

IN THE SUBORDINATE COURT OF THE SECOND CLASS 2017/CRMP/368
FOR THE LUSAKA DISTRICT
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)



BETWEEN: EDWARD BANDA
AND
PATRICK LUNGU

PLAINTIFF

DEFENDANT

JUDGMENT

In this matter the plaintiff claimed the sum of K5, 000.00 from defendant being monies for the balance for the purchase price of a plot with interest at the current bank lending rate and costs thereof

I must state from the outset that in civil matters the proof is on balance of probabilities.

When the matter came up for hearing it had already an admission by defendant of the claim on Form 20. Defendant had proposed to liquidate the judgment sum in monthly installments of K700.00 with effect from May, 2017 month end. However, there was no appearance by defendant twice but with affidavit evidence between parties. Plaintiff contested that the proposed installments were unrealistic as defendant would take 6 months to liquidate the judgment sum. Plaintiff proposed 2 months installments of K2, 500.00 especially that defendant had already built a house on the said plot and that the debt balance had been outstanding since 2015. However, defendant replied substantiating his position that he was not in formal employment and that he only sales Mongu rice which earns him not more than K1, 500.00 per month.

There was no appearance by defendant twice and there were affidavits of service filed by plaintiff to that effect.

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I then proceeded to make a decision in the absence of the defendant based on the affidavit evidence between the parties.

Since defendant didn't dispute the claim but the contention is only on the instalments to be paid, I will consider the proposals suggested by each party and make a reasonable decision. In the first instance, I must pronounce that I enter judgment in favour of plaintiff.

On the proposed instalments by defendant of K700.00, he justifies it on the basis that he is in informal employment and only earns K1, 500.00 per month in his business of selling Mongu rice. However, plaintiff submitted that defendant had the capacity to pay the K2, 500.00 monthly installments as defendant had built a house on the said plot. It is not clear whether the house which defendant built is used for commercial purposes that can enable defendant to liquidate the judgment sum as prayed by plaintiff. However, I also taken consideration of the fact that defendant last paid an instalment in 2015. This is not acceptable as defendant was supposed to have been liquidating the amount at frequent intervals. Notwithstanding this, basing on the capacity by plaintiff, I will order that plaintiff liquidates the judgment sum of K5, 000.00 in monthly instalments of K1, 000.00 with effect from May, 2017 month end with interest thereon from date of the writ. Costs for plaintiff.

DELIVERED IN OPEN COURT THIS ^{3RD} DAY OF ^{MAY} 2017


A.C. MWEENE

MAGISTRATE CLASS II



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