

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

**2017/HP/2003**



BETWEEN:

**GATBRO INTERNATIONAL LIMITED**

**PLAINTIFF**

AND

**JONATHAN NYONDO**  
*(T/A Gauzen Logistics)*

**1<sup>st</sup> DEFENDANT**

**GAUZEN BUSINESS TRADING AND LOGISTICS LIMITED** **2<sup>nd</sup> DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 10<sup>th</sup>  
DAY OF FEBRUARY, 2020**

*For the Plaintiff* : Ms N. Mbulo, Chibesakunda & Company

*For the 1<sup>st</sup> Defendant* : Ms M. Simumba, Robson Malipenga & Co

*For the 2<sup>nd</sup> Defendant* : no appearance

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## **R U L I N G**

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LEGISLATION REFERRED TO:

1. ***The High Court Rules, Chapter 27 of the Laws of Zambia***

This matter comes to me by way of appeal against the ruling of the Deputy Registrar which was delivered on 3<sup>rd</sup> May, 2019, which dismissed the defendants' application to set aside the default judgment that was entered on 5<sup>th</sup> August, 2018.

The background leading to the application is that the plaintiff commenced this action on 16<sup>th</sup> November, 2017, by writ of summons claiming;

- i. *An order directing the immediate payment of ZAR480, 740.00 by the defendants, being the value of the plaintiff's consignment of goods that were allegedly lost while being transported by the 1<sup>st</sup> defendant from Johannesburg, South Africa to Lusaka Zambia.*
- ii. *Damages for breach of the carriage of goods and or transportation contract entered into between the plaintiff and the 1<sup>st</sup> defendant, under which the 1<sup>st</sup> defendant agreed to transport the plaintiff's goods worth ZAR480, 740.00 from Johannesburg, South Africa to Lusaka, Zambia.*
- iii. *An order and or declaration that the 2<sup>nd</sup> defendant guaranteed the 1<sup>st</sup> defendant's payment to the plaintiff in the sum of ZAR480, 740.00 being the value of the consignment that was allegedly lost in South Africa, and which payment the 2<sup>nd</sup> defendant expressly guaranteed.*
- iv. *In the event that the 1<sup>st</sup> defendant fails to pay the sum demanded in paragraph (i) above, an order directing the 2<sup>nd</sup> plaintiff as guarantor to pay the sum of ZAR480, 740.00 to the plaintiff, being the value of the consignment of goods that was allegedly lost in South Africa.*
- v. *Further, or in the alternative, damages for conversion of the plaintiff's goods.*
- vi. *An order for interim attachment of the defendant's truck, registration number ALM6329 and two trailers bearing the registration numbers AAR1857T and AAR5140T respectively, being the property of the 2<sup>nd</sup>*

*defendant and whose ownership documents, namely, the white books, were delivered to the plaintiff by the 1<sup>st</sup> defendant as surety for the payment.*

*vii. Interest on the total awards found due and payable by the defendants to the plaintiff herein at the current commercial bank lending rate from the date of the writ of summons to the date of judgment, and thereafter in accordance with the Judgment Act.*

*viii. Costs.*

*ix. Any other relief which the court may deem fit.*

On 25<sup>th</sup> April, 2018, the defendants entered conditional appearance to the writ of summons, but they did not file the application pursuant to which the conditional appearance was entered. Thus, on 3<sup>rd</sup> August, 2018, the Deputy Registrar entered judgment in default of appearance and defence for the reliefs sought. Then on 14<sup>th</sup> August, 2018, the defendants applied to set aside the default judgment and obtained an ex-parte stay of execution pending the determination of the application on 17<sup>th</sup> August, 2018.

From there, the matter was repeatedly adjourned by the Deputy Registrar, and an application to substitute the intended defence was made, which the Deputy Registrar granted on 1<sup>st</sup> February, 2019. The application to set aside the default judgment was heard on 1<sup>st</sup> February, 2019, and as alluded to above, the ruling declining to grant the application, was delivered on 3<sup>rd</sup> May, 2019.

A stay of execution pending an application to appeal out of time was granted by the Deputy Registrar on 23<sup>rd</sup> May, 2019. When the matter came up before me on 21<sup>st</sup> June, 2019, Counsel for the plaintiff informed

that me that the matter was coming up for appeal and there was an application before the Deputy Registrar, which was pending inter partes hearing. I adjourned the matter, to allow that application to be heard, and the record shows that when the matter came up before the Deputy Registrar on 26<sup>th</sup> June, 2019, Counsel for the 2<sup>nd</sup> defendant stated that he had been unable to obtain instructions from his client who was out of jurisdiction.

Counsel for the plaintiff did not object to the application for adjournment of the application, and the matter was adjourned to 18<sup>th</sup> July, 2019. The matter then came up before me on 7<sup>th</sup> August, 2019, and Counsel for the 1<sup>st</sup> defendant informed me that there was a pending application before the Deputy Registrar to stay execution of the default judgment. Counsel for the plaintiff who had just been engaged in place of the previous advocates, had no objection to having the matter adjourned. I adjourned the matter to 23<sup>rd</sup> September, 2019.

On that date, Counsel for the 1<sup>st</sup> defendant informed me that the application before the Deputy Registrar was still pending, and I adjourned the matter to 30<sup>th</sup> October, 2019. Only Counsel for the plaintiff attended the hearing on 30<sup>th</sup> October, 2019, and he applied to strike out the matter from the active cause list, which application was granted, giving the defendants liberty to restore it within fourteen (14) days, failure to which it would stand dismissed for want of prosecution.

The matter was restored on 8<sup>th</sup> November, 2019, and came up for hearing before me on 27<sup>th</sup> November, 2019. Counsel for the 1<sup>st</sup> defendant applied for an adjournment on the basis that the Deputy Registrar had not attended to the application to stay execution.

I noted that an appeal does not operate as a stay, and I adjourned the matter to deliver the ruling as an appeal from the decision of the Deputy Registrar is a re-hearing.

It will be noted from the record, that on 17<sup>th</sup> May, 2019, the 1<sup>st</sup> defendant filed summons to stay execution pending an application for leave to appeal out of time. These summons were endorsed with the hearing date of 17<sup>th</sup> June, 2019. As can be seen, on that date, the Deputy Registrar sat but did not hear the application, as the 2<sup>nd</sup> defendant needed to secure legal representation.

However, before that date, the Deputy Registrar granted an ex-parte order to stay execution. As it is, the ruling that the defendants seek to appeal against, was delivered on 3<sup>rd</sup> May, 2019. Order 30 Rule 10 of the High Court Rules, Chapter 27 of the Laws of Zambia provides that;

***“10. (1) Any person affected by any decision, order or direction of the Registrar may appeal therefrom to a Judge at chambers. Such appeal shall be by notice in writing to attend before the Judge without a fresh summons, within seven days after the decision, order or direction complained of, or such further time as may be allowed by a Judge or the Registrar. Unless otherwise ordered, there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision, order or direction of the Registrar shall be no stay of proceedings unless so ordered by a Judge or the Registrar”.***

Therefore, the defendants being aggrieved with the decision of the Deputy Registrar, had the right to appeal against the said order, within seven (7)

days of the date of such order. The appeal should therefore have been lodged by 11<sup>th</sup> May, 2019. The application for leave to appeal out of time was filed 17<sup>th</sup> May, 2019, and as can be seen from the record, it has not been heard.

It therefore follows, that there is no appeal before me, and in order to expedite the hearing, I direct the defendants to re file the application for leave to appeal out of time before me. This shall be done within fourteen (14) days from today, failure to which, the matter shall stand dismissed for want of prosecution. Costs shall be in the cause.

**DATED AT LUSAKA THIS 10<sup>th</sup> DAY OF FEBRUARY, 2020**

*S. Kaunda*

**S. KAUNDA NEWA  
HIGH COURT JUDGE**