

MAXLUCKY TOBACCO (PRIVATE) LIMITED
versus
DOESMATTER MUVIMBI

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 17 July & 11 October 2017

Civil Trial

T Zhuwarara, for plaintiff
T Maganga, for defendant

TAGU J: Most of the facts in this case are common cause. The undisputed facts are that on the 7th of October 2014 the plaintiff and the defendant entered into a Tobacco Contract Growing and Marketing Scheme on condition that the plaintiff would provide the defendant with financial and input support for the production of flue cured tobacco. The defendant was obliged to produce flue cured tobacco on 10 hectares of land yielding a minimum of 25 000kg of tobacco. The defendant was obliged to further repay the loaned amount at the end of the 2015 Tobacco Selling Season which was on the 3rd of July 2015. Interest was to accrue on all outstanding amounts at a rate equivalent to the Bank lending rate of the Commercial Bank of Zimbabwe Limited which was then at 10% per annum.

In accordance with the agreement entered into by the parties the plaintiff provided the defendant with finance and input for a total loan of US\$37 302.49. In breach of the terms and conditions of the agreement the defendant failed to deliver to the plaintiff the agreed quantities of tobacco and failed to repay the advanced loan which resulted in the full amount of US\$37 302.49 being due and outstanding. The plaintiff is now claiming from the defendant the sum of US\$37 302.49 together with interest thereon at the rate of 16% per annum calculated from the 31st July 2015 to date of payment in full and costs on a legal practitioner and client scale.

In his plea the defendant said that the plaintiff is the one who breached the contract by failing to finance the project and unilaterally changed the terms of the contract. The defendant therefore counter claimed an amount of US\$62 500.00 in lost revenue and costs incurred in tilling the land. He said the same must be set off against the plaintiff's loan.

The two issues that fell for determination therefore were whether or not the defendant is indebted to the plaintiff in the amount of USD 36 941.20 or any amount at all, and whether or not the plaintiff is liable to the defendant for the amount of USD62 500.00.

Mr Allen Derick Mayberg the General Manager of the plaintiff told the court that the plaintiff supplied all the inputs to the defendant. They later made a follow up and found that the tobacco curing facilities which they had initially been shown by the defendant belong to another farmer and they got concerned. They further discovered that the equipment they had seen on the farm also belonged to another contributor. They saw that the barns were in disrepair and based on those observations they had to make an adjustment to the contract. He produced an addendum in which they reduced the hectares from 10 to 4. The addendum was signed by the defendant on the 21st of November 2014. In terms of paragraph 4 of the addendum they supplied a further USD5 386.00 to the defendant for him to renovate the barns. He further produced an acknowledgement of debt signed by the defendant on the 11th of February 2015 in which the defendant said-

- “1. I acknowledge having received inputs with cash payments for wages, diesel and other repairs from Maxlucky Tobacco (Private) Ltd in the sum of USD 36 207.20 (Thirty six thousand two hundred and seven dollars and twenty cents)....
2. I undertake to repay the amount stated in 1 above through the sale of tobacco through my tobacco contract growing agreement with Maxlucky Tobacco (Pvt) Ltd.
3. I undertake to deliver to Maxlucky Tobacco (Pvt) Ltd ...5000kgs.....tonnes of tobacco at the end of the 2015 tobacco selling season.
4. As security for my indebtedness, I pledge the following assets;
TOYOTA HILUX STATION WAGON REG NO. 580-884V.
5. I undertake to ensure that the pledged assets are properly maintained and insured against any loss and I undertake not to dispose of same without Maxlucky Tobacco (Pvt) Ltd’s prior written consent.”

He denied that there was crop failure because they did not supply inputs in terms of the contract. He further denied that they unilaterally changed the terms of the contract. He produced a letter dated the 30th June 2015 to that effect. He finally denied that they are liable to the defendant at all as claimed in the counter claim.

In his defence the defendant admitted signing the addendum but said he did so under duress on threats of removal of funding. He maintained that his failure to meet the terms of the contract was as a result of the plaintiff unilaterally changing the terms of the contract. He therefore prayed that the plaintiff should set off what he is claiming from the losses he incurred.

Having assessed the evidence led before the court I found that the plaintiff’s case is unassailable. The defendant having acknowledged his indebtedness to the plaintiff produced

no evidence that he signed under duress. He never sued the plaintiff nor wrote to plaintiff protesting about the unilateral change of the terms of the contract. The defendant's counter claim is without merit and I will dismiss it.

This is a case that follows on all fours with the situation in *BancABC v PWC Motors 7 Others* HH-123-13 where MATHONSI J who at p 1 of the cyclostyled judgment lamented that a pattern is manifesting itself where business people will stop at nothing in avoiding to pay legitimate claims and in the process play havoc to investor confidence. I am now convinced with such wisdom of MATHONSI J.

The plaintiff managed to establish and prove its case on a balance of probabilities and I will award the claim. It is unfortunate that the defendant has chosen to waste the Court's time in ventilating his spurious defence and must be visited with costs on a higher scale of legal practitioner and client.

IT IS ORDERED THAT

- a) The defendant shall pay to the plaintiff the sum of USD37 302.49 being the amount due and payable as a result of the breach of the Tobacco Contract Growing and Marketing Scheme.
- b) Defendant to pay the outstanding amount in paragraph (a) at the rate of 16% per annum calculated from the 31st of July 2015 to the date of payment in full.
- c) The counter claim is dismissed.
- d) Defendant to pay costs of suit on a legal practitioner and client scale.

Gill, Godlonton & Gerrans, plaintiff's legal practitioners
Maganga & Co., defendant's legal practitioners.