

IN THE HIGH COURT FOR ZAMBIA

2022/HP/1963

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

EUPHRASIA A.P. MTONGA

PLAINTIFF

AND

TRINITY UNIVERSITY LIMITED

DEFENDANT

BEFORE HON. JUSTICE E. P. MWIKISA

For the Plaintiff: Mr. M. Mulele- Messrs G.M. Legal Practitioners

For the 1st Defendant: Mr. C. Phiri-Messrs M.C. Phiri Associates.

RULING

Cases referred to:

1. *Zambezi District Council vs. Zolick Kazanda Chanyika iii (suing in his capacity as senior chief Inshindi of the Lunda Chieftdom) Appeal No. 149 of 2018.*
2. *Father Rodgers Hansini Banda (Sued in his capacity as Secretary General of Zambia Anglican Council) vs. Dr. Simon Chisi- Appeal No. 140 of 2021.*
3. *Cosmas Mukuka vs. Jason Mwanza Selected Judgment No. 13 of 2019.*
4. *Zega Limited vs. Zambezi Airlines Limited Diamond General Insurance Limited SCZ Appeal Number 39 of 2014.*
5. *Himani Alloys Limited vs Tata Steel Limited (2011)15 SCC 27.*
6. *Finance Bank Zambia Plc vs Lamasat International Limited CAZ Appeal Number 175 of 2017.*

7. *Chazya Silwamba v Lamba Simpito (2010) ZR 475*
8. *Queens Royale International and Kennedy Mambwe vs. Alpha Commodities Limited Appeal No. 025 of 2022*
9. *Freshview Cinema's Limited vs. Manda Hill Limited Appeal No.174/2013*

Legislation referred to:

- i) *High Court Act, Chapter 27 of the Laws of Zambia*
- ii) *The Rules of the Supreme Court of England, 1999 Edition.*

Other works referred to:

- i) *Matibini on Zambian Civil Procedure: Commentary and Cases*

1. Introduction and Background.

1.1 This ruling emanates from an application dated 24th August 2023, filed by the Plaintiff against the Defendant for an order to enter judgment on admission pursuant to **Order 27 Rule 3** of the Rules of the Supreme Court of England, 1999 edition.

1.2 The Defendant filed its affidavit in opposition on 6th December 2023.

2. Affidavit in support of the application.

2.1 It was deposed by the Plaintiff herein. She stated that on 9th December 2022, she commenced an action against the Defendant seeking the following reliefs;

- 1) Payment of the sum of ZWM150,388.90 being the Plaintiff's dues accrued as salary arrears, leave days**

and gratuity in respect of the Plaintiff's employment with the Defendant for a period of 1st July 2018 to 31st July 2021;

2) Interest on the amount in (1) above;

3) Costs of the action; and

4) Any other relief the Honorable Court may deem fit.

2.2 She stated that on 9th March 2022, the Defendant wrote her a letter acknowledging that it owes her ZMW150,388.90 for a period from 1st July 2018 to 31st July 2021. A copy of the letter was exhibited and marked "EAM1".

2.3 Furthermore, she deposed that on 4th April 2022, the Defendant wrote her another letter proposing a payment of the admitted sum. The said letter was exhibited and marked "EAM2".

2.4 That the Defendant has no defence on the merits to the claim, as there is an admission on its part. Therefore, this is a proper case to order judgment on admission against the Defendant.

3. Skeleton Arguments in support of the affidavit.

3.1 In his arguments, Counsel relied on the provision of **Order 27 Rule 3** of the Rules of the Supreme Court of England, 1999 edition and fortified the interpretation of the law

abovementioned by referencing the **learned authors of** **Zambian Civi Procedure Commentary and Cases** where it was stated that;

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

3.2 To buttress further, counsel relied on the cases of **Zambezi District Council vs. Zolick Kazanda Chanyika iii (suing in his capacity as senior chief Inshindi of the Lunda Chiefdom)¹** and **Father Rodgers Hansini Banda (Sued in his capacity as Secretary General of Zambia Anglican Council) vs. Dr. Simon Chisi²** where it was stated that:

“The object of the rule is to enable a party obtain a speedy judgment where the other party has made plain admission entitling the Plaintiff to succeed and that it applies where there is a clear admission on the face which it is impossible for the party making it to succeed”.

3.3 Counsel submitted that the Defendant admitted owing the Plaintiff the sum of ZMW150,388.90, which admission was

clear, unambiguous, and unequivocal. This was revealed in the letters exhibited as “EAM1” and “EAM2”. Counsel argued that a Court cannot refuse judgment on admission where the admissions are clear.

4. Affidavit in opposition

4.1 It was deposed by Field Kasoma, the Human Resource personnel of the Defendant. He deposed that the amount claimed by the Plaintiff is incorrect. That the Defendant has made payments to the Plaintiff through her advocates since the commencement of this matter and has further proposed terms for a consent order, however, there has been no response.

4.2 It was stated that the Defendant has made payment of ZMW25,000.00 and ZMW5,000.00 on 18th October 2023, and 23rd October 2023, respectively to the Plaintiff through her advocates. Copies of the letters to the Plaintiff’s advocates enclosing the two cheques and the proposed consent order were exhibited and marked “FK1”.

4.3 He deposed that this is a matter the parties would have by now resolved instead the Plaintiff insists on proceeding with

the case in Court thereby clogging the Court with matters that can be resolved ex-curia or by consent.

5. Skeleton Arguments in support of the opposition.

5.1 Counsel argued that prior to the commencement of the proceedings herein, the Defendant was and is still attempting an ex-curia settlement. Counsel argued that exhibits "EAM1" and "EAM2" of the Plaintiff's affidavit in support of the application herein are proposals that the Defendant made to the Plaintiff to facilitate reconciliation and not an admission of indebtedness. That the Defendant did not make any unequivocal admission of indebtedness in its defence but submitted proposals for the purposes of reconciliation.

5.2 Counsel argued that at the time of filing the application herein, the Defendant had since paid to the Plaintiff the sum of ZMW30,000.00, therefore, the amount endorsed on the Plaintiff's judgment on admission is incorrect as the Defendant continues to liquidate the sum it is truly indebted to the Plaintiff which sum is a subject of reconciliation.

5.3 Furthermore, Counsel argued that this case is fit for mediation and should in fact have been commenced in the Industrial Relations Division as it is purely a labor matter. To reinforce this position, Counsel relied on the case of **Cosmas Mukuka vs. Jason Mwanza**³.

6. Hearing

6.1 The application was heard on 13th May 2025. Counsel for both the Plaintiff and Defendant were in attendance.

6.2 Counsel for the Plaintiff stated that he would rely on the affidavit and skeleton arguments filed on 24th August 2023. Counsel briefly augmented and told the Court that, the Defendant's contention that the amount claimed on the judgment on admission incorrect and misleading, as the exhibits marked "EAM1" and "EAM2" of the Plaintiff's affidavit in support clearly shows that the Defendant did admit owing the Plaintiff the sum of ZMW150,388.90 and the fact that there has been partial payment of about ZMW45,000.00 after the application was filed, does not take away the jurisdiction of this Court to enter judgment

on the entire sum. That it only stops the Plaintiff from levying execution in respect of the money already paid. Thus, it was Counsel's prayer that this Court enter judgment on the sum claimed.

6.3 Counsel for the Defendant stated that he would rely on the affidavit in opposition and skeleton arguments filed on 6th December 2023.

7. Consideration and Determination.

7.1 I have considered the evidence and submissions filed herein. This Court has been moved pursuant to **Order 27 Rule 3** of the Rules which provides as follows;

“Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may give such judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by motion or summons.”

7.2 There are two issues for determination and these are;

a) Whether exhibits “EAM1” and “EAM2” amount to an admission.

b) Whether judgment on admission should be entered on the whole amount considering the partial payments made by the Defendant.

7.3 In determining the application to enter Judgment on Admission before this Court, it is worth considering the effect of **Order 21 Rule 6** of The High Court Rules from the onset. The said Order provides as follows;

“A party may apply, on motion or summons, for cancelled judgment on admissions where admissions of facts or part of a case are made by a party to the cause or matter either by his pleadings or otherwise...”

7.4 I also refer to **Order 27 Rule 3** of the White Book which provides that:

“Where admissions of fact or of part of case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may give judgment, or make such order, on the application as it thinks fit”.

7.5 The first issue for determination is whether exhibits “EAM1” and “EAM2” amount to an admission. It is trite that the Court has the power to enter judgment on admission of facts without determining any other question between the parties. In the case of **Zega Limited vs. Zambezi Airlines**

Limited Diamond General Insurance Limited⁴, the Supreme Court cited with approval the case of **Himani Alloys Limited vs Tata Steel Limited⁵** where it was stated that;

“The court, on examination of the facts and the circumstances has to exercise its Judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the court should not be exercised to deny the valuable right of the defendant to contest the claim. In short, the discretion should be used only where there is a clear admission which can be acted upon.”

7.6 Furthermore, in the case of **Finance Bank Zambia Plc vs Lamasat International Limited⁶**, the Supreme Court stated that;

“The court has discretionary power to enter judgment on admission under Order 27 of the High Court Rules. This power is exercised in only plain cases where admission is clear and unequivocal. An admission has to be plain and obvious, on the face of it, without requiring a magnifying glass to ascertain its meaning. Admissions may be in pleadings or otherwise. A court cannot refuse to grant Judgment on admission in the face of clear admissions.”

7.7 Also in the case of **Chazyia Silwamba vs. Lamba Simpito**⁷, the Court held that it is permissible to enter judgment on admission where a party admits a fact or part of a case or where the admission is contained in a pleading or other form of communication. This is notwithstanding the fact that there may be other questions to be determined.

7.8 Similarly, in the case of **Queens Royale International and Kennedy Mambwe vs. Alpha Commodities Limited**⁸, the Court of Appeal held that;

“We are of the view that Order 21 Rule 6 of the High Court Rules and Order 27 Rule 3 of the Supreme Court Practice (White Book) are clear that an admission can be made in a letter or any other document by the parties. This may even be in default of defence. We opine that the lower Court was on firm ground when it entered judgment on admission by relying on the settlement agreement which is clear and shows that the appellant admitted their indebtedness to the respondent in an unequivocal manner”

7.9 The foregoing authorities are instructive. A Court is empowered to enter judgment on admission without waiting for the determination of other questions between the parties.

7.10 After perusing through the letters exhibited as “EAM1” and “EAM2”, I am of the considered view that the Defendant admitted to owing the Plaintiff the sum of ZMW150,388.90 in form of salary arrears, leave days and gratuity due from the 1st July 2018 to 31st July 2021. Furthermore, the Defendant was and is willing to pay the Plaintiff the said sum as it had proposed a payment plan. As guided by **Order 21 Rule 1** of the High Court Rules and **Order 27 Rule 3** of the Supreme Court Rules of England, 1999 edition, an admission can be by way of a letter or a document signed by the parties even in default of defence.

7.11 In view of the unequivocal admission made by the Defendant in the letters dated 9th March 2022, and 4th April 2022, wherein the Defendant admits owing the Plaintiff the sum of ZMW150,388.90 in form of salary arrears, leave days and gratuity due from the 1st July 2018, to 31st July 2021. I therefore arrive at the finding that the defendant has unequivocally and expressly admitted its indebtedness to the Plaintiff and this is a proper case to enter Judgment on Admission.

- 7.12 The second and last issue for determination is whether judgment on admission should be entered on the whole amount considering the partial payments made by the Defendant.
- 7.13 A careful perusal of the affidavit in opposition and the exhibits before Court, the Defendant argues that the amount claimed in the application herein is incorrect as the Defendant has made partial payments towards the debt owed to the Plaintiff. Counsel for the Plaintiff admitted that indeed there has been a partial payment of ZMW45,000.00 from the Defendant towards the debt it owes the Plaintiff.
- 7.14 In my view, this does not take away the fact that the Defendant admitted its indebtedness of the sum claimed, considering the fact that the admission was made long before the Defendant made partial payment and proposal of liquidating the debt.
- 7.15 I am fortified in this finding ably guided by the pronouncement of the Supreme Court as set out in the case of **Freshview Cinema's Limited vs. Manda Hill Limited**⁹

when it had an occasion to consider a similar application under **Order 21 of the HCR** and **Order 27 rule 3 of the RSC**, and held that;

“ ... what is paramount, in our view is that the express or implied admission is clear”

7.16 Premised on the foregoing and as rightly submitted by Mr. Mulele, Counsel for the Plaintiff, a partial payment of a debt does not take away the powers I have to enter judgment on the entire sum as it only stops the Plaintiff from levying execution in respect of the money already paid.

8. Conclusion.

8.1 In light of my being satisfied that the defendant has admitted indebtedness in the letters addressed to the Plaintiff, Judgment on admission is entered against the Defendant in the sum to be determined by the learned District Registrar in form of salary arrears, leave days and gratuity due from the 1st July 2018 to 31st July 2021. The matter is accordingly referred to the DR for assessment.

8.2 The Judgment debt shall attract interest at the average of the short-term deposit-rate per annum prevailing from the

date of commencement of this action to date of Ruling and thereafter at the Bank of Zambia short term lending rate until date of full and final settlement.

8.3 Costs are awarded to the Plaintiff, to be taxed in default of agreement.

Leave to appeal is granted

Dated at Lusaka this.....11th.....day of.....November.....2025


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ELITA PHIRI MWIKISA
HIGH COURT JUDGE