

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

2012/HPC/0577

**BETWEEN:**

**DIMITRIOS MONOKANDILOS**

**FILANDRIA KOURI**

**AND**

**FINANCE BANK ZAMBIA LIMITED**



**1<sup>ST</sup> PLAINTIFF**

**2<sup>ND</sup> PLAINTIFF**

**DEFENDANT**

**Before the Honourable Mr Justice W.S. Mweemba at Lusaka in Open Court**

*For the Plaintiffs :* Mr Sakwiba Sikota, SC- Central Chambers  
Mr S. Mambwe- Messrs Mambwe Siwila & Lisimba  
Advocates.  
*For the Defendant :* Mr J. Sangwa, SC - Messrs Simeza Sangwa &  
Associates.

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**JUDGMENT**

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**LEGISLATION REFERRED TO:**

1. Order 14 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia

**CASES REFERRED TO:**

1. Base Aroso V Coutts & Co (2002) All ER 241.
2. Catlin V Cyprus Finance Corporation (London) Limited (1983) QB 759.
3. Royal Bank of Scotland PLC V Fielding (2004) ECWA Civ 64.
4. Nkongolo Farms Limited V Zambia National Commercial Bank Limited Kent Choice Limited (in Receivership) V Charles Huruperi SCZ Number 19 of 2007.
5. Khalid Mohamed V the Attorney General (1982) ZR 49.
6. Brewer V Westminster Bank Limited (1952) 2 All ER 650.
7. London Ngoma and Others V LCM Company Limited and United Bus Company of Zambia Ltd (Liquidator) (1999) ZR 75.
8. The Attorney General V Aboubarcar Tall and Zambia Airways Corporation Limited (1995-1997) ZR 54.
9. Re Harrison (1920) 90 L. J.(Ch) 186.

**OTHER WORKS REFERRED TO:**

1. **Halsbury's Laws of England Volume 42**
2. **Sheldon (1962) The Practice and Law of Banking**
3. **Pagets Law of Banking**
4. **Chitty on Contracts Vol 2: Specific Contracts, London Sweet & Maxwell, 1999.**
5. **Maurice Megrah, The Institute of Bankers' Legal Decisions Affecting Bankers Volume 5 1947-1954, Reprint 1988 Professional Books' Limited, England.**

By a Writ of Summons filed on 30<sup>th</sup> March, 2010, the Plaintiffs are claiming the following from the Defendant:

1. *Payment of US\$949,933.87 with interest at the agreed rate of 7% from March 1996 up to date of payment.*
2. *Further or other relief.*
3. *Costs.*

According to the Statement of Claim, on 20<sup>th</sup> November, 1995 the 1<sup>st</sup> Plaintiff and the Defendant signed an agreement which stipulated inter alia that the Kwacha call account held with the Defendant by the Plaintiffs should be converted to US Dollar account No. 880012002 and that it shall be earning a monthly interest of 42.5% per annum subject to market rate change.

It was further stated that as at 4<sup>th</sup> March 1996, the Plaintiffs had accumulated a total of US\$983, 858.74 in the said account with the Defendant whose deposit terms were that interest be charged at 7% per annum.

However, on 26<sup>th</sup> February, 1996 the Defendant without lawful authority or instructions from the Plaintiffs wrongly debited the Plaintiff's Joint Dollar account with the sum of US\$949,933.87 and all efforts to have the money paid to the Plaintiffs have failed.

That as a result of the Defendant's action, the Plaintiff has suffered loss and damage.

The Defendant filed a Defence on 7<sup>th</sup> March, 2013 and it is averred that the Account in question was solely in the name of the 1<sup>st</sup> Plaintiff and at no time was it joint and all transactions thereon clearly indicated the fact that it was being operated solely by the 1<sup>st</sup> Plaintiff.

It is also stated that the 1<sup>st</sup> Plaintiff's Account had a total sum of USD643,501.36 and the Defendant lawfully exercised its right of set off against the 1<sup>st</sup> Plaintiff's Account arising from the personal guarantee the Plaintiff had given in respect of a credit facility that had been granted to a Company called International Investments and Financings Limited. Moreover that the 1<sup>st</sup> Plaintiff gave a personal guarantee in favour of the Defendant in the sum of USD\$1,200,000.00 which gave the Defendant the right to set off against his two foreign currency dollar accounts including the Account in question. That the 1<sup>st</sup> Plaintiff was a Director in the Company and the Defendant rightly exercised its right of set off against the 1<sup>st</sup> Plaintiff's Account who had given a personal guarantee.

According to the Defendant the set off was exercised on the sum of USD\$ 643, 501.36 which was in the 1<sup>st</sup> Plaintiff's Bank Account held with the Defendant at the material time.

The Plaintiff filed one Amended Witness Statement on 6<sup>th</sup> September, 2016. It stated that he and his wife the 2<sup>nd</sup> Plaintiff maintained a joint account with the Defendant Bank in their personal names.

That by a letter dated 20<sup>th</sup> November, 1995 on page 1 of the Plaintiff's Bundle of Documents the parties agreed to convert their Kwacha Call Account to a United States Dollar Account.



It further stated that at the time of conversion, the interest rate applicable on the Kwacha Call Account was 42.5% per annum and by 23<sup>rd</sup> February, 1996, the interest rate was 47.5% per annum.

Furthermore, that by a letter dated 26<sup>th</sup> February, 1996 the Defendant confirmed that it had converted the Kwacha in the Plaintiff's Account and the amount outstanding in Dollars was US\$949,933.81.

That as at 4<sup>th</sup> March, 1996 he and his wife had accumulated a total of US\$983,858.74 in the said Account whose deposit terms were that interest be charged at the rate of 7% per annum.

That he and his wife came to learn with shock that the Defendant had without their authority, debited their entire account to the credit of a third party namely International Investments and Financing Limited.

Further that although he was a Director in the said third party Company, his wife had completely nothing to do with the same and that neither his wife, him or both of them at the time authorized the Defendant to debit their account to the said Company or to anyone at all.

That International Investments and Financings Limited was an incorporated Company and as further shown, the money borrowed by the said Company was borrowed by the said Company in its own name and had nothing to do with the Plaintiffs.

He averred that he and his wife now humbly sought that this Court orders the Defendant to pay back their money with interest at the agreed rate of 7% per annum from March 1996 to date of payment.

In cross examination **PW1** stated that he and his wife opened and maintained an account with the Defendant between 1994 and 1996 and they deposited \$US1,000,000.00. That they did so by going to the Bank where they were given an account opening form which he completed and put both their names.

Further that the joint account was the issue that had brought them before Court and that the account opening form only showed his signature and that although it set out the names of the 2<sup>nd</sup> Plaintiff at the beginning it did not set out any of her details or signature.

That page 21 of the Defendants Bundle of Documents showed the specimen signature card with his signature... of Account No. 0101800121000 and he did not know why his wife did not sign it.

Moreover, that his wife signed another specimen signature card and he withdrew money from the account, neither did they both sign any money instruments and he had no knowledge on whether his wife signed any or how many.

It was also his evidence that he only had one forex account which was the subject of this action and that he had not given his lawyer any documents signed by his wife to the Defendant Bank.

Further that he was one of the shareholders of International Investments and Financing Limited.

That the letter to Bank of Zambia dated 30<sup>th</sup> November, 1995 indicated that he borrowed money on behalf of the Company to import maize and the bank approved US\$2,190,000.00.

He also added that the Letter of Guarantee bore his signature and was dated 28<sup>th</sup> November, 1995 and as the Chairman of the Company he went to the Defendant Bank to borrow US\$2,100,000 to import maize from Tanzania.

