MICHAEL STANWAY SAUNDERS
versus
KEAGAN PAUL BLUMEARS

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 19 October 2022

Date of provisional sentence: 19 October 2022
Date of written judgment: 5 April 2023

Provisional sentence

D. Chemhere, for the plaintiff
T. Tavengwa, for the defendant

MAFUSIRE J

[1] On 19 October 2022 I granted a provisional sentence in favour of the plaintiff against the defendant. The principal amount of the debt was USD34 000-00, or the local currency equivalence thereof. The provisional sentence was based on an acknowledgement of debt signed by the defendant in favour of the plaintiff. It read:

> "Letter of debt acknowledgement [*sic*] by Keagan Paul Blumears
>
> I, Keagan Paul Blumears ID No 63-1142397T00 of the above address here by [*sic*] confirm and acknowledge that I owe an individual named Mr Michael Stanway Saunders ID 63-363084R00, the following amount of money:
>
> USD 34 000 (Thirty four thousand United States Dollars)
>
> I further acknowledge that there are no defences to the amount owed or any credits or set offs against the amount owed.
>
> I further undertake to make full repayment of the amount to Michael Stanway Saunders within 12 months from date of signature of this letter."

[2] The acknowledgement of debt was signed on 5 September 2019. The plaintiff's provisional sentence summons was served on the defendant on 29 June 2022. The date of hearing was 19 October 2022. In terms of r 14(2) of the High Court Rules, 2021, a provisional sentence summons, *inter alia*, calls upon the defendant to pay the amount claimed

or, failing such payment, to appear in court personally or by counsel to admit or deny liability. The defendant appeared by counsel. He denied liability.

[3] Ahead of the hearing, the defendant had filed a notice of opposition and opposing affidavit. He denied liability on three grounds. The first was that the plaintiff's claim had become prescribed in 2019 because the cause of action upon which the acknowledgement of debt was based had allegedly arisen in 2016. The second defence was that the acknowledgement of debt was illegal, allegedly because in terms of s 23(1)(2) [*sic*] of the Finance Act [*sic*] it was illegal to trade in foreign currency. It was further alleged that by virtue of the Exchange Control Regulations [*sic*], particularly SI 212/19 [*sic*], it had been pronounced illegal to trade in foreign currency. Further, SI 142/19 [*sic*] had allegedly rendered the use of the United States dollars illegal. The third defence by the defendant was that the amount of the debt had become payable in RTGS dollars allegedly because by virtue of s 22 of the Finance Act [*sic*] USD34 000 in 2016 had become RTGS 34 000 in 2019. Alternatively, the money having fallen due for payment in September 2020, it had to be converted to RTGS dollars at the rate of 1:85 which allegedly was the prevailing rate of exchange at the time.

[4] After full argument on the date of hearing, I dismissed the defendant's defences and granted provisional sentence as aforesaid, giving reasons *ex tempore*. After that, I considered the matter closed. It was only sometime in March 2023 that the Registrar informed that the defendant had appealed my "judgment" to the Supreme Court and that the reasons for my "judgment" were now required. I have wondered which "judgment" the defendant has purported to appeal and in terms of what rule or procedure. In summary, r 14(10 and (11) of the High Court Rules aforesaid provide that a person against whom provisional sentence has been granted may enter appearance to defend the principal case but only if they have satisfied the amount of the judgment of the provisional sentence and the taxed costs. The appearance to defend has to be entered within one month of the grant of the provisional sentence. When that happens, the summons stands as a summons in an ordinary action. The defendant files a plea within ten days after the entry of appearance. Thereafter, the matter proceeds as an ordinary action. The provisional sentence becomes a final judgment upon the defendant's

failure to enter appearance or to file a plea. Thus, it would be strange if an appeal lies straight to the Supreme Court against a provisional sentence like that.

[5] Be that as it may, the reason why I granted a provisional sentence on 19 October 2022 was because the defendant's so-called defences were manifestly a smokescreen, a ploy to buy time and an abuse of the court process. The plaintiff's claim was based on an acknowledgement of debt. The document might have been amateurish. It might have lacked legal finesse. It was undoubtedly the product of lay legal minds. But it was classically an acknowledgement of debt. It was just as good as they come. Among other things, a typical acknowledgment of debt drafted by, or copied from lawyers' drafts, normally renounces the benefit of a host of the legal exceptions, all expressed in the Latin language, such as *exceptio errore calculi* [there was an error in in the calculation of the debt] or *exceptio non causa debiti* [there was no cause for the debt]. But in the current case, in one critical sentence, the acknowledgement of debt simply provided that "*I further acknowledge that there are no defences to the amount owed…*" That took care of all the defendant's purported defences.

[6] But even if one indulged the defendant and interrogated his so-called defences, they just evaporated as all mist would with the rising sun. Among other things, the court would not be drawn to 2016 where the defendant alleged the cause of action had arisen. The cause of action had arisen twelve months after the acknowledgement of debt had been signed on 5 September 2019 and he had defaulted. He did not deny that he had signed the document. He did not challenge it in any way except for his attempt to bring in exogenous factors to have it set aside. A valid acknowledgement of debt is a liquid document. It is a complete cause of action by itself. Rule 14(1) of the High Court Rules aforesaid unequivocally states that where the plaintiff is the holder of a valid acknowledgement of debt he or she may cause a summons to be issued claiming provisional sentence "… on the said document." That puts paid to the purported defence on prescription. The plaintiff's summons for provisional sentence was issued and served within the 3-year prescription period.

[7] The defendant's attempt to rely on the monetary policies by central government and the legislative changes that occurred, particularly in the period around 2019 which, among other things, terminated the multi-currency system in this country and re-introduced the local

currency,[1] was clumsy. It reflected a passing acquaintance with the law on the point. There was nothing unlawful in the defendant acknowledging his debt to the plaintiff in the currency in which he had incurred it and undertaking to repay it in the same currency. It is hardly a defence to say the debt was now repayable in local dollars when the plaintiff, among other things, had in his draft order, claimed payment in an equivalent amount in local currency. If the defendant chose to pay in local currency, the rate of exchange would be that prevailing at the time of payment. There could have been no basis for the defendant to allege that the rate would be something prevailing at some time in the past when the debt had become payable. What would be the logic for saying that when he had not paid? Such a stance was just an abuse of the court process. Courts frown upon litigants who abuse its process. The first line of punishment for this kind of behaviour is a punitive order of costs. The defendant eminently deserved it.

[8] It was for such reasons that the provisional sentence was granted as aforesaid.

5April 2023

Coghlan, Welsh & Guest, plaintiff's legal practitioners
Mutuso, Taruvinga & Mhiribidi, defendant's legal practitioners

[1] For a fuller and more thorough discussion of these changes reference is made to the case of *Stone & Anor v CABS & Ors* HH 118-23