

IN THE HIGH COURT FOR ZAMBIA

2018/HPC/0041

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(Commercial Jurisdiction)



BETWEEN:

LARFAGE ZAMBIA PLC

PLAINTIFF

AND

MWENYA CHAMBULA TRADING AS

DEFENDANT

BUBU TRADING

Before the Honourable Mr. Justice W. S. Mweemba at Lusaka

For the Plaintiff: Mrs. C. Ngulube, In House Counsel – Larfage Zambia Plc

For the Defendant: Mr. G. Nyirongo, Messrs Nyirongo and Company

JUDGMENT ON ADMISSION

LEGISLATION REFERRED TO:

1. Order 21 Rules 5 and 6 of the High Court Rules, Chapter 27 of the Laws of Zambia.
2. Order 21 Rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia.
3. Order 27 Rule 3 of the Rules of the Supreme Court of England (White Book) 1999 Edition.

CASES REFERRED TO:

1. Cosmas Mweemba V Chikankata District Council and the Attorney General 2013/HP/1654.
2. Ellis V Allen (1911-13) ALL ER 1072.

This is an application by the Plaintiff for Judgment on Admission. It is supported by an Affidavit and Skeleton Arguments filed into Court on 27th February, 2018. The Affidavit is sworn by Chibuye Ngulube the Litigation Manager in the Plaintiff Company.

It is deposed by Mrs. Ngulube that the Plaintiff commenced this action against the Defendant by way of Writ of Summons and Statement of Claim for payment of the sum of K1,541,257.90 of which K120,667.22 is owed by the Defendant for cement supplied by the Plaintiff to the Defendant on the Defendant's Trading Account and the sum of K1,420,590.73 being monies owed by the Defendant for cement supplied by the Plaintiff to the Defendant on the Defendant's Consignment Account. The other reliefs claimed are:

- (a) Interest on the sums due;
- (b) Costs; and
- (c) Any other relief the Court may deem fit.

That on 22nd February, 2018 the Defendant filed its Defence wherein under paragraph 7 the Defendant admits being indebted to the Plaintiff in the sum not exceeding K150,000.00 in respect of the Consignment Account. That the contents of paragraph 6 of the Defence is proof that the Defendant does not dispute being indebted to the Plaintiff.

It is deposed that in the circumstances he believes that in the interest of justice and in order to save time and further costs, upon the admission made by the Defendant through his Defence, this is a proper case for Judgment on Admission to be entered against the Defendant for the admitted debt of K150,000.00 while the disputed amount of K1,391,257.90 may proceed to trial in the event of failure by the parties to reach settlement.

It is stated that he has been advised by the Plaintiff's Advocates and he believes that the Plaintiff is entitled to Judgment on Admission thus befitting the exercise of the Court's jurisdiction in the Plaintiff's favour.

There is an Affidavit in Opposition sworn by the Defendant filed into Court on 3rd April, 2018. It is deposed that in paragraph 7 of his Defence, he never unequivocally admitted to owing the sum of K150,000.00. That he was simply estimating that the amount owed cannot exceed K150,000.00 and that he would ask for invoices. That the Plaintiff has not exhibited the said invoices in its Affidavit in Support.

It is stated that he believes that in the absence of the Plaintiff providing invoices signed by himself which show that he owes K150,000.00 to the Defendant, it would be unlawful and unjust to enter Judgment on Admission.

That in paragraph 6 of his Defence he did plead that invoices were requested for by himself on numerous occasions but to-date the Plaintiff has provided none. That in paragraph 9 of his Defence, he further pleaded to the effect that the Plaintiff has had unfaithful employees who would steal from it and then charge the stolen cement to the Defendant's Account. That it is in this regard that the Plaintiff should furnish him and the Court with invoices duly signed by himself to show that he owes K150,000.00.

The Plaintiff in its Skeleton Arguments filed into Court on 27th February, 2018 relied **on Order 21 Rule 5 and Rule 6 of the High Court Rules Chapter 27 of the Laws of Zambia.** **Order 21 Rule 5 of the High Court Rules** provides that:

“If any defendant shall sign a statement admitting the amount claimed in the summons or any part of such amount, the Court or a Judge, on being satisfied as to the genuineness of the signature of

the person before whom such statement was signed, and unless it or he sees good reason to the contrary, shall, in case the whole amount is admitted or in case the plaintiff consents to a judgment for the part admitted, enter judgment for the plaintiff for the whole amount or the part admitted, as the case may be, and in case the plaintiff shall not consent to judgment for the part admitted, shall receive such statement in evidence as an admission without further proof”.

Order 21 Rule 6 of the High Court Rules provides as follows:

“A party may apply, on motion or summons, for cancelled judgment on admission where admissions of facts or part of a case are made by a party to the cause or matter either by his pleadings or otherwise”.

The Plaintiff also relied on **Order 27 Rule 3 of the Rules of the Supreme Court of England, (White Book) 1999 Edition** which states that:

“Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to without waiting for the determination of any other question between the parties and the Court may give such judgment or make such order, on the application as it thinks just. An application for an order under this rule may be made by motion or summons”.

The Plaintiff also referred to **Order 21 Rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia** which provides that:

“Any party to a suit may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the writ of summons, statement of claim, defence or other statement of any other party”.

It is contended by the Plaintiff that it is apparent from the Defence filed into Court on 22nd February, 2018 that what is contained at paragraph 7 of the same is a partial admission that the Defendant is indebted to the Plaintiff in the sum not exceeding K150,000.00. It is submitted therefore that the Defendant has no defence to the Plaintiff’s claim in respect of the admitted amount and simply intends to stall Court proceedings in prosecuting this case and/or delaying the process of executing a consent order.

It is submitted that it is appropriate for the Court to enter Judgment on Admission for the Plaintiff in the sum of K150,000.00 in respect of the Defendant’s Consignment Account held with the Plaintiff, while the parties may proceed to trial for the disputed amount in the interest of justice. The Plaintiff prayed that the costs of the application be for the Defendant to bare.

The Defendant filed Skeleton Argument in opposition on 20th April, 2018. He relied on **Order 27 Rule 3(2) of the Rules of the Supreme Court of England (White Book) 1999 Edition** which states that:

“Such admissions may be express or implied, but they must be clear”.

The case of **COSMAS MWEEMBA V CHIKANKATA DISTRICT COUNCIL AND THE ATTORNEY GENERAL (1)** was cited in which it was stated that:

“Although it is not for the courts to dictate to parties how they should frame their case the court is disposed to give a liberal

interpretation to the meaning of the terms; 'Tend to prejudice, embarrass or delay the fair trial of the action'.

My understanding and what is always the court's position is that parties are called upon not to offend against the rules of pleadings".

The Defendant also relied on the case of **ELLIS V ALLEN (2)** in which it was held that:

"the object of the rule was to enable a party to obtain a speedy judgment where the other has made a plain admission entitling the former to succeed and that it applies where there is a clear admission on the face of which it is impossible for the party making it to succeed".

The case of **HIMANI ALLOYS LTD V TATA STEEL LTD (3)** was also cited. In that case it was held that:

"It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. The Court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendants, by way of an appeal on merits".

It is contended that entering judgment on admission premised on one paragraph in the Defence which does not clearly admit to anything when there are other paragraphs in the Defence in which the Defendant clearly and unequivocally denies each claim contained in the Writ of Summons and Statement of Claim manifestly offends the Defendant's pleading being the Defence. It is submitted that the Defendant's position is that the contents of

paragraph 7 of the Defence was in no way meant to bring out any admission as the same was not made unequivocally and was not a clear admission. That the purported admission is in no way clearly stating any admission. That in his Defence the Defendant was simply bringing to light the fact that it was not possible to clearly know what is owed to the Plaintiff, if anything is owed at all, since there were no invoices signed by the Defendant to that effect.

Learned Counsel for the Defendant states that they are alive to the fact that this is a matter of discretion of the Court and not a right as was observed in the case of **HIMANI ALLOYS LTD V TATA STEEL LTD** cited above. That unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim.

It is submitted that no statement made in the Defendant's Defence was either unconditional or unequivocal to justify judgment on admission to be entered against the Defendant. Reference was made to the learned authors of Black's Law Dictionary by Brant Garner 9th Edition at pages 1663 and 1667 were the words "*unequivocal*" and "*unconditionally*" are respectively defined as:

"Unconditional – not limited by a condition; not depending on an uncertain event or contingency' absolute".

"Unequivocal – unambiguous; clear; free from uncertainty".

That based on these definitions there is no statement in the Defence which justifies judgment on admission. That each paragraph in the Defence was stated in a manner which specifically denied every allegation made by the Plaintiff and answered the point of substance in the Plaintiff's Statement of Claim. That the Defendant clearly denied the Plaintiff's claim and stated that it does not owe the Plaintiff anything.

It is further submitted that the Plaintiff in paragraph 5 of its Affidavit in Support of Summons for Judgment on Admission refers to the contents of paragraph 6 of the Defendant's Defence as proof of admission but upon perusal of the said paragraph 6 of the Defence, it can be seen that the paragraph denies paragraph six of the Plaintiff's Statement of Claim and does not at any point admit to anything. It is submitted that the Plaintiff's application is calculated to embarrass the Defendant and delay the logical conclusion of the matter. The Defendant's prayer was that the Plaintiff's application be dismissed with costs.

I have considered the application for entry of Judgment on Admission. The issue is whether the Defendant has admitted partial liability in his Defence as contented by the Plaintiff. I have perused the said Defence dated 22nd February, 2018.

It is clear that the Defendant denies owing the Plaintiff the claimed sum of K1,638,090.73. It is equally clear that at paragraph 7 of the Defence the Defendant admits owing the Plaintiff in respect of the Consignment Account an amount not exceeding K150,000.00. Although the Defendant states that he will ask for invoices signed by himself in respect of the admitted sum of K150,000.00, I consider that the admission is clear.

At paragraph 6 of the Defence the Defendant states that he is in possession of receipts as issued by the Plaintiff to the Defendant acknowledging receipt of payments from the Defendant which receipts exceed 20 folios. I take the view that in arriving at the admitted sum of K150,000.00 the Defendant took into account the payments he had made to the Plaintiff and in respect of which he had receipts. I find and hold that when the Defendant stated that in respect of the Consignment Account, the amount owed cannot exceed K150,000.000 the

Defendant made this assertion consciously and deliberately and intended to be bound by it.

I am therefore of the considered view that in respect of the sum of K150,000.00 which has been clearly admitted by the Defendant, the application is allowed. I am of the considered view that this is a proper case to enter Judgment on Admission.

For the foregoing reasons, I hereby enter Judgment on Admission in respect of the sum of K150,000.00 on the Consignment Account. The said sum should be paid with interest at the short term commercial banking deposit rate from date of Writ of Summons to date of Judgment, thereafter at the current, banking lending rate as determined by Bank of Zambia.

In respect of the disputed claimed for the sum of K1,391,257.90, the said claim shall proceed to be determined at trial.

It is directed that a Status Conference shall be held on 8th August, 2018 at 10:00 hours.

Costs are awarded to the Plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

Dated the 29th June, 2018.



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WILLIAM S. MWEEMBA
HIGH COURT JUDGE