

PAN AFRICAN MINING (PRIVATE) LIMITED
versus
CYNDRELLA MASIMBE

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE 2 December 2024 & 6 February 2025

Summons Commencing Action

S. Bhebhe with *J. Makanda*, for the plaintiff
A Dracos, for the defendant

MAMBARA J:

The plaintiff issued summons against the defendant claiming a total of USD32 861.00 (Thirty – two Thousand Eight Hundred and Sixty – One United States Dollars), being an amount arising from personal loans advanced to the defendant in August 2017 and June 2019, plus interest at the prescribed rate from the due date of payment to the date of final payment.

The plaintiff seeks an order compelling the defendant to settle the loan obligation in United States dollars (USD), arguing that the loan was a foreign obligation not affected by the provisions of Statutory Instrument 33 of 2019 (“SI 33/19”) and the Finance (No.2) Act of 2019. The defendant, on the other hand, contends that the loan was a local liability and, therefore, was converted to Real Time Gross Settlement (RTGS) dollars at a rate of 1:1 in accordance with section 4(1)(d) of SI 33/19.

At the commencement of the trial parties agreed on the issues for determination and further agreed that the matter should be dealt with as a stated case without the need to lead oral evidence.

BACKGROUND FACTS

The facts are largely common cause.

The defendant, Cyndrella Masimbe, was employed by the plaintiff, Pan African Mining (Pvt) Ltd, as Head of Human Resources. During her employment, the plaintiff granted her two personal loans:

1. The defendant obtained a loan of USD 20,000.00 in August 2017. The loan was used to pay for her child's university tuition at Edinburgh Napier University, Scotland. The plaintiff disbursed the funds directly to the university. The defendant repaid USD 638.00, leaving a balance of USD 19,362.00.
2. In June 2019, the defendant was granted another loan of USD 22,000.00. The defendant has since repaid USD 8,501.00, leaving an outstanding balance of USD 13,499.00.

The parties have since reached an agreement regarding the repayment of the 2019 loan, and they have requested that this order by consent be incorporated into this judgment.

On 22 February 2019, SI 33/19 came into effect, deeming all local assets and liabilities denominated in USD before that date to be payable in RTGS dollars at a rate of 1:1, except for foreign loans and obligations, which remained payable in foreign currency.

A dispute arose regarding the 2017 loan, with the defendant arguing that it was a local obligation, payable in RTGS at 1:1 given that it was contracted between two entities domiciled in Zimbabwe, it was to be paid from a salary earned in Zimbabwe and the transaction was between employer and employee, making it a domestic obligation. The plaintiff on the other hand insists that it was a foreign obligation since it was used to settle a foreign debt (i.e., tuition fees) and was paid directly outside Zimbabwe and should remain payable in USD.

ISSUE FOR DETERMINATION

The core issue before the Court is whether the loan extended to the defendant was a foreign obligation that remained payable in USD or a local liability subject to conversion to RTGS at 1:1 per SI 33/19.

LEGAL ANALYSIS

The starting point in resolving this issue is section 4(1)(d) of SI 33/19, which states:

“All assets and liabilities that were, immediately before the effective date, valued and expressed in United States dollars (other than assets and liabilities referred to in section 44C(2) of the principal Act) shall on and after the effective date be deemed to be valued in RTGS dollars at a rate of one-to-one to the United States dollar.”

The critical exemption is found in section 44C (2)(b) of the Reserve Bank of Zimbabwe Act, which provides that:

“Foreign loans and obligations denominated in any foreign currency shall continue to be payable in such foreign currency.”

Thus, for the plaintiff's claim to succeed, it must be established that:

1. The loan was a foreign loan or obligation and not merely a local liability.

2. The exemption under section 44C(2)(b) applies.

APPLICATION OF CASE LAW

In determining whether this loan constitutes a foreign obligation, the Supreme Court has provided guidance in various cases. In *Zambezi Gas Zimbabwe (Pvt) Ltd v N.R. Barber (Pvt) Ltd & Another SC 3/20*, the Supreme Court interpreted section 4(1)(d) of SI 33/19 and held that all obligations valued in USD immediately before 22 February 2019 were to be converted to RTGS at a rate of 1:1, unless they qualified as foreign obligations.

The plaintiff argues that because the loan was used to settle tuition fees abroad, it must be treated as a foreign obligation. However, in *Zambezi Gas supra*, it was made clear that the origin of the liability—and not the destination of payment—determines whether an obligation is local or foreign. The fact that the loan was denominated in USD and paid externally does not automatically make it a foreign loan.

Further in *Breastplate Services (Pvt) Ltd v Cambria Africa PLC SC 66/20*, the Supreme Court emphasized that foreign obligations must be determined by the factual circumstances and the material substance of the transaction. If the funds originated from an offshore source, the obligation remains foreign.

Applying this principle to the present case, there is no evidence that the plaintiff sourced the funds from an offshore account. The plaintiff merely facilitated the transaction by making a direct payment abroad, but the liability arose locally between employer and employee.

Thus, the Court finds that the loan does not meet the threshold of a foreign obligation and remains a local liability subject to the 1:1 conversion rate.

The plaintiff relies on cases such as *Mushayakurara v Zimbabwe Leaf Tobacco Company (Pvt) Ltd SC 108-21* and *Brian Rodney Brom v Verdure Investments & Ors SC 28-24*, arguing that the loan was a foreign obligation because it was disbursed to settle a foreign debt.

These cases are distinguishable because in *Mushayakurara*, the debt was sourced from offshore funds, whereas, in the present case, the loan was sourced locally and was simply used for a foreign payment.

In *Brom*, the loan was disbursed from an offshore account into Zimbabwe, whereas, in the present case, the plaintiff was a local entity and the defendant a local employee.

These differences are material and support the conclusion that the loan remains a local liability subject to SI 33/19 and was converted to RTGS at 1:1.

CONCLUSION

Having regard to the law and case authorities, The Court finds that:

1. The 2017 loan was a local transaction between employer and employee.
2. The payment destination (Scotland) does not transform the loan into a foreign obligation.
3. The loan was converted into RTGS dollars at a rate of 1:1 under SI 33/19.
4. The plaintiff's claim for repayment in USD is dismissed.

DISPOSITION

Accordingly, the Court makes the following orders:

1. 2017 Loan Determination

It is declared that the loan granted to the defendant in August 2017 is a local liability and was converted into RTGS dollars at a rate of 1:1 in terms of Statutory Instrument 33 of 2019.

The plaintiff's claim for repayment in United States dollars is dismissed.

2. 2019 Loan Order by Consent

By consent of the parties, the Court orders the repayment of the 2019 loan as follows:

- The defendant shall pay the plaintiff USD 6,665.77, which represents the outstanding portion of the 2019 loan after deducting terminal benefits due to her.
- The defendant shall pay the plaintiff USD 1,500.00 on or before 28 February 2025.
- The defendant shall pay the balance in monthly instalments of at least USD 1,000.00 per month, payable on or before the last day of each successive calendar month, until the debt is settled in full.
- Should the defendant fail to make any payment, the full outstanding amount shall become immediately due and payable.

3. Costs

Each party shall bear their own costs.

MAMBARA J:

Kantor and Immerman, plaintiff's legal practitioners
Gollop and Blank, defendant's legal practitioners