MARANATHA FERROCHROME (PRIVATE) LIMITED
versus
RIOZIM LIMITED

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 8 & 22 June 2020; 19 October 2020; 2 & 24 November 2020

Civil trial

Date of written judgment: 17 March 2021

Adv F. Girach, for the plaintiff
Adv T. Zhuwarara, for the defendant

MAFUSIRE J

[1] This is a civil trial. The plaintiff claims USD450 000-00 from the defendant. The amount is said to represent the replacement cost of an immovable property, and the improvements thereon, previously occupied by the plaintiff, but intentionally destroyed by the defendant. In the alternative the plaintiff claims USD143 588-22, allegedly for unjust enrichment.

[2] The plaintiff's claim stems from relationship, or association between the parties that had endured for fourteen years but had eventually gone sour. Ultimately it degenerated into a full-scale legal confrontation. The facts are these. The plaintiff and the defendant are duly registered companies in Zimbabwe. At all relevant times both have been involved in mining or mining related activities. The defendant was the owner of certain land in the Eiffel Flats area of Kadoma. On three sites it had put up several buildings for various uses, mainly office blocks. The one site was 3 856 m^2 in extent, the second 5 144 m^2 and the third 2 328 m^2. The total area was 11 328 m^2.

[3] By a written agreement dated 3 June 2003 the defendant sold to the plaintiff these three sites as three separate subdivisions. The total purchase price was $117 881 000-00. This was

in the then Zimbabwean currency. The plaintiff had paid it all off in accordance with the terms of the agreement.

[4] The defendant says there were no proper sub-divisions done to the land which could legally be sold as separate sub-divisions. In the agreement of sale, each of the sites was described as "*A surveyed stand yet to be allocated a number, being a subdivision of Chemukute Township Lot 1 of Railway Farm 11 located on Eiffel Flats Road, Eiffel Flats …*"

[5] Prior to the formal sale agreement aforesaid, the plaintiff was already in occupation on a leasehold basis. The lease terminated upon payment of the full purchase price. In the area, the defendant was doing open cast mining. Its operations were expanding. In 2014 the parties entered into an agreement in terms of which the defendant leased back from the plaintiff some of the offices for a nominal rent. But the defendant could not pass transfer in terms of the sale agreement. Concomitantly, the plaintiff could not get title. A dispute arose.

[6] Matters came to a head in about 2016. The defendant's open pit mining operations continued to expand. Transfer of the sites could not be passed. The parties engaged. Discussions centred on a number of options. One option was for the defendant to refund the purchase price paid by the plaintiff in an amount that would take into account, *inter alia*, the fact that the country had transformed into a multi-currency economy (following the demise of the local currency in 2009). Another option was that the defendant could simply buy back the sites. Yet another option seemed to be that the defendant could offer the plaintiff alternative sites on which it would construct similar structures for the plaintiff, especially a laboratory that seemed central to the plaintiff's operations.

[7] Negotiations were protracted. There were several draft agreements produced by both parties with offers and counter-offers. Unfortunately, nothing was concluded. Relations between the parties completely broke down in February 2017. According to the plaintiff, the defendant, without warning, sent in its heavy-duty equipment comprising excavators, front-end loaders, dump trucks and the like, and started demolishing the buildings. The plaintiff's staff on the ground raised an alarm. Its head office personnel in Harare engaged the defendant's personnel. Nothing helped. The demolitions continued. The plaintiff's staff on the ground was

instructed to salvage such of the goods and materials as had been stored inside the buildings to avert any possible losses.

[8] In July 2018 the plaintiff issued a summons against the defendant claiming the sums of money aforesaid. The amount of USD450 000-00 is said to be the replacement cost of substitute buildings. The alternative claim for USD143 582-22, for unjust enrichment, is said to be the equivalent of the purchase price paid by the plaintiff in 2003, calculated using the official exchange rate prevailing at the time.

[9] The defendant vigorously opposes the claims. The main defence is that the 2003 sale agreement was invalid and therefore unenforceable in that it was concluded in contravention of s 39(1) of the Regional, Town and Country Planning Act [*Chapter 29:12*], more particularly in that the three pieces of land in question had purportedly been sold without a subdivision permit. The defendant also resists the plaintiff's claim on the basis that when the parties realised that the 2003 sale agreement was illegal, and could therefore not be consummated, they entered into another agreement, the exit agreement. In terms of it, the old agreement would stand cancelled; the plaintiff would move off the sites, and the defendant would pay it an amount in the sum of USD135 000-00 in full and final settlement of the parties' rights and obligations towards each other in terms of the old sale agreement. The defendant says the plaintiff has purported to resile from the exit agreement. In the alternative, the defendant pleads that the plaintiff's claims have become prescribed.

[10] The defendant asserts that the claim by the plaintiff to be put back into the position that it would have been in had the allegedly illegal contract been performed, is not cognisable at law. Furthermore, the plaintiff lays no basis for denominating its claims in United States dollars. At any rate, the claim takes no account of the fact that the plaintiff was in occupation of the sites for well over a decade without paying any form of rent, consideration or compensation.

[11] The plaintiff has called three witnesses:

- George Tichaona Mushawatu ("***Mushawatu***"): From 2010 he was the plaintiff's managing director. His evidence deals with the relationship between the parties before, during and after the agreement of sale; the lease agreement; the inconclusive negotiations to salvage some alternative form of relationship between the parties; the

demolitions of the buildings without warning, and the quantum of the claims. According to him, the option of an alternative piece of land was not too attractive because of the defendant's inability to guarantee title. The plaintiff did not sign the final or execution draft of the exit agreement which its own lawyers had prepared and which the defendant had signed in January 2017. This was because not only had the parties not yet reached final agreement on certain specifics, but also the defendant had made some alterations to it.

- Nikita Masaya ("***Masaya***"): He is a registered estate agent. He was the one who, at the instance of the plaintiff, evaluated the three sites in question and the improvements thereon and had prepared a report upon which the plaintiff's claim for USD450 000-00 is predicated. He says he personally inspected the buildings and the sites and came up with three sets of values, namely USD330 000-00, being the estimated market value; USD450 000-00, being the gross replacement value, and USD215 000-00, being the depreciated replacement cost. He did not measure or survey the land on which the buildings had been situated, or examine the title deed description of the land. However, he says these were not material or necessary for the valuation process.

- Tom Usupu ("***Usupu***"): At all material times he was the plaintiff's human resources manager stationed at the Eiffel Flats operations. He, together with the other members of staff for the plaintiff, witnessed the surprise demolitions of the buildings by the defendant. They made arrangements to salvage the plaintiff's goods and materials.

[12] At the close of the plaintiff's case, the defendant applied for absolution from the instance. I dismissed the application under judgment no HH 482-20. The defendant sought leave to appeal. I dismissed the application for leave to appeal under judgment no HH 623-20. The defended appealed against the refusal of leave. The appeal was dismissed. After that, the trial resumed in earnest. The defendant called two witness:

- Augustus Munodawafa Derembwe ("***Derembwe***"): He is a land surveyor with 19 years' experience. He was commissioned by the defendant at the end of September 2020 to establish whether there existed any sub-division permits for the properties in question. His report, although unsigned, was submitted to the defendant on 15 October 2020. His findings were that there never existed any subdivision permits for the three properties. In executing his mandate, he was assisted by two assistants, one with a degree and the other with a diploma. His investigations comprised searches at the Surveyor-General's office at Harare and discussions with the defendant's personnel from its surveyor's office at Eiffel Flats.

- Curtis van Heerden ("***van Heerden***"): He is the senior legal officer for the defendant. He has been with the defendant for the last 5 ½ years, having joined in 2015. The defendant's legal position in the present suit is largely informed by the advice he has been rendering. One of the tasks he carried out when problems with the plaintiff were beginning to manifest was a due diligence. He established that the properties in question had been sold without a subdivision permit. His conclusion and advice were that the

> June 2003 agreement was illegal and therefore unenforceable for want of compliance with the Regional Town and Country Planning Act. But because of the cordial relationship that existed between the parties, it was agreed to make an *ex gratia* payment to the plaintiff so that it would relinquish occupation of the properties to pave way for the defendant's expansion of its mining programme in the area. The plaintiff was not entitled to any compensation as of right, let alone specific performance. The amount of the *ex-gratia* payment would take account of the fact that the plaintiff had paid the purchase price in local currency but would now be receiving foreign currency; that, in reality, the land and buildings sold had remained the property of the defendant; that the plaintiff had occupied the properties for fourteen years rent-free; and that it was desirable to avoid costly litigation. It was regrettable that the plaintiff had refrained from signing the exit agreement the final or execution draft of which had been prepared by its own lawyers. The defendant had signed it. At the end of it all the plaintiff is entitled to nothing.

[13] The plaintiff's argument in support of the main claim for USD450 000 is this. That the pieces of land in question have no sub-division permits, or never had them, is not accepted. The evidence shows that both parties accepted that the properties could be transferred to the plaintiff. It was only in 2016 when the defendant, for the first time, started to indicate the absence of sub-division permits. The onus to prove the absence of sub-division permits rests on the defendant. It has not discharged it. No reliance can be placed on Derembwe's evidence and his report. They lack credibility. Derembwe was commissioned only in the middle of the trial. His report is unsigned. This is for a reason. It is not his alone. Parts are hearsay. He relied on his assistants, particularly on the crucial investigation whether or not there exists sub-division permits for the properties. That was not done by him. The assistant that carried out that part of the enquiry was not called to give evidence. Furthermore, the enquiry was only carried out at Harare. None at Kadoma, the local authority. No witness from the Surveyor-General's office or from the Kadoma Municipality was called to give evidence. They are the custodians of the survey records.

[14] The plaintiff submits that the evidence militates against a finding that there exists no sub-division permits for the properties in question. Apart from the 2003 agreement itself that consistently made reference to a "*surveyed stand*", and apart from the subsequent conduct of the parties whereby, among other things, the defendant at one time leased portions of the property from the plaintiff as owner, as late as 2016 when the parties were negotiating the exit agreement, the defendant, despite having formulated the opinion that the 2003 agreement was a legal nullity, was still recognising the plaintiff as owner, and was still treating that agreement

as valid, requiring formal termination. Further, the draft exit agreement contemplated the defendant inserting title deed numbers for those properties. For these reasons, the plaintiff concludes, the court ought to treat the 2003 sale agreement as valid and enforceable.

[15] The plaintiff further argues that in the event that the court finds that there exists no sub-division permits for the properties, it must nonetheless relax the *in pari delicto* rule and award the plaintiff the sum of USD450 000-00 on the basis of unjust enrichment. The basis for this position is that the plaintiff finds itself with no property, thanks to the unlawful actions of the defendant in demolishing the buildings and digging up the places for open cast mining. From Masaya's evaluation, it will now cost the plaintiff USD450 000-00 to put up substitute buildings. The defendant has escaped paying anything at all. But even on the defendant's own case the plaintiff is entitled to USD135 000-00. There is no question of prescription. The plaintiff's cause of action arose in February 2017 when the defendant demolished the properties that both parties regarded as belonging to the plaintiff.

[16] In counter, the defendant argues that the 2003 sale agreement was *in fraudem legis*. It is unenforceable. No rights derive from it. The plaintiff is claiming the value or cost of substitute buildings. In so doing, it is seeking to be placed in the same position that it would have been in had that agreement been performed. This position is in breach of the *ex turpi causa* rule. An illegal agreement is unenforceable. At any rate, the plaintiff cannot found a claim on the basis of the destruction of the buildings. They belonged to the defendant. The plaintiff never got title of the land. Thus, the defendant actually destroyed its own property. Nor can the plaintiff's alternative claim for unjust enrichment be sustained. It is prescribed. The plaintiff paid the purchase price for the three sites in 2003. It immediately became entitled to transfer. It is immaterial that the plaintiff might have become aware of the illegality only much later.

[17] The defendant further argues that the onus to prove that there existed requisite sub-division permits for the properties rests on the plaintiff. It is the plaintiff that seeks to found a cause of action on the 2003 sale agreements which in turn must derive its validity from the sub-division permits. As a matter of fact, there has never been any sub-division permit. Therefore, the plaintiff has no case.

[18] In my judgment HH 482-20 aforesaid, I dismissed the defendant's application for absolution from the instance on the basis that more evidence of the absence or otherwise of the sub-division permits was required. I said it did not appear *ex facie* the documents that the 2003 sale agreement was a legal nullity. I agreed with the plaintiff's position that it was up to the defendant to lead evidence on these aspects. I said further that it was only after all the evidence had been led that the court would be in a position to properly assess and consider the applicability or otherwise of the principles *ex turpi causa* and *in pari delicto* in relation to s 39(1) of the Regional, Town and Country Planning Act.

[19] I have now had the benefit of all the evidence that the parties wished to lead. From it the plaintiff urges me to find that sub-division permits for the property exist, or existed at the time of the sale agreements in 2003. On the other hand, the defendant, on the same evidence, urges me to find that no such sub-division permits exist, or ever existed.

[20] I consider that the plaintiff's argument is tenuous. In reality, it urges me to assume the existence of these sub-division permits at the time of the sale agreement. But where are they? The plaintiff says the evidence of their existence is the sale agreement in 2003 which referred to "*... a surveyed stand ...*" in relation to all the three properties. The parties went on to sign the document. The parties must have assumed that the properties had been properly sub-divided. The plaintiff's further evidence is the conduct of the parties in the succeeding fourteen years. The plaintiff was in occupation of the properties. For all practical purposes, the parties treated the plaintiff as owner of the properties. Indeed in 2014 the defendant went on to lease a portion of the premises from the plaintiff. To cap it all, the final or execution draft of the exit agreement in 2016 shows that the parties recognised the sale agreement of 2003 as being valid, requiring formal termination. It referred to title deed numbers that had to be inserted. The defendant, with its eyes open, went on to sign the document.

[21] But with all due respect to the plaintiff, where are these sub-division permits? Where are the title deeds for these properties? It is not enough to say the onus is on the defendant to prove that they are not there. That argument might have prevailed at the time of the application for absolution from the instance. Not anymore. Not now, when I have had the benefit of all the evidence. The quality of the defendant's evidence may be poor. Its witnesses may have made a poor showing. Indeed, they did, particularly under intense cross-examination. Derembwe, for

example, was very hesitant. Among other things, he took long to answer some very simple questions. Counsel for the plaintiff would dramatize this quite effectively. Occasionally he would resume his seat, ostensibly to wait for the answers that were long in coming. Van Heerden faired marginally better. But he also tried to evade giving direct answers to direct questions. He was more bent on proffering his opinion in long winded explanations than providing simple "yes" or "no" answers.

[22] However, none of all that proves the existence of the sub-division permits, let alone the title deeds. The plaintiff wants me to make a positive finding that these exist, or existed at the time of the sale in 2003. It bears the onus. It has not discharged it. The defendant's evidence, poorly delivered as it might have been, shows, on a balance of probabilities, that there exists no sub-division permits for the properties in question, let alone the title deeds, either now or at the time of the agreement in 2003.

[23] My finding above, that the properties were sold in the absence of subdivision permits, calls for consideration the applicability of the Regional, Town and Country Planning Act and the twin concepts *ex turpi causa* and *in pari delicto*. The relevant portion of s 39(1) of the Regional, Town and Country Planning Act reads:

> "**39 No subdivision or consolidation without permit**
>
> (1) "… …[N]o person shall –
>
> (a) subdivide any property; …
>
> (b) … … … … … … … …
>
> except in accordance with a permit granted in terms of section forty … …"

[24] In *X-Trend – A – Home* v *Hoselaw Investments* 2000 (2) ZLR 348 (S) the Supreme Court interpreted s 39 above to mean that what is prohibited is the agreement itself that may lead to a change of ownership of any portion of a property, irrespective of the time of signing that agreement. So, if parties enter into an agreement to buy and sell a portion of land which is part of a whole but without a subdivision permit, that agreement will be patently illegal. It is unenforceable. No rights or obligations derive from it. It is such an agreement as will be affected by the *ex turpi causa* and *in pari delicto* principles.

[25] Counsel for the defendant has drawn attention to the English case of *Mahmoud v Ispahani* 1921 KB 716, and the South African one of *York Estates Ltd v Wareham* 1950 (1) SA 125 (SR). In both, the *ratio decidendi* was that a court of law will not enforce a contract prohibited by law even though the plaintiff is innocent and the defendant is even setting up his own illegality as a defence. The court will not lend its aid in order to enforce a contract entered into with a view of carrying into effect anything which is prohibited by law.

- In *Mahmoud*, by some statutory provision in force at the time, the seller required a licence to sell, among other commodities, linseed oil. Equally, the purchaser required a licence to buy. The defendant lied to the plaintiff that he had the requisite licence to buy. The plaintiff sold him. The defendant resiled from the contract. The matter went for arbitration, with the plaintiff trying to enforce the contract. The defendant set up his own non-possession of the licence as a defence. The arbitrator found for the plaintiff. The defendant appealed to court. The court refused to enforce the contract. It allowed the appeal.

- In *York Estates* the facts were more similar to those of the present case. The plaintiff bought an unsurveyed piece of land over which there was no sub-division permit. The defendant resiled from the agreement. The plaintiff sought specific performance. The defendant excepted on the basis that the contract was unenforceable for want of compliance with the law. The court upheld the exception.

[26] Thus, fault plays no part in the consideration whether or not a contract entered into in violation of the law is or is not enforceable. In the present case, the plaintiff does not seek specific performance *per se*. It has accepted the defendant's repudiation of the contract. It seeks something akin to compensation. But that is no distinction. This was a contract that a court of law could not possibly relate to. To grant the plaintiff's claim for the cost of putting up substitute buildings is to recognise the validity of the 2003 sale agreement. That is not possible. The agreement was a legal nullity. It was void *ab initio*. It is hit by the *ex turpi causa* doctrine.

[27] The maxim *ex turpi causa non oritur actio* means "**no action arises from an immoral cause**": see *Dube* v *Khumalo* 1982 (2) ZLR 103 (S), at 109D – F, and *Mega Pak Zimbabwe (Pvt)* v *Global Technologies Central Africa (Pvt) Ltd* 2008 (2) ZLR 195. It is a rule absolute. It admits of no exception. Explaining the rationale for this rule, MAKARAU JP, as she then was, in the *Mega Pak Zimbabwe* case above, said[1]:

[1] At p 197G – 198A

> "In my view, the general principle expressed in the maxim does not permit litigants to bring their 'dirty' transactions into the clean halls of justice. Justice will not soil its hands by touching such transactions. 'Dirty' in this regard not only refers to immoral transactions, contracts specifically prohibited by law but also includes transactions that seek to defeat the law."

In `*Jajbhay* v *Cassim* 1939 AD 537, at p 551, and quoting from *Collins* v *Blantern* [2 Wilson, 347] [1767], reference was made to "… *no polluted hand shall touch the pure fountains of justice.*"

[28] But *ex turpi causa* is not the end of the enquiry in a matter like this. In *Mahmoud's* case above is this statement in the judgment by BANKES LJ, (at p 726):

> "I say nothing upon the question whether the respondent may have a remedy in some other form of action against the appellant, who is said to have deceived him by making a deliberately false statement. That does not arise in this case."

[29] I consider that the *ex turpi causa* rule, which is absolute and admits of no exception, and the *in pari delicto* rule, which is not inflexible and can be relaxed in appropriate situations, are cognate principles. The *in pari delicto* principle ["*in pari delicto est conditio possidentis*"], in its classical form, says that in case of equal guilt, the loss stays where it falls; he who is in possession prevails: see *Schierhout* v *Minister of Justice* 1926 AD 99: *Dube* v *Khumalo*, *supra*; *Matsika* v *Jumvea Zimbabwe (Pvt) Ltd* 2003 (1) ZLR 71 (H), and *Gambiza* v *Taziva* 2008 (2) ZLR 107 (H). The rationale is to discourage illegality by denying judicial assistance to persons who part with money, goods or incorporeal rights in furtherance of an illegal transaction: *Schierhout v Minister of Justice, supra*.

[30] In a nutshell, *ex turpi causa* prohibits the enforcement of immoral or illegal contracts. *In pari delictum* curtails the rights of the delinquents or offenders to avoid the consequences of their performance, or part performance of such contracts (per STRATFORD CJ in *Jajbhay* v *Cassim*, *supra*, at p 540 – 541). The flexibility of the *in pari delicto* rule is grounded in public policy. In *Dube's* case above, GUBBAY JA, as he then was, confirming the position that in suitable cases the courts will relax the *in pari delictum* rule, said that this is done "*…[to do] simple justice between man and man*" (also *Jajbhay*, *supra*, at p 544).

[31] Demonstrably, the plaintiff is entitled to some form of compensation. It parted with money in furtherance of a deal both parties considered quite legitimate. For fourteen years both parties treated the plaintiff as the owner of the premises. The issue of the illegality of the 2003 agreement only came up in 2016 when the defendant's expansion interests manifestly began to

conflict with the plaintiff's possession, not ownership, of the premises. It then resorted to the "*austerity of tabulated legalism*": see *Rattigan & Ors v Chief Immigration Officer & Ors* 1994 (2) ZLR 54 (S). It combed the law. It scrutinised the small print. It came up with *ex turpi causa*.

[32] In fairness to it, the defendant offered USD135 000-00 to persuade the plaintiff to quit. The plaintiff was not quick to grab the money. It did not sign the exit agreement. So, there was no final agreement reached in that regard. The defendant has now withdrawn the offer. It used force. It pulled down the premises and evicted the plaintiff. In this regard, I prefer the evidence of the plaintiff to that of van Heerden as to what exactly happened on the ground when the defendant's bulldozers moved in. Usupu was the man on the ground. He witnessed what took place. Van Heerden was in Harare. Among other things, he cannot, as he has purported to do, contradict the plaintiff's evidence on the manner the defendant carried out the demolitions, and the fact that the plaintiff lost some of its assets in the process.

[33] The plaintiff has made out a proper case for the relaxation of the *in pari delictum* principle. The defendant received the plaintiff's money then. It is of no moment to anyone, including the defendant, that the purchase price might have been paid into the conveyancers' trust account where, as van Heerden claims, it rotted to nothing owing to the vagaries of inflation and the economic meltdown. There is no question of fault by the plaintiff. If the court sends the plaintiff away empty-handed, justice will turn on its head. It bought property. It does not have it. It paid value for it. But it has neither the money nor the property. Yet the defendant, except for the fourteen years the plaintiff occupied the property, has both the property and the value received from the plaintiff. That is unjust enrichment. To the extent that money can restore the equilibrium, the defendant must pay back something. The only question is how much.

[34] The plaintiff cannot receive USD450 000-00, or any amount related to the value of the property. That would run counter to the findings on *ex turpi causa*. Nor can it receive USD135 000-00, which was the quantum of the exit agreement. No final agreement was reached in that regard. That leaves the sum of USD143 588-22. This is said to be the value of the purchase price paid by the plaintiff. The plaintiff is entitled to a refund. There has been no discernible objection or contradiction by the defendant to the manner this amount has been computed by the plaintiff. I therefore take it as is. I dismiss the defendant's suggestion that the plaintiff's

claim in this regard must be whittled down and diminished to nothing by reason of the fact that it occupied the premisses for fourteen years rent-free. During that period, the premises effectively belonged to the plaintiff. It could not pay rent for its own property.

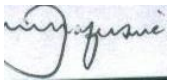
[35] The defendant does not seem to persist with the original position that the plaintiff is not entitled to denominate its claim in foreign currency in view of the monetary regime in force at the time of the claim, whereby the local currency was the only legal tender, particularly s 23(1) of the Finance (No. 2) Act, No. 7 of 2019. The plaintiff's claim arose during the period of the multicurrency. It was entitled to compute and denominate its loss in a manner that best reflected the value of that loss: see *Makwindi Oil Procurement (Pvt) Ltd v National Oil Company of Zimbabwe* 1988 (2) ZLR 482 (SC) and *AMI Zimbabwe (Pvt) Ltd v Casalee Holdings (Successors) (Pvt) Ltd* 1997 (2) ZLR 77 (S). The monetary regime originally relied upon by the defendant came into effect only on 24 June 2019. The loss the plaintiff sues on was incurred in February 2017. At any rate, SI 85 of 2020 [Exchange Control (Exclusive Use of Zimbabwe Dollar for Domestic Transactions) (Amendment) Regulations] permits quoting in USD.

[36] Prescription does not apply. The plaintiff sues on a cause of action that arose in February 2017 when the defendant demolished the premises that the parties had all along regarded as belonging to the plaintiff. The draft exit agreement was signed by the defendant in January 2017. As late as that date, the parties still regarded the properties as belonging to the plaintiff.

[37] In the premises the plaintiff's main claim for payment of the sum of USD450 000-00 is dismissed. The plaintiff's alternative claim for USD143 588-22 succeeds. The plaintiff, in its amended claim, seeks costs of suit at the scale of attorney and client. No basis has been properly laid out why. I can only assume it is the seemingly callous manner the defendant terminated its long-standing cordial relationship with the plaintiff, and the way it went about recovering possession of the premisses that informs the plaintiff's prayer for costs at the higher scale. But that is not enough. Accordingly, it is ordered as follows:

The defendant shall pay the plaintiff the sum of USD143 582-22 (one hundred and forty-three thousand, five hundred and eighty-two United States dollars and twenty-two cents), together with costs of suit and interest thereon at the prescribed rate from the date of judgment to the date of final payment, such amount to be paid in Zimbabwean dollars at the interbank rate prevailing at the time of payment.

17 March 2021



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