

ROBSON MAKONI
versus
THE COLD CHAIN (PRIVATE) LIMITED t/a SEA HARVEST

HIGH COURT OF ZIMBABWE
CHIGUMBA J
HARARE, 26 May 2017, 3, 9, July 2017, & 28 July 2017

Opposed Application

Mr P Mabhundu, for plaintiff
Mr E Matinenga, for defendant

CHIGUMBA J: The background to this matter is largely common cause. The applicant obtained an order this court on 23 January 2008 in which he was awarded payment of;

- (a) PB 63 750.00 as replacement value for his damaged vehicle.
- (b) ZWD\$83 717.09 for medical expenses.
- (c) BP12 000 000.00 for car hire charges.
- (d) ZWS 2 000 000.00 for pain and suffering.
- (e) ZW\$ 850 000.00 for disability
- (f) ZW\$1 000 000.00 for future medical expenses ZW\$2 000 000.00

It is common cause that the respondent fulfilled the Botswana Pula part of the order and left the Zimbabwean dollar component unpaid. The court initially dismissed the application for enforcement of the Zimbabwean dollar component of the order. The Supreme Court held that the matter relating to the conversion of the currency in which damages were expressed was a new question which had been placed before the court for determination which was different from the question of the assessment of damages which had been dealt with by the trial court. We were

asked to take judicial notice of the fact that the currency in which the damages had been denominated had become valueless and that foreign currency had officially been adopted as legal tender. The Supreme Court directed that the merits of the application for conversion be determined on its merits.

Supplementary heads of argument were filed by consent. The issues which arise for determination include the question of whether the court in 2008 ordered payment of one million or two million Zimbabwe dollars for pain and suffering, the rate of exchange which should be applied to convert this sum to United States dollars, and whether the date of converting this sum is the date of the judgment, or the date of conversion, i.e. 2008 or 2017. My reading of the judgment HC 4252-01, at page 10 of the record in the application HC3475/13, par 6 is that the total claim by the plaintiff was for an amount of BP\$ 1 041 750 and ZW\$ 4 087 217.09. The Zimbabwean dollar component comprised of two million dollars for pain and suffering, one million dollars for 70% disability, and one million dollars for future medical expenses. At rp13, par 1, the Judge stated that;

“Plaintiff has claimed a meager ZW\$2000 000 which in today’s terms is insignificant. In my considered view circumstances of this matter point to a higher figure than has been claimed. In can only confine myself to the figure claim. I have no hesitation in granting the claim of ZW\$2 000 000 for pain and suffering”.

I am satisfied that the court awarded the sum of two million Zimbabwe dollars for pain and suffering. There is merit in the submission made on behalf of the respondent that the total amount to be converted is ZW\$3 937 217.09. We find this to be the total amount to be converted to United States dollars. We accept that the rate of exchange which is applicable is the official rate of exchange. See *NMB Ltd v The Cold Chain Private Limited*,¹ *Acavalos v David Riley*.² It is clear from these lines of cases that the date of exchange is the date of the judgment and not the date of its enforcement. See *Olivine Industries v Caution Nharara*.³ The date of exchange from Zimbabwe dollar to United States dollars is 23 January 2008. It is trite that interest runs from the

¹ HH96-08

² HH75-07

³ 2006 (1) ZLR 203 (S) @ 206

date of the judgment in terms of s 5 of the Prescribed Rate of Interest Act [*Chapter*]. It is common cause that the official exchange rate on 23 January 2008 was USD\$1; ZWD\$30.

If we divide the sum due of ZW\$3 937 217-09 by ZW\$30-00 we get 131 240.56. According to my calculation, this is the amount due to the applicant, together with interest thereon at the prescribed rate calculated from 23 January 2008 to the date of payment in full. In the result it be and is hereby ordered that;

1. Respondent shall pay to the applicant the sum of USD\$131 240.56.
2. Interest thereon at the rate of 5% per annum calculated from 23 January 2008 to the date of payment in full.
3. Costs of suit.

Messrs Mabhundu & Ndlovu, plaintiff's legal practitioners

Messrs Atherstone & Cook Legal Practitioners, defendant's legal practitioners