

CLEAR SKY ENTERPRISES (PRIVATE) LIMITED
versus
AKIN INVESTMENTS (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
SIZIBA J
MUTARE, 15 and 30 May 2025 & 16 June 2025

CIVIL ACTION

Mr *I.H Mandikate* with Mr *E.S. Kadirire*, for the plaintiff
Mr *P. Nyakureba* for the defendant

SIZIBA J:

1. The Plaintiff in this matter instituted an action against the defendant through summons which were filed on 25 November 2020 and the claim thereof was articulated as follows:

“(a) Payment of ZWL\$8 700, being the total amount due and owing as service fees for preparation of Value Added Tax 7 (VAT7), Pay As You Earn (PAYE) tax and Quarterly Payment (QPDs) from 30 November 2017 to 2019.

(b) Payment of the Zimbabwean Dollars equivalent to US\$2 000 at the prevailing interbank rate as at the date of payment being the total amount due for monthly fees for the preparation of VAT7, PAYE and QPDs from February 2019 to June 2019.

(C) Payment of the Zimbabwean Dollars equivalent to US\$4 000 at the prevailing interbank) rate as at the date of payment being the total amount due for the preparation of ITF12C returns for 2018 and 2019, with the invoices having been raised in 2019 and 2020.

(d) Payment of the Zimbabwean Dollars equivalent to US\$103 278.37, being the total amount due and owing as service fees for tax reduction and royalties tax and income tax services.

(e) Payment of interest on all the above claimed sums at the agreed rate of 5% per month from date of default to date of full and final payment.”
2. When the trial commenced, the parties agreed that the plaintiff’s claim be amended in terms of its Notice of Amendment dated 20 September 2024 which read as follows in the relevant parts:

- “1. By deletion of the term ‘Zimbabwean Dollar’ wherever it appears and thereby substituting it with ‘Zimbabwe Gold Currency’.*
- 2. By abandoning the claim of payment of ZWL\$8700.”*

3. In terms of the Joint Pre-Trial Conference Minute dated 5 November 2024, the issue that was recorded as agreed upon was that there was an agreement between the parties.
4. There were only two issues which were referred to trial and which were recorded in the joint minute as follows:

- 1. Whether or not the agreement between the parties was written or verbal.*
- 2. Whether or not the defendant owes the plaintiff and if so how much?.*

THE PLAINTIFF’S EVIDENCE

5. The plaintiff’s case was premised upon the evidence of only one witness Daniel Moyana who was its Director. He testified under oath. He told the court that the plaintiff and the defendant entered into a verbal or oral agreement for tax management services in January 2016 and that the contract was terminated on 1 June 2020. He articulated that the tax management services included tax returns preparation, dealing with objections on assessments, submission of correspondence and any other information including VAT returns, Pay As You Earn, annual returns and financial statements. He testified that after the work would be done, job cards, statements of accounts and invoices would be prepared and given to the defendant for payment. He alleged that the defendant’s manager one Happymore Songeya or other employees of the defendant would append their signatures and endorse their names and identity numbers whenever they delivered documents or collected the same from the plaintiff. A copy of an extract from the logbook was produced by the plaintiff which was in long hand together with an array of some invoices and statements of account. There were also some receipts by the plaintiff which reflected moneys paid by Kassim Wholesalers, a sister company to the defendant.

6. The plaintiff's witness also testified that for the services that they rendered to the defendant, the modes of payment were in different categories. Some payments were to be done monthly. Payments for QPDs were done per quota while the payments for annual returns were done per year. There were other services such as assisting with ZIMRA assessments and audits that were rendered as and when such issues arose and such charges would then be tabulated in a statement and forwarded to the defendant.
7. This witness also testified that when ZIMRA raised a query about alleged undeclared income by the defendant in the tune of about three million United States Dollars, the plaintiff assisted in the reduction of the sum to nil and the parties had agreed on a fee of 10% of the reduced amount of tax. He also alleged that the parties had agreed on a fee of 10% as well in the sum of money that was demanded by the Minerals Marketing Corporation of Zimbabwe as royalties from the defendant. He alleged that the defendant was later absolved from paying such amount due to the services rendered by the plaintiff.
8. The plaintiff's witness alleged that the defendant never paid anything to it in respect of all the services that were rendered by the plaintiff. When such non payment was noticed, a final demand was done which was followed by summons. He prayed for judgment as per the claim. This witness also denied the authenticity of the alleged written contract that was filed with defendant's bundle of documents. He said that it was a forgery and that neither himself nor his wife had ever signed such a document at any given time.

THE DEFENDANT'S EVIDENCE

9. The main witness for the defendant was Muzaffer Khan who was the Managing Director of the defendant. His testimony under oath was to the effect that on 16 October 2015, he was introduced to Daniel Mahonye being the plaintiff's witness by his father Mozammil Khan at Kassim Wholesalers as the knew accountant. He said that Daniel Mahonye signed the written agreement on that date and his wife signed as his witness while he signed it as well and it was witnessed by his brother Mozzam Khan.

He had raised a query which led to the cancellation of the reference to services which were to be excluded from the contract. He also asked for the inclusion of Kassim Wholesalers as it was a joint agreement. He had not seen the other agreement which his father had signed with the plaintiff as the plaintiff's witness had stated that it had already been taken by his wife and he said that the copy that he had was the most important one.

10. According to this witness, all the services which the plaintiff rendered were paid for in terms of the written contract at the agreed rate of US\$100 per month which he would pay himself or have the plaintiff collect it from his father or brother when he was away abroad. He denied that the defendant owed any money to the plaintiff. He stated that there was a fallout with the plaintiff because the plaintiff was fond of taking short cuts in its services which would often put them in a bad light with ZIMRA. He stated that the plaintiff had held to the defendant's books of accounts to itself despite their request so that they would move on with the new accountant. The books were finally given to his manager in June 2020 when he was abroad and when he returned he even reported the plaintiff to the police over the matter.
11. This witness denied having agreed to pay 10% of the reduced tax and the alleged 10% of the amount which was alleged to be due on the royalties to the Minerals Marketing Corporation of Zimbabwe. According to him, he had personally engaged the latter and the defendant was absolved from payment on the basis that it was not a mining company but a business involved in cutting and polishing of diamonds. He denied all the plaintiff's claims as an attempt to extort money from the defendant without any legal basis and his prayer was a dismissal of the plaintiff's claim.
12. Under cross examination, this witness insisted that he only met the plaintiff's witness for the first time when the written contract was signed. He did not know him prior and he would not have known more about his company apart from the fact that the plaintiff's witness referred to his company as Poolvest. Since the written contract was prepared by the plaintiff's witness, he never cared by what name the plaintiff would

call himself. He alleged that Happymore Songeya who was a manager in one of the sister companies of the defendant had no authority to sign any documents on behalf of the defendant.

13. The above witness's testimony was further buttressed by his brother Mozzam Khan who testified as the second witness. He confirmed that he had witnessed the signing of the agreement relating to Kassim Investment by his father and also the agreement relating to both Kassim and defendant whereon he signed as a witness. He confirmed that the plaintiff's witness signed the written agreement together with his wife. He highlighted that Happymore Songeya was a manager in relation to another sister company. His attitude towards the alleged gaps in the written agreement was that the document was authored by the plaintiff and whatever he called himself did not concern them as they knew it as Poolvest. He was not very sure of the exact date when the written agreement had been concluded but he maintained that it was around the end of 2015. He denied that the defendant owed any money to the plaintiff. He alleged that at times he did make payments to the plaintiff and that at times his brother and father would also make the payments.

ANALYSIS OF THE EVIDENCE

14. Upon analysis, the evidence of the plaintiff's sole witness as taken together with the pleadings and the documentary evidence presented to this court does not seem to be coherent enough to establish a case against the defendant as per the plaintiff's claims.
15. The first observation to make is that the defendant's assertion that the contract between the parties was a written one which was concluded on 16 October 2015 was first made in the Defendant's Plea which was filed before this court on 18 October 2020. In such Plea, the defendant articulated that the terms of the engagement were for financial services to be rendered at a fixed monthly fee of US\$100. The plaintiff never filed any replication to deny this allegation. In its summary of evidence, the plaintiff only indicated that the written agreement was being disputed without alleging that the same was a forgery as was insisted upon by the plaintiff's witness when he was testifying

before this court. This lack of forthrightness and confidence in the plaintiff's approach casts doubt about the veracity of its insistence that the agreement was verbal.

16. Secondly, the resemblance between the features in the contract with Kassim Wholesalers which the plaintiff's witness acknowledged to be genuine and the one which the defendant has presented in its bundle is striking. The only noticeable difference is in the difference between '*Clearsky (Pvt) Limited*' in the agreement relied upon by the defendant and '*Clear Sky Enterprises (Pvt) Limited*' in the one which the plaintiff relies upon as genuine. The trade name '*Pool-Vest Financial Services*' and the inscription '*Inspired to Improve Your Business*' appears in both documents. The addresses, email, telephones and cellular phone numbers are all the same and the logos are similar. The purported signatories are the plaintiff's witness and his wife and both have not made a report to the police to allege that their signatures were forged therein. The fee of US\$100 which the plaintiff's witness denied in the contract with the defendant is not being made an issue in the contract with Kassim Wholesalers when these were sister companies and both contracts were signed on the same date. To then assert that the contract sought to be relied upon by the defendant is not authentic because it does not reflect the four companies which the defendant says engaged the plaintiff's services does not suffice to completely sustain the plaintiff's allegation of an oral contract.
17. Thirdly, the plaintiff's case remains hypothetical when it is devoid of important documentary evidence to demonstrate that there was an agreement relating to the 10% fees both on the cancelled CCMZ royalties and the reduced tax to ZIMRA. The allegation that all these important transactions were orally being agreed becomes too much of an exaggeration in this context. Whilst the documentary evidence before this court does point clearly that the plaintiff would have assisted the defendant to deal with ZIMRA's query about the alleged undeclared income, there is no evidence that the parties agreed on a 10% fee to be paid by the defendant. The correspondences in the defendant's bundle clearly show that the defendant's Managing Director dealt with the issue of the alleged royalties by CCMZ without reference to the plaintiff.

18. The fourth concern is that despite the contract having been allegedly entered way back in 2016 if one is to go by the plaintiff's evidence, it cannot be explained why all the statements that the plaintiff produced in its bundle bear dates of 2020 and not before. Whilst there are some invoices dated 2018 and 2019, all such are endorsed as having been delivered to the defendant in June 2020. All the job cards were prepared in 2020 and not before. To again say that no payment was ever made by the defendant from 2016 up to 2020 whilst the plaintiff would still continue to render its services to the defendant is another castle that is just built in the air. All these pitfalls by the plaintiff demonstrate that its version of a verbal contract together with the version that it was never paid by the defendant is highly improbable and even impossible.
19. The fifth concern about the plaintiff's case is the absence of crucial witnesses to confirm the verbal contract. This court was not given any reason why the plaintiff's witness could not call his wife to come and confirm that her signature in the alleged written contract was a mere forgery. Nothing again prevented the plaintiff from calling the defendant's employees or even its own employees to come and confirm the issues relating to the delivery of invoices and statements to the plaintiff as well as to verify the entries in the logbook. To only have the one witness testifying about all these transactions and processes from a company in such a case as this where verbal agreements are alleged casts doubt in the plaintiff's case. The plaintiff's witness on his own was just struggling and evasive to answer simple questions under cross examination by defendant's counsel and it is unsafe to rely upon his sole testimony as being accurate in this case.

CONCLUSION

20. It is because of the above fundamental shortcomings of the plaintiff in its evidence that I must conclude that it was not proven on a balance of probabilities that the contract between the parties was verbal. All the pointers are that the contract was a written one as contained in the defendant's bundle. I am also unable to make a finding that the defendant owes the plaintiff any amount as the evidence presented by the plaintiff is

unconvincing in this regard. I am not however persuaded that the plaintiff is guilty of any unbecoming conduct warranting censure of this court by way of costs at a punitive scale apart from having failed to prove its claims.

21. In the result, I therefore order as follows:

- (a) The plaintiff's claim be and is hereby dismissed.
- (b) The plaintiff shall bear the defendant's costs on the ordinary scale.

Mugadza Chinzamba & Partners, plaintiff's legal practitioners
Maunga Maanda & Associates, defendant's legal practitioners