

KM INSURANCE
versus
MR REUBEN MARUMAHOKO

IN THE HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 25 November 2014

Pre-trial Conference

N.Bvekwa, for the plaintiff
The defendant in person

MATANDA-MOYO J: On 17 November 2014 this matter came before me for a Pre-Trial Conference. The parties duly attended and the only issue was whether the loan amount was repaid. The plaintiff submitted that an amount of \$18 897.00 remained outstanding to date. The defendant submitted that such amount was settled. I postponed the matter to 24 November 2014 to enable the defendant to submit proof of payment. On 24 November 2014 I postponed matter to 25 November 2014 at 1000hours. At 8:59 am. On 25 November 2014 the defendant's lawyers filed a renunciation of agency.

Such conduct by lawyers is intolerable. At worst the lawyer was supposed to attend and explain to me the reasons for such renunciation. In future I will not hesitate to order costs *de bonis* against such offending legal practitioners. Such conduct is disrespectful to the very court to which lawyers are officers of.

On the 25 November 2014 the defendant attempted to profer a different defence from the one in papers. The defendant admitted to owing the said amount but disputed receiving farming inputs to the value of \$20 000-00. The pleadings in this matter were closed and the defendant having not sought and obtained leave to reopen proceedings. The defendant could not be allowed to profer a new defence at that stage.

The duties of a judge in a pretrial conference include:-

- (1) Identification of issues to be resolved at trial.

- (2) Identifying common cause areas.
- (3) Eliminating frivolous claims or defences.
- (4) Identify witnesses and documents.
- (5) Discuss possibilities of a settlement.

After the conference a Judge either issues an order reflecting the results of the conference or refers the matter for trial on identified issues.

The question is can a pretrial Judge simply refer a matter to trial where there are no disputed issues to be resolved at trial? Certainly not. To do so would amount to defeating the real purpose from which a trial court is constituted to do. When it is clear that a litigant simply refuses to settle but concedes that there are no issues for determination at trial. I am of the view that it is permissible for the pre - trial judge to enter judgment at that stage.

I found that there were no issues to refer to trial as the parties basically agreed that a loan amounting to the tune of \$20 000-00 was advanced to the defendant for the 2011-2012 agricultural season. A sum of \$4 000-00 was advanced for tobacco insurance and \$2 850-00 was advanced for livestock insurance making a total of \$26 850. Adding interests and other costs the amount came to \$33 355. The defendant has since paid the sum of \$14 458-00 towards extinguishing of the debt leaving a balance of \$18 897.00 which is the amount claimed in the summons.

I therefore did not identify any issues for referral to trial. Accordingly judgment is entered in favour of the plaintiff in the following;

1. That defendant pay to plaintiff the sum of \$18 896.15 together with interest at the rate of 6 % per annum from 31 March 2011 to date of full payment.
2. Collection commission in terms of the loan agreement.
3. Costs on a higher scale.

Musekiwa & Associates, plaintiff legal practitioners