

NOBERT KATERERE

Versus

STANDARD CHARTERED BANK ZIMBABWE LTD

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 7 SEPTEMBER & 5 NOVEMBER 2010 & 26 JANUARY 2012

C.P. Moyo, for the plaintiff

J. Tshuma, for the defendant

Trial Cause

NDOU J: The plaintiff issued out summons against the defendant claiming payment of the sum of 8 200 British Pound Sterling being monies deposited by plaintiff with the defendant. The plaintiff also seeks that the defendant pays interest on the said amount at the relevant rate and costs of suit. The background facts of the matter are the following. In 2000 whilst the plaintiff was based in the United Kingdom he became aware that the defendant had an investment programme for overseas based Zimbabweans. According to the plaintiff he contacted the defendant through its employees. An agreement was entered into by the parties. In terms of this agreement plaintiff deposited the sum of British Pound Sterling 8 200 pounds. It was agreed that the money would be changed into Zimbabwean dollars by the defendant. It was also agreed that defendant would invest this sum on behalf of plaintiff. Indeed this was done by defendant as was proved in court. The point of difference between the parties was on what would happen to both the capital sum and profits after the investment matured. The issues are, therefore, the following –

- (a) Whether defendant through Bob Matemera and Henry Kwangwari undertook that, the Zimbabwe dominated interest earned from the investment of 8 200 pound Sterling, would be converted, together with the capital amount into Pound Sterling.
- (b) If there was such an agreement, and defendant was in breach of the same, whether plaintiff suffered a loss of 8 200 Pound Sterling and whether defendant is liable to pay back the said amount to plaintiff with interest as claimed.

The onus is on the plaintiff – *Pillay v Krishma* 1946 AD 946 at 949. It is common cause that the alleged agreement was not in writing. The question, therefore, is whether plaintiff has adduced evidence which on a balance of probability proves the existence of the alleged agreement taking into account the circumstances of the case. It is common cause that Bob

Matemera and Henry Kwangwari are no longer in the employ of defendant. The evidence available for defendant is the documentary evidence and knowledge of the banking policies applicable then. The plaintiff testified that he saw a fax emanating from the defendant indicating that the money would be invested via Treasury Bills and Bankers Acceptances. The fax also detailed the prevailing rates. In pursuant to this information, he made an application to open two accounts, namely the Foreign Currency Account ("FCA") and the Zimbabwe Denominated Account ("ZDA") with the defendant. It is his testimony that the FCA was to be used to receive foreign currency i.e. British Sterling Pound that he wanted to invest. And that the ZDA was the account which the British Pounds were to be paid into and thereafter converted into Zimbabwe dollar. The latter would then be invested in Treasury Bills or Bankers Acceptance or whatever investment. Plaintiff said he did not really mind whichever as he had faith in the defendant as his bankers. He said that he did receive a statement of account which confirmed receipt of his 8 2 00 Pound Sterling deposited into his FCA, the transfer of this amount into his ZDA as a vehicle for investment. He was satisfied that his instructions had been carried and he left the investment to be run by defendant. The documentary evidence produced confirmed that that amount was indeed invested and it indeed earned some interest as envisaged by the investment arrangement. His contention was that the agreement between the parties was that the FCA and ZDA were going to run parallel. He said this was the verbal undertaking made on defendant's behalf by its then employee Bob Matemera and later confirmed by Henry Kwangwari. In other words these two employees of defendant made a verbal undertaking that the Zimbabwe dollar denominated interest earned from investment of 8 200 Pound Sterling would be converted, together with the capital amount, into Pound Sterling. This is the crux of the matter in this case.

The defendant called two witnesses namely Evelyn Nyakoty and Tatenda Mutundwe who were employed as General Manager Distributions: Branch Sales and Services and Business Relationship Manager: Small to Medium Enterprises respectively. Tatenda Mutundwe investigated the matter after the plaintiff raised a complaint. She went through all the records in connection with the plaintiff's accounts. She went through the investments done on behalf of the plaintiff by defendant. The long and short of it is that all interest earned from investments was transferred into plaintiff's ZDA. The witness explained that they tried to locate Bob Matemera but failed. Be that as it may, the witness indicated through documents there is evidence on how this investment was run and how the plaintiff made withdrawals from his ZDA until the funds were exhausted. The witness categorically indicated how the plaintiff utilized all the funds in his account. The witness also evinced that it was also unlawful to do what the plaintiff says Bob Matemera undertook. The Reserve Bank of Zimbabwe Guidelines applicable at the time, (of 1986) did not allow the conversion of Zimbabwe Dollar investment into foreign

currency. All foreign currency required by individuals to be bought using Zimbabwe Dollar had to be authorized by the Reserve Bank. This testimony was substantially corroborated by that of Evelyn Nyakoty. I find that it is highly improbable that plaintiff and Bob Matemera (acting on behalf of defendant) entered into the verbal agreement as alleged. Further, the investment portfolio of plaintiff shows that not only did plaintiff invest the 8 200 Pound Sterling through defendant but introduced more money for investment. If defendant was in breach of the initial agreement, it is highly unlikely that plaintiff would ask defendant to add to his already existing investment even more money. Plaintiff must have been satisfied with the manner in which his investment was performing hence the introduction of more funds. I find the plaintiff's testimony incredible and I am impressed by the defendant's two witnesses. Their testimony is supported by records of the plaintiff's accounts. It is clear from their records that the full amount of 8 200 Pound Sterling has been accounted for. It was converted, invested and is earned interest. Both the capital amount and interest earned were withdrawn and used by the plaintiff. No evidence was led by the plaintiff to show that the failure to convert the capital amount and interest into Pound Sterling resulted in a loss to plaintiff and if so how much. Not only has plaintiff failed to prove that there was an agreement between himself and defendant as alleged, he has also failed to prove any damages suffered, and if suffered, the quantum of such damages. The claim is devoid of merit.

Accordingly, I dismiss the plaintiff's claim with costs.

Messrs Moyo & Nyoni, plaintiff's legal practitioners
Webb, Low & Barry, defendant's legal practitioners