

PETROS CHAPONDA
versus
DOUGLAS CHIDEMO

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 17 May & 2 June 2016

Opposed Application

T. J. Madotsa, for plaintiff
D.Chidemo, in person

TSANGA J: The plaintiff's claim was for provisional sentence in the amount of US\$8 750.00 based on an acknowledgement of debt signed on 30th August 2014 by the defendant in favour of the plaintiff, whereby the defendant undertook to pay stipulated instalments from 30th September 2014 to 30th October 2014.

On the 17th of May 2016 when the matter was initially scheduled for hearing, the defendant requested a postponement of the matter because his lawyers had renounced agency the day before and he needed to find new lawyers. I agreed to the postponement and ordered that the plaintiff's wasted costs for the day be paid by the defendant. These remain due and owing.

At the hearing of the matter on the 2nd June, the defendant appeared as a self-actor. The plaintiff indicated that the costs had not been paid despite a letter of demand being sent to his place of business. His wife had refused to sign. The plaintiff therefore sought that the application for provisional sentence be heard as if the defendant was not present. The defendant objected on the grounds that he had not received the letter. Having noted that the letter had not been sent to the address indicated by defendant's erstwhile lawyers as his address, I permitted the defendant to be heard whilst reiterating to the defendant that the costs ordered by the court on the 17th of May for the postponement of the matter remain due and owing.

Having heard the matter, I granted the application for provisional sentence as follows:

1. It is ordered that the defendant be and is hereby ordered to pay the plaintiff the sum of \$4333.00 (four thousand three hundred and thirty three United States dollars).
2. The defendant to pay costs of suit.

I hereby capture more fully, the written reasons for so doing.

The defendant did not deny signing the acknowledgment of debt nor did he deny his signature. In his papers he said he paid \$3 250.00 in satisfaction of the debt. However, he said that as they were close friends, the plaintiff had not provided him with any receipts as proof of payment. He also said the plaintiff recovered \$4 317.00 from his wife in person via *Eco-cash* payments since she was the one in charge of their business and had been mandated by him to make the payments. He had attached in response to the application, the schedules of payments made by his wife through *Eco-cash* payments. Thus the core of the defendant's defence to the claim for provisional sentence was that the amount had been paid through payments both by his wife and himself personally, and that as such, the demand for \$8 750.00 was unjustified.

As a general principle, provisional sentence summons will be granted where acknowledgment of debt is sufficiently clear and certain and where no evidence to the contrary has been given by the defendant. Once granted, a plaintiff is entitled to immediate payment and to issue a writ of execution. (See *Rich & Ors v Lagerway* 1974 (4) SA 748 (H)). As regards the money paid by the defendant's wife Alice Maingire, which the plaintiff had argued in his papers that it had been made towards the settlement of her own debt, the plaintiff's counsel agreed at the hearing that given that his client had not availed evidence in support of this assertion, and since Alice Maingire had sworn to an affidavit that she had paid \$4 317.00 in settlement of her husband's debt, the plaintiff's claim of \$8750.00 could be reduced by the amount alleged to have been paid.

I therefore granted the application for provisional sentence for the sum of \$ 4333.00 and costs of suit for this reason and for the foundational reason that defendant conceded to signing the acknowledgement of debt in question.

Madotsa & Partners, plaintiff's legal practitioners