002 as it took away the entrenched right of the named executors to employ Counsel of their choice. The appellant imposed her services against the estate at a fee without receiving instruction to do so. This Court condemns such conduct by the appellant who is a seasoned and senior member of the legal

profession that upcoming lawyers look to for inspiration.”

- 4.10 Also cited, was that case of ***Milimo Chooka & Associates (Suing as a Law Firm) and another v Law Association of Zambia and others*** ⁽⁵⁾ contending that the Constitutional Court in that matter held that:

“Furthermore, that Section 83 of the Legal Practitioners Act and Rule 17 (1) of the Legal Practitioners Practice Rules Statutory Instrument No 51 of 2002 requires practitioners to sue for and recover fees for services rendered and to inform clients about the charges or fees when taking instructions.

However, that there are conditions precedent to be fulfilled before a practitioner can recover the fees as held in the case of Mushipe (T/A Mushipe and Associates and suing as Executrix and Trustee of the late Funny Lungu Yolamu) v Rossi that in the absence of express instructions, claims for legal fees in respect of services provided and actions done are not legally tenable.”

- 4.11 It was argued that Fraser Associates acted in breach of the Retainer Agreement with G4S Secure Solutions (Zambia) Limited, when it instituted Court proceedings, in the absence of instructions from G4S Secure Solutions (Zambia) Limited, and issued invoices which were over and above the fee which was stipulated in the Retainer Agreement.

4.12 Reliance was also placed on the case of *Indeco Estates Development Company Limited v Marshall Chambers* ⁽¹⁾ stating that the Supreme Court in that matter, held that:

“There was a ground of appeal complaining about the size of the bill. When Mr. Ndhlovu counsel for the lawyers pointed out that having regard to the value of the property (which was some K2 billion) the bill was well within the range of 5% to 10% scale fees fixed for conveyancing matters, Mr. Ng’onga conceded that at the very least the 5% minimum scale fee would have been payable in any event and he would have advised his clients to pay this. In truth, there is no justification for interfering with the amount of the professional bill in this case.”

4.13 It was argued that Fraser Associates was not entitled to the unpaid invoices as claimed, as they were contrary to the fee structure in the Retainer Agreement, *the Legal Practitioners Act, the High Court Act, Chapter 27 of the Laws of Zambia* and the *Legal Practitioners Rules of 2002*.

5. AFFIDAVIT IN REPLY

5.1 Fraser Chishimba in the affidavit in reply, denied that it was G4S Secure Solutions (Zambia) Limited that terminated the Retainer Agreement, contending that it was in fact Fraser Associates that terminated the same, pursuant to Clause 5.4 (b) as shown by exhibit ‘FC1’. He averred that the files that

had been listed in the affidavit in support of the Originating Summons were for matters that were never commenced in Court, as they had no cause numbers.

- 5.2 It was denied that Fraser Associates withheld any monies that were paid as alleged, and Fraser Chishimba stated that in fact, G4S Secure Solutions (Zambia) Limited received payment directly from the debtors, without informing Fraser Associates. Therefore, as a result, Fraser Associates unknowingly continued pursuing the matters in Order to recover all the amounts that were owed to G4S Secure Solutions (Zambia) Limited by its' debtors.
- 5.3 It was also Fraser Chishimba's averment, that as G4S Secure Solutions (Zambia) Limited claimed that the fees charged by Fraser Associates were above and beyond the fee structure as stipulated in the Retainer Agreement, this Court could refer the matter to taxation, as both parties had failed to come up with an agreement, as to the applicable legal fees, hence the application being made.
- 5.4 Admission was made that Fraser Associates was to return the files to G4S Secure Solutions (Zambia) Limited which were in its' possession, upon payment of all the bills which were due, as stipulated in the letter dated 20th October, 2023, which was exhibited as 'FC2'.
- 5.5 Reiteration was made, that the files which were in issue, were in relation to which proceedings were not commenced in Court. It was denied that the invoices which were sent to G4S Secure Solution (Zambia) Limited were overbilled.

- 5.6 The specific reply in relation to the said files was as follows:
- i. ***G4S Secure Solutions Limited v Horizon Distributors Limited***-Fraser Associates was entitled to expenses for pursuing the matter to the extent of having prepared a demand letter, and trying to physically locate the debtor, and it constantly asked G4S Secure Solutions (Zambia) Limited to provide the location details of the debtor, but the same were never provided.
 - ii. ***G4S Secure Solutions Limited v Drake and Gorham***-the matter was not commenced in Court, and it had no cause number. Fraser Associates prepared a Debt Settlement Agreement between G4S Secure Solutions Limited and the debtor, which was exhibited as 'FC3', together with the collection acknowledgment cheque by Stephen Zimba, as the debt was disputed. Therefore, Fraser Associates was entitled to Collection Commission and expenses which were incurred in effort of trying to recover the debt which was owed to G4S Secure Solutions (Zambia) Limited.
 - iii. ***G4S Secure Solutions Limited v Intertruck***- Fraser Associates was entitled to Collection Commission and expenses which were incurred because the debtor was equally only compelled to make payment of the debt after Fraser Associates sent a demand letter for the amount which was owed to G4S Secure Solutions

(Zambia) Limited which funds were paid directly to the said G4S Secure Solutions (Zambia) Limited.

- iv. ***G4S Secure Solutions Limited v Saturnia Regina Pension Trust Fund***- this matter was equally not commenced in Court, as it had no cause number. Fraser Associates drafted a Demand Letter as per the instructions from G4S Secure Solutions (Zambia) Limited, and it was sent to the debtor for recovery of the amount which was owed to G4S Secure Solutions (Zambia) Limited.

Therefore, Fraser Associates was entitled to recover for time spent and the expenses that it incurred in effort of trying to recover the debt which was owed to G4S Secure Solutions (Zambia) Limited.

- v. ***G4S Secure Solutions Limited v Fanwell Phiri***- this matter was also not commenced in Court, as it equally had no cause number. Fraser Associates drafted a Demand Letter as per the instructions from G4S Secure Solutions (Zambia) Limited, which was sent to the debtor to recover the amount which was owed to G4S Secure Solutions (Zambia) Limited. Fraser Associates was entitled to time spent and the expenses that it incurred in the effort of trying to recover the debt which was owed to G4S Secure Solutions (Zambia) Limited.

- vi. ***G4S Secure Solutions Limited v Mozambique High Commission***- G4S Secure Solutions (Zambia) Limited

received direct payment from the debtor without informing Fraser Associates. Fraser Associates was therefore entitled to Collection Commission in view of the fact that the debt was paid directly to G4S Secure Solutions (Zambia) Limited after a Demand Letter was sent to the Debtor on the instruction of G4S Secure Solutions (Zambia) Limited, and Fraser Associates made several follow ups, thereby expending time and incurring several expenses.

- 5.7 It was deposed that as the parties had failed to reach an agreement as to the applicable legal fees, the matter should be referred to taxation.

6. SKELETON ARGUMENTS IN REPLY

- 6.1 The provisions of **Order 30 Rule 11 (b) of the High Court Rules** were relied on authority that this Court is clothed with jurisdiction to hear the application. Argument was made, that the parties had failed to come up with a mutual agreement as to the legal fees which were applicable, and therefore the matter should be referred to taxation.
- 6.2 On the provisions of **Order 50 Rule 2 of the High Court Rules**, the case of **Kenneth Kaunda and United National Independence Party v Central Chambers & Five others** ⁽²⁾ was relied on as having stated as follows:

“The effect of the foregoing order is that before a legal practitioner can claim for legal fees he needs to render a bill to his client. Such a bill will explain the work done, the basis of the billing and

the amount to be paid as remuneration for legal services rendered.”

- 6.3 The provisions of **Order 50 Rule 3 of the High Court Rules** were also cited. It was argued that Fraser Associates incurred expenses in pursuance of the various files for purposes of debt collection, which was evidenced by the various attendances which Fraser Associates made, with a view to recovering the debts which were owed to G4S Secure Solutions (Zambia) Limited.
- 6.4 Further argument was made that upon provision of the legal services, invoices were issued and bills were sent to G4S Secure Solutions (Zambia) Limited for the services which Fraser Associates rendered, but G4S Secure Solutions (Zambia) Limited had failed and/or neglected to settle the same. Thus, the matter should be referred to taxation.

7. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR FRASER ASSOCIATES

- 7.1 In submitting, Counsel stated that reliance was placed on the affidavit which was filed in support of the application, as well as the affidavit in reply and the Skeleton Arguments in reply.

RESPONSE BY COUNSEL FOR G4S SECURE SOLUTIONS LIMITED

- 7.2 The submission in response, was that reliance was placed on the affidavit in opposition, and the List of Authorities and Skeleton Arguments in opposition. Counsel in augmenting, stated that G4S Secure Solutions (Zambia) Limited had

disputed the invoices which were issued. This Counsel contended, was on account of the fact that they were overbilled, and that Fraser Associates acted without instructions in the matters.

REPLY BY COUNSEL FOR FRASER ASSOCIATES

7.3 There was no reply.

8. DECISION OF THIS COURT

8.1 I have considered the matter. This matter was commenced pursuant to **Order 50 Rule 4 of the High Court Rules** which provides that:

“4. In case no application shall be made within one month, as in the last preceding rule provided, it shall be lawful for such reference as aforesaid to be made, either upon the application of the practitioner making the demand, or upon the application of the party to be charged, with such directions and subject to such conditions as the Court or Judge making the reference shall think proper, and the Court or a Judge may restrain such practitioner from commencing or prosecuting any suit touching such demand pending such reference, upon such terms as shall be thought proper.”

8.2 Fraser Associates argued that they had commenced these proceedings more than a month after the bills were presented to G4S Secure Solutions (Zambia) Limited. Therefore, this Court has jurisdiction to hear the matter.

- 8.3 **Order 50 Rule 2 of the High Court Rules** provides as follows, when it comes to commencement of proceedings by a Practitioner to recover legal fees from a client or a former client:

“2. No practitioner shall commence any suit for the recovery of any fees for any business done by him until the expiration of one month after he shall have delivered to the party to be charged therewith or sent by registered letter to or left for him at his office, place of business, dwelling-house or last known place of abode a bill of such fees, such bill either being signed by such practitioner (or, in the case of a partnership, by any of the partners, either in his own name or in the name of the partnership) or being enclosed in or accompanied by a letter signed in like manner referring to such bill.”

- 8.4 In interpreting that provision, the Supreme Court in the case of ***Kenneth Kaunda and United National Independence Party v Central Chambers & 5 others*** ⁽²⁾ noted that:

“As counsel for the appellants has argued, the basis upon which a legal practitioner renders a bill, is prescribed under Order 50, rule 2 of the High Court Act which states that a claim for fees should be preceded by a bill.

The effect of the foregoing order is that before a legal practitioner can claim for legal fees he needs

to render a bill to his client. Such a bill will explain the work done, the basis of the billing and the amount to be paid as remuneration for legal services rendered. Further, the legal practitioner's right to institute a claim arises only after the expiry of a month of service of the bill upon the client."

- 8.5 The affidavit evidence on record shows that Fraser Associates rendered bills to G4S Secure Solutions (Zambia) Limited. This was pursuant to a Retainer Agreement which was executed between the parties, and which was exhibited as 'FC1' to the affidavit which was filed in support of the Originating Summons.
- 8.6 It is noteworthy from that Retainer Agreement, that only a representative of G4S Secure Solutions (Zambia) Limited, Gabriella da Costa signed the said Retainer Agreement, while the representative from Fraser Associates, Oga Sitimela did not sign.
- 8.7 What is not in contention in this matter however, is that Fraser Associates started providing legal services to G4S Secure Solutions (Zambia) Limited pursuant to the said Retainer Agreement. Therefore, the parties executed the Retainer Agreement.
- 8.8 The scope of the Retainer Agreement as seen in paragraph 1. was:

"Your services shall consist in providing legal services with regard to any issues that may arise

in connection with G4S's ordinary course of business in Zambia, namely, but not limited to debt collection and general litigation."

8.9 Then in terms of the fees which were payable to Fraser Associates for the legal services that it would provide, paragraph 2 provided that:

Fees

(a) the agreed upon fees, applicable to debt collection cases already assigned to Fraser Associates as at date of this assignment and to future debt collection cases and general litigation, will be capped and consist as follows:

<i>Collection Success Fee (Before litigation)</i>	<i>10%</i>
<i>Collection Success Fee (After litigation)</i>	<i>8%</i>
<i>Disbursements (up until and Including default judgment)</i>	<i>ZMW 10, 000.00 to ZMW15, 000</i>
<i>Disbursements (up until and including trial)</i>	<i>ZMW15, 000.00 to ZMW20, 000.00</i>

(b) the above fees may not be amended or reviewed unless agreed upon by both parties and such amendment shall only be valid once it has been reduced into writing and signed by both parties.

(c) The fees applicable to matters other than debt collection shall be as provided by Statutory Instrument No 6 of 2017, Zambia.

(d) G4S shall exclusively assign the resulting litigation costs and expenses to Fraser Associates, less the above fees which shall be fully indemnified by the debtor or Defendant upon successful recovery of the debt and or successful litigation.”

8.10 The contention by G4S Secure Solutions (Zambia) Limited was that the matters which were listed in paragraph 7 of the Originating Summons were commenced in Court by Fraser Associates without instructions from it, and moreover, the fees were overbilled and were not in compliance with the Retainer Agreement.

8.11 Fraser Associates in reply contended that the matters were not commenced in Court as they had no cause numbers.

8.12 The Supreme Court in the case of *Martha Mushipe (T/A Mushipe & Associates and suing as Executor and Trustee of the estate of the late Funny Lungu Yolamu v Gaudensia Rossi (suing as Executor and Trustee of the estate of the late Funny Lungu Yolamu)* ⁽⁴⁾ stated as follows as regards reimbursement of legal practitioners:

“The entitlement to reimbursement does not include payment of the professional charges because, as counsel, the Appellant can only recover those fees incurred in services rendered pursuant to a client's instructions. In this case, no instructions were given to her and as such she cannot recover professional fees.”

8.13 They further stated that:

“Our Legal Practitioners scale of fees does not also provide for counsel recovering fees on a quantum merit basis.”

8.14 Other than alleging that proceedings in the alleged matters were commenced without instructions, G4S Secure Solutions (Zambia) Limited did not demonstrate how that was the position.

8.15 Therefore, that being the position, there is no basis upon which I can conclude that the matters listed in paragraph 7 of the affidavit filed which was filed in support of the Originating Summons were actually filed into Court. Consequently, the provisions of ***Rule 16 (3) of the Legal Practitioners Practice Rules, 2002*** do not apply.

8.16 G4S Secure Solutions (Zambia) Limited does not dispute that Fraser Associates was engaged by it, by virtue of the Retainer Agreement to among others, do debt collection on its' behalf.

8.17 In fact, with respect to the matters listed in the affidavit which was filed in support of the Originating Summons, G4S

Secure Solutions (Zambia) Limited does not dispute that those are matters that Fraser Associates provided legal services to it, in their respect.

- 8.18 The contention as regards those matters was that with regard to the matter **G4S Secure Solutions Limited v Horizon Distributors Limited** that Fraser Associates issued invoice number 102943 on the ground that G4S Secure Solutions (Zambia) Limited had received full payment directly from the debtor.
- 8.19 However, G4S Secure Solutions (Zambia) Limited never received any update from Fraser Associates relating to this matter until the Retainer Agreement was terminated on 26th July, 2023. Further, G4S Secure Solutions (Zambia) Limited had never received payment directly from the debtor. Therefore, no sum is due to Fraser Associates.
- 8.20 In reply, Fraser Associates stated that it is entitled to expenses for pursuing the matter to the extent of having prepared a demand letter, and trying to physically locate the debtor, and it constantly asked G4S Secure Solutions (Zambia) Limited to provide the location details of the debtor, but the same were never provided.
- 8.21 Then with regard to the matter **G4S Secure Solutions Limited v Drake and Gorham**, G4S Secure Solutions (Zambia) Limited contended that Fraser Associates issued invoice no 102947 for the collection of commission of a debt of ZMW4, 561.61 which was paid directly to G4S Secure

Solutions (Zambia) Limited and invoice number 102747 relating to reimbursement expenses.

- 8.22 However, G4S Secure Solutions (Zambia) Limited did not instruct Fraser Associates to initiate Court proceedings. Therefore, no reimbursable expenses are due to Fraser Associates, as the same were contrary to the retainer agreement. Further, Fraser Associates is yet to revise the invoice for G4S Secure Solutions (Zambia) Limited's settlement.
- 8.23 In reply to the averments regarding that matter, Fraser Associates stated that the matter was not commenced in Court, and it had no cause number. Fraser Associates prepared a Debt Settlement Agreement between G4S Secure Solutions Limited and the debtor, which was exhibited as 'FC3' together with the collection acknowledgment cheque by Stephen Zimba, as the debt was disputed.
- 8.24 Therefore, Fraser Associates is entitled to Collection Commission and expenses which were incurred in effort of trying to recover the debt which was owed to G4S Secure Solutions Limited.
- 8.25 Then as regard the matter **G4S Secure Solutions Limited v Intertruck**, G4S Secure Solutions (Zambia) Limited stated that Fraser Associates issued invoice no 73036 relating to collection commission on the recovery of ZMW20, 272.44 which was paid directly to G4S Secure Solutions (Zambia) Limited by the debtor, and invoice number 103244 relating

to reimbursable expenses which were itemized on invoice number 73036 itself.

- 8.26 However, no reimbursable expenses are due to Fraser Associates as the same was contrary to the Retainer Agreement and Fraser Associates was yet to revise this invoice for G4S Secure Solutions Limited's settlement.
- 8.27 The reply that Fraser Associates gave over this matter, was that it is entitled to Collection Commission and expenses which were incurred, because the debtor was equally only compelled to make payment of the debt after Fraser Associates sent a demand letter for the amount which was owed to G4S Secure Solutions (Zambia) Limited, which funds were paid directly to the said G4S Secure Solutions (Zambia) Limited.
- 8.28 Then as for the matter ***G4S Secure Solutions Limited v Saturnia Regina Pension Trust Fund*** the assertion by G4S Secure Solutions (Zambia) Limited, was that Fraser Associates issued invoice number 73464 for debt collection on the basis that G4S Secure Solutions (Zambia) Limited received full payment directly from the debtor. However, G4S Secure Solutions (Zambia) Limited had not yet received payment from the debtor, and it did not instruct Fraser Associates to initiate Court proceedings.
- 8.29 Thus, its' contention was that there is no sum that is due to Fraser Associates.
- 8.30 Fraser Associates in reply, stated that this matter was equally not commenced in Court, as it has no cause number.

The averment was that Fraser Associates drafted a Demand Letter as per the instructions from G4S Secure Solutions (Zambia) Limited, and it was sent to the debtor for recovery of the amount which was owed to G4S Secure Solutions (Zambia) Limited.

- 8.31 Therefore, Fraser Associates is entitled to recover for time spent and the expenses that it incurred in effort of trying to recover the debt which was owed to G4S Secure Solutions (Zambia) Limited.
- 8.32 Then as regards the matter, **G4S Secure Solutions Limited v Fanwell Phiri** G4S Secure Solutions (Zambia) Limited stated that Fraser Associates issued invoice number 102942 on the ground that it issued a letter of demand and G4S Secure Solutions (Zambia) Limited subsequently received payment directly from the debtor.
- 8.33 However, G4S Secure Solutions (Zambia) Limited had not yet received payment from the debtor, and Fraser Associates was not instructed to initiate Court proceedings, and there no sum that is due to it.
- 8.34 The reply that Fraser Associates gave, was that this matter was also not commenced in Court, as it equally has no cause number. Fraser Associates drafted a Demand Letter as per the instructions from G4S Secure Solutions (Zambia) Limited, which was sent to the debtor to recover the amount which was owed to G4S Secure Solutions (Zambia) Limited. Therefore, Fraser Associates is entitled to time spent and the expenses which it incurred in the effort of trying to recover

the debt which was owed to G4S Secure Solutions (Zambia) Limited.

8.35 Then in relation to the last matter, ***G4S Secure Solutions Limited v Mozambique High Commission*** the averment by G4S Secure Solutions (Zambia) Limited was that Fraser Associates issued invoice number 31395 for collection charges and reimbursement expenses. However, no reimbursement expenses are due to Fraser Associates, as the same were contrary to the Retainer Agreement and Fraser Associates is yet to revise the invoice for G4S Secure Solutions Limited's settlement.

8.36 It was Fraser Associates' reply that G4S Secure Solutions (Zambia) Limited received direct payment from the debtor without informing Fraser Associates. Fraser Associates is therefore entitled to Collection Commission, in view of the fact that the debt was paid directly to G4S Secure Solutions (Zambia) Limited after a Demand Letter was sent to the Debtor on the instruction of G4S Secure Solutions (Zambia) Limited, and Fraser Associates made several follow ups, thereby expending time and incurring several expenses.

8.37 When one peruses the Retainer Agreement, they will note that other fees payable under the Retainer Agreement were stipulated in paragraph 2, and paragraph 5.2 also provided for expenses as follows:

"Expenses

(a) Fraser Associates will not charge more than 5% of the applicable fees to cover administrative,

handling and ordinary expenses, such as mail and local communications, courier and international communication costs;

(b) Any costs and disbursements, such as notary and Court fees, taxes, charges, reasonable travel and lodging expenses etc, all duly documented and itemized will be billed separately with no mark-up.”

8.38 Exhibited as ‘FC2’ to the affidavit which was filed in support of the Originating Summons, are the various invoices and the bills which were sent to G4S Secure Solutions (Zambia) Limited with the latest being on 20th October, 2023.

8.39 The invoices and bills sent, was done pursuant to paragraph 5.3 of the Retainer Agreement which provided that:

“Invoicing and Payment

(a) Fraser Associates will submit invoices for services monthly. Invoices should be settled within 60 days from the date of issuance (or such later date as we may agree);

(b) Fraser Associates may charge interest for late payments, at the minimum rate determined by law...”

8.40 This was also in line with **Rule 17 (1) of the Legal Practitioners Practice Rules 2002** which states that a Practitioner shall inform clients about charges or fees and the basis for such charges on taking instructions.

- 8.41 Therefore, in line with the above, and the fact that G4S Secure Solutions (Zambia) Limited has not established that these matters were instituted in Court without its' authority, as the argument by Fraser Associates was that they were not, as they do even have cause numbers, having highlighted that Fraser Associates other than being entitled to fees, was also entitled to charge for expenses with interest thereon for late payments.
- 8.42 Having sent the invoices and bills to G4S Secure Solutions (Zambia) Limited, as the bills have been disputed, the proper course is to refer the matter for taxation.
- 8.43 This is also on account of the fact that there was compliance with **Order 50 Rule (2) of the High Court Rules**, which states that a legal Practitioners shall only commence proceedings for the recovery of costs against a client a month after they have sent to such client the bill for the fees.

9. CONCLUSION

- 9.1 I accordingly refer the matter to taxation of the costs, which taxation shall be done in line with the provisions of the Retainer Agreement, as the costs are for matters which are to be taxed which were not commenced in Court.

9.2 Fraser Associates having succeeded on the application, it is awarded costs, which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 25th DAY OF SEPTEMBER, 2024

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**

