

AFRICAN HUNTING OUTFITTERS (PVT) LTD
versus
SAFRIQUE SAFARIS (PVT) LTD
and
BULEMBI SAFARIS (PVT) LTD

HIGH COURT OF ZIMBABWE
NDLOVU J
HARARE, 21 June and 20 July, 2022

TRIAL

T Maanda, for the Plaintiff
M.E Motsi for the Defendants

NDLOVU J The Plaintiff issued a summons out of this Court against the Defendants claiming against them jointly and severally one paying, the other to be absolved, US\$130 000.00 being an amount payable by the Defendants to the Plaintiff in terms of a settlement agreement entered into by and between the Plaintiff and the Defendants on 8 October 2020, interest at the prescribed rate from 21 October 2020 to the date of full payment and costs of suit on a legal practitioner and client scale.

The Settlement Agreement was born out of an Urgent Chamber application under case number HC 5689/20 by the Plaintiff against the Defendants pursuant to a contractual dispute over a sale and purchase of hunting rights and quotas. At the hearing the parties informed the Court that they had made tremendous progress in trying to settle the matter as exemplified by the Defendants having paid the Plaintiff a large percentage of the sum claimed already. The only live controversy remaining between the parties therefore was that Plaintiff was of the view that the payment did not represent full and final settlement while the Defendants were of a contrary view.

The bolts and nuts of the remaining part of their dispute centres on the interpretation of clause 3:3:2 as read with clause 3:4 of the parties' Settlement Agreement. The clauses in question read as follows;

“3:3 The Settlement Amount shall be paid as follows;

3:3.1.....

3:3.2 USD 21 875 (Twenty-one thousand eight hundred and seventy five United States Dollars) which shall be paid on or before the 21st October 2020 in cash to the representative of AHO or their legal practitioners subject to clause 3:4 below.

3:3:3

3:4 The payment of the amount in clause 3:3:2 above shall be subject to AHO¹ providing proof to Bulembi and Safrique that three (3) instalments of the annual payment (as defined in the Principal Agreement) due in 2019 were made. If no such proof is provided on or before the 21st October 2020 Bulembi and Safrique shall be released from the obligation to pay this amount.”

COMMON CAUSE

It is common cause that on 20 October 2020 the Plaintiff duly furnished the Defendants with proof of payment of three (3) instalments for the year 2019 made in 2 payments of USD 21 875.00 made on 10 May 2019 for the quarter ending on March 2019 and USD 42 000.00 made on 2 March 2020 for the quarters ending June and September 2019. It is also common cause that the remaining part of the dispute relates to the payment of USD 21 875.00 as provided for in para 3:3:2 of the Settlement Agreement. The Defendants are of the view that Plaintiff should have provided proof of payment of 4 instalments for 2019.

RESOLUTION

The condition precedent for the liability of the Defendants to pay the Plaintiff USD 21 875.00 per clause 3:3:2 is contained in, clause 3:4 and it is that the Plaintiff should provide proof of having paid 3 instalments for the year 2019 on or before 21 October 2020. Nowhere is proof of payment of 4 instalments mentioned. That condition precedent was complied with by the Plaintiff on 20 October 2020. This therefore means that the Defendants are obliged to pay the Plaintiff the amount indicated in clause 3:3:2.

“The role of the court is to interpret the contracts and uphold the intentions of the parties when they entered into their agreements provided always that the agreement meets all the elements of a valid contract.”

Ashanti Goldfields Zimbabwe Limited v Mdala SC 60/17

The agreement entered into by the parties on 8 October 2020 is known as a compromise. It is a settlement by agreement of disputed obligations. It is clear to me that the parties agreed that the Plaintiff on or before 20 October 2020 should provide proof to the Defendants of the payments of 3 (three) instalments for the year 2019, for the Plaintiff to be entitled to the payment of USD 21 875.00. No further condition was attached to that condition precedent. The original agreement was extinguished and replaced the one of 8 October 2020.

Mabhena v Kandale HB 103/04.

¹ AHO is the abbreviation of the Plaintiff’s name given under the “Parties sub-title of the Settlement Agreement.

Georgias & Anor v Standard Chartered Bank Zimbabwe Limited 1998 (2) ZLR 488 (S).

I am therefore satisfied that the Plaintiff has proven its case against the Defendants jointly & severally on a balance of probabilities. Costs of suit shall be as agreed in the compromise agreement. In light of the fact that the Defendants have already settled part of the Plaintiff's claim, I make the following order.

IT IS HEREBY ORDERED THAT:

1. The Defendants jointly and severally, one paying the other to be absolved, shall pay the Plaintiff the sum of USD21 875.00 (Twenty-one thousand eight hundred and seventy-five United States Dollars), or the equivalent in RTGs\$ convertible at the inter-market bank rate at the time of payment.
2. The Defendants shall pay the Plaintiff the amount aforesaid together with interest at the prescribed rate from 21 October 2020 to the date of payment in full.
3. The Defendants shall pay the Plaintiff costs of suit on a legal practitioner and client scale.

Maunga Maanda & Associates, Plaintiff's legal practitioners
M.E Motsi & Associates, Defendant's legal practitioners