

ZIMBABWE FARMERS DEVELOPMENT COMPANY (PVT) LTD  
versus  
KIZITO DZVOVA

HIGH COURT OF ZIMBABWE  
CHIWESHE JP  
HARARE, 28 July 2017 and 2 March 2018

**Opposed Matter**

*R. Kwenda*, for the plaintiff  
*Miss M. Mafo*, for the defendant

CHIWESHE JP: The plaintiff issued summons against the defendant claiming payment of the sum of \$395 415.15 in respect of farming equipment sold at Harare on 10 September 2009 and delivered to the defendant at his specific instance and request. The plaintiff also claims interest at the prescribed rate, payment of collection commission and costs.

The defendant entered appearance to defend and filed an exception and a special plea. The defendant excepted to the summons as being vague and embarrassing as it is not clear whether the cause of action is based on a sale agreement or a loan agreement. The exception is however without merit as the vagueness complained of has been cured by way of further particulars provided by the plaintiff at the defendant's request. The claim is based on a sale agreement and not on a loan agreement. It is trite that further particulars form part of the pleadings. The effect of the further particulars was to cure any defect, ambiguity or embarrassment (if any) in the summons or declaration. See *ZFC Limited v Kettex Holdings* HH 253-15.

With regards the plea of prescription, I agree with the plaintiff that the provisions of s 15(d) of the Prescription Act [*Chapter 8:11*] wherein the prescriptive period is set at 3 years are not applicable in the present matter. Rather it is s 14 (2) of the Act that is applicable.

It provides:

“A subsidiary debt which arose from a principal debt or a debt which is dependent upon a principal debt shall be extinguished by the prescription of the principal debt.”

Thus in the present matter the plaintiff’s claim is subsidiary to the principal claim, namely that of *actio rei vindicatio*. This is so because the agreement between the parties has a reservation clause, namely that the equipment sold shall remain the property of the plaintiff until the purchase price is paid in full. Hence the amount claimed by the plaintiff is a subsidiary claim, dependent upon the principal claim of ownership giving the plaintiff the right to recover the equipment itself. Conversely the sum claimed by the plaintiff is the subsidiary debt whilst the right to recover the equipment is the principal debt. Prescription cannot therefore arise until the principal debt, upon which the subsidiary debt is dependent, has been extinguished. Section 2 describes the word “debt” widely to “include anything which may be sued for or claimed by reason of any obligation arising from statute, contract, delict or otherwise”.

See *Chetty v Naidoo* 1974 (3) SA 13 (A) and *Surface Investments Pvt Ltd v Chinyani* 2014 (1) ZLR 658 (H).

I am satisfied that both the exception and the special plea are without merit.

Accordingly, it is ordered as follows:

1. The exception be and is hereby dismissed.
2. The special plea be and is hereby dismissed.
3. The defendant be and is hereby directed to file its plea within seven days from the date of receipt of this order.
4. The defendant shall pay the costs of this application.

*Muvirimi Law Chambers*, plaintiff’s legal practitioners  
*Scanlen & Holderness*, defendant’s legal practitioners