

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2011/HP/0265

BETWEEN:

BRIG GEN AGGREY NKANDU CHILUBA**PLAINTIFF**

AND

LEONARD MBAO**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 25th DAY OF JULY,
2017**

For the Plaintiff : In person

For the Defendant : In person

R U L I N G

LEGISLATION REFERRED TO:

- 1. The Rules of the Supreme Court, 1999 edition**
- 2. The Debtors Act, Chapter 77 of the Laws of Zambia**

This is a ruling on application made by the Plaintiff for an order to commence contempt proceedings against the Defendant, made pursuant to Order 52 of the Rules of the Supreme Court, 1999 edition. The Plaintiff told the court that he relied on the affidavit verifying the facts, as well as the skeleton arguments, and statement in support of the application.

He stated that judgment in this matter was delivered in his favour on 5th February, 2016 for the payment of K100, 000.00 together with interest, but the Defendant had not paid that money. It was also submitted that bailiffs had gone to the Defendant's house to execute the writ of fifa that

was issued to satisfy the judgment, but had tendered a report that there was nothing of value worth seizing. Further that his previous lawyers had gone to the Defendant's house to prove ownership of the said house, and found property there that could have been seized in execution.

In response the Defendant stated that he had been unwell after the judgment was delivered, and was in and out of hospital. He stated that the house that he lives in is not his, and he is just a tenant there. He told the court that he has farmland in Itezhi Tezhi, but that he has not yet obtained title for it. He concluded by stating that as he has been in and out of hospital, he has not been able to raise money to pay the judgment sum.

The Plaintiff in reply stated that he had seen the Commissioner General of the Zambia Correctional Services, as the Defendant when getting the money from him had told him that he was a supplier with the Ministry of Home Affairs, and that after the judgment he had told him that he was awaiting payment from them. That the Commissioner General had told him that he would apportion money to be paid to him, but that it would be in the Defendant's name. The Plaintiff further submitted that after K40, 000.00 was paid in the Defendant's name, the Commissioner General had called him to go and collect the cheque, but when he went there, he found that the Defendant had already collected it.

It was his contention that the Defendant was just being slippery, and that the issue of sickness was just an excuse. He prayed that he be cited for contempt of court.

I have considered the application. It has been made pursuant to Order 52 of the Rules of the Supreme Court of England, 1999 edition. Order 52 Rule 1 of the said rules of the Supreme Court provides that;

“(1) The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal”.

Order 52/1/3 provides that the chief instance of civil contempt (or "contempt in procedure") is disobedience to an order of the Court by a party to the proceedings.

Order 52/1/11 on the other hand states that contempt of court may issue for the disobedience to a judgment or order for the payment of money (other than for the payment of money into court), within a time specified, subject to the provisions of the Debtors Acts 1869 and 1878.

Further Order 45 Rule (1) of the Rules of the Supreme Court, 1999 edition states that;

“Subject to the provisions of these rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means, that is to say -

(a) writ of fieri facias;

(b) garnishee proceedings;

(c) a charging order;

(d) the appointment of a receiver;

(e) in a case in which rule 5 applies, an order of committal;

(f) in such a case, writ of sequestration.

Section 4 of the Debtors Act, Chapter 77 of the Laws of Zambia on the other provides that;

“4. Subject to the provisions hereinafter mentioned and to prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court:

Provided that-

(i) the jurisdiction by this section given shall, in the case of any court other than the High Court, be exercised only by a subordinate court of the first or second class, and by an order made in open court and showing on its face the ground on which it is issued;

(ii) such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had, since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same”.

In terms of the granting of leave to commence contempt proceedings, Order 52 Rule 2 of the Rules of the Supreme Court states that;

“(1) No application to a Divisional Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a Divisional Court, except in vacation when it may be made to a judge in chambers, and must be supported by a statement

setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit”.

A perusal of the record shows that the Plaintiff on 27th January, 2017, applied ex-parte for leave to commence the contempt proceedings, and that the said application was supported by an affidavit verifying the facts, as well as a statement setting out the names and description of the defendant who is the judgment debtor in this matter, and the grounds upon which the order of committal is sought.

He has therefore satisfied the requirements of the law that are to be met before leave to commence contempt proceedings is granted, and I accordingly grant the said leave.

DATED THE 25th DAY OF JULY, 2017

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**