

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

2023/HP/1966

BETWEEN:

ZAMCHICK LIMITED

AND

FIRST PRINCIPLES FARMS LIMITED**PLAINTIFF****DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 13th DAY OF
NOVEMBER, 2025**

For the Plaintiff : Mr A. Tembo, Messrs Tembo Ngulube and Associates
For the Defendant : Mr James Tembo, Messrs August Hill & Associates

J U D G M E N T

CASES REFERRED TO:

1. *Salomon v Salomon* 1897 AC 22
2. *Dunlop Pneumatic Tyres Co Limited v Selfridge and Co Limited* 1915 AC 847
3. *Macaura v Northern Assurance Co Ltd* 1925 AC 619
4. *Mobil Oil (Z) Limited v Loto Petrol* 1977 ZR 336
5. *Daniel Peyala v Zambia Consolidated Copper Mines Appeal No 81/2012*
6. *Madison Investment Property Limited and Advisory Company Limited v Kanyinji Selected Judgment No 48 of 2018*

LEGISLATION REFERRED TO:

1. *The Companies Act No 10 of 2017*

OTHER WORKS REFERRED TO:

1. *Oxfords Dictionary of Law, 8th Edition, by Jonathan Law*

1. INTRODUCTION

1.1 Zamchick Limited, a company that is incorporated in Zambia, commenced this action on 6th November, 2023 by Writ of Summons which is accompanied by a statement of claim and the other requisite documents, against First Principles Farms Limited claiming:

- i. An Order for the payment of K183, 660.77 being the outstanding amount owed by First Principles Farms Limited to Zamchick Limited in respect of goods supplied to it, at its' own request;*
- ii. Interest;*
- iii. Costs;*
- iv. Any other relief that the Court may deem fit.*

2. STATEMENT OF CLAIM

2.1 Zamchick Limited stated that First Principles Farms Limited was at the material time, an outgrower for Zamchick Limited and that on 25th March, 2020, Zamchick Limited entered into an agreement with First Principles Farms Limited for the rearing of broiler chickens on an out grower basis on its' behalf.

2.2 The averment was that, it was a term of the agreement that Zamchick Limited would provide day old chicks to First Principles Farms Limited, chicken feed and vaccines, and upon the chickens being ready, Zamchick Limited would buy all the chickens.

2.3 Thus, in pursuance of the agreement, Zamchick Limited supplied First Principles Farms Limited with day old chicks,

various quantities of chicken feed as well as chicken vaccines. Then upon Zamchick Limited's final purchase of the chickens from First Principles Farms Limited, First Principles Farms Limited fell into debt of K183, 660.77 which it owed Zamchick Limited.

- 2.4 It was stated that despite several reminders to First Principles Farms Limited, it had neglected to liquidate the debt.

3. DEFENCE

- 3.1 First Principles Farms Limited in defence to the claims filed a defence on 5th December, 2023, in which it denied having been an outgrower for Zamchick Limited. The assertion that the parties entered into an agreement on 25th March, 2020 for First Principles Farms Limited to rear broiler chickens on an out grower basis for Zamchick Limited was denied.
- 3.2 The defence was that on 25th March, 2020, when the agreement was allegedly entered into, First Principles Farms Limited did not exist, as it was only incorporated on 16th July, 2020.
- 3.3 Thus, the terms of the agreement as alleged were denied and First Principles Farms Limited denied having been supplied with day old chicks, chicken feed, chicken vaccines and any inputs at all as contended.
- 3.4 Further denial was made, that Zamchick Limited purchased the chickens from First Principles Farms Limited when they were ready, and that First Principles Farms Limited fell into debt with Zamchick Limited in the amount of K183, 660.77.

3.5 The claims as made by Zamchick Limited were thus denied.

4. EVIDENCE LED AT TRIAL

4.1 At trial, Zamchick Limited called one witness while First Principles Farms Limited also called one witness.

PW1-MUYUNDA MILUPI

4.2 This witness, an Outgrowers Manager at Zamchick Limited produced his witness statement as his testimony before the Court. His evidence as contained in that witness statement, was that on 25th March, 2020, Zamchick Limited entered into an agreement with First Principles Farms Limited for First Principles Farms Limited to be rearing broiler chickens on an out grower basis on its' behalf.

4.3 He stated that the agreement was at pages 1-12 of Zamchick Limited's bundle of documents.

4.4 Further testimony was given, that the out grower agreement is and was a standard template, which was developed by Zamchick Limited, and it was given to the out grower to insert in their names. However, for reasons best known to the Managing Director for First Principles Farms Limited, the agreement was signed without stating the name for First Principles Farms Limited in full, as Jacob Lushinga signed on behalf of First Principles, as shown at pages 1 and 12 of Zamchick Limited's bundle of documents.

4.5 On the terms of the agreement, Muyunda Milupi testified that Zamchick Limited was under obligation as provided in Clause 2.1 of the agreement, to provide First Principles Limited with day old chicks, chicken feed and vaccines and

upon the chickens being ready, to buy all the chickens. Page 3 of Zamchick Limited's bundle of documents was referred to as evidence in that regards.

- 4.6 Further testimony was given, that Zamchick Limited in pursuance of the agreement, supplied First Principles Farms Limited with day old chicks, various quantities of chicken feed as well as vaccines.
- 4.7 It was also stated that from the get go, First Principles Farms Limited had been the entity that received all the inputs from Zamchick Limited at its' farm in Chibombo.
- 4.8 Muyunda Milupi testified that the transactions between Zamchick Limited and First Principles Farms Limited continued seamlessly even in July, August, September, October, November, and December 2020, as well as January, February and March, 2021 under the name First Principles Farms Limited, which was the name that was currently being used by First Principles Farms Limited.
- 4.9 He stated that the said name was shown on the statement of accounts which was at pages 13-15 of Zamchick Limited's bundle of documents.
- 4.10 Muyunda Milupi added that no one in First Principles Farms Limited raised issue with First Principles Farms Limited's name until First Principles Farms Limited defaulted.
- 4.11 He told the Court that upon Zamchick Limited's final purchase of the chickens from First Principles Farms Limited, it had made several reminders to First Principles

Farms Limited, which had neglected and failed to liquidate the same.

CROSS EXAMINATION OF MUYUNDA MILUPI

- 4.12 When cross examined, Muyunda Milupi testified that the agreement was between Zamchick Limited and First Principles. He stated that the agreement was concluded on 25th March, 2020.
- 4.13 His testimony when he was referred to pages 16-17 of First Principles Farms Limited's bundle of documents, was that it was a incorporation document for First Principles Farms Limited, with the date of incorporation indicated as 16th July, 2020.
- 4.14 Agreement was made, that the Defendant in this matter is First Principles Farms Limited, and that it was incorporated three (3) months after the agreement was entered into.
- 4.15 Muyunda Milupi testified that the agreement was between Zamchick Limited and First Principles Limited. He agreed that First Principles Farms Limited was not a party to the agreement.
- 4.16 Miyanda Milupi however denied, that by virtue of that it was not bound by the agreement. It was also his evidence that he was not aware of any agreement that First Principles Farms Limited signed ratifying the agreement as its' own.
- 4.17 Miyanda Milupi also denied that after 16th July, 2020 when First Principles Farms Limited was incorporated, no agreement was signed by Zamchick Limited with First

Principles Farms Limited. He added that he had not seen any agreement to that effect.

- 4.18 Further in cross examination, Muyunda Milupi told the Court that he had not produced a resolution that adopted the agreement which was dated 25th March, 2020. His testimony was that the document was with his lawyer and not in the bundle of documents for Zamchick Limited.
- 4.19 Muyunda Milupi stated that page 13 of Zamchick Limited's bundle of documents, was the statement of account on which the claim was based. His evidence was that the statement of account did not indicate that it was in relation to the contract between First Principles Farms Limited and Zamchick Limited.

RE-EXAMINATION OF MUYUNDA MILUPI

- 4.20 Muyunda Milupi clarified that page 13 of Zamchick Limited's bundle of documents was just inputs for First Principles Farms Limited and did not state that it was a contract.
- 4.21 He further clarified that page 1 of First Principles Farms Limited's bundle of documents was a contract between Zamchick Limited and First Principles.
- 4.22 It was also his evidence that no contract was signed after 16th July, 2020 as the contracts for Zamchick Limited ran for a year.
- 4.23 That marked the close of the case for Zamchick Limited.

DW1- JACOB LUSHINGA

- 4.24 Jacob Lushinga produced his witness statement as his evidence. In that witness statement, he gave a background

to how Zamchick Limited commenced this action and the reliefs that it seeks. He added that the claims were based on a Broiler Out Grower Agreement which was dated 25th March, 2020, which was between Zamchick Limited and First Principles Limited, and not First Principles Farms Limited.

- 4.25 He referred to pages 1-12 of First Principles Farms Limited's bundle of documents as the said contract, adding that he signed that contract in his capacity as first director for First Principles Limited at page 12, and not as director for First Principles Farms Limited.
- 4.26 Jacob Lushinga testified that as at 25th March, 2020, First Principles Farms Limited did not exist as a legal person and it was only incorporated by the Companies and Patents Registration Agency on 16th July, 2020, as evidenced at page 13 of First Principles Farms Limited's bundle of documents.
- 4.27 He stated that the incorporation was three months after the contract was executed on 25th March, 2020.
- 4.28 Jacob Lushinga testified that by virtue of that, First Principles Farms Limited was not bound by the agreement, as it was not a party to it, and at no point did it assume rights or obligations arising out of the agreement.
- 4.29 He went on to further state that at no point did First Principles Farms Limited pass a special resolution adopting the agreement.

CROSS EXAMINATION OF JACOB LUSHINGA

- 4.30 It was Jacob Lushinga's evidence in cross examination that page 1 of Zamchick Limited's bundle of documents was a Broiler Grower Agreement between Zamchick Limited and First Principles. He stated that it did not state First Principles Limited.
- 4.31 He further testified that First Principles did not receive any batch of broiler chickens from Zamchick Limited. It was his evidence that First Principles Limited received two batches of broiler chickens, the last being 36, 000 birds.
- 4.32 Jacob Lushinga also testified that First Principles owed the K183, 000.00 that was claimed, but stated that the amount was disputed.
- 4.33 He told the Court that farm workers for First Principles Limited dealt with Zamchick Limited. His testimony was that he dealt with various people among them Anthony Mwegama on the reconciliation.
- 4.34 Jacob Lushinga agreed that they applied to have the case dismissed on the basis that a wrong party had been sued. It was his evidence that the accounts for First Principles Farms Limited were only opened beyond November 2020.
- 4.35 It was agreed that Jacob Lushinga wrote emails to say that the money be paid into the account for First Principles Limited at ZANACO Acacia Park, although he could not recall the account number for that account.

- 4.36 Jacob Lushinga further testified that the contract which was before Court was the only evidence of business with Zamchick Limited by First Principles Limited.
- 4.37 As to who the shareholders for First Principles Farms Limited are, Jacob Lushinga testified that it was himself and Linda Lushinga. He also stated that himself and Linda Lushinga are the two shareholders for First Principles Limited. His position was that the two companies are separate companies.
- 4.38 Further in cross examination, Jacob Lushinga testified that he had not stated that First Principles Farms Limited did not have any dealings with Zamchick Limited, adding that it depended on what the instructions were. He stated that he would recall what the instructions were if he saw them, and why he had said that the payments should be made to First Principles Limited.
- 4.39 Jacob Lushinga also testified that it would wrong to say that he used two companies on the out grower agreement with Zamchick Limited.

RE-EXAMINATION OF JACOB LUSHINGA

- 4.40 There was no re-examination.

5. DECISION OF THIS COURT

- 5.1 I have considered the evidence and the submissions.

FACTS NOT IN DISPUTE

- 5.2 It is common cause that Zamchick Limited and a company called First Principles, entered into a Broiler Out Grower Agreement on 25th March, 2025.

- 5.3 The facts which are further not in dispute, are that Zamchick Limited sued First Principles Farms Limited pursuant to that agreement claiming payment of the sum of K183, 660.77.
- 5.4 The facts which are also not in contention, are that First Principles Farms Limited the Defendant herein, was incorporated on 16th July, 2020.

ISSUES IN DISPUTE

- 5.5 It is in dispute whether First Principles Farm Limited owes Zamchick Limited the sum of K183, 660.77 pursuant to the said Broiler Out Grower Agreement.

ANALYSIS

- 5.6 The testimony as given by Muyunda Milupi, the Outgrower Manager for Zamchick Limited was that Zamchick Limited entered into an agreement with First Principles Farms Limited on 25th March, 2020, for First Principles Farms Limited to be rearing broiler chickens on an out grower basis on its' behalf.
- 5.7 He further testified that the out grower agreement is and was a standard template which was developed by Zamchick Limited, and it was given to the out grower to insert their names in the agreement. However, for reasons best known to the Managing Director for First Principles Farms Limited, the agreement was signed without stating the name for First Principles Farms Limited in full, as Jacob Lushinga signed on behalf of First Principles.
- 5.8 Muyunda Milupi on the terms of the agreement, testified that Zamchick Limited was under obligation as provided in

Clause 2.1 of the agreement, to provide First Principles Limited with day old chicks, chicken feed and vaccines and upon the chickens being ready, to buy all the chickens.

- 5.9 It was his evidence that Zamchick Limited, in pursuance of the agreement, supplied First Principles Farms Limited with day old chicks, various quantities of chicken feed as well as vaccines.
- 5.10 Muyunda Milupi explained that from the get go, First Principles Farms Limited had been the entity that received all the inputs from Zamchick Limited at its' farm in Chibombo.
- 5.11 His testimony was that the transactions between Zamchick Limited and First Principles Farms Limited continued seamlessly even in July, August, September, October, November, and December 2020 as well as January, February and March, 2021 under the name First Principles Farms Limited which was the name that was currently being used by First Principles Farms Limited.
- 5.12 Muyunda Milupi also stated that no one in First Principles Farms Limited raised issue with First Principles Farms Limited's name until First Principles Farms Limited defaulted.
- 5.13 His evidence was that upon Zamchick Limited's final purchase of the chickens from First Principles Farms Limited, it had made several reminders to First Principles Farms Limited, which had neglected and failed to liquidate the same.

- 5.14 On the other hand, Jacob Lushinga on behalf of First Principles Farms Limited stated that Zamchick Limited and First Principles Limited entered into a Broiler Out Grower Agreement which was dated 25th March, 2020. His testimony was that he signed that contract in his capacity as first director for First Principles Limited, and not as director for First Principles Farms Limited.
- 5.15 Jacob Lushinga's evidence was also that as at 25th March, 2020, First Principles Farms Limited did not exist as a legal person, and that it was only incorporated by the Companies and Patents Registration Agency on 16th July, 2020.
- 5.16 It was further Jacob Lushinga's evidence that the incorporation was three months after the contract was executed on 25th March, 2020.
- 5.17 Thus, he took the position that by virtue of that, First Principles Farms Limited was not bound by the agreement as it was not a party to it, and at no point did it assume rights or obligations arising out of the agreement.
- 5.18 Jacob Lushinga also stated that at no point did First Principles Farms Limited pass a special resolution adopting the agreement.
- 5.19 In the submissions, Zamchick Limited stated that a valid agreement existed between Zamchick Limited and First Principles Farms Limited for the rearing of broiler chickens as evidenced by Zamchick Limited having supplied the inputs being the day old chicks, feed and vaccines to First

Principles Farms Limited, which accepted and participated in performance of the same.

- 5.20 It was submitted that **Sections 20 (1) and (2) of the Companies Act No 10 of 2017** is instructive that a person who purports to enter into a contract in the name and on behalf of a company before incorporation shall be bound by the contract and entitled to the benefits.
- 5.21 Further submission was made, that this is implied where an agreement was entered into before incorporation, and the person acting is personally liable.
- 5.22 It was also stated that **Section 20 (3) of the said Companies Act** allows for the post adoption of pre-incorporation contracts by the company within fifteen months. Thus, upon adoption, the company becomes bound as if it were a party from the outset.
- 5.23 Applying the above to this matter, submission was made that the conduct of First Principles Farms Limited following its' incorporation and continued engagement with Zamchick Limited, and acceptance of further supplies clearly pointed to adoption or ratification of the agreement, which was consistent with **Section 20 (3) of the Companies Act**, which provides for ratification or adoption either expressly or impliedly.
- 5.24 Referring to the **Oxfords Dictionary of Law, 8th Edition, by Jonathan Law** the submission was that it defines ratification as:

“The process of agreeing or confirming a specific action.”

- 5.25 It was further submitted that in legal terms, ratification involves a party such as a newly incorporated company agreeing to be bound by an action or agreement that was made on its’ behalf prior to its’ legal formation.
- 5.26 The contention was that the contract that Jacob Lushinga executed entered into with Zamchick Limited prior to First Principles Farms Limited’s incorporation, could have been voidable had the parties chosen not to act upon it. However, both parties’ continued performance by delivery and acceptance of the goods and services amounted to conduct that was consistent with intention to be bound by the terms of the original agreement.
- 5.27 As such, First Principles Farms Limited ratified the pre-incorporation contract and that this was done impliedly as could be inferred from the circumstances of the case of continuing to perform under the contract.
- 5.28 It was stated that exhibit ‘TM13’ to the affidavit which was filed in opposition to the application to dismiss the matter on points of law, was the email that Jacob Lushinga who signed the out grower agreement, wrote on 23rd January, 2024, providing details of the bank account in which the payments were to be made by Zamchick Limited, being account number 5755042500151 at ZANACO Acacia Branch.

5.29 Further submission was made, that under **Section 20 (4) of the Companies Act**, the Court is empowered to apportion liability between the company and the person who purported to act on its' behalf prior to incorporation. Therefore, should this Court find that the contract was not formally adopted, First Principles Company Limited should be held liable jointly or severally with any pre-incorporation actors.

5.30 Cited as authority in support of that position was the case of **Mobil Oil (Z) Limited v Loto Petrol** ⁽⁴⁾ stating that the Court held that:

“The court must investigate the circumstances to see whether the document came into being as a perfect agreement,…”

5.31 On the other hand, First Principles Farms Limited relied on the case of **Daniel Peyala v Zambia Consolidated Copper Mines** ⁽⁵⁾ stating that the Supreme Court in that matter, held that a contract cannot confer rights or impose obligations arising therefrom on other parties except the parties thereto, which position was buttressed in the case of **Dunlop Pneumatic Tyres Co Limited v Selfridge and Co Limited** ⁽²⁾.

5.32 It was submitted that Muyunda Milupi admitted in his testimony that First Principles Farms Limited was not a party to the Broiler Out Grower Agreement which was signed on 15th March, 2020 and that First Principles Farms Limited was only incorporated on 16th July, 2020, after the contract

was entered into, as evidenced by the documents from PACRA.

5.33 The case of ***Salomon v Salmon & Co*** ⁽¹⁾ was relied on as having held that:

“The company is at law a different person altogether from the subscribers in the memorandum; and though it may be that after incorporation the business is precisely the same as it was before, the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them.”

5.34 The cases of ***Macaura v Northern Assurance Co Ltd*** ⁽³⁾ and ***Madison Investment Property Limited and Advisory Company Limited v Kanyinji*** ⁽⁶⁾ were stated as having reiterated the principle that a company has separate legal personality from its’ shareholders.

5.35 It was stated that this principle is enshrined in **Section 16 of the Companies Act No 10 of 2017**.

5.36 The submission was that, was is in contention in this matter is whether First Principles Farms Limited ratified the contract for the Broiler Out Grower Agreement following its’ incorporation on 16th July, 2020.

5.37 The provisions of **Section 20 of the Companies Act** were cited and it was stated that in accordance with the provisions, any pre-incorporation contracts had to be ratified within fifteen months of the incorporation, which as provided

in **Section 3 of the said Act** had to be a resolution which was passed by more than half of the votes cast by the members who are entitled to vote in person or by proxy at a meeting, that is duly convened and held.

- 5.38 It was stated that from the evidence that is on record, there was nowhere where it was stated that a meeting was held to ratify the contract. Thus, the mere fact that Jacob Lushinga is a signatory for both companies, being First Principles Limited and First Principles Farms Limited, and a signatory to the agreement, did not make First Principles Farms Limited liable to Zamchick Limited on the agreement.
- 5.39 It has been seen that the contract was signed on 25th March 2020 by Zamchick Limited and First Principles. The Defendant in this matter, First Principles Farms Limited was incorporated on 16th July, 2020 as evidenced by incorporation document which is at page 13 of First Principles Farms Limited's bundle of documents.
- 5.40 At page 16 of the said bundle of documents, is an incorporation document for First Principles Limited which shows that the said company was incorporated on 9th March, 2004.
- 5.41 The entity that entered into the contract of sale with Zamchick Limited which contract is at pages 1-12 of both Zamchick Limited and First Principles Farms Limited's bundles of documents is First Principles.
- 5.42 It is trite that a company that is incorporated at law is a legal entity that is separate from its' owners.

5.43 **Section 16 of the Companies Act No 10 of 2017** in that regard provides that:

“16. A company registered in accordance with this Act, acquires a separate legal status, with the name by which it is registered, and shall continue to exist as a corporate until it is removed from the Register of Companies.”

5.44 Following from this, First Principles Farms Limited on being incorporated attained a legal status that is separate from its’ owners, and has a right to sue and to be sued in its’ own name.

5.45 As to whether it is the entity that entered into the contract with Zamchick Limited prior to its’ incorporation, and whether it did in fact ratify that contract, **Section 20 of the Companies Act** states that:

“20. (1) Where a person purports to enter into a contract not evidenced in writing in the name or on behalf of an entity before it is incorporated, that person is bound by the contract and shall incur any liability and be entitled to the benefits arising there from.

(2) Subject to this section, where a person purports to enter into a contract evidenced in writing in the name or on behalf of an entity before it is incorporated, the person shall be bound by the contract and entitled to the benefits thereof, except as provided in this section.

(3) A company may, not later than fifteen months after its incorporation, adopt the contract specified in subsection (1) and (2) by an ordinary resolution, and on the adoption, subject to subsection (4) the—

(a) company shall be bound by the contract and entitled to the benefits thereof, as if the company had been incorporated at the date of the contract and had been a party thereto; and

(b) person who purported to act in the name or on behalf of the company shall cease to be bound by the contract or entitled to the benefits thereof.

(4) Subject to subsection (5), whether or not a contract specified in subsection (3) is adopted by the company, a party to the contract, may apply to the Court for an order fixing obligations under the contract as a joint party or joint and several parties, or apportioning liability between or among the company and, the person who purported to act in the name or on behalf of the company, and on such application, the Court may make any order it considers appropriate in the circumstances.

(5) Subsection (4) shall not apply if the relevant contract expressly provides that the person who

purported to act in the name or on behalf of the company before it was incorporated shall not be bound by the contract nor entitled to the benefits thereof.”

5.46 From this, it can be seen that a company will be bound by a company a contract that it enters into prior to its' incorporation if such contract is ratified within fifteen (15) months of the company being ratified.

5.47 **Sub Rule 3 of Section 20** states that such ratification is by ordinary resolution.

5.48 **Section 3 of the Companies Act** defines ordinary resolution as:

“ordinary resolution” means a resolution passed by more than half of the votes cast by the members entitled to vote in person or by proxy at a meeting duly convened and held;”

5.49 Further observation will be made that under subsection 4 of Section 20, and which is subject to subsection (5), whether or not a contract specified in subsection (3) is adopted by the company, a party to the contract, may apply to the Court for an order fixing obligations under the contract as a joint party or joint and several parties, or apportioning liability between or among the company and, the person who purported to act in the name or on behalf of the company, and on such application, the Court may make any order it considers appropriate in the circumstances.

- 5.50 Then under **Subsection 5 of the said Section 20**, Subsection (4) shall not apply if the relevant contract expressly provides that the person who purported to act in the name or on behalf of the company before it was incorporated, shall not be bound by the contract nor entitled to the benefits thereof.
- 5.51 There is no evidence on record to show that an ordinary resolution was passed by First Principles Farms Limited which ratified the Broiler Out Grower Agreement which was signed with Zamchick Limited.
- 5.52 Further, no application was made to this Court by Zamchick Limited as a party to the contract for an order fixing obligations under the contract as a joint party or joint and several parties, or apportioning liability between or among the company and, the person who purported to act in the name or on behalf of the company.
- 5.53 It will also be seen that there was no provision in the contract stating that the person who contracted on behalf of First Principles before First Principles Farms Limited was incorporated, would not be bound by the contract or entitled to benefits thereunder.
- 5.54 In view of the fact that there is First Principles Limited and First Principles Farms Limited it is not certain which of those two companies entered into the Broiler Out Grower Agreement with Zamchick Limited on 25th March, 2020, as the entity on the said contract is indicated as First

Principles, and the person who signed the contract on behalf of First Principles was Jacob Lushinga.

- 5.55 Zamchick Limited urged this Court to infer liability on the basis of implied ratification, on the basis that the evidence on record shows that by the email which is exhibited as 'TM13' to the affidavit which was filed in opposition to the application to dismiss the matter, in that email Jacob Lushinga on 2nd November, 2020 informed Anthony Mweghama that he agreed with the figures and that the money should be paid into the account for First Principles Farms Limited at ZANACO Acacia account number 5755042500151.
- 5.56 It was further submitted that there was continued performance under the contract by First Principles Farms Limited by rearing the chickens on behalf of Zamchick Limited after receiving the inputs at its' farm in Chibombo.
- 5.57 If I were to agree that the First Principles Farms Limited was the entity that was contemplated as having entered into the Broiler Out Grower Agreement with Zamchick Limited, as at 25th March, 2025, it had not yet been incorporated, and it would have had to ratify the contract within fifteen months of its' incorporation by ordinary resolution, as provided in **Section 20 (3) of the Companies Act.**
- 5.58 There is no such evidence on record and the law in the above stated Section lays down what amounts to ratification, which has to be complied with, in order for this Court to find that

there was ratification of the pre-incorporation contract which is the subject of dispute in this matter.

5.59 Further, the fact that Jacob Lushinga who signed the Broiler Out Grower Agreement on behalf of First Principles in the email dated 2nd November, 2020 instructed Anthony Meghama, that the money should be paid into First Principles Farms Limited's account, is not sufficient evidence that First Principles Farms Limited was the party to the contract, in view of the fact that when the contract was entered into, First Principles Farms Limited had not yet been incorporated, and there is another entity First Principles Limited which was incorporated in 2004.

5.60 As such, as there is insufficient evidence to show that the First Principles as indicated on the contract dated 25th March, 2020 is First Principles Farms Limited, the entity that was incorporated on 16th July, 2020, and which would have had to ratify the agreement by ordinary resolution in order for it to have become binding on First Principles Farms Limited.

5.61 The claim that First Principles Farms Limited is the party that executed the agreement and is liable under it has not been proved on a balance of probabilities.

6. CONCLUSION

6.1 As such, it not having been found that First Principles Farms Limited was the company that was intended to be bound under the contract, the claim for the payment of K183, 660.77 with interest thereon fails with costs to First

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Principles Farms Limited which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 13th DAY OF NOVEMBER, 2025

S. Kaunda
**S. KAUNDA NEWA
HIGH COURT JUDGE**

