

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

2015/HP/1822

BETWEEN:



WANG XING CAN

PLAINTIFF

VS

GRACE LUSHINGA CHANDA

DEFENDANT

CORAM: HONORABLE JUSTICE MR. MWILA CHITABO, SC

For the Plaintiff: Mr. R. Msoni of Messrs Willa Mutofwe & Associates

For the Defendants: Mr. Mwangala Mutemwa of Messrs Mutemwa Chambers

JUDGEMENT

Cases Referred to:

- 1. DeGroot v Attals (1973) ZR 77*
- 2. Galaunia Farms Limited v National Milling Company Limited and National Milling Corporation Limited (2004) Z.R. 1 (S.C.)*
- 3. J.Z. Car Hire Limited v Chala and Another SCZ No. 25 of 2002*
- 4. Khalid Mohamed v The Attorney General (1982) ZR 49*
- 5. Tijem Enterprises Limited v Children International Zambia Limited 2010/HPC/0121*
- 6. Wilson Masauso V Avondale Housing (1982) Z.R. 172.*

Works Referred to:

1. *Chitty on Contracts (23rd Edition) Volume 1.*

This matter was instituted by way of writ of summons supported by a statement of claim. The Plaintiff sought the following reliefs:

- a) Payment of the sum of US\$58,000 for the works done.
- b) Payment of the sum of US\$5,000 for the material left on site used by the new constructor
- c) Interest on the sum found due

The Plaintiff's statement of claimed revealed that the Plaintiff was Chinese national resident in Zambia in the construction industry. The statement further revealed that by an agreement dated 6th August 2014, the Plaintiff was contracted by the Defendant to construct two bedroomed flats and a one bedroomed cottage up to completion and commissioning. It was an express term in the agreement that the contractor would provide materials for the works.

It was asserted that the total contract sum of the works was US\$134,640. The Plaintiff stated that he had done works up to lintel level all valued at US\$58,000. It was further revealed that the Defendant advised the Plaintiff to halt further construction as he had no money at the time as she had only paid K139,000 from the sum total. To the Plaintiff's shock, the Defendant had engaged another contractor who had done work from where the Plaintiff left off up to completion using some materials left by the Plaintiff on site

all valued at US\$5,000. The Plaintiff contended that the Defendant was in breach of the agreement.

The defendant filed in her defence and counter claim. In her defence it was averred that at the time the contract was being signed between the parties, the Plaintiff and the Defendant did not adhere to the mode of payment in the contract as they subscribed to a more convenient means of payment. It was contended that the works done were slightly below lintel level and were far below the claimed US\$58,000 and that the same could not exceed K80,000.

The Defendant contended that it was the Plaintiff who deserted the construction site demanding payment even without producing a full bill of quantities despite numerous requests from the Defendant for the same. It was the Defendant's contention that after the Plaintiff deserted the construction site, another contractor was engaged to complete the construction works that should have been performed by the Plaintiff had he not breached his agreement with the Defendant.

The Defendant stated that the new contractor did not use any tool left by the Plaintiff as the only thing left was a tarpaulin tent which was never used and could not cost US\$5,000. It was her further contention that the Plaintiff willfully deceived the Defendant into thinking that she entered into a contract with a company known as "Wang Xin Can" and that the two parties agreed to abandon the mode of payment stipulated in the contract and adhered to an orally agreed mode of payment. She stated that the works done by

