

RENAISSANCE MERCHANT BANK LIMITED

Versus

SAMUEL NCUBE

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 10 MAY 2012

N. Ndlovu for applicant
Respondent in person

Opposed Court Application – *Ex Tempore*

KAMOCHA J: This is an application for summary judgment wherein the applicant seeks an order in the following terms:

“It be and is hereby ordered that:

- (1) the respondent pays applicant a sum of US\$46126,08 with interest at the rate of 42% per annum from 1 August, 2011 to the date of full payment;
- (2) stand number 11827 Bulawayo Township held under Deed of Transfer number 2185/90 be declared to be specially executable ;
- (3) the respondent be ordered to pay costs at an attorney and client scale.”

The brief facts giving rise to this case are these.

On 5 October, 2010 Renaissance Merchant Bank Limited offered credit facility to a company known as Bulawayo Tyre Services [Private] Limited. The company, by resolution passed by its board of directors, dated 8 October, 2010 appointed the respondent who was one of its directors and one Michael Mpfu its accountant to attend to the said credit facility.

Samuel Ncube, respondent signed an unlimited guarantee on 11 October, 2010 wherein he bound himself to Renaissance Bank Limited as surety *in solidium* and co-principal debtor with the company to repay on demand by the bank all sums of money which were owing to the bank by the company either as principal or as surety and whether solely or jointly with the company.

The total amount available under the facility was \$100 000,00. The company utilised \$43376,12 of the \$100 000,00 but failed to repay that money plus interest thereon by 31

August, 2011 thereby breaching the loan agreement. The total amount owed then rose to \$46126-08 which the applicant is claiming.

The respondent entered appearance to defend and then requested for further particulars which were clearly meant to buy time.

The respondent has no valid defence to the applicant's claim. He complained that the applicant should have sued the principal debtor but his complaint is devoid of any merit. He seems to have conveniently forgotten the fact that he had bound himself as a surety and had guaranteed to pay on demand all moneys owed by the company to the bank.

This is a typical case where summary judgement is merited. The request for cost on an attorney-client scale is also merited in terms of the agreement the respondent signed.

In the result I would grant the application in terms of the draft on page 1.

Cheda & Partners, applicant's legal practitioners