

IN THE HIGH COURT FOR ZAMBIA

2015/HP/1388

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



BETWEEN:

NKHOSI BREWERIES LIMITED

PLAINTIFF

AND

NSIMBI TRUCKING (PTY) LIMITED

DEFENDANT

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, ON
29TH MARCH, 2018**

For the Plaintiff: Ms. C.M. Mwansa - Messrs. EBM Chambers

*For the Defendant: Mr. M.Z. Mwandenga- Messrs. Mwandenga &
Co.*

JUDGMENT

CASES AUTHORITIES REFERRED TO:

1. *Zambia Railways Limited vs. Pauline S. Mundia Sialumba (2008) Vol. 1 ZR 287;*
2. *K. B. Davies and Company (Z) Limited vs. Musunu - Appeal No. 181 of 2006;*
3. *Colgate Palmolive (Z) Limited, Chuka and Others - Appeal No. 181 of 2005;*
4. *Printing Numerical Registering Company vs. Simpson (1875) L. R. 19 EQ 462;*
5. *Attorney General vs. Moyo (2007) ZR 38;*
6. *Holes Limited vs. Buildwell Construction Company Limited (1973) ZR 97;*
7. *Phillip Mutantika and Another vs. Kenneth Chipungu - SCZ No. 13 of 2014;*
8. *Khalid Mohamed vs. Attorney General (1982) ZR 49;*
9. *Nicolene Limited vs. Simmonds (1953) 1 All ER 882;*

- 10. *Associated Chemicals Limited vs. Delamain Zambia Limited and Ellis & Company (1998) ZR 9;*
- 11. *B. P. Zambia Plc vs. Interland and Motors Limited (2001) ZR 37;*
- 12. *Robson Sikombe vs. Access Bank (Z) Limited - SCZ Appeal No. 240/2013;*
- 13. *JZ Car Hire Limited vs. Malvin Chala and Scirocco Enterprises Limited (2002) ZR 112;*
- 14. *Match Corporation Limited vs. Development of Zambia (1999) ZR 13; and*
- 15. *Zambia Exports and Imports Bank Limited vs. Mkuyu Farms Limited, Elias Andrew Spyron & Mary Ann Langley Spyron (1993 - 1994) ZR 36 (S.C.).*

LEGISLATION AND OTHER WORKS REFERRED TO:

- 1. *Treitel: Law of Contract, 13th Edition, Sweet & Maxwell;*
- 2. *Brooms Legal Maxims, 10th Edition, Sweet & Maxwell;*
- 3. *Making Commercial Contracts, John Harris, BSP Professional Books, 1988;*
- 4. *High Court Act, Chapter 27 of the Laws of Zambia;*
- 5. *The Judgments Act, Chapter 81 of the Laws of Zambia;*
- 6. *Halsbury's Laws of England, 4th Edition (re-issue) Vol. 1 (1);*
- 7. *Commercial Law, Roy Goode, 3rd Edition;*
- 8. *Chitty on Contracts, Vol. 1 General Principles, 31st Edition, London, Thompson, Reuters (Legal) Limited, 2008; and*
- 9. *Halsbury's Laws of England, Vol. 9 (1).*

The delay in delivering this Judgment is regretted. It is due to the amount of cases in backlog re-allocated to this Court.

The Plaintiff, Nkhosi Breweries Limited launched this action against the Defendant, Nsimbi Trucking (PTY) Limited, on 17th September, 2015. The action was commenced by way of Writ of Summons and Statement of Claim, whose endorsement is as follows: -

- 1. *Damages for breach of contract entered into between the Plaintiff and Defendant on 18th February, 2014 for shipping of the Plaintiff's seven (7) trucks at a hire charge to the Defendant at the rate ZAR22,000.00 for each*

- truck and shipping the Plaintiff's two (2) one (1) ton vans, all from Johannesburg, South Africa to Kafue, Zambia;*
- 2. Special damages in the sum of K15,000.00 being costs of accommodation and travel to and from Johannesburg, South Africa in an attempt to ensure that the Defendant fully honoured its part of the contractual agreement between the parties hereto;*
- 3. Payment of ZAR63,000.00 or its Kwacha equivalent K34,496.38 being the total balance left outstanding for the hire of the seven (7) trucks;*
- 4. Delivery of the Van the Plaintiff purchased or alternatively the payment of USD13,000.00 or its Kwacha equivalent K102,179.93 being the full purchase of the Van;*
- 5. Payment to the Plaintiff of the sum of USD5,000.00 or Kwacha equivalent K39,300.00 which was paid to the Motor Vehicle distributor/dealership in South Africa as a deposit for the second Van that the Defendant later collected from the said distributor/dealership without the Plaintiff's knowledge and authority;*
- 6. Interests on sums of money found due and owing to the Plaintiff; and*
- 7. Costs of this action.*

The Statement of Claim began by revealing the capacities of the two parties as being, a company incorporated under **The Companies Act**¹ carrying on business of brewing opaque beer and a company limited by shares, incorporated and having its registered office in the Republic of South Africa, carrying on a business of trucking and shipping, respectively. Further, that on 18th February, 2014, the Plaintiff, entered into a contractual agreement with the Defendant for the shipping and delivery of seven (7) trucks at a hire charge to the Defendant at twenty two thousand South African Rand (ZAR22,000.00) each and also for the shipping and delivery of two

(2) 1 metric tons vans from Johannesburg, South Africa to Kafue, Zambia. The Plaintiff did purchase the seven (7) trucks and one (1) van from the truck and motor vehicle dealerships/distributors, which trucks and motor vehicles the Defendant did collect from the dealerships/distributors, but to date the Defendant has failed to deliver to the Plaintiff the van it purchased from Johannesburg, South Africa to Kafue, Zambia as per contractual agreement.

By the said contractual agreement, the Defendant undertook to ship the said seven (7) delivery trucks and two (2) 1 metric ton vans from Johannesburg, South Africa to Kafue, Zambia on condition that each truck was to be shipped with goods belonging to the Defendant at a hire charge of ZAR22,000.00 payable to the Plaintiff by the Defendant less commission of Two Thousand South African Rand (ZAR2,000.00) per truck, Four Thousand South African Rand (ZAR4,000.00) per truck for driver allowance and Seven Thousand South African Rand (ZAR7,000.00) per truck for fuel and therefore leaving a total balance of Nine Thousand South African Rand (ZAR9,000.00) per truck from the ZAR22,000.00 hire charge for each truck, which sums of money still remain unpaid to the Plaintiff to date.

The Plaintiff paid the Defendant directly through its Managing Director Mr. Jonas Zulu the sum of Five Thousand United States Dollars (US\$5,000.00), which sums of money were to be paid by the Defendant to the motor vehicle dealership as a deposit for the purchase of the second van on behalf of the Plaintiff, which sums

