

IN THE HIGH COURT FOR ZAMBIA

2017/HPC/0167

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN

SIMBA DRILLING AND EXPLORATION LIMITED

PLAINTIFF

And

KEREN MOTORS LIMITED

DEFENDANT

Before the Hon. Madam Justice Irene Zeko Mbewe

For the Plaintiff:

Mr. S. Sikota SC of Messrs Central Chambers

For the Defendant:

Mr. B. Gondwe of Messrs Buta Gondwe & Associates

R U L I N G

Cases Referred To

1. *East Midlands Gas Board v Doncaster Corporation [1953] 1 All ER 54*
2. *Upeo Zambia Limited v ZCON Construction Limited 2016/HPC/0362*
3. *Leopold Ridge Safaris Limited v ZAWA [2008] ZR 97*
4. *Nyambe v Total Zambia Limited SCZ Judgment No. 1/2015*
5. *Ashville Investments v Elmer Contractors Limited CA [1988] 2 ALL E R 577*

Legislation and Other Works Referred To:

1. *Arbitration Act No. 19 of 2000.*
2. *Garner "Black's law Dictionary" 5th Edition, Thomson Reuters*

This is a Ruling on the Defendant's notice of request for the matter to be referred to arbitration filed into Court on 23rd October, 2017. It is made pursuant to Section 10 of the **Arbitration Act No.19 of 2000**. The said Notice was accompanied by a supporting affidavit deposed to by Mr. Buta Gondwe an Advocate for the Defendant Company. It is deposed that this matter ensues from an Agreement which contains an arbitration clause under clause 14 and that the parties be referred to arbitration (Exhibit "BG1").

In opposing the Notice, the Plaintiff filed an affidavit dated 8th November, 2017 deposed to by Mr. Chisha Mwambazi an Advocate for the Plaintiff Company. The salient facts are that on 5th April, 2017, the Plaintiff filed a Writ of Summons and Statement of Claim and on 27th April, 2017, the Plaintiff received a letter from the Defendant advising it that the Defendant had been placed under receivership and was working on a turnaround strategy to improve its operations. That the Defendant planned to come up with an

achievable repayment plan for the debt owed to the Plaintiff (Exhibit “CM1”). According to the Plaintiff, there is no dispute that the Defendant is indebted to the Plaintiff nor is there a dispute in respect to the amount owed. That the contract entered into by the parties provides for disputes to be settled by arbitration. That there is no dispute that the parties have failed to settle amicably for them to refer to arbitration.

The Defendant in its skeleton arguments filed herein, in aid of the argument that the parties be referred to arbitration, I was referred to the English case of **East Midlands Gas Board v Doncaster Corporation (1953) 1 All ER 54¹**. Counsel for the Defendant submits that in *casu*, the parties in Clause 14 of the Agreement agreed that where there is a dispute, the same should be referred to arbitration and governed by the Laws of Zambia. My attention was drawn to Section 10 of the **Arbitration Act No 19 of 2000**. In light of the foregoing, Counsel submits that this is an appropriate case to stay proceedings and refer parties to arbitration.

The Plaintiff in its skeleton arguments cites Section 10 of the **Arbitration Act No 19 of 2000** and submits that before the Court

can stay the proceedings and refer the matter to arbitration, it has to closely study the wording in the arbitration clause to determine whether a dispute is amenable to arbitration or not. In articulating this argument, my attention was drawn to the case of **Upeo Zambia Limited v ZCON Construction Limited 2016/HPC/0362²**. It is the Plaintiff's submission that there is no difference or dispute in this matter which needs to be arbitrated and as such, the Defendant's application be dismissed with costs.

When the matter came up for hearing of the application, Counsel for the Defendant placed reliance on the affidavit in support and skeleton arguments filed herein. It was his submission that the Agreement in issue has an arbitration clause and going by the provisions of the **Arbitration Act No 19 of 2000**, the parties are obliged to submit to arbitration a fact which the Plaintiff acknowledges. The case of **Leopold Ridge Safaris Limited v ZAWA (2008) ZR 97³** was cited in aid of the argument that the matter ought to be stayed and parties referred to arbitration.

In response, Counsel for the Plaintiff submits that there is a clause in the Agreement which provides for referral to arbitration and that

it is clear from the said clause that arbitration will only be resorted to if there is a dispute which cannot be resolved. Counsel for the Plaintiff contends that where there is a claim for a specific amount of money and the Defendant admits its indebtedness as it did in the letter dated 26th April 2017, this shows that there is no dispute between the parties as the Defendant is only requesting for time within which to pay the amount claimed. My attention was drawn to the case of **Upeo Zambia Limited v ZCON Construction Limited 2016/HPC/0362²** cited in the Plaintiff's skeleton arguments. That there is no dispute in this matter as both parties have agreed that money is owed to the Plaintiff. It is prayed that this application be dismissed with costs.

Counsel for the Defendant submits that the question which begs an answer is, if there is no dispute why is the matter before Court. Counsel also questioned whether the arbitral clause is operative going by the authorities cited by both parties and that parties be referred to arbitration.

I have considered the affidavit evidence, skeleton arguments as well as oral submissions advanced by both Counsels of which I am

