

GIBSON FONDI SANGWENI

Versus

BENSON MPALA

IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO 16 MAY 2017

Civil Trial

N. Mazibuko for the plaintiff
Defendant in person

TAKUVA J: Plaintiff's claim against defendant is for: Payment of the total sum of US\$11 000,00 plus holding over damages due from the defendant to the plaintiff in respect of machinery hired to the defendant by the plaintiff at defendant's specific instance and request which monies defendant has failed and/or neglected to pay despite demand. Plaintiff further claimed a return of the said machinery together with interest on the aforementioned amounts and legal costs. A further claim was for payment of holding over damages at the rate of US\$500,00 per month calculated from the 1st September 2013 to date of return of the machinery abovementioned or payment of replacement value thereof together with interest at the prescribed rate calculated from the date each monthly amount becomes due and payable to date of full payment.

Defendant entered appearance to defend and subsequently filed his plea. The following issues were agreed to at the pre-trial conference:

- (1) whether the parties entered into an agreement whereby the defendant hired from the plaintiff some machinery being a Chicago Pneumatic Rock drill/Jackhammer, airleg, 30 metres of hose plus connectors and lubricator valued at US\$2 000,00 for a hire fee of US\$500,00 per month starting from the 1st March 2013.

- (2) whether the plaintiff delivered the aforementioned machinery to the defendant and whether the defendant failed to pay the monthly hire fee of US\$500,00 since he took custody of the machinery.
- (3) whether the plaintiff cancelled the agreement and demanded the return of the machinery in February 2014 and whether defendant has failed to return the machinery aforementioned.
- (4) whether the defendant accrued arrear hire charges from March 2013 to February 2014 being the total amount of US\$6 000,00.
- (5) whether the plaintiff is suffering holdover damages equivalent to US\$500,00 per month or part thereof calculated from the 1st March 2014 to the date when the defendant returns the machinery.
- (6) whether the machinery's replacement value is US\$2 000,00

Plaintiff gave evidence in which he simply confirmed the hire agreement between the parties including the terms therein. Further he testified that defendant failed to make any payments forcing him to cancel the agreement and demand the return of his machinery. When defendant failed to deliver the machinery he held a meeting at defendant's house where defendant made a written undertaking to return the machinery on or before the 28th February 2014. Defendant undertook to come up with a settlement plan for payment of outstanding hire fees.

Despite the written undertaking, the defendant neither brought back the machinery nor paid the hire fees. To date the machinery and the hire fees remain outstanding.

Defendant declined to cross examine the plaintiff insisting that he had no questions to put as he agreed with plaintiff's evidence *in toto*. He said all he wanted was for the parties to live harmoniously as neighbours. When he took the witness stand, he stated that he was not disputing the plaintiff's claim at all, adding that he was grateful for the opportunity granted to the parties to resolve their dispute as "brothers". Finally, he said he would abide by the judgment of the court.

In view of the fact that the plaintiff's claim has not been denied, I find that plaintiff has established its claim. Consequently, I make the following order:

- (1) Defendant be and is hereby ordered to make the following payments to the plaintiff.
 - (a) Payment of accrued hire fees from March 2013 to February 2014 in the sum of US\$6 000,00 together with interest thereon at the prescribed rate calculated on each individual component of US\$500,00 per month from the date when each payment became due to date of full payment.
 - (b) Payment of accrued holding over damages calculated from March 2014 to August 2014 in the total sum of US\$3 000,00 together with interest thereon at the prescribed rate calculated from the 1st day of each month that each monthly amount of US\$500,00 became due and payable to date of full payment.
 - (c) Defendant returns forthwith to the plaintiff, plaintiff's machinery being Chicago Pneumatic Rock Drill/Jackhammer, Airleg, 30 metres of hose pipe plus connectors and lubricator, failing which to pay the replacement value thereof US\$2 000,00 together with interest thereon at the prescribed rate calculated from the date of issue of summons to date of full payment.
 - (d) Payment of further holding over damages at the rate of US\$500,00 per month calculated from the 1st September 2013 to date of return of the machinery abovementioned or payment of the replacement value thereof together with interest at the prescribed rate calculated from the date each monthly amount becomes due and payable to date of full payment.
 - (e) Payment of costs of suit.