

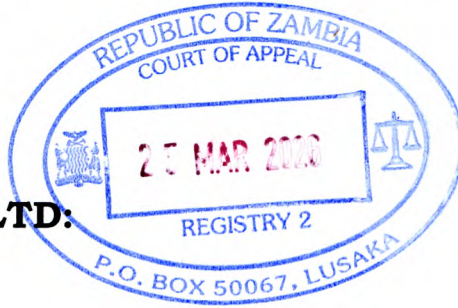
IN THE COURT OF APPEAL OF ZAMBIA: APPEAL NO 16/2025
HOLDEN AT NDOLA
(Civil Jurisdiction)

BETWEEN

NAMPAK ZAMBIA LTD:

AND

NICE PRODUCTS LTD:



APPELLANT

RESPONDENT

CORAM: SIAVWAPA JP, CHISHIMBA AND PATEL JJA

On 17th and 25th March 2026

FOR THE APPELLANT: MR. M. NKOLE OF MESSRS KAUMBU
MWONDELA LEGAL PRACTITONERS

FOR THE RESPONDENT:MR. H. SOKO OF MESSRS
LUMANGWE CHAMBERS

J U D G M E N T

SIAVWAPA JP delivered the Judgment of the Court

Cases referred to:

1. *Dr David Nama v the Republic of Romania Appeal No 261 of 2021 and 290 of 2022*
2. *Stage Club Limited v Millers Hotels Pty (1981) HCA 71*

Statutes referred to:

1. *Sale of Goods Act 1893*
2. *Limitation Act 1938*

1.0 INTRODUCTION

1.1 This appeal is against the Judgment of the Honourable Mrs. Justice Irene Zeko Mbewe of the Commercial Division of the High Court.

- 1.2 By the said Judgment, the learned Judge found that the Respondent had an outstanding balance on the cans and lids the Appellant had supplied to the Respondent. The learned Judge ordered that the balance be assessed by the Registrar.
- 1.3 On the counterclaim, the learned Judge awarded damages to the Respondent for breach of contract.

2.0 BACKGROUND

- 2.1. The uncontroverted facts are that the Appellant and the Respondent entered into a contract for the supply and purchase of food cans and lids respectively.
- 2.2 Between 2016 and 2018, the Appellant supplied a specified quantity of cans and lids to the Respondent which the Respondent used to pack its beef products branded as Fray Bentos Corned Beef.
- 2.3 It however, turned out that some of the cans had defective lids that caused the cans to swell and the Fray Bentos Corned Beef to go bad. As a result, the Respondent decided to dispose of the product by destruction.
- 2.4 The Respondent reported the defective cans and the Appellant in turn issued credit notes for all the reported defective cans and lids. This reduced the balance payable by the Respondent on the total value of the cans supplied.

2.5 The Respondent however defaulted on the instalment payments for the cans and lids that were not defective advancing the reason that the Appellant had stopped supplying the cans.

3.0 ACTION IN THE HIGH COURT

3.1. On 2nd December 2022, the Appellant commenced an action in the High Court, Commercial Division, by writ of summons and Statement of Claim.

3.2 In the Statement of Claim, the Appellant claimed ZMW106, 277.99 as the balance on the various food cans it had supplied to the Respondent, with interest and costs. In return, the Respondent filed its Defence and counterclaim on 19th January 2023.

3.3 In its defence, the Respondent alleged that the defects in the lids were attributed to faulty production. It further argued that the parties had agreed that the Respondent would waive the claim for the loss if the Appellant continued supplying the cans.

3.4 In its counterclaim, the Respondent submitted that the Appellant had committed to supplying cans with lids of defined specifications but supplied defective ones.

- 3.5 It further submitted that it lost 12,000 cans of Fray Bentos Corned Beef due to the defective can lids supplied. The Respondent therefore, counterclaimed for;
1. Damages for breach of contract.
 2. Damages for loss of business.
 3. Interest and,
 4. Costs.

4.0 DECISION OF THE HIGH COURT

- 4.1. In her Judgment dated 30th July 2024, the learned Judge found that the Respondent had made various payments between 25th November 2020 and 10th February 2023 amounting to ZMW123, 500.00 leaving a balance of ZMW76, 277.99.
- 4.2 The learned Judge rejected the Respondent's argument that paying for the balance was conditional upon the Appellant continuing to supply the cans and lids. She allowed the claim by the Appellant to be assessed plus interest and costs.
- 4.3 On the counterclaim the learned Judge found that the Appellant had breached its duty to supply goods of merchantable quality in the 12,000 defective food can lids. She relied on Section 14 of the Sale of Goods Act 1893.
- 4.4 The learned Judge dismissed the argument that the counterclaim was statute barred and awarded the Respondent damages for breach of contract and costs.

4.5 The learned Judge however, dismissed the Respondent's counterclaim for damages for loss of business for lack of evidence.

5.0 THE APPEAL

5.1. Dissatisfied with the decision of the High Court, the Appellant filed a Notice and Memorandum of Appeal on 28th August 2024.

5.2 In the Memorandum of Appeal, the Appellant raised three grounds of appeal set out as follows;

1. *The learned trial Judge erred in law and fact when she held that the claims relating to invoices No. 3331, No. 3554 and No. 364 were statute barred.*
2. *The learned trial Judge erred in law and fact when she held that the Plaintiff had breached the contract with the Defendant and awarded the Defendant damages for breach of contract.*
3. *The learned trial Judge erred in law and fact when she did not take into consideration the credit notes the Plaintiff had passed in favour of the Defendant in finding that the Plaintiff was liable for breach of contract.*

6.0 ARGUMENTS IN SUPPORT

6.1. In arguing the first ground, the Appellant has relied on Section 23(4) of the Limitation Act 1939 which resets the date of accrual of a cause of action to the date of acknowledgement or part payment of a debt where such acknowledgment or part payment is made by the debtor.

6.2 In support of the above argument, the Appellant has submitted that on or about April 2020, as per paragraph 7 of the Statement of Claim, the parties entered into an agreement through Fast Debt Managers for the Respondent

to liquidate the debt in monthly instalments of ZMW7, 500.00.

- 6.3 In the second ground, the Appellant argued that there was no evidence that the Respondent asked for a specific quality of cans and lids.
- 6.4 Further the Appellant argued that under section 14 of the Sale of Goods Act, there is no implied condition or warranty as to the quality or fitness of goods supplied for a particular purpose under a contract of sale.
- 6.5 In the third ground the Appellant argues that having found that the Appellant had issued credit notes for all defective cans and lids supplied to the Respondent, the learned Judge erred in finding that the Appellant was in breach of contract.

7.0 ARGUMENTS IN OPPOSITION

- 7.1 The Respondent did not file heads of argument and was accordingly barred from participating in the appeal.

8.0 OUR ANALYSIS AND DECISION

- 8.1 From the three grounds of appeal raised and the heads of argument in support, the Appeal raises three questions namely; whether the claims relating to the three invoices are statute barred, whether the Appellant was in breach of contract and whether the credit notes issued by the

Appellant released it from liability for supplying defective cans and lids to the Respondent.

8.2 The first question interrogates the recurring question of when a cause of action arises for the purposes of Section 2 of the Limitation Act 1939.

8.3 For ease of reference, Section 2(I) (a) provides as follows;

“The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued that is to say:-

(a) Actions founded on simple contract or on tort...”

8.4 By the above stated section any action founded on simple contract, or tort becomes statute barred if it is not brought within six years of its occurrence.

8.5 In this case the learned Judge held that the claims relating to invoices No. 3331, No. 3554 and No. 3647 were statute barred because they were issued on 31st August 2016, 21st October 2016 and 16th November 2016, more than six years before the Appellant commenced the action.

8.6 The Appellant has relied on Section 23(4) of the Limitation Act 1939 which provides as follows;

“where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefore acknowledges the claim or makes part payment in respect thereof the right shall be deemed to have accrued on and not before the date of the acknowledgment, or the last payment”.

8.7 In the case of Dr. David Nama v the Republic of Romania,¹ we cited an extract from an article “*Statute Barred Debt*” by Hannah Cavalieri published on Jhklegal.com. on 18th April 2023. The article states as follows;

“In order to effectively extend the limitation period, a creditor must establish that the debt was acknowledged by the debtor prior to the expiration date either by way of acknowledgment of debt or by way of payment which can constitute as such acknowledgment”.

8.8 We also cited Gibbs CJ in the case of Stage Club Limited v Millers Hotels Pty² in which he stated as follows;

“Where the claim is for payment of a debt, an acknowledgment, to be sufficient, must recognise the present existence of debt”.

8.9 The Respondent did not deny the existence of an agreement in 2020 for it to pay the outstanding debt in monthly instalments of ZMW7, 500.00. The only defence it put up was that it was agreed that the payment would be upon the Appellant continuing to supply the food cans and lids.

8.10 Considering that the invoices in issue were issued in 2016 and the agreement for instalment payment of ZMW7, 500.00 was reached in or about April 2020, the claims relating to the said invoices were not statute barred as the action was commenced within six years thereof.

8.11 Further to the above, there are receipts exhibited from page 378 to 416 of the Record of Appeal evidencing payments of ZMW7, 500.00 by the Respondent between April 2020 and January 2023.

8.12 Clearly, the said agreement and the actual payment of the debt in instalments reset the date of accrual of the debt and time began to run afresh in April 2020 when the Respondent acknowledged the debt and made payments towards its settlement.

8.13 The learned Judge was therefore in error to declare the claims based on the three invoices statute barred. This ground must succeed.

8.14 As regards the second question, whether the Appellant breached the contract, which arises from the counterclaim, the learned Judge reasoned that on the basis of Section 14 of the Sale of Goods Act 1893, the Appellant breached its duty to supply specified lids to the Respondent.

8.15 Section 14(1) of the Sales of Goods Act provides as follows;

“where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies upon the seller’s skill or judgment, and the goods are of a description which it is in the course of the seller’s business to supply (whether he be the manufacturer or not) there is an implied condition that the goods shall be reasonably fit for the purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose”.

8.16 In this case there is no evidence that in the agreement the Respondent expressly or by implication stated the particular purpose for which it required the food cans and lids. It is therefore, inferable that the cans and the lids supplied to the Respondent were reasonably fit for the purpose.

- 8.17 The fact that the Respondent was able to use some of the cans and lids it procured from the Appellant without complaint attests to the effect that they were reasonably fit for the purpose.
- 8.18 But even assuming that the cans and lids supplied were not fit for the purpose, there is uncontroverted evidence that the Appellant issued credit notes in favour of the Respondent for all the cans and lids that the Respondent reported to be unfit.
- 8.19 At page 32 of the Record of Appeal, in paragraph 6.7 of the Judgment, the learned Judge stated as follows;
- “However the record shows credit notes were issued by the Plaintiff as late as 2019. This is confirmed by Plaintiff’s witness who testified credit notes were issued to the Defendant on all defective cans. This can be discerned from tax credit note No. 80144, No. 80143, No. 80141, No. 80139, No. 80138 all dated 28th February 2019, No. 80137 dated 11th November, 2018 and No. 80103 dated 9th August 2016”.*
- 8.20 With this firm finding by the learned Judge that credit notes were issued for all the defective cans, it follows that the Respondent suffered no loss as the value of the defective cans was deducted from the total amount the Respondent should have paid for the cans and lids supplied.
- 8.21 The Appellant should not therefore suffer double jeopardy by also being ordered to pay damages for the same breach already compensated for through the credit notes. This would be tantamount to unjustly enriching the Respondent.

This ground of appeal is allowed.

8.22 Having found as stated above, the third question becomes moot as it attacks the learned Judge for not considering the credit notes issued to the Respondent.

9.0 CONCLUSION

9.1 In the view we have taken we allow the appeal on all the grounds and make the following orders;

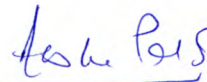
- (a) The three invoices that the learned Judge declared to be statute barred be included in assessing the amount due to the Appellant.
- (b) The order for damages in favour of the Respondent is hereby set aside.
- (c) We award costs to the Appellant to be taxed in default of agreement.



M.J. SIAVWAPA
JUDGE PRESIDENT



F. M. CHISHIMBA
COURT OF APPEAL JUDGE



A.N. PATEL SC
COURT OF APPEAL JUDGE