



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

2024/HP/1563

BETWEEN:

LINDA CHIKWAKWA

PLAINTIFF

AND

ABID ALI SHAH

DEFENDANT

**Before the Honourable Lady Justice Ms. S. Chocho, on the 14th day of
January, 2026 in Chambers.**

For the Plaintiff:

Mr. C. Bwalya of Messrs Legal Aid Board.

For the Defendant:

*Mr. C. Mbanachele of Messrs Chilao, Nyirongo
Mwiinde Legal Practitioners.*

JUDGMENT

Cases referred to:

- 1. National Drug Company and Zambia Privatisation Limited vs Mary Katongo Appeal No. 79/2001.**
- 2. Finance Bank (Z) Limited and Rajan Mahtani vs Simata Simata SCZ No. 11 of 2017.**
- 3. Zambia Bata Shoe Company Limited vs Vin Mas Limited (1994) SCZ 35.**
- 4. Chibwe vs Chibwe SCZ No. 38 of 2000.**

1. INTRODUCTION

1.1. This Judgment is in respect of the Plaintiff's claims as against the Defendant. The record will show that the Plaintiff by Writ of Summons and Statement of Claim dated November 1st, 2024 claims as follows:

- i. An Order for the Defendant to render a full account of Motor Vehicles Namely Toyota Auris Chassis Number NZE 151-1051281, Toyota Auris Chassis Number NZE 151-1006845, Toyota Axio Chassis Number NZE 141-6024479, Toyota Axio Chassis Number NZE 141-6063446, Toyota Axio Chassis Number NZE 141-6181830 and Toyota Mark X Chassis Number GRX120-0006706 and further release the said Motor Vehicles to the Plaintiff forthwith herein.
- ii. Immediate change of ownership for Motor Vehicle namely Honda Vezel Registration Number BAT 6406 into the Plaintiff's name by the Defendant herein;
- iii. Any other relief the Court deems fit;
- iv. Costs of this action also claimed;

1.2. In response, the Defendant entered Appearance and filed Defence and Counter-Claim dated November 22nd, 2024. By that Defence, the Defendant denied that the sum of K600,000.00 received from the Plaintiff was for shareholding in Shah Motors Limited. The Defendant denied all of the Plaintiff's claims.

1.3. By his counter-claim the Defendant claims as follows:

- i. The Defendant, as correctly stated by the Plaintiff, indeed gave the Defendant a sum of K600,000.00 (Kwacha Six Hundred Thousand) of which the Defendant will aver at trial

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that the Plaintiff has been paid K560,000.00 in cash instalments as per attached documents. The Plaintiff collected K200,000.00 from a Ms. Mutale Mwanza, which money Ms. Mwanza owed Shah Motors Limited. The Plaintiff collected the same K200,000.00 to recover K600,000.00 given to the Defendant. The Defendant therefore does not owe the Plaintiff any monies as regards the K600,000.00. Instead, it is the Plaintiff who owes the Defendant K160,000.00. This means an overpayment, as the total money the Plaintiff received from the Defendant amounts to a sum of K760,000.00;

- ii. The Defendant contributed K439,550.00 towards the construction of 2X2 bedroomed flats and that the Plaintiff withdrew a total amount of K120,000.00 towards the same project without authorisation of the Defendant. Therefore, the Defendant claims a share in the disposable value of the same 2X2 bedroomed flats a sum of K660,000.00 totalling to K780,000.00 as the said property has a disposable market value of not less than K1,500,000.00;
- iii. The Defendant also demands a payment of K150,000.00 as his share in the household properties taken by the Plaintiff as per Local Court Order; and
- iv. The Defendant claims payment of K150,000.00 being the Defendant's share in the family car which the Plaintiff has kept to herself.

The total Counter-claim, therefore, stands at K1,240,000.00.

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- 1.4. The Plaintiff filed Reply (joining issue with the Defendant) and Defence against the Counter-Claim dated April 7th, 2025. By her Defence, the Plaintiff denies owing the Defendant any money.

2. TRIAL COURSE

- 2.1. The matter was scheduled for trial and heard on October 9th, 2025. The Parties each called one witness in aid of their case.
- 2.2. On the trial date, this Court granted the Defendant grace and deemed the witness statement and bundle of documents dated October 3rd, 2025, filed without leave of the Court. The Plaintiff did not object and placed on record their readiness to proceed with the trial despite having been served at short notice.
- 2.3. The Plaintiff's witness was the Plaintiff herself one Linda Chikwakwa.
- 2.4. PW testified in chief that she was married to the Defendant in 2018 under customary law. That they lived as husband and wife at the Plaintiff's late father's house which property did not form part of matrimonial properties.
- 2.5. PW testified that during the subsistence of the marriage, she invested money from her businesses and her share from her father's estate in the Defendant's company – Shah Motors Limited.
- 2.6. PW further testified that the monies were advanced to the Defendant on understanding that he would buy motor vehicles on her behalf and sell them, after which he would give PW the ample amount and profit. This understanding/arrangement started in 2018 and continued through the subsistence of the marriage.

- 2.7. PW testified that in December, 2022, the Defendant informed her that he had bought stock from Captain Traders J. P, which included her cars. Referred the Court to pages 13, 15 to 23 of the Plaintiff's bundle of documents.
- 2.8. PW testified that she had advanced/given the Defendant a total of K1,956,000.00 for the motor vehicles and as at December 2022, the same had not been sold.
- 2.9. PW further testified that her lawyers made a demand for the K1,950,000.00 on January 13th, 2023, referred the Court to page 1 of the Plaintiff's bundle of documents. That the Defendant made various payments in liquidating sum demanded, and as at June 30th, 2023 he paid K1,265,968.00.
- 2.10. PW testified that on February 23rd, 2023 the Plaintiff and Defendant entered into a Debt Settlement Agreement as appears at page 2 of the Plaintiff's bundle of documents.
- 2.11. PW testified that on May 19th, 2023, the Plaintiff and Defendant entered into a Debt Settlement Agreement as shown on pages 6 and 7 of the Plaintiff's bundle of Documents.
- 2.12. PW further testified that the Defendant failed to honour clause 1 (b) and 1 (c) of the Agreement stated in 2.11 above claiming he had not sold the motor vehicles.
- 2.13. PW testified that the Defendant sold her motor vehicle Registration Number BAG 1206 and produced a motor vehicle Registration Number BAT 6406 to replace the motor vehicle sold without consent.
- 2.14. PW was not subjected to Re-examination.

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- 2.15. Under Cross examination, PW testified that the Plaintiff and Defendant were married under customary law and divorced.
- 2.16. Under Cross examination, PW conceded that she did not have any record/documents of the Oral Contracts she entered with the Defendant to invest in a company called Shah Motors Limited.
- 2.17. PW further conceded that she gave monies to the Defendant not Shah Motors Limited and the Defendant said he would buy and sell vehicles for her and give her the ample amount and profit.
- 2.18. PW testified under Cross examination to have given the Defendant a total of K1,956,000.00 from her business and share from her father's estate.
- 2.19. PW confirmed that the Defendant made payment of K1,265,968.00 between January to June 2023, and owes a balance of K690,032.00.
- 2.20. The Defendant called one witness, Abid Ali Shah who submitted a witness statement dated October 3rd, 2025.
- 2.21. DW testified in chief that he was married to the Plaintiff in 2018.
- 2.22. DW testified that in 2021 his business Shah Motors Limited experienced financial difficulties as a result of Covid-19. That the Plaintiff then caused to be transferred K630,000.00 into his account of which he gave the Plaintiff K30,000.00 and invested K600,000.00 into Shah Motors Limited.
- 2.23. DW further testified that he bought six (6) motor vehicles under Shah Motors Limited for resale and cost of K721,432.00.

- 2.24. DW testified to having made several Bank transfers in the sum of K560,000.00 in settlement of the monies he owed the Plaintiff which the Plaintiff acknowledged receipt via message conversation.
- 2.25. DW further testified that the Plaintiff accepted the funds in full settlement and extinguished his liability to the Plaintiff.
- 2.26. Under Cross examination, DW conceded that he had no documentary evidence to prove that he sent monies to the Plaintiff in settlement of his debt.
- 2.27. DW further conceded that he signed the Debt Settlement Agreement as appears at page 6 of the Plaintiff's bundle of documents.
- 2.28. DW conceded that he has not facilitated the change of ownership as required by clause 1 (c) of the Debt Settlement Agreement.
- 2.29. DW testified that he complied with the Debt Settlement Agreement.
- 2.30. DW conceded that the value of the six (6) motor vehicles he bought was K690,000.00.
- 2.31. DW testified that he sold half of the six (6) cars and three (3) are left, but that he had paid the Plaintiff all her monies and the remaining cars do not belong to her.
- 2.32. DW was not re-examined.
- 2.33. The Defendant's bundle of documents was expunged from the record for irregularity.

3. **LAW AND SUBMISSIONS**

- 3.1. Both Parties filed written submission and I am most grateful. I shall not reproduce the same save to put it on record that I have considered them in this my Judgment even though I may not make specific reference to them.
- 3.2. The Plaintiff submits that the settlement agreement with the Defendant carries the weight of law and amenable to contract law requirement. Further that the Parties willingly entered into these agreements and therefore bound by them.

Reference was made to the authority in the case of **National Drug Company and Zambia Privatisation Limited vs Mary Katongo Appeal No. 79/2001¹** in which it was held that;

“It is trite law that once the parties have voluntarily and freely entered into a contract, they become bound to abide by the terms of the contract when one party has breached it by respecting, upholding and enforcing the contract.”

The Plaintiff also referred this Court to the authority in the case of **Finance Bank (Z) Limited and Rajan Mahtani vs Simata Simata SCZ No. 11 of 2017²** wherein it was held that;

“a settlement agreement like any other agreement is amenable to the core principle of English law applicable in this Country, namely the need to preserve the value and sanity of contracts.”

- 3.3. The Plaintiff submits that she has proved her case and is entitled to all her claims against the Defendant.
- 3.4. The Defendant in his submissions avers that for a contract to be valid and binding, it must satisfy essential elements of offer, acceptance, consideration, intention to create legal relations and certainty of terms. Submitting that consideration need not be monetary but it is sufficient that each party offers something of value or consideration.
- 3.5. The Defendant submits that once the Parties have reached *consensus ad idem* and each has performed their obligations the contract is said to be discharged by performance. The Defendant relies on the authority in the case of **Zambia Bata Shoe Company Limited vs Vin Mas Limited (1994) SCZ 35³** in which it was held that;

“A contract is discharged when the obligations of both parties have been fulfilled and such liability cannot be avoided.”

- 3.6. The Defendant further submits that he performed all his obligations under the Debt Settlement Agreement dated May 19th, 2023. That the Debt Settlement Agreement was discharged by operation of law and the Plaintiff cannot claim more money. The Plaintiff submits that he is entitled to refund of the over payment made to the Plaintiff.
- 3.7. The Defendant submits that the 6 motor vehicles in question are registered to Shah Motors Limited and the Plaintiff has not shown title transfer forms (from RTSA) or indeed ownership or control of the motor vehicles.

- 3.8. The Defendant submits that he is entitled to Judgment in his favour on the counter-claim, that he has equitable interest and relied on the case of **Chibwe vs Chibwe SCZ No. 38 of 2000**⁴.
- 3.9. The Defendant submits that the Plaintiff has failed to prove her claims and her case must fail with costs.

4. COURT'S ANALYSIS/DECISION

- 4.1. The clear and undisputed facts are as follows:
- (i) The Parties were once married under customary law and now divorced; and
 - (ii) The parties executed a Debt Settlement Agreement dated May 19th, 2023.
- 4.2. The disputed facts are
- (i) Whether the Defendant is entitled to 2x 2 bedroom flats under divorce property settlement;
 - (ii) Whether the Plaintiff is entitled to the 6 motor vehicles as tabulated under paragraph 1.1 above; and
 - (iii) Whether the Defendant over-paid on his debt and entitled to repayment of K160,000.00.
- 4.3. As I see it the questions to be determined in this matter are as per the disputed facts above.
- 4.4. I shall begin with the questions of whether or not the Plaintiff is entitled to the 6 motor vehicles which is her main claim in this case.

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Both Parties aver to many issues which I consider to be clouding the proceedings and claim. Having reviewed the Record, I find that the Plaintiff's claim is founded on the Debt Settlement Agreement (hereinafter referred to as "DSA"). Both parties agree to the authority in the case of **National Drug Company and Zambia Privatisation Limited vs Mary Katongo** wherein it was held that;

"It is trite law that once the parties have voluntarily and freely entered into a contract, they become bound to abide by the terms of the contract when one party has breached it by respecting, upholding and enforcing the contract."

The contents and details of the DSA as agreed to by both parties is as appears below. The same is scanned and embedded into the Judgment to ensure nothing is lost in translation or summary.

Debt Settlement Agreement

This Debt Settlement Agreement (the "Agreement") is made as of 19th May, 2023

by and between ABID ALI SHAH AND LINDA CHIKWAKWA.

WHEREAS, ABID ALI SHAH wishes to settle the Debt in full according to the terms of this Debt Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises made by the parties hereto, the ABID ALI SHAH and LINDA LULY CHIKWAKWA (individually, each a "Party" and collectively, the "Parties") agree as follows:

1. Acknowledgment of Debt

- a) That ABID ALI SHAH agrees and acknowledges that I am indebted to LINDA LULY CHIKWAKWA in the full amount of the Debt of K280,000 balance. K80,000 I will pay on/before 30th June, 2023 and the balance K200,000 she will get from Mutale Mwanza her client who owes the company a balance from her purchase of Toyota Hiace Bus TRH214-0014461.
- b) The cars listed below are part of Linda Chikwakwas stock and she can do with them as she sees fit. They will remain in my custody at the showroom at no cost (e.g. storage or any other) and if she wants to sell them on her own she's at liberty to do so I will try my best to sell them as they were bought to better the business at the time.
 - i. TOYOTA AURIS CHASIS NUMBER NZE151-1051281
 - ii. TOYOTA AURIS CHASIS NUMBER NZE151-1006845
 - iii. TOYOTA AYGO CHASIS NUMBER NZE141-6024479
 - iv. TOYOTA AYGO CHASIS NUMBER NZE141-6063446
 - v. TOYOTA AYGO CHASIS NUMBER NZE141-6181830
 - vi. TOYOTA MARK X CHASIS NUMBER GRX120-0006706
- c) That the Honda Vezel registration BAT 6406 will remain in the custody of Linda Luly Chikwakwa until the 30-day hook period expires and then she can change ownership to replace the Prado BAG 1206 sold without her consent.

2. Timeliness

- a. The Parties agree and acknowledge that time is of the essence with regard to the Debt Settlement Payments. This applies to signing the Agreement and making the payments according to the Agreement.

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b. If ABID ALI SHAH fails to make a payment as outlined in the terms of this agreement without communicating in advance, LINDA LULY CHIKWAKWA may make proceedings as to how to recover the debt.

3. Full integration

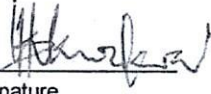
a. This Debt Settlement Agreement supersedes any prior agreements, understandings, or negotiations, whether written or oral. In other words, this agreement is now the controlling agreement with regard to the Debt.

b. In the event that the terms of this agreement are different from any other documents signed previously, the terms of this agreement are the ones that will be used.

4. Conditions

If there are any conditions that affect the Agreement, they should be outlined as part of the terms. Examples of conditions that may vary include enrollment fees, monthly account maintenance fees, or late payment fees, commissions, storage and cleaning.

The above is agreed upon between:

		
Signature	Signature	
<u>ABID ALI SHAH</u>	<u>LINDA L. CHIKWAKWA</u>	<u>954609/11/1</u>
Name	Name	
<u>19/05/2023</u>	<u>19-05/2023</u>	
Date	Date	

- 4.5. Of importance in the DSA is Clause 1, as speaks to acknowledgment of debt and motor vehicles that the Plaintiff is entitled to. Further Clause 3 as speaks to full integration.

I shall restate Clause 3 for clarity

“3a. This Debt Settlement Agreement supersedes any prior agreements, understandings, or negotiations, whether written or oral. In other words, this agreement is now the controlling agreement with regard to the Debt.”

- 4.6. It is clear in my mind that the DSA clearly stipulates what is owed and each Party's duty obligation.

The six-motor vehicle are specifically listed in the DSA and same detail in the Plaintiff's Writ of Summons. The Plaintiff seeks an Order that the Defendant renders a full account of the said motor vehicles and release of the same to her. The Defendant conceded under cross examination that he sold 3 of the 6 motor vehicles and paid all the monies to the Plaintiff. The Defendant further testified and submits that the motor vehicles belong to a company known as Shah Motors Limited.

The Defendant has failed or neglected to prove that he sold any of the motor vehicles and paid the Defendant such money. The Defendant has not availed evidence to this Court as to why Clause 1 (b) and 1 (c) of the DSA remains uncompiled with. Reference is

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made to the authority in the **Zambia Bata** case, the Defendant has not discharged his obligations under DSA.

I find that the Defendant has breached the DSA and is liable to the Plaintiff. To this end the Defendant must provide full and complete account of the 6 motor vehicles, to the Plaintiff. Should it be found that the motor vehicles are still in the possession of the Defendant, he must release the same to the Plaintiff who is entitled to the same as per DSA.

4.7. As refers to the Plaintiff's second claim for the change of title or ownership of motor vehicle Registration Number BAT 6406, I note that the Plaintiff's testimony and the provisions of DSA under clause 1 (c) that such change can only be facilitated upon expiry of red book period. The Court does not have information as to when this period ends. The Defendant is to ensure he facilitates and concludes the transfer of ownership or title of BAT 6406 to the Plaintiff when the period kicks in.

4.8. I shall now address my mind to the Defendant's Counter-Claim, as refers to whether or not he is entitled to share of 2 x 2 bedroom Flats constructed during the subsistence of the marriage, and household property and family car.

I am of the considered opinion that the Defendant's Counter-Claim is improperly before me.

The Record shows that the Local Court granted the Divorce and some sort of property settlement which could have led to his Counter-Claim.

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I opine that the Defendant's claim is best brought to the Court that granted the Divorce and property Settlement Order. To commence in new action before the High Court General List is improper and an abuse of Court process.

5. CONCLUSION

- 5.1. By reason of the foregoing, I hereby Order that the Defendant renders full account of the 6 motor vehicles as listed in the DSA and Originating process. The same to be made to the Honourable District Registrar within 30 days of this Judgment.
- 5.2. I further Order that the Defendant is to facilitate the change of ownership of motor vehicle Honda Vegel registration Number BAT 6406 within 30 days of the expiry of the 'Red book' period. The Expiry date is to be placed on Court record with the Honourable District Registrar.
- 5.3. The Plaintiff's claim succeeds with costs, to be taxed in default of agreement.
- 5.4. The Defendant's Counter-Claim fails in its entirety with costs.
- 5.5. Leave to Appeal is granted.

DELIVERED AT LUSAKA ON JANUARY 14TH, 2026



**HON. LADY JUSTICE SITUMBEKO CHOCHO
HIGH COURT JUDGE**

