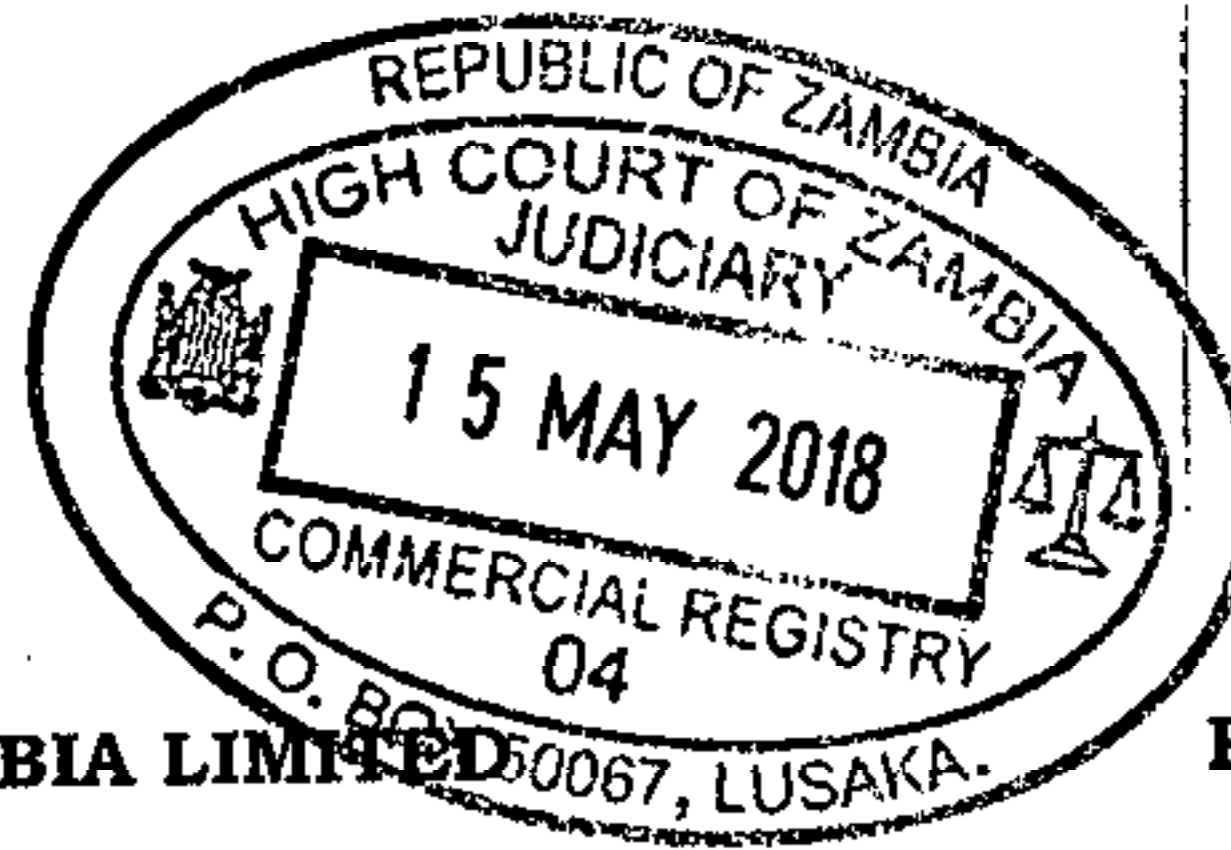


**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**

2016/HPC/0511

(Civil Jurisdiction)



BETWEEN:

GOOD TIME STEEL COMPANY ZAMBIA LIMITED PLAINTIFF

AND

KITCHENWARE INDUSTRIES LIMITED DEFENDANT

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

For the Plaintiff: Mr W. Chirwa- Messrs Willa Mutofwe & Associates.

For the Defendant: No Appearance

JUDGMENT ON ADMISSION

LEGISLATION REFERRED TO:

1. Order XXI Rule 5 of the High Court Rules, Cap 27 of the Laws of Zambia.
2. Order 27, Rule 3 of the Rules of the Supreme Court 1965 (White Book) 1999 Edition.
3. Order 35 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia.

CASES REFERRED TO:

1. Zega Limited V Zambezi Airlines and Diamond General Insurance Limited (SCZ/9/006/2014) Appeal No. 39/2014.
2. Kalusha Bwalya V Chadore Properties & Ian Chanunora Nyalungwe Haluperi Selected Judgment No. 20 of 2015.

3. Hampden V Wallis (1884) 27 Ch.D 257.

4. Porret V White (1885) 31 Ch.D 52.

This is an application by the Plaintiff for Judgment on Admission. It is supported by an Affidavit and Skeleton Arguments filed into Court on 8th, November, 2016. The Affidavit on record is sworn by Newton Mbewe, the Sales Manager for the Plaintiff herein.

It is deposed by Mr Mbewe that it is a matter of record that Originating Process was filed before this Court on the 21st October, 2016 by the Plaintiff herein claiming *inter alia* payment due and owing by the Defendant to the Plaintiff in the sum of K105, 198.54.

That prior to commencing these proceedings the Plaintiff through its Advocates did issue a letter of demand to the Defendant and the Defendant responded in writing not denying the debt.

He exhibited "NM1" and "NM2" true copies of the said correspondence.

He lastly deposed that the Plaintiff had instructed its Advocates to seek from this Court an Order to enter Judgment on Admission for the sum claimed and so admitted by the Defendant together with interest and costs from the date of the exhibited admission.

The Defendants did not file any Affidavit in Opposition.

The Plaintiff in their Skeleton Arguments relied on **Order XXI Rule 5 of the High Court Rules** which 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.

Further, that **Order 27, Rule 3 of the Rules of the Supreme Court (White Book) 1999 Edition** provides 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”

Order 27 Rule 3 (2) provides that:

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

Counsel for the Plaintiff also relied on the case of **ZEGA LIMITED V ZAMBEZI AIRLINES AND DIAMOND GEENERAL INSURANCE LIMITED (1)** where it was stated that:

“Judgment on admission can only be entered on admissions that are clear.”

The Plaintiff submitted that the aforementioned provisions were clear as to what constituted an admission and this may be express or implied statements provided that such statements were clear.

It is the Plaintiff's position that it is a matter of record that the Defendant's correspondence dated 2nd August, 2016 as prepared under the Defendant's own hand, represented a genuine expressed statement of an admission in the sum of K105,198.54 of the debt claimed by the Plaintiff and that it is an established principle in law that the Defendant is estopped from arguing anything to the contrary or disputing his own act, in this case, being his written admission and/or undertaking to make good the admitted portion of the portion of the debt claimed against him.

He also relied on the recent decision in the case of **KALUSHA BWALYA V CHADORE PROPERTIES & IAN CHANUNORA NYALUNGWE HALUPERI (2)** on the issue of the validity of a

signed document of a party as evidence of a fact or their intent in the absence of any vitiating factors.

The Plaintiff's Counsel further submitted that the Defendant freely wrote the letter to the Plaintiff through its Advocates that admitted the debt claimed by the Plaintiff which the Defendant neglected to honour.

That premised on the wording of **Order XXI Rule 5 of the High Court Rules**, it is the Plaintiff's position that this statement in admitting the amount claimed in the letter is evidence and is acceptance of this indebtedness and they beseeched this Court, on being satisfied as to the genuineness of the signature of the Defendant as witnessed by his own secretary to enter judgment on admission, unless there was good reason to the contrary.

It is the Plaintiff's further contention on this point that in the light of the recent judgment of the Supreme Court cited above in relation to the signing of documentation, that the Defendant cannot now be seen to deny that they did not knowingly and freely append their signature to their own Agreement particularly as he drafted it and as senior member of the bar, should fully understand all the legal ramifications of executing such an agreement as crafted under his own hand.

He also submitted that this position was further fortified by celebrated authorities dealing with written admissions which are made either before or since an action is brought before the Courts of law and would be used as evidence to enter judgment against the party admitting the debt (being the Defendant herein). Learned Counsel for the Plaintiff relied on the English

cases of **HAMPDEN V WALLIS (3)** and **PORRET V WHITE (4)** in this regard.

According to Counsel, the cited authorities supported the position that where a party makes a written admission of the claim or any portion of such a claim made by a Claimant and such admission was duly submitted before Court, this provided grounds for the Applicants to justly seek the granting of an Order for Judgment by way of admission for the admitted portion of the debt claimed together with costs and interest against the Defendant herein.

It was also submitted on this premise that without the need to await determination of any other questions between the parties, this Court may give such judgment, or make such an Order, on the application of the Applicant and the Plaintiff pray for the same.

Lastly Counsel stated that in light of the foregoing submissions and the documentary evidence produced and exhibited on record of the Defendant's own written statement of admission, it is the Applicant's humble prayer that Judgment by way of admission in the sum of K105,198.54 together with costs and interest be entered in favour of the Applicants.

The Defendant did not file any Skeleton Arguments to oppose the application before Court.

When the matter came up for hearing of the Applicant's application on 14th July, 2017 the Defendant and its Advocates were not in attendance. An Affidavit of service filed into Court on

10th July, 2017 sworn by Royd Siampongo, a Legal Assistant in the employ of Messrs. Willa Mutofwe & Associates shows that the Defendant was made aware that the matter was coming up for hearing on 14th July, 2017.

I therefore proceeded to hear the Plaintiff's application to enter Judgment on Admission pursuant to **Order 35 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia.**

I have considered the Affidavit evidence, the Skeleton arguments and the Authorities cited by learned Counsel for the Plaintiff.

The main issue for determination is whether or not this Court should enter judgment on admission in favour of the Plaintiff for the sum of ZMW 105, 198.54.

The gist of the Plaintiffs arguments are that the Defendant freely wrote a letter to the Plaintiff through its Advocates that admitted the debt claimed by the Plaintiff which the Defendant neglected to honour.

That based on the wording of Order XXI Rule 5 of the High Court Rules, it is the Plaintiffs position that the statement in admitting the amount claimed in the letter is evidence and acceptance of the indebtedness and he asked this Court to enter Judgment on admission for the sum of K105, 198.54.

It is trite law as set out in Order XXI Rule 5 of the High Court Rules that a party can apply for judgment on admission where the other party makes admissions of facts or of an allegation made by the opposite party.

Further, **Order 27, Rule 3 of the Rules of the Supreme Court (White Book) 1999 Edition** also provides for Judgment on Admission:

The letter exhibited as "NM2" from the Chief Accountant of the Defendant to the Advocates of the Plaintiff which was authored in response to their letter of demand stated as follows:

2nd August, 2016

Willa Mutofwe and Associates

P.O. Box 39136

Plot No. 19 A Nsumbu Road

Lusaka

Attn: Mr Andrew Kearns.

Dear Sir,

RE: DEMAND LETTER ON BEHALF OF GOOD TIME STEEL

"We hereby acknowledge receipt of your letter dated 21st July, 2016. We would like to state here that, we have closed operations in the country at the moment and put our properties in the market for sale.

We have appointed Knight Frank to sell the property after which we will settle our Bank, ZRA and Creditors. We await our appointed agent to sell the property as soon as a suitable buyer is found.

We will advise you accordingly.

Regards

Rodgers Bwale

Chief Accountant"

A perusal of this letter in my view shows that it is not an admission that the Defendant owed the Plaintiff as it was merely acknowledging receipt of the letter of demand as well as stating that Knight Frank had been appointed to sell the property after which they would settle their bank, ZRA and all Creditors.

All the authorities cited by Counsel for the Plaintiff beginning with the High Court Rules, the Rules of the Supreme Court (White Book) and the cases cited in their skeleton arguments above do indicate that an admission must be express or implied but clear.

In my view the letter shows no clear admission and for this reason I cannot exercise my jurisdiction under **Order XXI Rule 5 of the High Court Rules, Chapter 27 of the Laws of Zambia** to enter Judgment on Admission in favour of the Plaintiff.

The Plaintiff's application for Judgment on Admission is hereby dismissed.

I make no order as to costs.

Leave to appeal is hereby granted.

Delivered in Chambers at Lusaka this 15th day of May, 2018.



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WILLIAM S. MWEEMBA
HIGH COURT JUDGE