

MBCA BANK LIMITED
versus
BROADHAVEN HOLDINGS (PVT) LTD
and
MUNYARADZI MAJONI
and
MACDONALD CHIRONGA
and
KUMBIRAI PRECIOUS CHAURAYA
and
CLAURIO CHAURAYA

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 28 February 2012

Civil Trial

D.L.L. Morgan, for the plaintiff
2nd & 5th in person
1st, 3rd & 4th in default

BERE J: Subsequent to the conclusion of the hearing of this matter on 27 February 2012 it was brought to the court's attention that immediately after adjoining the second and fifth defendants had initiated negotiations with a view to reaching a settlement with the plaintiff. Documents to this effect have been filed of record and indications are that the parties on their own could not reach a settlement although both the defendants unequivocally accepted liability of the amount of claim.

It is not in dispute that the first, second and fourth defendants were duly served for purposes of trial and they were in default. In their absence, no-one could properly purport to represent them and in this regard it is only proper that default judgment be entered against them.

The second and fifth defendants appeared for trial and both gave evidence in the brief hearing. It is ironic that the following day after I postponed this matter for judgment the two defendants signed a document accepting liability of the amount claimed by the plaintiff.

With the first defendant having unequivocally accepted liability per se it was always going to be extremely difficult for defendants 2 and 5 to successfully deny liability as their liability and case in general is intricably linked to the first defendant's position.

In the court's view, this is one rare case which ought not to have been allowed to pass the pre-trial stage as it turned out that really the defendants had no defence to offer to the claim by the plaintiff. What the defendants ought to have done from the very beginning was for them to negotiate a settlement arrangement with the plaintiff long before court process had been issued.

There is no denial that the amount of claim was indeed advanced and that such money is now overdue for payment together with the penalty associated with the delayed payment.

Because of the first defendant's default, there was nothing advanced by way of evidence to sustain its counter-claim and that counter claim ought to be dismissed.

In conclusion it is ordered as follows:-

1. That judgment be and is hereby entered in favour of the plaintiff against the second, third, fourth, and fifth defendants, jointly and severally, any one paying the others to be absolved in the sum of US\$55 732-08 with interest thereon at 30% per annum from 3 February 2010 to date of payment plus costs on a legal practitioner and client basis as appears from paras 11 & 13 of the plaintiff's declaration.
2. The first defendant's counter-claim be and is hereby dismissed with costs.

Coghlan, Welsh & Guest, applicant's legal practitioners
In person 2nd and 5th defendants