

ZIMBABWE LEAF TOBACCO COMPANY (PVT) LTD
versus
BHUKA FUNGAI CHINAMASA

HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION
MANZUNZU J
HARARE, 7 November & 8 December 2023

Provisional Sentence

S Alumenda, for the plaintiff
Defendant in person

MANZUNZU J:

INTRODUCTION

For what it is, this judgment is meant to be short. This matter was set down on the unopposed roll on 7 November 2023 for provisional sentence. After hearing counsel for the plaintiff and the defendant, I gave my reasons *extempore* and granted the following order which was in terms of the draft by the plaintiff:

- “1. The defendant shall pay the plaintiff the sum of US\$147 587.22 together with interest at the rate of 13% per annum calculated from 13 August 2022 to date of full payment.
2. Defendant shall pay costs of suit on a legal practitioner and client scale.”

The defendant has written letters to the Registrar asking for a transcribed record of proceedings as he expressed his willingness to appeal the decision of the court. These letters were drawn to my attention by the Registrar. I formed the opinion that what the defendant ought to have asked for were written reasons for the decision. In any event, I then decided to record the reasons in this judgment and also directed the Registrar to avail to the defendant the transcribed record. Whether or not the decision of the court is appealable, is not what this court has been asked to decide on.

BACKGROUND

The plaintiff issued summons for provisional sentence based on a liquid document, an acknowledgement of debt signed by the defendant on 4 July 2022. The defendant was duly

served with the summons and a notice of set down for the unopposed roll on 7 November 2023. The defendant appeared in person on 7 November 2023.

PROCEDURE

Provisional sentence is governed by Rule 14 of the High Court Rules, 2021. Subrule (1) provides that:

“Where the plaintiff is the holder of a valid acknowledgment of debt, commonly called a liquid document, the plaintiff may cause a summons to be issued claiming provisional sentence on the said document.”

The plaintiff issued summons in terms of this rule.

The Commercial Division resorts to this rule because r 4 (2) of the High Court (Commercial Division) Rules 2020 authorizes this court to do so.

In terms of r 14(7) a defendant served with the summons may file a notice of opposition before the date stated in the summons for appearance. This, the defendant did not do. He however chose to appear on the date set down for the matter. Such appearance is permitted in terms of r 14(2) which reads in part;

“A summons for provisional sentence shall ... call upon the defendant to pay the amount claimed or, failing such payment, to appear personally ... on the floor of the court at the hour and on the day not being less than 10 days after service and at the place stated in the summons to admit or deny his or her liability.” (emphasis is mine).

While the IECMS system had some glitches during the hearing, the proceedings proceeded fairly well. The court asked the defendant why, if he was opposed to the granting of the provisional sentence, he did not file opposing papers. The defendant said he did not know the procedure and further more could not hire a lawyer because he could not afford to do so.

Nonetheless, the defendant was given the floor and asked to state why the provisional sentence should not be granted. He admitted that he signed an acknowledgement of debt but on the promise by the plaintiff’s agronomist that he would get another loan and his loan was to be downsized. This is all he could say. The defendant did not say he did not owe the amount stated in the acknowledgement of debt. He did not come up with any legal basis upon which the provisional sentence should not be granted. In fact, the defendant could not refer to any of the provisions of the acknowledgement of debt to seek refuge for his defence.

Despite his appearance, I saw no impediment in granting the order as sought by the plaintiff. For these reasons I granted the order as prayed for by the applicant.

Gill, Godlonton & Gerrans, legal practitioners for the plaintiff
Defendant in person.