

CAR RENTALS SERVICES [PVT] LTD t/a Avis Budget Zimbabwe
versus
DAMOFALLS INVESTMENTS [PVT] LTD

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 6 June 2023

Date of judgment: 28 September 2023

Pre-trial conference – costs of suit

M. Simango, for the plaintiff
H. Rgwaringesu, for the defendant

MAFUSIRE J

[1] This determination is on the plaintiff's entitlement to the costs of suit and the scale thereof, the main matter between the parties having been settled via a Deed of Settlement that formed the basis of the order of this court in June 2023. The plaintiff insists on the defendant paying its costs of suit on the higher scale of attorney and client. The defendant denies that the plaintiff is entitled to any costs, let alone on the higher scale. Having failed to reach agreement on this aspect despite having resolved the main dispute between them, the parties left it to the court to settle it. They went on to file lengthy submissions to support their respective positions.

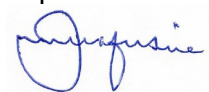
[2] The background is this. This plaintiff issued a summons against the defendant claiming payment of an amount just under US\$11 000-00. It also claimed the costs of suit on the higher scale and collection commission. The defendant filed a plea, in substance denying that it owed the plaintiff the sum alleged, or at all. It also alleged, among other things, that the plaintiff's suit was unnecessary and precipitate given that the parties were in continuous discussion with each other and that the defendant was steadily liquidating the outstanding amounts on the plaintiff's invoices. The defendant further questioned the propriety of the plaintiff claiming both the costs of suit and collection commission in a matter that was now the subject of litigation.

[3] The plaintiff pressed on with action until the pre-trial conference and case management stage. The defendant continued with its payments in accordance with what it alleged was a payment plan agreed to by the parties. At the pre-trial conference case management stage the main issue was settled. Among other things, only US\$148-06 was agreed to be the amount due and owing by the defendant to the plaintiff. The defendant would pay it all off within forty-eight [48] hours of the order to be granted. The plaintiff dropped its claim for collection commission but insisted on costs of suit on the attorney and client scale.

[4] In my decision, given that the main dispute between the parties was resolved and given that the defendant seemed vindicated on its stance that it had been liquidating the debt in accordance with some payment plan or undertaking, there was no reason for the plaintiff to persist with its claim for costs, let alone on the higher scale. The plaintiff seemed unclear on the exact amount allegedly due by the defendant from time to time. The defendant's averments, among others, that the plaintiff's invoices issued from time to time reflected different sums of money, seems borne out by the documents and the final outcome of the matter. In the end, the judgment for the plaintiff was only in a paltry amount of US\$148-00 odd. With a little bit of skill and common sense from the legal practitioners, the parties could have easily found each other much sooner than they did.

[5] There is no need to plunge into the bog about the principles governing the question of costs of suit as the parties entice me to do. These principles are well known and really foundational. The fundamental principle is that costs are entirely in the discretion of the court which discretion, of course, has to be exercised judiciously. Costs generally follow the result. Given the lofty premise the plaintiff started on and the eventual outcome of the case, there has been neither a loser nor a winner in this case. Therefore, each party shall bear their own costs.

28 September 2023



Mushoriwa Pasi Corporate Attorneys, plaintiff's legal practitioners
Wilmot & Bennett, defendants' legal practitioners