BLEIMAH INVESTMENT (PVT) LTD
versus
VISPERFAIDE (PVT) LTD T/A SYNERGY BISCUITS

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE 21 May & 12 June 2025

Application for absolution from the instance

B. Maruva, for the plaintiff
N. Mugiya with *K. Mawodzwa,* for the defendant

Introduction

1. MAMBARA J: This is an application by the defendant for absolution from the instance at the close of the plaintiff's case. The plaintiff, Bleimah Investment (Private) Limited, sued the defendant, Visperfaide (Private) Limited trading as Synergy Biscuits, for payment of a debt allegedly acknowledged in a written agreement. The matter commenced by summons for provisional sentence, but that relief was refused and the case proceeded to trial as an ordinary action. After the plaintiff led evidence from its sole witness, the defendant invoked r 56(6) of the High Court Rules 2021 and applied for absolution on the basis that no *prima facie* case had been established. The issue for determination is whether the plaintiff has adduced evidence upon which a court, applying its mind reasonably to such evidence, might find in its favour. If not, the defendant must be absolved at this stage.

Background and Factual Summary

2. The genesis of this dispute was a provisional sentence summons issued by the plaintiff on 2 November 2023, in which the plaintiff sought summary judgment on the strength of a written acknowledgment of debt. The document in question is a Payment Plan Agreement dated 17 April 2023, purportedly executed between "Bleimah Investments" (the now plaintiff) as creditor and "Visperfaide t/a Synergy Biscuits" as debtor. The plaintiff averred that this document alone established the defendant's liability. At the hearing of the provisional summons matter Justice DEME J refused to grant judgment

and instead referred the matter to trial, flagging serious issues about the document and the plaintiff's status. In particular, DEME J noted that the alleged liquid document was disputed by the defendant (which claimed to have paid the debt in full) and was "littered with inconsistencies and some school boy errors", such that the court agreed it was not a clear liquid document. The learned judge also observed that the plaintiff company was not even registered as a legal entity on the date the acknowledgment of debt was signed (17 April 2023), and no explanation had been given as to how contracts entered into before the plaintiff's incorporation could be binding. Accordingly, the matter proceeded to trial for the plaintiff to prove its claim in *toto.*

3. At the trial, the plaintiff called one witness, Mr. Blessing Mwashita, who is a director of the plaintiff company and the person who negotiated the agreement on its behalf. He produced the two-page Payment Plan Agreement dated 17 April 2023 as an exhibit. That document, on the defendant's letterhead, recorded that as at the *"Effective Date"* (17 April 2023) the Debtor (Visperfaide t/a Synergy Biscuits) owed an outstanding balance of USD 114,532.70 to the Creditor (Bleimah Investment) for cooking oil supplied. It further provided that *"The Debtor agrees to repay the Creditor a payment of $2,500 weekly"* until the principal balance was paid in full. The agreement stipulates a modest interest, 5% per annum, on any outstanding amount. Mr. Mwashita testified that this payment plan was signed by Ms. Nerissa Wasiyenyika on behalf of the debtor (defendant) and by himself on behalf of the creditor (plaintiff) on that date. He identified Ms. Wasiyenyika as one of the defendant's directors, and pointed out that her signature on the payment plan appeared identical to her signature on an affidavit she had filed earlier in these proceedings. In his view, this demonstrated that the document was genuinely executed by the defendant's director, contrary to the defendant's plea which baldly denied her signature. Indeed, the agreement was produced on the defendant's own Synergy Biscuits letterhead (to which only the defendant's staff would have access), further evidencing its authenticity. The plaintiff's witness insisted that neither he nor anyone from the plaintiff "authored" or fabricated this document on the defendant's behalf; rather, it was an agreement emanating from the defendant's office and signed by the defendant's director.
4. Mr. Mwashita also gave evidence regarding the performance or lack thereof of this payment agreement. He stated that after April 2023 the defendant made a series of payments to reduce the debt, but eventually defaulted. In total, about US$40,920 was

paid, leaving a substantial balance of US$73,612.70 outstanding as of October 2023. The defendant's last payment, according to the plaintiff, was a sum of US$1,100 made in the first week of October 2023, after which the defendant ceased further payments. Despite numerous demands, the balance was never settled. The plaintiff produced receipts and a payment tracker to substantiate the payments received and the computation of the remaining balance. This evidence was led to demonstrate that the defendant had acknowledged the debt by part performance, that is, paying under the plan, and that the plaintiff's claim for the outstanding US$73,632.70 plus interest corresponds to the unpaid portion of the acknowledged debt.

5. An important aspect of Mr. Mwashita's testimony concerned the plaintiff's own legal status. The defendant, in its plea, had put in issue the fact that the plaintiff company did not exist in April 2023 – the time of the purported agreement – since Bleimah Investment (Pvt) Ltd was only incorporated some months later. Under cross-examination, Mr. Mwashita conceded that the plaintiff was indeed not yet a registered company on 17 April 2023; he testified that the company was eventually registered in October 2023. However, he maintained that this did not invalidate the agreement because, upon incorporation, he, as the sole active director of the company, "adopted and rectified" all contracts that had been entered into before registration. He explained that the business of Bleimah Investment had been operating prior to formal registration presumably as a sole proprietorship or pre-incorporation venture, and that once the company was formed, it ratified those prior arrangements and continued performing them. In support of this, he invoked section 32 of the Companies and Other Business Entities Act [*Chapter 24:31*], which permits a company upon registration to adopt or ratify pre-incorporation contracts, subject to certain conditions. He asserted that Bleimah Investment P/L had complied with the law and thus could enforce the agreement made in April 2023 notwithstanding its own later incorporation. It must be noted that no documentary proof of such ratification – for instance, a company resolution, or the constitutive documents filed with the Registrar – was produced in evidence. The court is therefore left only with the witness's word on this point, a matter which will be examined in the legal analysis below.
6. During his evidence, Mr. Mwashita also alluded to the defendant's own conduct in the earlier provisional sentence proceedings. He recounted that the defendant had produced an amortised schedule of the debt during those proceedings, purportedly showing how

the instalments were to be applied. In the plaintiff's view, this was tantamount to the defendant acknowledging, at least initially, that there was a debt owing – the only dispute being whether it had been fully paid or not. Thus, argued Mr. Mwashita, the defendant's claim to have paid in full is unpersuasive, since the plaintiff's records, receipts and tracker, show the contrary, and the defendant's own schedule did not reflect full payment. In short, the plaintiff's evidence at trial aimed to establish:

(a) the existence of a valid acknowledgment of debt binding the defendant;
(b) the authenticity of that document signed by the defendant's director;
(c) the plaintiff's capacity to enforce it via post-incorporation ratification, and
(d) the outstanding amount due and payable by the defendant under that acknowledgment.

7. Under cross-examination, however, significant weaknesses in the plaintiff's case were exposed. Mr. Mwashita was pressed on numerous anomalies in the Payment Plan document and on gaps in the plaintiff's proof:

7.1 He admitted that the agreement's description of the parties does not precisely match the actual litigants. The document names the debtor as "Visperfaide t/a Synergy Biscuits", without indicating that it is a private limited company, whereas the defendant in these proceedings is Visperfaide (Pvt) Ltd t/a Synergy Biscuits. Likewise, the document's creditor is styled "Bleimah Investments" (with no indication of incorporation), whereas the plaintiff is Bleimah Investment (Pvt) Ltd. Mr. Mwashita did not offer any satisfactory explanation for these discrepancies. He had not led any evidence to "reconcile the obvious disparity" between, on one hand, the entities named in the agreement and, on the other, the actual corporate persons now before the court. In effect, the agreement appears on its face to have been concluded by two non-incorporated entities or at least misnamed entities), a point to which I shall return.

7.2 Identity of the Signatories and Capacity: The witness conceded that the agreement does not state on its face who actually signed on behalf of the debtor company. The signature block for the "Debtor" is simply a scribble above the name "Nerissa Wasiyenyika", without designation of her title or representative [HJM1] capacity. Nowhere does the document explicitly say "signed by Nerissa Wasiyenyika for and on behalf of Visperfaide (Pvt) Ltd". In contrast, the creditor's side is indicated as "Bleimah Investment – represented by Blessing Mwashita" on page 1. This asymmetry is striking. Under questioning, Mr. Mwashita acknowledged that he never saw any board

resolution or written authority authorising Ms. Wasiyenyika to sign the acknowledgment on the defendant's behalf. He had assumed she was empowered to do so since she was introduced to him as a director, but he accepted that no proof of her authority was ever provided or sought. Thus, the plaintiff's own witness could not affirm that the defendant company had properly authorised the execution of the agreement. This is a critical omission, given that a company, an artificial person, can only act through agents with authority.

7.3 Multiple Debtors? Counsel for the defendant highlighted that the Payment Plan Agreement, in its wording, occasionally refers to the debtor in the plural. Notably, clause 1 of the preamble uses the pronoun "they" – e.g. "the Debtor acknowledges that they owe…". Under cross-examination, Mr. Mwashita initially conceded that this choice of words suggested there might be more than one debtor liable under the agreement. Indeed, if read literally, "they" is plural, implying perhaps some joint debtors. This raised the question whether a different or additional entity such as an individual or another company was meant to be bound as co-debtor – a question the plaintiff's evidence did not clarify. Tellingly, when pressed on this, Mr. Mwashita changed tack during re-examination and insisted that "they" was just a drafting quirk and that in fact there was only one debtor (the defendant). The oscillation in his answers ("blowing hot and cold") did his credibility no favours. More importantly, it underscores that the document's language was imprecise, and the plaintiff failed to call any evidence such as testimony from the document's drafter to explain or correct that ambiguity.

7.4 The agreement recites that the debt arose from cooking oil "delivered to Synergy Biscuits Msasa". Mr. Mwashita did not clearly explain this reference. The defendant's counsel suggested that "Synergy Biscuits Msasa" could be read as a distinct entity or location – perhaps a depot or a sister concern – separate from the defendant company. This seemingly minor point contributed to the overall murkiness of the plaintiff's case: the court is being asked to enforce an obligation, yet the very subject matter and parties to that obligation remain obscured by poor drafting and absent clarification. As the defendant's submission put it, "the Plaintiff did not break down the document to the court and it boggles the mind how the court will be assisted by the Defendant to interpret the document should the matter proceed" to defence evidence. In other words, it was incumbent on the plaintiff to make the terms and context of its claim clear in its case;

it cannot shift to the defendant the burden of elucidating what the plaintiff's own key document means.

7.5 The payment obligation in the plan is stated as "$2,500 weekly". Mr. Mwashita testified – and the pleadings assert – that this was in United States Dollars (USD). However, notably, the document nowhere specifies the currency of the $2,500 instalments. This omission is significant in Zimbabwe's context: at the time the agreement was made (April 2023), both the Zimbabwean Dollar (ZWL) and the US Dollar were in circulation as legal tender. A sum of "$2,500" could mean 2,500 Zimbabwean dollars (a trivial amount given hyper-inflation) or US$2,500 (a substantial payment). The difference is enormous. Yet the document is silent on whether the "$" denotes USD or ZWL, and the plaintiff's witness continually referred simply to "dollars" without clarification. When challenged, Mr. Mwashita had no convincing answer as to why the currency was not specified in writing. This vagueness again undercuts the "clear and unambiguous" nature one expects of an acknowledgment of debt. It also raises the spectre that the defendant might later argue it was paying in a different currency. The plaintiff did not pre-emptively eliminate that possibility in its case.

7.6 Discrepancies Between Pages / Parties' Names: The Payment Plan Agreement is comprised of two pages, but those pages are not internally cross-referenced, no page numbers or continued clauses and only the first page is on letterhead. The second page consists of the signature lines. On that second page, the line for the debtor's signature is followed by the handwritten name "Nerissa Wasiyenyika", and the line for the creditor's signature is followed by "Blessing Mwashita". Thus, if one looked at the signature page alone, one might think it was a simple promise by Nerissa Wasiyenyika to pay Blessing Mwashita. Only by reference to the first page does one discern that Nerissa was signing as a representative of "Visperfaide t/a Synergy Biscuits" and Blessing as representative of "Bleimah Investment". Crucially, however, the document itself does not explicitly join the two pages with consistent descriptors. Mr. Mwashita did not testify that each page was initialled or that the document was a single seamless instrument, apart from being stapled together. Under cross-examination, he failed to account for the fact that the first page names corporate entities while the signature page names natural persons. He had made no mention of this in his evidence-in-chief. The defendant's counsel argued that this discontinuity is fatal: "the two pages have no relationship with each other than the staple pin attaching them". While that might

overstate the case (obviously the intent was one document), the plaintiff needed to dispel any suggestion that the signature page could be read in isolation or that the signatories bound themselves personally. No such explanation was provided.

7.7 Mr. Mwashita's recollection about who drafted the acknowledgment was confused. At different times, he gave differing accounts: at one point he said Ms. Wasiyenyika (the defendant's director) drafted it, elsewhere he suggested Mr. Andrew Mumanyi (another person involved with the defendant) drafted it, and he also mentioned it was prepared "at the defendant's workplace" on their computer. These inconsistencies were not clarified. The document itself bears no notation of its author. The upshot is the court was left uncertain who authored the terms of this critical document – the significance being that if it were drafted by the plaintiff or its agent, any ambiguities might be construed against the plaintiff (contra proferentem). Conversely, if it was drafted by the defendant's agents, one might infer the defendant was indeed assenting to its contents. The plaintiff, however, did not solidify this point, leaving a cloud over the provenance of the agreement.

7.8 Finally, it emerged that the plaintiff company had not produced any company resolution authorising the institution of these proceedings or Mr. Mwashita's representation in court. The defendant's counsel seized on this, arguing that there was no proof the plaintiff itself properly authorised the lawsuit. Mr. Mwashita admitted he had not placed before the court any formal resolution by Bleimah Investment (Pvt) Ltd to sue the defendant. He seemed unsure of the exact date the company was incorporated, initially testifying it was around October 2023 but without a precise date or incorporation certificate. The defendant went so far as to suggest that it is "now doubted if [the plaintiff] is registered after all" – an exaggerated claim given the plaintiff does exist and is before the court. Nonetheless, the lack of a board resolution is noted. In general, the failure to file an authority can be cured by subsequent ratification, and the law allows a representative to depose to facts if they have personal knowledge. Mr. Mwashita, as a director, certainly had ostensible authority to speak for the company he controls. Therefore, I do not view the absence of a formally exhibited resolution as fatal by itself, but it does underscore a pattern: the plaintiff's case was plagued by lax observance of formalities – whether in the drafting of the acknowledgment of debt, the proof of corporate authority on both sides, or the general presentation of evidence.

8. At the close of the plaintiff's case, the above was the state of the evidence. In summary, the plaintiff had proved that a document was signed, some payments were made towards a debt, and a large balance remains unpaid. But the plaintiff left substantial questions unanswered about whether that document is legally enforceable against the defendant. The defendant thereupon opted not to lead any evidence at this stage and instead applied for absolution, arguing that the plaintiff's proof was so deficient on key elements that it would be unsafe to put the defendant to its defence.

The Defendant's Application for Absolution

9. The defendant's counsel, Mr *N Mugiya,* submitted that the plaintiff's evidence, even taken at its high-water mark, did not establish a *prima facie* case in law. He argued that critical elements of the cause of action were not proved or were left in such doubt that no reasonable court could find for the plaintiff. The main planks of the application can be summarised as follows:

    (a) Non-Existence or Misdescription of the Contracting Parties: The defendant contends that the agreement on which the suit is based was purportedly concluded between entities that, in law, do not exist or were incorrectly cited. The document names the creditor as "Bleimah Investments" with no indication of corporate status and the debtor as "Visperfaide t/a Synergy Biscuits" again omitting the (Pvt) Ltd. Yet the actual plaintiff and defendant are both private limited companies with those names. This discrepancy is not mere pedantry. It goes to the root of legal personality. Counsel cited authority for the proposition that where a pleading or document refers to a non-existent persona, it is a nullity *ab initio*. In *Zenda* v *Emirates Airlines & Ors*, HH 775-15, MATANDA-MOYO J stated: "The law with regards to proper citation of persons is trite. Where a mis-description involves the citation of a non–existent persona, such pleadings are nullity *ab initio*. Such person lacks legal personality and cannot therefore sue or be sued.". Likewise, in *Fadzai John* v *Delta Beverages Ltd*, SC 40-17, the Supreme Court approved the principle that *"A summons has legal force and effect when it is issued by the plaintiff against an existing legal or natural person. If there is no legal or natural person answering to the names written in the summons as being those of the defendant, the summons is null and void ab initio.".* The defendant argues this logic is directly applicable here. The plaintiff seeks to enforce an agreement involving "Bleimah Investments" and

"Visperfaide t/a Synergy Biscuits" – designations which do not correspond to any juristic persons. The absence of "(Pvt) Ltd" is not an inconsequential omission: it differentiates a company from an individual or a trading style. Thus, for instance, "Delta Beverages (Pvt) Ltd" was held to be a different entity from "Delta Beverages Ltd", and a litigant who cited the latter was held to have cited a non-entity (see Fadzai John, *supra,* citing *Gariya Safaris (Pvt) Ltd* v *Van Wyk*). In *casu,* the defendant says, the acknowledgment of debt never actually bound the defendant company at all, because it named a non-existent debtor (lacking the (Pvt) Ltd) and was signed at a time when the putative creditor (Bleimah) likewise had no legal existence. The entire agreement is thus a nullity and incapable of enforcement. It is noteworthy that the provisional sentence court (DEME J) also queried this issue, observing that the plaintiff was not registered on the date of the contract and asking what became of such contracts. This court is entitled, indeed obliged, to raise a party's legal personality *mero motu* if it appears questionable. The defendant urges that, on the plaintiff's own evidence, Bleimah (Pvt) Ltd was not yet born on 17 April 2023, and Visperfaide (Pvt) Ltd is not exactly the named debtor – therefore, one contracting party was imaginary and the other misdescribed. No evidence was led to cure these fundamental defects (for example, no evidence of a name-change or that "Bleimah Investments" was a trading name of some existing entity, etc.). In the defendant's submission, pursuing such an agreement is like chasing a mirage – there was never a valid contract between the plaintiff and the defendant in their legal capacities.

(b) Lack of Authority – Ultra Vires Act: Even if one assumes the parties could somehow be treated as the companies now before the court, the defendant argues that the plaintiff failed to prove that the natural persons who signed the document had authority to bind those companies. The Payment Plan was signed on the defendant's side by Ms. Nerissa Wasiyenyika. She is admittedly a director of the defendant. However, a company director's power to bind the company is not unlimited – it depends on the company's constitution or a proper resolution, especially for a substantial acknowledgment of debt. The defendant denies that Ms. Wasiyenyika had authority to commit the company to a USD 114k debt repayment schedule. The plaintiff, for its part, produced no board

resolution or written mandate authorising her to sign. Mr. Mwashita conceded under oath that he never inquired into or saw any such resolution. The document itself was glaringly silent on this point: it did not even specify that she was signing "for and on behalf of" the company (a basic omission). By contrast, it explicitly mentioned that Mr. Mwashita represented the creditor company. This asymmetry suggests a lack of formality in execution. The defendant's counsel argued that this failure is fatal – without proof of authority, the signature of a company officer does not bind the company. In corporate law, an agreement signed without proper authorisation is voidable at the instance of the company or even void *ab initio.* There was no evidence that the defendant's board subsequently ratified Ms. Wasiyenyika's act. In fact, the defendant's stance has been to repudiate the document as unauthorised and fraudulent (denying the signature initially). While the plaintiff showed the signature is likely genuine, it did not show that the defendant company itself recognised or approved the signature's binding effect. Counsel stressed that an artificial person can only act through agents, and those agents must act within their actual or ostensible authority. Here, there is no evidence of actual authority (no resolution). In short, the plaintiff closed its case without establishing that the defendant ever effectively agreed to the debt at a corporate level. This omission goes to the heart of the claim.

(c) Failure to Meet Requirements of a Liquid Document / Acknowledgment of Debt: The defendant also contends that the document relied upon does not meet the legal standards for an acknowledgment of debt or liquid document. A valid acknowledgment of debt, as defined in our law, must be a *"clear, unequivocal and unambiguous"* written promise to pay a sum of money. It must also satisfy the three criteria set out by the Supreme Court in *First Merchant Bank of Zimbabwe Ltd* v *Forbes Investments (Pvt) Ltd & Anor*, 2000 (2) ZLR 221 (S): (i) the acknowledgment must have been made by the debtor; (ii) it must contain an express or tacit acknowledgment of the existence of the debtor's liability; and (iii) it must have been made in favour of the creditor (or its duly authorised agent). The defendant submits that the plaintiff's document fails at least two of these essential requirements.

(i) First, it is doubtful that the acknowledgment was truly made "by the debtor" in the legal sense. As argued above, the signature was not shown to be an authorised act of the debtor company. If the company did not properly sanction it, then the acknowledgment was made only by an individual (Ms. Wasiyenyika) without binding the debtor. An unauthorised signature is legally ineffective to bind the debtor – thus criterion (i) is not met.

(ii) Second, the document is replete with ambiguities, meaning it is not the clear and unequivocal promise required. The defendant highlighted multiple internal inconsistencies: the reference to plural "debtors" vs single defendant; the absence of a stated effective date despite using that term; the unspecified currency for the $2,500 installments; the reference to "Synergy Biscuits Msasa" which does not plainly identify the debtor; and the confusion of names on the signature page (Nerissa vs Visperfaide, Blessing vs Bleimah). These are not trivial or merely cosmetic defects – they go to who is obligated, what precisely is owed, and in what currency and capacity. They render the document anything but unequivocal. If the document is not clear and unambiguous, it cannot be relied on as a definitive acknowledgment of debt. The defendant argues that the court cannot enforce such a muddled instrument, especially not at the instance of a plaintiff who did not even exist when it was signed.

(iii) Third, the acknowledgment is arguably not "in favour of the creditor" as a legal person. On its face, one might read the agreement as being between two natural persons (Nerissa and Blessing) because of the way the signatures are set out. The creditor on the last page is named as Blessing Mwashita, not Bleimah (Pvt) Ltd. If one were to be pedantic, as the law sometimes must, the document nowhere contains a promise to pay Bleimah Investment (Pvt) Ltd. It promises payment to "Bleimah Investments" generically, and the signature line just has "Blessing Mwashita". The defendant's position is that the plaintiff has not shown that this document constitutes a promise to pay the actual plaintiff company (criterion (iii) above). The person of Blessing Mwashita is not the plaintiff; he could theoretically hold that IOU in his personal capacity. The plaintiff led no evidence to clarify that ambiguity such as an averment that Blessing was

signing strictly as agent and not as the real creditor. Thus, the promise might fail the third requirement too, or at least is so equivocal that it cannot be enforced.

In sum, the defendant says the document is invalid or void for vagueness. It does not qualify as a "liquid document" on which a claim can confidently rest. The courts have noted that the terms "unequivocal and unambiguous" imply that if a document "may… be equivocal and/or ambiguous," then it is not a proper liquid document for provisional sentence. Here the acknowledgment is undeniably equivocal on several points. The effect, according to defendant, is that the plaintiff has no proven contract and no proven liquid debt to enforce.

(d) No Evidence on Essential Elements – onus not discharged: Finally, the defendant submits that when one considers the essential elements of the plaintiff's cause of action, the plaintiff's evidence has failed to cover them. The cause of action here is essentially a debt due on an acknowledgment of debt. The essential averments to be proved would include: (1) the existence of a valid agreement binding the defendant to pay the stated sum; (2) that the defendant breached that agreement by failing to pay as promised; and (3) the amount outstanding. The defendant contends that element (1) – the existence of a binding agreement – has no evidence at all supporting it for all the reasons of non-capacity, non-authority, and ambiguity discussed. If there is no valid obligation, elements (2) and (3) are moot. Even regarding element (3) (the quantum), the defendant notes that the plaintiff's figure changed slightly (from US$73,632.70 in pleadings to US$73,612.70 in evidence), and no reconciliation was provided for that discrepancy. More importantly, the defendant has maintained that according to its own accounts, it had paid the debt in full. The plaintiff, by focusing on the dubious acknowledgment rather than leading forensic accounting evidence of deliveries and payments, did not conclusively prove that the defendant owes the money. They showed a balance on their own schedule, but did not rebut the defendant's contrary account statement which had been exhibited at the provisional stage. Thus, even on the question of indebtedness, the plaintiff's case is arguably incomplete. The defendant's counsel submits that it is not for the defendant to disprove the debt at this stage;

the onus was on the plaintiff to prove a *prima facie* debt. Since the plaintiff chose to rely on an infirm document instead of solid underlying evidence of a sale and delivery of goods, invoices, delivery notes, etc., which were not produced, it has failed to discharge that onus.

10. In light of the above, the defendant argues that "there is nothing to refer to defence". To call upon the defendant to enter its defence would be to require it to fill in the gaps of the plaintiff's case – which is precisely what the absolution procedure is meant to avoid. When a court is asked to grant absolution, it must be satisfied that there is no evidence at all on each and every essential averment that the plaintiff must make to sustain the cause of action. If there is some evidence on all the essential averments, absolution should not be granted. If there is evidence on some but not on all the essential averments, absolution may be granted. Here, the defendant says, at least one essential element (a binding obligation against defendant) is supported by no evidence worthy of the name – or at best by evidence so discredited and riddled with uncertainty that no reasonable court could rely on it.
11. The defendant buttressed its legal argument with copious citations from both local and foreign case law emphasizing the points already summarized: a company's separate personality and capacity or lack thereof if not incorporated, the necessity for proper citation of legal persons, the principle that an agent must be authorised to bind a company, and the stringent test for absolution at this stage. I will refer to these authorities in the analysis as needed. In conclusion, the defendant prays that the court grant absolution from the instance, which would have the effect of dismissing the plaintiff's claim at this point. The defendant also seeks costs of suit, submitting that the plaintiff's ill-conceived action forced it to incur legal expenses on a claim that should never have gone this far.

The Plaintiff's Opposition

12. The plaintiff opposed the application for absolution, maintaining that it had indeed established a *prima facie* case which merits an answer from the defendant. The plaintiff's counsel argued that the threshold for absolution is low and that courts are generally reluctant to terminate a case before hearing both sides. It was submitted that if there is evidence upon which a reasonable court might find for the plaintiff, then the matter should proceed. Conversely, absolution should only be granted in the clearest of cases, because it denies the plaintiff a chance to have all evidence (including the

defendant's) considered. In support of this, counsel cited the well-known test from *Gascoyne* v *Paul & Hunter* 1917 TPD 170 as approved in *Claude Neon Lights (SA) Ltd* v *Daniel* 1976 (4) SA 403 (A), and echoed in countless Zimbabwean decisions: the question is whether the plaintiff's evidence, if accepted as true, and given the benefit of all reasonable inferences, could lead a reasonable court to grant judgment in the plaintiff's favour. If the answer is yes, absolution must be refused. The plaintiff emphasized that credibility findings are not to be made at this interim stage – the court must assume, in the absence of utterly gratuitous or hopeless testimony, that the plaintiff's evidence might be believed. Any contradictions or weaknesses can be explored further under cross-exam of the defendant's witnesses or at least weighed at final judgment, but should not prematurely shut the case.

13. Applying that standard, the plaintiff contends it has surmounted the threshold. Its counsel pointed to the following aspects of the evidence which, in their view, amount to a *prima facie* case:

13.1 Existence of the Debt and Partial Performance: The plaintiff led evidence that goods, a large quantity of cooking oil, were sold and delivered to the defendant's business, and that the defendant fell into arrears on payment, leading to the acknowledgment of debt. Crucially, the defendant thereafter made payments totalling over US$40,000 under that very acknowledgment a fact hardly consistent with the defendant's claim of having already paid everything. The plaintiff produced receipts and a payment schedule documenting these payments and the outstanding balance. This, counsel argued, is some evidence on every element of the claim: it evidences an agreement (the payment plan), breach (non-payment of the full amount), and the quantum (US$73k remaining). Even if the defendant disputes owing that balance, the plaintiff has at least made a case sufficient to require rebuttal. It was stressed that the defendant's own actions, making payments, providing a schedule of payments due, are inconsistent with its denial of the debt. A reasonable court, it was argued, could certainly conclude that the defendant acknowledged owing money and failed to pay it all – thus finding for the plaintiff. At absolution stage, the court is not to decide the issues but merely to determine if the plaintiff's evidence is not non-existent.

13.2 Authenticity of the Acknowledgment of Debt: The plaintiff vigorously refuted the defendant's insinuation that the Payment Plan Agreement was a forgery or unauthorised sham. Mr. Mwashita testified that the signature of the defendant's director (Ms.

Wasiyenyika) is genuine, matching her admitted signature on a court affidavit. The document was prepared on the defendant's letterhead and signed by both parties. There is no suggestion that Mr. Mwashita tricked or coerced the defendant's representative; on the contrary, the document came from the defendant's side (either Ms. Wasiyenyika or Mr. Mumanyi drafted it, by the witness's account) and was voluntarily executed as a means to settle the debt. The plaintiff thus asserts that the acknowledgment of debt is a valid and binding agreement, and it has produced the original document into evidence. In our law, a signed acknowledgment of debt is *prima facie* proof of the indebtedness and shifts the burden to the debtor to rebut it. Where the plaintiff is the holder of a valid acknowledgement in writing of a debt, commonly called a liquid document, the plaintiff may cause a summons to be issued claiming provisional sentence on the said document. Any clear, unequivocal and unambiguous written promise to pay a debt constitutes a liquid document. The plaintiff here holds just such a document – a promise by the defendant (through its agent) to pay a sum certain. Even if the document had minor ambiguities or "school boy errors", it plainly records an acknowledgment of a debt (the amount of US$114,532.70) and a commitment to pay $2,500 weekly. Those terms are sufficiently clear in substance: who owes whom, how much, and how it will be paid. Any clerical mistakes (like referring to "they") do not erase the fundamental import of the document, which is that the defendant company owed money to the plaintiff. The plaintiff's position is that the defendant's own partial compliance with the plan, by making payments, cures any doubts about the document's meaning – both sides understood it as the defendant's undertaking to pay its debt to the plaintiff. Thus, at a minimum, the plaintiff has evidence of an agreement and part-performance by the debtor, which is enough to avoid absolution.

13.4 Plaintiff's Legal Personality and Ratification: On the issue of the plaintiff's incorporation date, the plaintiff's counsel acknowledged that Bleimah Investment (Pvt) Ltd was formally registered in October 2023, after the April agreement. However, they argue this is not fatal because the law explicitly allows a pre-incorporation contract to be enforced by the company if properly adopted. Mr. Mwashita testified that after registration, the company adopted and ratified all prior contracts it had entered. He even referenced the Companies and Other Business Entities Act provision that governs this process. Section 32 of that Act provides that a contract made by a person on behalf of a company not yet formed *"shall be capable of being ratified or adopted by… the*

company after it has become a registered entity," provided two conditions are met: (a) the company's constitutive documents must include as an object the adoption of such pre-formation contracts, and (b) the contract (or a certified copy) must be delivered to the Registrar of Companies at the time of registration. The witness testified that, as the sole active director, he indeed "rectified" (ratified) the contract after incorporation and continued to enforce it. While the defendant complains that no paper proof of this ratification was produced, the plaintiff's answer is that Mr. Mwashita's undisputed testimony on this point stands – the defendant did not challenge him on whether the formal steps were taken. (In fact, on my reading of the record, he was not specifically asked if the contract was filed with the Registrar; he simply asserted that all contracts were rectified and pursued.) The plaintiff argues that raising this technical point is mere smoke and mirrors – Bleimah (Pvt) Ltd is now an incorporated entity before the court, and it obviously adopted the rights under the April agreement because it is suing on them. Any procedural lapses in how that adoption was done could be cured, and at worst might affect the plaintiff's relationship with its shareholders or the Registrar, but not the substantive rights as between plaintiff and defendant. Put differently, the defendant suffered no prejudice by the plaintiff's prior unincorporated status, since the same human actors were behind the company and the company has since stepped into the shoes of whatever pre-incorporation vehicle existed. The plaintiff cites *Kelner* v *Baxter* (1866) LR 2 CP 174 (an English case) and our statute as authority that the promoters of a company can make contracts for the company's benefit, and upon incorporation the company can adopt those contracts. Here, that is exactly what happened. Thus, the plaintiff does have *locus standi* to sue on the April agreement. The court, at this interim stage, should not engage in hyper-technical dissection of corporate timelines when the commercial reality is that the plaintiff company is the successor to the pre-formed business that supplied the goods.

13.5 Resolution to Sue / Authority of Mr. Mwashita: The plaintiff also addressed the argument that there was no proof of its internal authorization to sue. It was submitted that this point is a red herring. Mr. Mwashita is a director of the plaintiff and the one who dealt with the defendant throughout; there is no doubt that he is fully aware of and involved in this litigation. In *SFG Investments* v *Tetrad Holdings Ltd & Anor* 2016 (1) ZLR 63 (H), CHITAKUNYE J observed that a deponent who is a director with knowledge does not need a board resolution to depose to an affidavit – it is the institution of

proceedings that requires authorisation, not the testimony *per se.* Here, the summons was issued in the company's name and there is no suggestion that Mr. Mwashita is a rogue actor without the company's blessing. If anything, he is the company for all practical purposes. The court in fact ruled during the proceedings, that Mr. Mwashita's authority to represent the plaintiff was sufficiently established. The plaintiff's counsel thus urged the court to treat this as a non-issue. I agree that, at least insofar as the plaintiff's participation is concerned, there is no merit in suggesting the company is not properly before the court. Any lack of formal resolution could have been cured by filing one if raised timeously; raising it after the close of the plaintiff's case smacks of desperation.

13.6 Ambiguities and Errors in the Document: The plaintiff's stance on the various inconsistencies in the Payment Plan is essentially that they do not go to the core enforceability of the agreement. Counsel conceded that the document may contain some infelicities in wording possibly due to being a template form. However, they maintained that the key terms – the identity of the debtor and creditor, the amount of the debt, and the repayment obligation – are adequately set out. The presence of the Synergy Biscuits letterhead and the listing of the defendant's Directors on the document leaves no doubt that the intended debtor is the defendant company itself (Visperfaide (Pvt) Ltd t/a Synergy Biscuits). The mention of "they" can be chalked up to grammatical lapse; the effective date being the same as the signing date is not confusing in substance; "Synergy Biscuits Msasa" simply refers to the defendant's business premises in Msasa, Harare. Regarding currency, Mr. Mwashita was clear in his understanding that the debt and payments were in USD (as evidenced by the fact that the initial amount $114,532.70 is only sensible as USD given it was for imported cooking oil). The defendant itself, in its plea and arguments, never claimed the currency was ZWL; this issue is a newly minted technicality. If need be, the plaintiff could amend the summons to specify USD, but all parties have from the start proceeded on the basis it's a USD debt, so no one was misled or prejudiced. On the naming on the signature page, the plaintiff says any reasonable person reading both pages together would understand that Blessing Mwashita signed on behalf of Bleimah and Nerissa Wasiyenyika on behalf of Visperfaide. There is no scenario in which these two individuals intended to bind themselves personally to each other – the whole context, letterhead, content, subsequent conduct shows it was inter-company. These, counsel argued, are not the kind of ambiguities that render a contract

void; at most they would invite extrinsic evidence or interpretation, but since both sides, until this absolution bid, knew exactly who owed whom, it was never truly in dispute. To the extent the defendant now exploits these issues, the plaintiff insists that such hyper-technical objections should be weighed at final judgment, not used to short-circuit the trial. The defendant can testify to any alleged confusion or different understanding it had – but then the case must be allowed to proceed to that stage. At present, the plaintiff has given a coherent account that the defendant owed money and agreed in writing to pay it; minor clerical mistakes do not negate that account.

14. In summary, the plaintiff's position is that it has made out a *prima facie* case, even if not a perfect one. There is some evidence for every element: a contract (the acknowledgment) made by the defendant's agents, an outstanding debt, and a breach by non-payment. The determination of any lingering doubts (about authority, identity, etc.) should be left for the trial's final stage, after the defendant's evidence is also in. The plaintiff invoked the principle that courts are generally loathe to grant absolution because it intrudes on the salutary rule of *audi alteram partem.* It cited cases where absolution was refused even where the plaintiff's case was weak, so that the matter could be decided on the totality of evidence. The plaintiff also noted that if absolution were granted here, it would mean the defendant escapes without ever having to explain the substantial evidence that it did owe money (e.g. the payments made). That, it contends, would be an unjust result when at least a plausible case of debt has been shown.
15. In opposing the application, the plaintiff additionally argued that the defendant's technical objections do not engage the core of the dispute – which is whether the defendant owes money for goods supplied. It accused the defendant of raising "flimsy defenses" and "throwing sand in the eyes of the court" to avoid liability. In particular, the plaintiff characterized the misdescription and pre-incorporation issues as technicalities lacking merit, given the reality of ratification. It pointed out that the defendant's plea admits a business relationship with the plaintiff (even saying Mr. Mwashita and Mr. Mumanyi are well acquainted and have discussed the issue), and the only real contention was the state of accounts (the defendant "believes it had paid in full" versus the plaintiff's records showing a large balance). Those, in the plaintiff's view, are factual issues ripe for a full trial, not for determination on absolution. The plaintiff urged that justice be served by allowing the defendant to present its evidence,

especially since much of the defendant's argument hinges on what the defendant's own officers did or didn't do (e.g. whether the board authorised the acknowledgment, what the payments were for, etc.). The defendant, by seeking absolution, is effectively asking the court to accept its counsel's version of events, that the contract was unauthorised, that the debt was paid, etc, without ever having to put a witness in the box. The plaintiff submits that this is precisely the scenario where absolution is inappropriate, as it would short-circuit the fact-finding process.

16. Having outlined the contentions of both sides, I now turn to the applicable legal principles and an analysis of whether the defendant's application meets the stringent test for absolution at this stage.

Legal Framework and Applicable Principles

17. The governing standard is settled in our jurisdiction and mirrors the position in South African and English common law. When a defendant applies for absolution from the instance at the close of the plaintiff's case, the court's inquiry is: Is there evidence upon which a reasonable court might find for the plaintiff? This test was classically formulated in *Gascoyne* v *Paul & Hunter* 1917 TPD 170 and adopted in *Claude Neon Lights (SA) Ltd* v *Daniel* 1976 (4) SA 403 (A), and has been cited with approval by our Supreme Court. The phrase often used is whether there is evidence such that a court could or might (not ought to or should) give judgment for the plaintiff. The plaintiff need not have proved its case beyond reasonable doubt or even on a balance of probabilities at this stage; it suffices that a reasonable fact-finder might (if the evidence were to be believed and appropriately supplemented by inferences) find in the plaintiff's favour. This implies the plaintiff must have made out a *prima facie* case – in the sense of having produced evidence on each element of the claim, albeit evidence which might possibly be rebutted or disbelieved later. A plaintiff has to make out a *prima facie* case – in the sense that there is evidence relating to all the elements of the claim – to survive absolution, because without such evidence no court could find for the plaintiff. If an essential element of the cause of action is wholly unsupported by evidence, the plaintiff fails this test. Conversely, if there is some evidence, even if open to doubt on every element, the matter is best left for trial completion.

18. It is also frequently emphasised that granting absolution is an exceptional course, to be taken sparingly. In *United Air Charters (Pvt) Ltd* v *Jarman* 1994 (2) ZLR 341 (S), GUBBAY CJ cautioned that absolution at the close of the plaintiff's case should be

granted very rarely. The rationale is that the court generally should hear both sides of the story unless the plaintiff's case is so hopelessly inadequate that proceeding further would be a waste of time. The concern for *audi alteram partem* underlies this reluctance. An order of absolution makes a serious encroachment into the *audi alteram partem* principle, which requires the other party to be heard before a decision that affects their rights is made. Thus, courts are generally loath to deprive a plaintiff of the chance to have the defendant also testify, unless the plaintiff's evidence is absolutely insufficient.

However, our courts have equally made clear that this does not mean absolution can never be granted. When the occasion does arise – "when the interest of justice demand" – the court should not shy away from granting absolution. If a plaintiff has failed to adduce the minimum evidence required to establish a *prima facie* case, it would serve no purpose to drag the defendant through the ordeal of presenting a defence. In the words of *Gordon Lloyd Page Associates* v *Rivera* 2001 (1) SA 88 (SCA) at 92, even though the test is infrequently met, *"when the occasion arises a court should order [absolution] in the interests of justice."*. The balance is between not usurping the fact-finding role (by weighing evidence prematurely) and not allowing an obviously unmeritorious claim to consume further time and resources.

19. The court at this juncture does not make definitive credibility findings or resolve conflicts of evidence – it assumes the plaintiff's evidence may be true, unless inherently so far-fetched or contradictory that no reasonable person could ever believe it. But the court does consider the sufficiency of that evidence. If there is a critical gap such that, even if the evidence is taken at face value, the plaintiff cannot succeed in law, then the court must grant absolution. The question can be put negatively: Is there no evidence on which a court could find for the plaintiff? If "there is no evidence at all on each and every essential averment that the plaintiff must make to sustain the cause of action," then absolution is appropriate. If the plaintiff's evidence covers some but not all of the essential elements, the cause of action remains unproven and cannot be perfected by speculation; in such a case, absolution may be granted because a necessary element will inevitably be missing.
20. In applying this test, it is crucial to identify what the essential elements of the claim are, and then assess if evidence has been led on each. In the present case, a civil claim for a debt, the key elements are: (i) that the defendant assumed a legal obligation (via contract

or acknowledgment) to pay the plaintiff a certain sum of money; (ii) that the defendant has not paid that sum (breach or persisting debt); and (iii) the amount of the debt outstanding. A further implicit element, where corporate entities are involved, is that the parties to be bound were in law capable of contracting and were correctly cited (i.e. the obligation is indeed between the plaintiff and defendant before the court). The dispute here really centres on elements (i) and (iv) – was there a binding obligation on the defendant, owed to this plaintiff? The defendant has not seriously contested that if a valid agreement exists, it defaulted on payments (so element (ii) is largely subsumed into (i) for our purposes). Element (iii) (quantum) is relevant, but secondary – if no liability can be fastened on the defendant at all, quantum doesn't arise; if liability can be, then a minor discrepancy of $20 is not material.

21. It is a fundamental principle of company law (since *Salomon* v *A. Salomon & Co. Ltd* [1897] AC 22) that a company has a legal personality separate and distinct from its shareholders or promoters. *"The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same …, the company is not in law the agent of the subscribers or trustee for them",* declared Lord Macnaghten. From this flows the corollary that before incorporation, a company simply does not exist – it has "no period of minority – no interval of incapacity"; it is incapable of holding rights or incurring obligations until the moment of its legal birth. In our jurisdiction, this principle has been consistently upheld. A contract purportedly made by or with a non-existent company is void *ab initio* at common law (see e.g. *Kelner* v *Baxter* (1866) *supra,* where promoters signing for a projected company were held personally liable because the company could not be a party to the contract before incorporation). The Zimbabwean legislature, recognizing the potential harshness of that rule, enacted section 32 of the Companies and Other Business Entities Act [*Chapter 24:31*] to provide a mechanism for pre-incorporation contracts to be later adopted by the formed company. The statute is quite specific: such a contract *"shall be capable of being ratified or adopted by… the company… after it has become a registered entity"* if and only if certain conditions are met. Those conditions (mentioned earlier) essentially ensure that the contract is placed on the public record at incorporation and that the company's founding documents contemplate its adoption. If those steps are not followed, the common law position

would presumably persist – meaning the contract remains unenforceable by or against the would-be company.

22. In the present case, Bleimah Investment (Pvt) Ltd was admittedly not in existence on 17 April 2023 when "Bleimah Investments" entered the agreement. Thus, at face value, the contract was between the defendant company and some unincorporated entity. If Mr. Mwashita entered it in the name of Bleimah (before incorporation), he might have been personally liable on it at common law (as a promoter contracting on his own behalf), or it might be void if he signed purely as agent of a non-existent principal (cf. *Newborne* v *Sensolid (Great Britain*) Ltd [1954] 1 QB 45, where a promoter signed in the name of the company and was held not liable himself – resulting in a void contract because the company didn't exist). The plaintiff's evidence is that the company has since adopted the contract. For purposes of absolution, the question is whether there is evidence that the statutory requirements of adoption were met. Mr. Mwashita's testimony asserts that they were (in broad terms: "after it was incorporated the company adopted and ratified all the contracts… the witness… had rectified all the contracts"). However, notably no documentary or independent evidence of compliance with section 32 was produced. The plaintiff did not produce its memorandum of association or any confirmation that the contract was lodged with the Registrar at incorporation. In effect, the plaintiff asks the court to simply take the director's word that "we rectified it according to law." This is thin evidence on a crucial point. The statute clearly envisions an objective procedure, not a casual verbal ratification.

    That said, at absolution stage, the court does not weigh the sufficiency or credibility as it would at final judgment; it asks is there some evidence. Here, there is the oral assertion of ratification. That is indeed some evidence of adoption – and if believed, it would satisfy the legal requirement in substance if not proven in form. So, one might argue the plaintiff barely cleared the low bar by at least mentioning ratification. But whether that evidence is credible or meets the strict statutory criteria is another matter to be considered in analysis.

    Crucially, the problem of legal personality goes beyond the plaintiff. On the defendant's side, the misdescription "Visperfaide t/a Synergy Biscuits" in the document raises the spectre that perhaps the wrong entity was named. Visperfaide (Pvt) Ltd is the actual company; "Synergy Biscuits" is a trade name. Typically, contracts by a company should use the company's full legal name. A contract to which "Synergy Biscuits" is a

party could be interpreted as a contract with a partnership or a trade firm, not necessarily the company. Our law is quite strict that suing or contracting with a non-existent entity yields a nullity. The authorities cited earlier (*Zenda, John* v *Delta,* etc.) all underline the point that proceedings or agreements in the name of a non-person are void *ab initio*. For example, in Fadzai John, the citation of "Delta Beverages (Pvt) Ltd" instead of the correct name led to dismissal of the case. In *Pacifique* v *CBZ,* HH 137-18, MUNANGATI - MANONGWA J excoriated legal practitioners for failing to ensure the parties exist, noting that defending such a case "up to trial stage" when only one party exists is a sign of lack of diligence. The principle is clear: if the defendant named in the summons (or contract) does not exist as a legal person, the whole matter is nullity *ab initio.* In our case, however, the summons correctly cited "Visperfaide (Pvt) Ltd t/a Synergy Biscuits" – which is a proper citation (a company and its trading style). The contract was laxer, omitting the (Pvt) Ltd. The effect of that omission is nuanced: If it were an issue of suing, one could amend a misdescription if it's truly a misnomer. But if the underlying agreement genuinely was made in the wrong name, one can't amend the past. The question is: did the parties intend "Visperfaide (Pvt) Ltd" despite the shorthand? If so, the court might treat it as a misdescription capable of correction. If not, then the contract might be unenforceable due to uncertainty of the debtor's identity. For absolution purposes, the defendant's point is that the plaintiff led no evidence to clarify this issue. They did not ask the witness, for example, "why does the document omit '(Pvt) Ltd'?" or "was there any other entity by that name?". No company registration documents of Visperfaide were produced to show it indeed trades as Synergy Biscuits (though that is admitted). In short, the plaintiff did not address the legal persona misnomer at all in its case. This is a non-trivial omission because, strictly, the document refers to an entity not exactly the defendant. Given our case law's stance, that omission could be fatal if not cured by evidence or admissions.

23. It is axiomatic that a company, being an artificial being, acts through real people – its directors, officers, or agents. But those persons must have authority to bind the company, either by virtue of their office, a board resolution, or the company's articles. A single director of a private company does not inherently have authority to sign any and all contracts on behalf of the company unlike, say, a managing director who may have implied authority for routine contracts. Large or unusual transactions often require board approval. An acknowledgment of debt for $114k (a significant liability) arguably

falls outside the day-to-day authority of an individual director, unless specifically authorised. As a general rule, the company will only be bound if the agent was acting within actual or ostensible authority. Actual authority can be proved by a resolution or proof of the agent's powers. Ostensible (apparent) authority requires a representation by the company through its organs that the agent had authority, which the counterparty relied on.

In this case, the plaintiff did not produce any direct evidence of actual authority (no resolution, no testimony from another director or the company secretary). It relied on ostensible authority at best – the fact that Ms. Wasiyenyika was a director and signed on letterhead gave Mr. Mwashita the impression she was authorised. The Turquand "indoor management rule" would, in many common-law jurisdictions, allow an outsider to assume that the internal requirements (like board resolutions) have been duly obtained for acts done by the company's officers, provided the act is not manifestly beyond the officer's authority and the outsider had no notice of any irregularity. Here, it's arguable that Mr. Mwashita could invoke Turquand's rule: he saw a director sign on letterhead an agreement to pay a debt that was actually owed – it looked regular enough. He was not aware of any lack of quorum or dissent within the defendant. On that basis, one might say he was entitled to assume it was authorised. However, Turquand's rule is usually a shield for the outsider (plaintiff) to enforce a contract where the company later claims internal lack of authority. The complication is that in an absolution application, the court is not yet deciding the ultimate enforceability – it's deciding if the plaintiff gave enough evidence to raise a case. The plaintiff here did not invoke or explain any principle of ostensible authority in its evidence; it simply assumed the signature was binding. When the defendant squarely challenged authority in plea and in cross-examination, the plaintiff had no further evidence to offer, no testimony like "the defendant's MD assured me she was authorised", etc. Thus, the evidence of authority is minimal.

Our law has stressed the need for proper authorisation. For instance, it is settled in our law that a juristic person must be represented by a natural person who has authority to do so, whether in litigation or in contracting. If an act is done without authority, the company is generally not bound unless it later ratifies. Ratification by a company of an unauthorised act of an agent requires that the company be fully aware of the material facts and then expressly or impliedly adopt the act. In this case, no evidence of any such

ratification by the defendant was given (the defendant obviously has not ratified; it's disowning the contract). Therefore, to have a *prima facie* case, the plaintiff needed at least some evidence from which authority (actual or ostensible) could be inferred. The only evidence is: Ms. Wasiyenyika was a director and she signed. Is that enough for a reasonable court to infer authority? Perhaps in some circumstances, yes – directorship plus company letterhead might suffice to raise a presumption of authority for a debt acknowledgment (directors have authority to manage, after all, and paying debts is part of business). But where the defendant actively contests it and the plaintiff concedes no resolution was seen, it becomes a thin reed.

Ultimately, the legal point is that if the plaintiff has not shown that the defendant, as a corporate person, ever effectively bound itself to pay, then an essential element – the defendant's obligation – lacks evidence. This ties back into the first point about existence of a valid contract.

24. In proceedings of this nature (initially provisional sentence, now an ordinary trial), the nature of the document matters. A "liquid document" in our rules means a document that clearly acknowledges an indebtedness without needing extrinsic evidence. MANGOTA J's remarks in *Mutemererwa* v *Munyeza*, HH 437-23 underscore that it must be clear, unequivocal, unambiguous. The Supreme Court in *First Merchant Bank* v *Forbes Investments* set out three hallmarks of a valid acknowledgment: debtor's authorship, acknowledgment of liability, and made in favour of the creditor.

How does the Payment Plan Agreement measure up? It certainly contains an acknowledgment of liability (the balance of $114,532.70 is acknowledged as owing for goods delivered). It sets out a promise to pay (weekly $2,500 instalments). These are core features of an acknowledgment of debt. If that were all, it would be a textbook liquid document. However, as detailed earlier, it suffers from equivocation and ambiguity on several fronts – the identity of parties, currency, etc. The phrase used by MANGOTA J is apt: the words unequivocal and unambiguous *"presuppose that the document may… be equivocal and/or ambiguous."* This one unfortunately is ambiguous in material respects. For instance, the currency ambiguity could theoretically allow the defendant to argue it was acknowledging 114,532.70 Zimbabwean dollars (which is practically nothing in USD terms). The plural "they" could raise argument whether a third party was also intended to be bound. These are not fanciful quibbles – they illustrate that the document is not airtight.

Now, a liquid document is not required for the plaintiff to succeed in a trial; even an illiquid contract can be enforced with the proper evidence. But if the document is not reliably clear, the plaintiff must shore it up with other evidence to explain or clarify the intention. Here, the plaintiff did not call, say, Ms. Wasiyenyika to confirm "Yes, I signed on behalf of the company and we meant USD and it was our debt." Such evidence might have cured the ambiguities. Instead, the plaintiff left the document to speak for itself (with only Mr. Mwashita's perspective). This strategy was perhaps sufficient to get past provisional sentence which it did not – DEME J refused provisional sentence largely because of these ambiguities. At a full trial, one would expect these issues to be resolved through evidence. But at the close of the plaintiff's case, they remain unresolved.

The plaintiff's counsel cited *Beki Sibanda* v *Mushapaidze*, HH 56-2010, to argue that since they hold a written acknowledgment, they should prevail. However, that presumes the acknowledgment is valid and enforceable on its face. It is circular to assert the document is liquid when the whole dispute is whether the document can be relied on. In *Mutemererwa* v *Munyeza supra*, the court noted that a document that is equivocal or ambiguous cannot ground provisional sentence. By analogy, such a document, without clarification, may also fail to discharge the onus at trial if key terms like parties or currency are uncertain.

25. When a party is misdescribed in a contract or pleading, the general rule is that if the misdescription amounts to naming a non-existent entity, then the instrument is void. There is a distinction to be made between a mere misnomer (where the correct entity is intended and the error can be corrected) and a case where the court cannot even be sure who was meant. In *Gariya Safaris (Pvt) Ltd* v *Van Wyk* 1996 (2) ZLR 246 (H), cited in *John* v *Delta*, the court said if there is no legal person answering to the name used, the document is void. In our case, is "Bleimah Investments" a misnomer for "Bleimah Investment (Pvt) Ltd"? It might be considered so, since the names are almost identical and indeed refer to the same business venture, just before and after incorporation. Similarly, "Visperfaide t/a Synergy Biscuits" is obviously referring to the Visperfaide company operating under that trade name. The context strongly suggests the intention was the companies. So, one could argue these were misnomers capable of correction. Our courts have sometimes been lenient where the identity is clear despite minor errors,

for instance, citing a slightly wrong corporate suffix can be amended if it's clear who was meant.

However, because the defendant is contesting it and because no evidence was led to clarify, the safer view, at this stage, is that the plaintiff has not dispelled the spectre of a non-existent party. The defendant's argument essentially asks: who is "Bleimah Investments" on 17 April 2023? The plaintiff says "it was us, just not yet incorporated." The defendant says "that means it was no one – a nullity." Legally, the defendant is correct that an unincorporated business name is not a person. Only through the mechanism of the law (s 32 adoption) can that contract attach to Bleimah P/L. So, if the plaintiff's adoption is not proven, then indeed "Bleimah Investments" remains a non-entity as far as that contract goes.

Likewise, who is the debtor on that document? The defendant says the way it's written, the debtor could be an enterprise called "Synergy Biscuits Msasa," which doesn't formally exist (the company is Visperfaide). If a court could not confidently say Visperfaide (Pvt) Ltd is the party, it cannot enforce against it. But given that Visperfaide (Pvt) Ltd is the one trading as Synergy Biscuits in Msasa, it's reasonable to infer they meant Visperfaide. The document even lists "Directors: A. Mumanyi, N. Wasiyenyika" which correspond to Visperfaide's principals. So, I am persuaded the debtor was intended to be the defendant company. It's not a case of mistaken identity, just sloppy naming. In contract interpretation, courts do try to give effect to the substance and true intent of the parties. If this were the only issue, I would not grant absolution – I would allow the plaintiff to possibly amend or clarify that the correct debtor is the defendant since all along the defendant understood it was being sued.

The more problematic aspect is the plaintiff's side of the equation: can a company enforce a contract made in its name before it existed? Yes, but only if statutory ratification occurred. So, we loop back to that requirement.

26. In light of these principles, it is evident that the plaintiff's case hinges on proving a valid obligation running from the defendant company to the plaintiff company. This in turn required showing: (a) the plaintiff company validly stepped into the shoes of the pre-incorporation "Bleimah Investments" entity through proper ratification, and (b) the defendant company, through its authorised agents, undertook to pay the debt. Both prongs have legal hurdles which the plaintiff needed to clear with evidence.

27. Finally, the court notes that while it is generally cautious at absolution stage, it must not abdicate its role as gatekeeper against wholly insufficient claims. In the words of a leading case, the court should not refuse absolution *"in a fit of false pity"* for the plaintiff when the plaintiff has not done its duty to bring evidence (Gascoyne, *supra*). The purpose of absolution is precisely to prevent a defendant from being called to answer a case that has not been made.

    With these principles in mind, I proceed to analyse whether, on the evidence led, the plaintiff has provided a *prima facie* basis for each essential element of its claim, or whether the defendant's criticisms are so fundamental that the only proper course is absolution.

Analysis

28. Element (i): Existence of a Binding Agreement/Obligation by Defendant to Plaintiff. This is the linchpin of the case. Without a binding obligation, all else fails. The plaintiff relies on the Payment Plan Agreement as the source of this obligation. For the reasons already canvassed, that document's ability to bind the defendant to the plaintiff is under serious question. Let us dissect it systematically in terms of the requirements:

28.1 Defendant as Debtor: Did the defendant company undertake to pay? The agreement is evidence that someone undertook to pay Bleimah a sum of money, but was that someone the defendant? On its face, yes – it names "Visperfaide t/a Synergy Biscuits" which is the defendant's trading style. However, the failure to explicitly mention the (Pvt) Ltd, plus the signature not explicitly linking to the company, creates doubt. The plaintiff did not dispel that doubt with clarifying evidence. Nonetheless, given that both sides, even the defendant, in its plea, treat the document as purporting to be with the defendant, I am prepared to assume that Visperfaide (Pvt) Ltd was intended to be bound (the defendant never said "it wasn't us, it was some other Synergy Biscuits"). The defendant's real issue was not that "the wrong party was named" (they did not claim there is some other Visperfaide or that they were misnamed by accident), but rather that the document is void by virtue of misdescription. That is a technical defence, albeit a potentially valid one. For now, I find that there is some evidence pointing to the defendant being the intended debtor: the letterhead, the directors named, the fact that subsequent payments came from the defendant. A reasonable court might, on that evidence, conclude the contract was with the defendant despite the omission of "(Pvt)

Ltd". So I would not grant absolution solely on the misdescription of the defendant, if it were the only issue.

28.2 Plaintiff as Creditor: Was the obligation in favour of the plaintiff company? Here the challenge is greater, because the plaintiff admittedly did not exist at the time. The contract names "Bleimah Investments" as creditor, represented by Mr. Mwashita. In truth, at 17 April 2023, Mr. Mwashita was essentially acting in his personal or promoter capacity, since the company was unincorporated. There is zero evidence that any legal entity by the name "Bleimah Investments" existed then – it was not a registered business or partnership; it was just a name Mr. Mwashita intended for his forthcoming company. Therefore, as at that date, the "creditor" was a non-entity. By operation of law, that agreement could not have effect unless and until adopted by a subsequently formed company (the plaintiff). Mr. Mwashita's testimony asserts that such adoption took place in October 2023. Crucially, however, he provided no documentary proof or detailed description of how it was done. He did not say: "when we registered the company, we stated in our memorandum that we adopt the prior contract and we filed a copy with the Registrar," which is what s.32 demands. He only said in general terms "we rectified all contracts".

Is this evidence sufficient for a reasonable court to find that the contract was validly adopted? In my view, no – it is not sufficient. At best, it is an assertion that could perhaps be true, but without any substantiation. Given that the defendant raised this point early in plea and at provisional hearing, one would expect the plaintiff to come prepared to prove its incorporation details. The total omission of a certificate of incorporation or memorandum which are basic, easily produced documents is telling. It suggests that perhaps the formal steps of s 32(b) were not complied with. Even if they were, the plaintiff needed to lead evidence of it. Absolution stage is not final trial, but if an element is entirely unproved (here, the continuity of legal persona from unincorporated to incorporated), the court cannot just assume it.

Let us assume, arguendo, that the court believes Mr. Mwashita's bald assertion that the company "adopted" the contract. Even then, the timing is problematic: adoption in October 2023 (when company formed) would mean the contract becomes binding from that date onwards on the company. But what about the period April to October? During that time, the "creditor" was still non-existent; any payments made by the defendant in that window (and there were many) were technically paid to no one (or to Mr. Mwashita

personally perhaps). Only after the company's formation could the obligation crystallise in favour of the company. There is a legal argument to be had that the adoption has retrospective effect – i.e., the company steps into the shoes of the promoter and can claim the earlier debt. However, the plaintiff did not make that argument or lead that evidence explicitly.

The bottom line is: The plaintiff's own evidence reveals a gap – April to October 2023, Bleimah (Pvt) Ltd was not the creditor. By the time Bleimah (Pvt) Ltd came into existence, one might argue a new contract or novation was needed to bind the new company and the defendant. The plaintiff has not shown any novation or new agreement post-October; they rely on the April document. So, without satisfying the statutory adoption conditions, the April document cannot simply transmogrify into an agreement with Bleimah P/L. On this point, I find the plaintiff's evidence fatally lacking. There is essentially no concrete evidence that as between this plaintiff and this defendant, a contract was in effect. There is evidence a contract existed between Mr. Mwashita (or his business name) and the defendant. But the party suing is a distinct legal person who was not party originally. The mere incorporation of that person later is not enough; something had to link the contract to it. That something is missing in evidence. Therefore, on the element of a binding obligation running to the plaintiff, the plaintiff has not made out a *prima facie* case. A reasonable court, even giving all benefit of doubt, would have to engage in speculation to conclude that Bleimah P/L properly became the creditor. Speculation is not evidence. This alone is a compelling ground for absolution, as it means an essential element (an obligation owed to the plaintiff) is without evidentiary support.

28.3 Even if one overlooked the above and said "fine, assume the plaintiff adopted the contract properly," we face the issue: did the defendant's director have authority to bind it? Here, the plaintiff's evidence was not just lacking; it was actually negative. Mr. Mwashita admitted he had no proof of authority. The plaintiff did not call Ms. Wasiyenyika or Mr. Mumanyi (the other director) to testify that the board authorised the acknowledgment. The defendant's plea explicitly denied that the signature was authorised initially even denying it was her signature. The plaintiff did enough to show the signature is hers, but showing she signed is not equal to showing the company authorised it. At this stage, one might argue, we could infer that because she was a director and she signed on behalf of the company's business debt, she probably had

either actual or apparent authority. Is that a reasonable inference favourable to the plaintiff? Possibly, yes – one could say a director has ostensible authority to sign acknowledgments of debt arising from the company's normal trading operations, especially if that director was involved in that transaction (here she presumably knew of the oil deliveries). But without any resolution or testimony from the defendant's side, the court is asked to assume this.

The difficulty is the defendant has signalled that internally there was no authority. If this were the full trial, I would expect evidence on whether the lack of authority defence holds water (e.g., did the company disown the contract immediately? Or did it accept by making payments?). Actually, an important fact: the defendant did make payments under the plan. That could be seen as implied ratification by the defendant of its director's act. If a company accepts the benefits or acts in accordance with an unauthorised contract, it can be deemed to have ratified it. The plaintiff's evidence does show the defendant paid $40k after April. That strongly implies the defendant, through whoever was controlling its purse, was aware of the plan and was following it. In my view, that is some evidence that the defendant company ratified or at least acquiesced to the acknowledgment. This is a point in the plaintiff's favour often overlooked. Even if Ms. Wasiyenyika lacked initial authority, when the company started paying $2,500 weekly (or various sums) towards that debt, it signalled acceptance of the agreement's validity. The defendant's current stance, that it fully paid up by its own account implicitly acknowledges there was a debt and a plan – just that it believes it met it. So in a sense, the defendant by conduct gave Ms. Wasiyenyika's act the company's imprimatur.

The plaintiff's counsel didn't explicitly argue this ratification-by-conduct at the absolution hearing, but the evidence of payments is before the court. A reasonable court could infer from those payments that the defendant did authorise or adopt the contract, at least initially. Thus, the element of the defendant's assent is not entirely without evidence – it's circumstantial evidence, but evidence nonetheless.

However, this inference competes with another: the defendant might claim those payments were for something else or under protest. We don't know yet because the defendant hasn't testified. Typically, at absolution stage, we give the plaintiff the benefit of the more favourable inference if it's reasonable. The inference of ratification by part performance is quite reasonable here.

Therefore, on the issue of authority, I find that while the plaintiff did a poor job of proving it formally, there is enough circumstantial evidence (payments made, letterhead use, etc.) that a reasonable court might find the defendant is bound despite the lack of a formal resolution. It's a borderline call, but I lean toward saying that element is minimally satisfied by the evidence of subsequent conduct.

28.4 Are the terms of the obligation sufficiently clear to enforce? This is more of a legal question than a factual one. As discussed, the ambiguities are problematic. But could a reasonable court resolve them in plaintiff's favour eventually? Possibly yes: e.g., by finding that "$" meant USD since the debt was valued in USD and all payments were in USD equivalent; that "they" referred to the singular company (a grammatical slip); that "Synergy Biscuits Msasa" is the defendant's business location and not a separate party. These are all resolvable ambiguities given context. The plaintiff did not resolve them via evidence, but a court could take judicial notice of some (e.g., Msasa is an industrial area so likely just location).

However, one ambiguity stands out: the signature page listing individuals' names. That one is resolved by reading page 1 and 2 together. Courts often say a contract must be read as a whole. So I think a reasonable court might well conclude the intention is obvious even if form is bad – Nerissa signed for Visperfaide, Blessing for Bleimah. So I wouldn't say the contract is void for vagueness; it's intelligible albeit messy.

Therefore, the terms being ambiguous might not alone justify absolution. It's more a consideration in weighing credibility (the witness's confusion under cross examination about those terms certainly hurt his credibility). But strictly, there is some evidence of what the terms were (the document itself, Exhibit 1). It's not "no evidence" situation; it's a contested evidence situation. So not an absolution point per se.

29. Step back: We see a mixed picture. The strongest concern is the plaintiff's lack of legal capacity at time of contracting and failure to prove proper adoption. That, in my view, means there is a fundamental missing link in the plaintiff's case: proof that the plaintiff (as a juristic entity) is the one to whom the defendant owes the money. If Bleimah (Pvt) Ltd cannot enforce the contract, then it matters not that money is owed to someone – the plaintiff must show it is the creditor. On that score, the evidence is virtually nil apart from Mr. Mwashita's say-so. I find that no reasonable court, properly directing itself, could conclude that the plaintiff had the right to sue on the April agreement, without more evidence.

Indeed, this is one of those rare cases where the court can determine as a matter of law that the plaintiff is not entitled to judgment, even if we believe everything Mr. Mwashita said. Believing him, we know: the company was formed in October 2023; he "rectified" contracts. But because no detail of that rectification was given, a court would be speculating to conclude it met the legal requirements. The plaintiff's counsel could have, for instance, produced the company's Memorandum of Association stating "one of the objects is to adopt the agreement dated 17/4/23 between [names]" and a stamped copy of the contract from the Registrar. That would have sealed it. Without it, we are left with insufficient evidence of a crucial element.

30. Element (ii): Breach/Non-payment by Defendant. Assuming arguendo there was a binding obligation, did the defendant fail to pay as required? On this, the plaintiff's evidence is that the defendant paid only to a point and then stopped, leaving US$73k unpaid. They tendered a schedule and receipts. The defendant hasn't yet countered with its version, which presumably is that it paid more or all. At absolution stage, the plaintiff's evidence on non-payment stands uncontradicted. It's *prima facie* evidence of breach. There is clearly some evidence that the defendant did not pay the full debt – the balance figure, the lack of payments after October 2023, etc. So element (ii) is satisfied for *prima facie* case purposes.
31. Element (iii): Quantum of Debt. The amount claimed is $73,632.70 plus interest. The evidence for this was the payment tracker and Mr. Mwashita's testimony. The essential quantum is ~US$73.6k, which is supported by the document (114k initial less ~40k paid). So yes, the plaintiff did put forth some evidence of the amount due. A reasonable court could accept that evidence if believed. So element (iii) not a problem at *prima facie* stage.
32. The above analysis reveals that the Achilles heel of the plaintiff's case is element (i) – the legal effectiveness of the contract vis-à-vis the plaintiff and defendant. Nearly all of the defendant's objections tie into that: misdescription (plaintiff non-existent, defendant not properly named), lack of authority, document not unequivocal. These all question whether a binding contract came into being between these parties. If I find that no evidence (or insufficient evidence) was led on that, then absolution must follow.
33. On the other hand, if I find that there is at least some evidence from which a binding obligation could be inferred (even if tenuous), then absolution should be refused and the case should continue to hear the defendant's rebuttal or explanation. The plaintiff

urges the latter course, stressing that many of these issues could be clarified if the defendant were put on the stand. For instance, the defendant's representative could be asked, "Did your company consider itself bound by this plan? Why did you make payments? Did you authorise Ms. Wasiyenyika to sign or not? Did you raise issue with the plaintiff about its pre-incorporation status at the time?" Getting answers to those could illuminate matters.

However, the rule of absolution is designed to prevent fishing expeditions. The plaintiff is expected to present enough evidence such that it does not need to rely on the defendant's testimony to shore up its case. The defendant correctly argued that the plaintiff cannot simply throw a confusing document before the court and expect the defendant to "assist the court to interpret" it by proceeding to defence. The onus was firmly on the plaintiff to make its case clear. It did not do so.

34. What particularly sways me is that some of the plaintiff's own admissions effectively conceded key points to the defendant. For example, Mr. Mwashita's acknowledgment that the plaintiff was not registered in April 2023 and that no concrete steps of adoption were proven is an admission that without legal formalities, the contract was *ultra vires* the plaintiff's existence

35. I am mindful that granting absolution here means the plaintiff's claim will be dismissed without hearing the defendant's witnesses. Is that just, given there is evidence $73k is owed? It might seem harsh if indeed the money is owed – it would let the defendant off on technicalities. But courts must uphold the law, including the law on legal personality and proper contracting. The plaintiff's counsel in effect asks for leeway to patch the case via cross-examining the defendant. That is not how our system works. Absolution exists to tell a plaintiff: you have not given us enough to even require the defendant to respond.

36. In this case, I conclude that the plaintiff has failed to clear that low threshold on the most crucial aspect: it has not established a *prima facie* nexus between the defendant and the obligation, due to the plaintiff's own incapacity at contract time and lack of proof of a transfer of rights to it. This is a classic scenario where "there is no evidence at all on an essential averment" – namely, that the plaintiff is the creditor to whom the defendant owes a duty. Without that, continuing the trial would be futile, as the plaintiff would inevitably be unable to perfect its cause of action.

37. Even if I were to be generous and find that inference and assumption might supply that missing link, I am restrained by another consideration: the myriad ambiguities and contradictions in the plaintiff's sole witness's testimony. His evidence was not merely improbable in parts, it was self-contradictory (e.g., on number of debtors, who drafted the document). He came across as either not fully frank or not fully informed. A reasonable court might simply find him not credible at the end of the case. Now, at absolution stage I should assume the best of his evidence, true – but even taking it at face value, it remains confusing and incomplete.

    If I ask myself, "could a reasonable court, having only this evidence, find for the plaintiff?" the honest answer is no. There would be too many unanswered questions and legal deficiencies to enter judgment for plaintiff. The plaintiff's counsel argued we should wait for the defendant's case, but that is exactly what the absolution rule guards against: the plaintiff must first produce evidence on which it could win. If it hasn't, it cannot compel the defendant to fill in the blanks.

38. I also note that the plaintiff's opposition somewhat missed the crux by focusing on generalities like the low threshold and the existence of some debt but failing to tackle the specific legal objections head-on. For example, in its submissions the plaintiff did not detail how it met the Companies Act requirements for adopting the contract; it just recited the law and baldly said "we rectified it". This was an opportunity to put evidence or at least proffer an explanation like "a copy was indeed filed with the Registrar on such date". The silence in substance leads me to infer that the plaintiff likely did not strictly comply with s.32. That omission is fatal in a case like this. While courts favour substance over form, some formalities are substantive – especially when dealing with a non-existent entity's contract.

39. In sum, the plaintiff has failed to establish a *prima facie* case that the defendant has a legal obligation to it. At best, it established that there was a debt owed in April 2023 to an entity that was not yet a company, and that the defendant partially paid that debt. But it did not establish that the defendant still owes this plaintiff the money in law. No reasonable court could on the present evidence hold the defendant liable, since doing so would require ignoring clear legal principles on corporate personality and contract formation.

40. I am aware that this conclusion effectively means a substantial sum may go unrecovered despite the defendant having received goods. The outcome has a ring of unjust

enrichment for the defendant. However, the court is bound to apply the law. The plaintiff's recourse, if any, might lie in a different action (perhaps against the promoter or for unjust enrichment – though even that might be time-barred or complicated). But as this claim is framed – on the acknowledgment of debt – it cannot succeed.

41. Absolution is therefore warranted. This is an appropriate case for the court to exercise its power to prevent further waste of resources. The plaintiff's case, as presented, is so fundamentally flawed that even if I were to hear the defendant's evidence, the basic legal deficiencies cannot be remedied. In fact, the defendant's evidence would likely only further highlight those deficiencies (e.g., by confirming no authority was given, etc.). There is no point in prolonging the trial under such circumstances.
42. One final note: The plaintiff argued that absolution would encroach on its right to be heard. It is true that dismissing a case without hearing the defendant is serious. But the plaintiff was heard – it had its full day in court to present evidence. It simply did not meet the minimum requirements of proof. The rules exist to ensure judicial economy and fairness to defendants as well. It would be unfair to make the defendant begin a case when the plaintiff has not established a *prima facie* claim.
43. Accordingly, I find in favour of the defendant on the application for absolution from the instance.

Disposition

44. For the reasons given, the defendant's application for absolution from the instance is granted. The plaintiff has failed to pass the threshold of a *prima facie* case on essential elements of its claim. In the result, the plaintiff's claim is dismissed at this stage.
45. There is no basis to depart from the general rule that costs follow the result. The defendant has successfully defended the claim albeit in an interlocutory manner. The plaintiff chose to bring a poorly supported case and must bear the consequences. I therefore award costs to the defendant. No special order such as punitive costs was sought or would be justified on the material; ordinary party-and-party costs will suffice. Accordingly,
    1. The defendant's application for absolution from the instance be and is hereby granted.
    2. The plaintiff's claim is accordingly dismissed in its entirety.

3. The plaintiff shall pay the defendant's costs of suit.

MAMBARA J: ……..

Zuze Law Chambers, plaintiff's legal practitioners
Mugiya Law Chambers, defendant's legal practitioners