

AFRICON TRADING ENTERPRISES (PVT) LTD  
Versus  
DENSON MUTASA

HIGH COURT OF ZIMBABWE  
DUBE J  
HARARE, 18, 25, 26 September 2017 & 2 November 2017

**Civil Trial**

*I Chiwara*, for the plaintiff  
*M C Mukome*, for the defendant

DUBE J: This claim is based on an acknowledgment of debt, (A.O.D).  
The brief facts surrounding this dispute are as follows. The plaintiff is a company that trades in fuel. The defendant was a director of Nhari Investments (Pvt) Ltd. The defendant and his co-directors traded in fuel under Mammoth Fuels. The plaintiff would sell fuel to Mammoth Fuels which in turn would sell it to Biddulphs Removals. The defendant managed the account with Biddulphs and was supposed to collect payments for the fuel and remit them to the plaintiff. On 7 September 2010 the plaintiff delivered fuel worth \$29 961.05 which was delivered to Biddulphs and the defendant signed for it. A total of \$13 911.00 remained outstanding. Nhari Investments started experiencing viability challenges. The defendant signed an AOD acknowledging that he owes the plaintiff the amount claimed. The defendant has failed and refused to pay the debt he acknowledged. The plaintiff issued provisional sentence summons claiming the monies outstanding. The defendant admits signing the A.O.D but asserts that he did so under duress after he had been threatened with criminal charges. He asserts further that the debt belongs to Nhari Investments and that he cannot be held personally liable for such a debt.

The following issues were referred to trial;

1. Whether or not defendant owes the plaintiff the sum of \$13 911.05.

2. Whether or not plaintiff's claim is based on a liquid document
3. Whether or not the defendant signed the A.O.D under duress.

The plaintiff called Graham Escort Parham in support of its case. His testimony is as follows. He was responsible for distribution of fuel for the plaintiff. He got to know the defendant because he used to deliver fuel to one of Nhari Investments' clients, Biddulphs Transport. The defendant is one of the directors of Nhari Investments. Nhari Investments would buy fuel from the plaintiff which would be delivered directly to their clients. They would collect money from their clients and pay to the plaintiff. Plaintiff delivered fuel to Biddulphs worth \$29 961.05 on 7 September 2010 and it was signed for by the defendant who was responsible for that account. The fuel was delivered by Ram Investments through Concrete Structures, a transport company, to Biddulphs. A total of \$16 000.00 was paid leaving a balance of \$13 911.95.

The defendant attended at his offices when he was in the company of his brother on 17 September 2010. They asked him to sign an acknowledgment of debt for the balance outstanding and he did so. He returned one more time after the signing of the A.O. D and paid a further \$1 000.00 in cash leaving a balance of \$12 911.05. The defendant was not threatened with criminal charges as alleged.

The witness maintained under cross examination that the defendant accepted that the Biddulphs debt was his responsibility because he was in charge of that account and signed the AOD. He maintained that he never threatened the defendant with criminal prosecution. The witness testified well and maintained his version under cross-examination.

Douglas Chiimba was called to testify on behalf of the plaintiff. He testified as follows. He was in a business partnership with the defendant in a company which ran service stations and retailed fuel to other companies called Nhari Investments. There were five directors and the defendant was one of them. The Biddulphs account was handled by the defendant. Around September 2010 Nhari Investments fell into debt. The directors split the debt and took ownership of the accounts they handled. The defendant took ownership of the Biddulphs account. Directors would take ownership of debts by signing acknowledgment of debts and would pay the debts in their personal capacities since the company had no capacity. The defendant acknowledged the Biddulphs debt .The defendant was not threatened with prosecution when he signed his own

agreement of debt. He is not being sued because he adhered to his payment plan. The witness gave a straight forward version of the events leading to the signing of the AODs.

The defense called the defendant in his own case. He testified as follows. He handled the Biddulphs account. He was given the acknowledgment of debt drafted by the plaintiff when he went to make payment. There were a number of people in the office. Gary Parham told him that he would not leave until he signed the document. He was threatened with criminal sanctions if he did not sign the AOD. He was not sure what the people in the room were threatening to do with him and what it could lead to. They said that he could rot in jail and that they had people in high places. One of the directors said that they would take him to jail and that he knows everything about him as he was being followed. All the other people were talking and emphasizing what Gary Parham was saying, with him leading the conversation. He was sitted whilst the owner of the business was standing. He told them that he was signing the agreement of debt on behalf of Nhari Investments and not because he was under any obligation to do so as a person. He eventually signed the agreement of debt against his will. Nhari owes the plaintiff and should pay. He did not take ownership of the debt. He denied that the directors of Nhari Investments agreed to split the debt and that he was part of that arrangement.

Under cross examination, he testified that he disputed the amount owed. He made a payment of \$1000.00 after the agreement of debt was signed. He insisted that he signed the agreement of debt under duress.

An AOD signed under fear or threats of force cannot stand in a court of law.. A litigant who challenges an AOD on the basis that he signed it under duress has the onus to show that that he signed the AOD under duress. Where there is an allegation that he was threatened or forced to sign the AOD, he must show that the fear or force of threats was so overwhelming such that he could not resist the force to sign that AOD but simply comply. See *Broad Tyk v Smuts* 1942 TDD 47 at 52.

The test to follow in determining whether a signatory to an acknowledgement of debt did so whilst under duress has been dealt with in a number of cases. The case of *Export Trading Company v Mazambani* HH 195/17 dealt with a litigant who challenged an AOD. The court listed the requirements that one has to satisfy as follows,

Where a litigant claims that he signed an AOD under duress he must satisfy the following requirements,

1. The fear alleged must be reasonable.
2. The fear must be caused by some threat of considerable measure.
3. It must be a threat of an imminent or inevitable evil.
4. The threat must be unlawful at *contra bonos mores*.
5. The moral pressure exerted must have caused damage

The first issue for consideration is whether the defendant signed the agreement of debt under duress. The defendant was required to show that he was forced to sign the AOD under duress. The defendant testified that there were many people in the room. He pointed to about three people as being in the room where he signed the agreement of debt. He says that the first witness (Gary) was leading the conversation. He created the impression that all the people in the room were talking and exerted pressure on him but was unable to say what each individual said and how each individual pressured him. During his evidence he stated that he was not sure what these people were threatening to do with him. He was told that someone, not named, had people in high places, and that they knew everything about him because he was being followed. The evidence of threats and duress was too general and not convincing and lacked detail. The witness did not impress the court as truthful witness. He seemed to be making up his story as he progressed. His story that he signed the agreement of debt under duress does not find favor with the court. He has failed to cross the first hurdle, that is, that he was forced to sign the acknowledgment of debt.

The defendant is a businessman who is expected to know the effect of an acknowledgment of debt. It is not plausible that a director of a company would be threatened to sign a business document by threats of being jailed. I do not believe that a man of the defendant's standing would believe that he would be taken to jail when there are no criminal allegations or proceedings against him. The first witness and his team were not police officers and do not have powers to take anybody to jail. The threat to jail him was not imminent. He knew that he had not committed an offence; his fear that he would be jailed lacks a proper basis.

He says that he was threatened with jail if he did not sign the agreement of debt. He testified that he wasn't even sure what he was being threatened with. It is not reasonable for a person who has not committed any offence to fear that he will be sent to jail. The threat was not imminent nor

was it inevitable the fear of the defendant, if any, was not reasonable. It is not reasonable for a man of his standing to fear that he would be taken to jail when there are no criminal proceedings pending and for no apparent reason.

The defendant did not make a report of allegations of extortion to the police. He also failed to report to his co-directors that he was being forced to pay a debt that does not belong to him but chose to try and clear the debt instead. Ten days later, he goes back to the same office and pays \$1000.00 to reduce the debt. His conduct after the signing of the agreement of debt does not support his assertion that he was forced to sign the AOD .

The fact that the debt originally belonged to Nhari Investments does not assist the defendant. He took responsibility for the debt. He appended his signature to the acknowledgement of debt which qualifies as a liquid document. A man who appends his signature to a document assents to the contents thereof. The maximum *caveat subscriptor* is applicable to the circumstances of this case. In *Burger v Central African Railways* 903 TS 578 at 578, the court said the following of the concept,

“It is a sound principle of law that when a man signs a contract he is taken to be bound by the ordinary meaning and effect of the words which appear over his signature”

The defendant is taken to have acquainted himself with the contents of the AOD before signing it. The defendant appended his signature to the AOD, he acknowledged the contents thereof. He is bound by the AOD. I am not convinced that the defendant signed the acknowledgement of debt under duress. The plaintiff is entitled to the order sought.

In the result it is ordered as follows:

1. The defendant shall pay to the plaintiff is US \$12 911.05 together with interest at 1% per annum from 1 October 2010 to date of payment in full.
2. Costs of suit.

*Coglan, Welsh & Guest*, for plaintiff’s legal practitioners  
*M C Mukome Legal Practitioners*, defendant’s legal practitioners