

RAMA JITESH

Versus

SHEILA SKIMMER

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J
BULAWAYO 13 June 2023 & 31 August 2023

Default judgement

A Mutatu, for the plaintiff

DUBE-BANDA J:

[1] This is a claim for contractual damages brought by the plaintiff against the defendant. The plaintiffs' claim is founded on contractual damages and arise out of breach of contract. The plaintiff claims a total of US\$250, 000.00 in damages.

[2] When the matter was called, the defendant was in default. I therefore asked the plaintiff to adduce evidence as to quantum only. See r 24 and r 25 of the High Court Rules, 2021.

[3] For completeness and to give a factual background to this matter I summarise the plaintiff's case as amplified in the summons and declaration. The plaintiff avers that sometime in November 2012 he entered into an agreement with the defendant in respect of a mine called Black Prince. The defendant is the owner of the mine. The material terms of the agreement were that: the defendant would appoint the plaintiff as her accredited agent who would take over possession and control of the mine; and that he would become a partner or purchase the mine after a period of time.

[4] The plaintiff avers that he was appointed an accredited agent with the Ministry of Mines and Mining Development. He subsequently took over control of the mine and in anticipation of being a partner or owner he invested money in buying mining equipment and erecting necessary structures in preparation of mining operations. And as of 2020 he had invested US\$250, 000.00 at the mine. On 1 December 2020 the defendant evicted him from the mine, and as a result of the breach he suffered damages in the sum of US\$250, 000.00 for improvements he made at the mine.

[5] This matter was set down for the 13 June 2023 at 10 O'clock. When the matter was called the defendant was in default. Liability is not an issue for consideration because the defendant was in default, and r 25(1) of the High Court Rules, 2021 provides that in a case where the defendant is in default and in a claim for damages the plaintiff shall adduce evidence as to quantum only. Therefore, to succeed the plaintiff must quantify and prove his loss. The plaintiff testified and adduced oral evidence from one Albert Tsikira, and further tendered documentary evidence to prove damages claimed from the defendant.

[6] The plaintiff must prove that he suffered damage as a result of the defendant's breach. The primary purpose of contractual damages is the compensation for the non-fulfilment of its terms. It is a sum of money paid to the innocent party in compensation for a breach of contract, and is meant to place the plaintiff in the position he would have been in if the contract had been performed. In *Silonda v Nkomo* (6 of 2022) [2022] ZWSC 6 (25 January 2022) the court said:

“There is no magic attached to *restitutio in integrum*. Regarding contractual damages, it is a term of art, which denotes the unwinding or unravelling, physically or by payment of a monetary equivalent, of what has been done back to its original or pre-contractual position. See *Extel Industrial (Pty) Ltd v Crown Mills (Pty) Ltd* 1999 (2) SA 719 (A) at 732B and *Sackstein NO v Proudfoot SA (Pty) Ltd* 2006 (6) 358 (SCA) para (11) and *Mackay v Fey NO* 2006 (3) SA 182 (SCA) at para (10), *Jacobs v United Building Society* 1981 (4) S.A.37 at 39C-E and *Du Plessis* p 70 para 4.4.2.2.”

[7] The plaintiff testified that he made a number of improvements at Black Prince Mine. He testified further about the payment he expended in making the improvements. He produced a number of invoices and receipts to show the items purchased and the costs thereof in improving the mine. The second witness for the plaintiff was one Mr Albert Tsikira (Tsikira). This witness testified that he is a registered estate agent. He operates under Baobab Real Estate t/a Property Sales and Management; he specialises in evaluations. The plaintiff instructed him to do an evaluation of the developments and equipment at the mine. The improvements are listed in the evaluation report (Exh. A. 10) as the following:

- i. Head gear sub-structure: Built of industrial plain common bricks; ordinary Portland cement PC 15; grade 25 Mpa 230 mm thick reinforced foundation concrete mix 1:2:4 for structural wall to engineer's approval; $\frac{3}{4}$ quarry stones / 19-25 mm aggregate to SAZ standards approval. Reinforced with RCC beans, D bars, Stirrups and ties; Excavated ventilation shaft 60 m long by 30 m deep, was timbered all round.

- ii. Hammer mills stands sub-structure: Consisting of 4 hammer mill stands substructures with 6 pools and a slab built of industrial plain common bricks, pit sand to SAZ standards approval, reinforced with RCC beams; D bars, stirrups and ties. A cabin consists of a reception and 2 offices.
- iii. The property boundaries are fenced.

[8] Tsikira opined that as at 8 September 2020 the improvements were valued at US\$250,000.00.

[9] There is one version before court, i.e., the plaintiff's version. There is nothing to gainsay it. In general, a court may not reject an undisputed version, unless it is so improbable that it cannot stand on its own. On the facts of this case, I cannot say that the plaintiff's version is so improbable that it cannot stand on its own for me to reject it. Therefore, I am satisfied that on applicant's version standing alone, and based on the papers and the evidence before court, a good cause has been made for the relief sought.

In the result, judgment be and is hereby entered for the plaintiff in the following terms:

- i. The mining agreement entered between the plaintiff and the defendant in respect of Black Prince Mine, registration number 29602 be and is hereby cancelled.
- ii. Plaintiff to be paid damages in the sum of US\$250, 000.00 or equivalent thereof in RTGS dollars at the interbank rate applicable on the date of payment, being the money, he expended and the value of improvements made on Black Prince Mine, registration 29602.
- iii. Defendant to pay interest on the US\$250, 000.00 calculated at the prescribed rate from the date of judgment to the date of full and final payment.

Matatu and Partners, plaintiff's legal practitioners