

JETHRO MWANZA

Versus

BEITBRIDGE BULAWAYO RAILWAYS

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 21 AND 22 FEBRUARY 2012

Plaintiff in person
P. Madzivire for defendant

Civil Trial – Ex Tempore

KAMOCHA J: The plaintiff who is a self actor was claiming a sum of US\$8 000 which he alleged was a refund of an amount he had deposited into the account of Beitbridge Bulawayo Railways on 13 August 2008 which amount was meant to be an out of court settlement payout.

The brief background of the matter is as follows. The plaintiff was an employee of the defendant from 2003 to 2004 working as an administrative officer.

Sometime in 2004 there was a labour dispute between the plaintiff and his employer. The parties sought recourse from the labour court where judgment was granted in favour of the plaintiff. The employer was ordered either to re-instate the plaintiff or alternatively pay him damages instead. The matter dragged on for about four years until 12 June 2008 when the parties had a round table conference with a view to reach a settlement. It seems common sense prevailed and the parties agreed that the plaintiff be paid the sum of \$750 billion in full and final settlement of the plaintiff's entitlement.

The settlement agreement was however short lived as the plaintiff pulled out of it four days later on 16 June 2008. The plaintiff was advised by his legal practitioners that the amount had been paid into his wife's ZABG account number 19301002202163 Fife Street branch in terms of the agreement. His lawyers further advised him that since he had pulled out of the settlement agreement he should refund the \$750 billion paid into his wife's account. He did as advised and refunded the amount which was revalued to \$75.

While it is common ground that the plaintiff refunded the \$750 billion revalued to \$75 he disputes that the defendant had indeed paid the said amount into his wife's bank account as agreed. His story on that point is that almost at the same time his wife had applied for a loan from the Ministry of Public Construction to effect some renovations at his house in Thorngrove.

The loan was approved and Ministry of Construction paid into her account a sum of \$500 billion. That was the same account into which the defendant was to pay the \$750 billion. Plaintiff produced his wife's bank statement reflecting that a cheque in the sum of \$500 billion was deposited on 17 June 2008. Plaintiff wanted the court to believe that the cheque deposit was from Barclays Bank Zimbabwe the bankers of the Ministry of Construction. His suggestion is clearly wrong. The statement would have reflected Barclays Bank if the wife had got a loan from the bank itself not when the loan was from Ministry of Public Construction. The bank account narrates and identifies the names of the depositors of funds into bank account not the banks from which the depositors draw their funds. What is likely to have happened in this case is that there was a typographical error in that when trying to write "BBR" what was written was "BBZ".

The plaintiff denied that the \$750 billion was deposited into his wife's account in terms of the agreement but just refunded the defendant on the advice of his lawyers. He now claims back that amount having converted it to \$8 000.

His wife's evidence is in support of his story. She denied that the \$750 billion was deposited in her ZABG bank account. She states that the \$500 billion that was found in her ZABG bank account was from Ministry of Public Construction. She said her employers began to make a deduction from her salary in favour of Ministry of Public Construction starting from the month of May 2008.

The defendant led evidence from one Raymond Shonhiwa who is a financial executive who told the court that in an effort to finalise the dispute between plaintiff and defendant a deed of settlement was drawn up. The plaintiff was to be paid \$750 billion.

On 16 June 2008 two sums of \$500 billion and \$250 billion were paid into the plaintiff's wife's ZABG bank account. He produced two bank slips showing that the money was indeed paid into B. Mwanza ZABG bank account. The cheque deposit slips were stamped by ZABG. The stamp is faint but the 16 June 2008 can be seen.

There is therefore no doubt that the \$750 billion was paid into the plaintiff's wife's ZABG bank account. If the bank failed to transmit the money to the plaintiff the problem would be between the plaintiff and his bankers.

The witness also produced a Standard Chartered bank cheque in the name of B. Mwanza the plaintiff's wife in the sum of \$500 billion dated 16 June 2008. That was the cheque that defendant gave to ZABG. The cheque reflects the account holder as Beitbridge Bulawayo Railway BBR. Hence it admits of no doubt that the \$500 billion reflected in the plaintiff's wife's bank statement was paid by the defendant. The plaintiff's story that it came from Ministry of

Public Construction is rejected. As already stated above if ZABG bank did not transfer the remaining \$250 billion into the plaintiff's wife's account the fault would lie with her bank.

The plaintiff was therefore refunding what should have been paid to him by the bank of his own choice. If his bank failed to pay him he cannot claim the money from the defendant.

I therefore make a finding that the defendant is not obliged to pay the plaintiff anything.

His claim is accordingly dismissed with costs.

Joel Pincus, Konson & Wolhuter defendant's legal practitioners