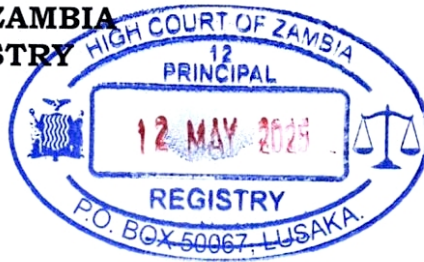


**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*



**2024/HP/0201**

**BETWEEN:**

**IN BANKRUPTCY:**

**RE JOSEPH NOMBO SIANYABO  
EX PARTE  
CHUMA NYIRENDA (A CREDITOR)**

**Before the Honourable Ms. Justice S. Chocho, in Chambers, on the 12<sup>th</sup> day  
of May, 2025.**

*For the Judgment Creditor:* Mr. B. Lusungo of Messrs Steven Osborne  
Advocates.

*For the Judgment Debtor:* Mr. M. Ntanda of Messrs Reagan Blankfein Gates  
Legal Practitioners.

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## **JUDGMENT**

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**Legislation referred to:**

- 1. Bankruptcy Act Chapter 82 of the Laws of Zambia.**
- 2. Sections 6 (1) (c) and Section 3 (1) (a) of the Bankruptcy Act.**
- 3. Order 45 of the Rules of the Supreme Court (White Book).**
- 4. Insolvency Rules 1986 (England) apply to Zambia and relies on Rule 6.21.**
- 5. Rule 6.12 of the Insolvency Rules 1986.**

**1. INTRODUCTION**

1.1. This Judgment is in respect of the Bankruptcy Order proceedings as against one Joseph Nombo Sianyabo (hereinafter referred to as Judgment Debtor). The proceedings commenced by one Chuma Nyirenda (hereinafter referred to as Judgment Creditor).

**2. BACKGROUND**

2.1. The Judgment Creditor filed Request to issue Bankruptcy Notice on Consent Judgment on February 7<sup>th</sup>, 2024. Detailing that the Judgment Debtor had defaulted on a Consent Judgment dated September 12<sup>th</sup>, 2023. The said Consent Judgment provided for the payment of Judgment Sum of ZMW 400,000.00.

- i. That the application before the Court of Appeal having been withdrawn, the Parties herein agree that Judgment be entered in favour of the Plaintiff for the sum of ZMW400,000.00.
- ii. That the Parties further agree that the Defendant shall pay the Plaintiff the Judgment sum in four equal instalments as follows;
  - a. The first instalment in sum of ZMW100,000.00 shall be paid on or before September 30<sup>th</sup>, 2023.
  - b. The second instalment in the sum of ZMW100,000.00 shall be paid on or before November 30<sup>th</sup>, 2023.
  - c. The third instalment in the sum of ZMW100,000.00 shall be paid on or before January 31<sup>st</sup>, 2024.
  - d. The fourth and final instalment in the sum of ZMW100,000.00 shall be paid on or before March 31<sup>st</sup>, 2024.

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- iii. That each party herein shall bear their own legal costs.
  - iv. That the Plaintiff shall be at liberty to levy execution should the Defendant default or fail to pay any of the instalments herein.
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- 2.2. The Bankruptcy Notice was endorsed by Court on July 19<sup>th</sup>, 2024. Order for leave to serve the Bankruptcy Notice by substituted service was endorsed on October 17<sup>th</sup>, 2024.
  - 2.3. The Judgment Creditor filed Bankruptcy Petition and Affidavit verifying truth of Statements in Creditor's Bankruptcy Petition on December 6<sup>th</sup>, 2024.
  - 2.4. The Judgment Creditor filed for leave to file application for appointment of Official Receiver as Interim Receiver, during Christmas vacation on December 13<sup>th</sup>, 2024, which application was not attended to by vacation Judge.
  - 2.5. The Judgment Debtor did on January 31<sup>st</sup>, 2025 filed a Notice of Intention to oppose Bankruptcy Petition.
  - 2.6. The Judgment Debtor filed summons for determination of matter on point of law, on February 27<sup>th</sup>, 2025. The application was withdrawn by Counsel on March 6<sup>th</sup>, 2025.
  - 2.7. The application for Bankruptcy Petition and the appointment of a Interim Receiver is the subject of this Judgment.

3. **AFFIDAVIT EVIDENCE/PLEADINGS**

- 3.1. The Judgment Creditor by Bankruptcy Petition and Affidavit verifying truth of Statement in the Petition avers that the Judgment Debtor is domiciled in the Republic of Zambia.
- 3.2. The Judgment Creditor further avers that the Judgment Debtor is truly and justly indebted in the sum of ZMW400,000.00 being amount in Consent Judgment dated September 12<sup>th</sup>, 2023.
- 3.3. The Judgment Creditor avers that neither he or anyone on his behalf hold any security on the Judgment Debtor estate/on any part thereof for payment of the Judgment Sum.
- 3.4. The Judgment Creditor avers that the Judgment Debtor within 3 months before presentation of the Petition has committed an act of Bankruptcy namely failing to comply with the requirements of Bankruptcy Notice.
- 3.5. The Judgment Creditor further avers that the Judgment Debtor has failed before November 9<sup>th</sup>, 2024 to comply with the requirements of Bankruptcy Notice duly served on him on November 1<sup>st</sup>, 2024.
- 3.6. The Judgment Debtor by Notice to Oppose Bankruptcy Petition avers that the Bankruptcy Petition is improperly before Court as the Judgment Creditor did/has neglected, failed/omitted to use other execution methods prescribed by law for recovery of a money Judgment.
- 3.7. The Judgment Debtor avers that the Judgment Creditor instituted Bankruptcy proceedings without engaging him or his advocates on record on the Consent Judgment.

- 3.8. The Judgment Debtor further avers that as a Legal Practitioner in the employ of the Government of the Republic of Zambia and receiving a regular monthly income, has capacity to settle the Judgment debt if given reasonable time. That the proceedings are unwarranted and disproportionate in the circumstances.
- 3.9. The Judgment Debtor avers that the Petition is improperly before this Court as it contravenes the provisions of the **Bankruptcy Act Chapter 82 of the Laws of Zambia**, that the Act of Bankruptcy occurred more than 3 months before the Petition was presented.

4. **TRIAL COURSE**

- 4.1. The matter was scheduled for hearing and heard on March 6<sup>th</sup>, 2025. At the hearing, the Judgment Debtor conceded that the Judgment Creditor had filed the Petition within 3 months as per law required. To this end Counsel applied to withdraw their application to raise Preliminary Issue (PI) on point of law.
- 4.2. Counsel for the Judgment Creditor relied on their documents filed being Petition, Affidavit Verifying truth of Statement of facts, Affidavit in Reply, list of authorities and skeleton arguments.
- 4.3. Counsel for the Judgment Debtor also relied on the pleadings filed being Notice to Oppose Bankruptcy Notice, the Affidavit in Opposition, List of Authorities and Skeleton Arguments. Counsel further submitted that the proceedings must fail as no prior enforcement of the Judgment was attempted by the Judgment Creditor contrary to **Order 45 Rules of the Supreme Court (White Book)**.

5. **LAW AND SUBMISSIONS**

- 5.1. The Judgment Creditor submits that he has followed or complied with the law as regards the filing of the Bankruptcy proceedings as the Judgment Debtor as committed an act of bankruptcy by failing to pay the Judgment Sum for over 12 months and failing to comply with a Bankruptcy Notice.
- 5.2. The Judgment Creditor further submits that the Bankruptcy Act is clear and does not require that a Party attempt other execution methods before the Petition. Reference was made to the following provisions;

**Sections 6 (1) (c) and Section 3 (1) (a) of the Bankruptcy Act** which provides that;

***“A Creditor shall not be entitled to present a bankruptcy petition against a debtor unless:***

***(c) The act of Bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition.”***

And that:

***“(1) A debtor commits an act of bankruptcy in each of the following cases:***

***(g) if a Creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in Zambia, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, and he does not, within seven days after service of the notice, in case***

*the service is effected in Zambia, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter – claim, set off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained.”*

- 5.3. The Judgment Creditor submits that the Petition arises from a Consent Judgment that the Judgment Debtor voluntarily signed and is well aware of the Judgment debt. That the Judgment Debtor has not paid any amount towards the Judgment debt.
- 5.4. The Judgment Creditor urges this Court to grant the Petition and appoint the Office of the Official Receiver to manage the affairs of the Judgment Debtor and order costs to the Judgment.
- 5.5. The Judgment Debtor submits that the **Insolvency Rules 1986 (England) apply to Zambia and relies on Rule 6.21** for filing his Notice of intention to oppose the Petition.

**Rule 6.12 of the Insolvency Rules 1986** provides as follows:

*“Where the debtor intends to oppose the petition, he shall not later than (5 business) days before the day fixed for the hearing.*

*(a) File in court a notice specifying the grounds on which he will object to the making of a bankruptcy order, and*

***(b) Send a copy of the notice to the petitioning creditor or his solicitor.”***

- 5.6. The Judgment Debtor further submits that the Petition and Bankruptcy proceedings have been commenced in disregard of the due process of law. He submits that the Judgment Creditor ought to have first issued execution process by Fifa and relies on **Order 45 Rules of the Supreme Court (White Book)**.
- 5.7. The Judgment Debtor submits that it would be wholly untenable to infer that he is incapable of satisfying the Judgment debt, as he is a Legal Practitioner and a Government employee.
- 5.8. The Judgment Debtor also submits on the question of Preliminary Issue which I shall not repeat as the same was withdrawn at hearing.
- 5.9. The Judgment Debtor urges the Court to dismiss the Judgment Creditor's action.

## **6. COURTS ANALYSIS AND DECISION**

- 6.1. The clear and undisputed facts in this case are as follows:
- i. That the Parties entered/signed Consent Judgment dated September 12<sup>th</sup>, 2023, wherein the Judgment Debtor was to pay the Judgment Creditor the sum of ZMW400,000.00 in four equal instalments.
  - ii. That the Judgment Debtor has failed/neglected to pay the said Judgment sum of ZMW400,000.00.
- 6.2. The disputed facts are:

- i. Whether the Judgment Creditor can issue Bankruptcy proceedings at first instance of execution of Judgment debt.
  - ii. Whether the Judgment Debtor is incapable to satisfying the Judgment debt.
  - iii. Whether the Judgment Debtor has committed an act of bankruptcy.
- 6.3. In dealing with the first question in dispute, I have reviewed the provisions of the **Bankruptcy Act Chapter 82 of the Laws of Zambia and Order 45 of the Rules of the Supreme Court (White Book)**.

The Judgment Debtor submits that **Order 45 of the Rules of the Supreme Court (White Book)** provides that a Party/Judgment Creditor must first issue execution process via Fifa before Bankruptcy proceedings. He appears to suggest that there exists some legally binding hierarchy of methods of execution of a money Judgment.

The Judgment Debtor does not specify which Rule particularly refers to this hierarchy.

**Order 45 of Rules of the Supreme Court** deals with enforcement of Judgments and Orders (General). **Order 45 Rule 1** provides as follows:

*“(1) Subject to the provisions of these rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means, that is to say –*

*a. writ of fieri facias;*

- b. garnishee proceedings;*
- c. a charging order;*
- d. the appointment of a receiver;*
- e. in a case in which rule 5 applies, an order of committal;*
- f. in such a case, writ of sequestration.*

*(2) Subject to the provisions of these rules, a judgment or order for the payment of money into Court may be enforced by one or more of the following means, that is to say –*

- a. the appointment of a receiver;*
- b. in a case in which rule 5 applies, an order of committal;*
- c. in such a case, writ of sequestration.*

*(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a Court under the Debtors Act 1869 and 1878, to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to the right of a person prosecuting a judgement or order for the payment of money to a person to apply under section 105 (1) of the County Courts Act 1984, to have the judgment or order enforced in a county Court, or to the enactments relating to bankruptcy or the winding up of companies.*

***(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.”***

6.4. It is my considered opinion that nothing under **Order 45** or its comments section, stipulates any sort of hierarchy of execution method. A Party is at liberty to decide which method of execution to adopt provided always that the rules surrounding the method decided on are strictly followed. In fact **Order 45 1/3** explains the following:

***“A judgment or order for the payment of money to a person may be enforced by any of the six methods listed in paragraph (1) which are not alternative, but cumulative remedies. On the other hand, if the judgment or order does not and as a general rule it will not, specify a time for the payment of the money to a person, the method of enforcement by way of an order of committal or writ of sequestration will not be available (subparagraphs (e) and (f).”***

6.5. I find that the Judgment Creditor is entitled to choose the methods of execution open to him as per law provides.

6.6. I will attend to the last two questions as one, as they relate to whether/not the steps/provisions of the Bankruptcy Act and Rules have been complied with by the Judgment Creditor.

**Section 3 (1) (g)** as reproduced in paragraph 5.2 above, clearly defines what amounts to an act of bankruptcy as relates to the Judgment Debtor. In casu, the Judgment Creditor has shown the existence of the circumstances pointing to an act of bankruptcy.

I find as a matter of fact that the Judgment Debtor has committed an act of bankruptcy.

The Judgment Debtor acknowledges that he was served and has the Notice of Bankruptcy. The said Notice as endorsed by this Court gave the Judgment Debtor 7 days after service to either comply with the requirements of the Notice or satisfy the Court that he has a counter claim, set off or cross demand which equals or exceeds the Judgment Sum. Failing this, the Judgment Debtor is incapable of satisfying the Judgment debt.

In the absence of proof of payment of the Judgment Sum, I am inclined to believe that the Judgment Debtor is incapable of satisfying the Judgment debt.

- 6.7. I find that the Judgment Creditor has proved his claim and shown that there is in fact need to appoint a Receiver to assist the Judgment Debtor manage his financial affairs and for realization of the Judgment Sum due to the Judgment Creditor.

7. **CONCLUSION**

- 7.1. For the foregoing reasons and on a balance of probability, I find that the Judgment Creditor's case succeeds.
- 7.2. I further Order that the Office of the Official Receiver **BE** and **IS** **APPOINTED** as Interim Receiver to manage the Judgment Debtor's affairs.
- 7.3. Costs for and incidental to these proceedings are for the Judgment Creditor to be taxed in default of agreement.

**Delivered at Lusaka on 12<sup>th</sup> May, 2025**



**S. CHOCHO  
JUDGE**

