INNOCENT CHIMEURA
And
VONGAI CHIMEURA
Versus
GODWIN GOGWE
And
ORBET GOGWE

HIGH COURT OF ZIMBABWE
ZISENGWE J
MASVINGO, 19 & 20 June, 12 October 2023
Judgment delivered on 22 April 2024

Civil Trial

V Kwande & Mufumi, for the plaintiffs
J. Chidawanyika, for the defendants

ZISENGWE J: The plaintiffs are a married couple, so too are the defendants. The two sets of couples are locked in a dispute over the financial implications of the demise of their short-lived business partnership. The business partnership which came into existence sometime in July 2020 went into a tailspin barely three months into its life before collapsing entirely. As between them the parties had two business concerns comprising a hardware store and a baby supplies shop.

The causes of the demise of the partnership are yet contested, suffice it to say that in the immediate aftermath thereof, the plaintiff's instituted the present proceedings seeking an order in the following terms:

(i) An award (*sic*) dissolving the partnership between the parties
(ii) An award for the equal sharing of US$22 727 being profits realised from the hardware shop

(iii) An award for the equal sharing of stock worth US$30 370 at the baby supplies shop and US $ 10 000 at the hardware shop

(iv) An order for the repayment of US$17 389 being capital injected into the partnership by the plaintiffs

(v) An award for the payment of US$34 090.47 being damages for loss of investment

(vi) Payment of interest at the prescribed rate

(vii) Payment of costs of suit on the attorney client scale

The foundation of the plaintiffs' claims as set out in their joint declaration is that the business ventures collapsed on account of the defendant's unilateral decision to terminate the partnership in October 2020. They averred that in terms of the oral agreement which gave birth to the partnership, it (i.e., partnership) was to subsist for a period of 12 months and that they were to share profits and losses equally.

They gave a breakdown of the amounts each couple was required to contribute towards the partnership, the cash on hand as well as the value of the remaining stock in each of the two businesses. This then explains the claim for share of not only the cash on hand but also the outstanding stock.

Significantly, however, they averred that they incurred damages on account of the alleged premature termination of the partnership by the defendants. Their claim in this regard was a direct computation of the projected monthly profit for each month multiplied by the factor of nine, the latter being the remaining number of months of the life of partnership.

The defendants entered appearance to defend and simultaneously with their plea, filed a counter-claim.

In their plea the defendants admitted that profit and loss were to be shared equally in respect of the hardware shop but denied that the same formula applied to the baby supply shop. According to them such a formula was only applicable in the event that the partners contributed equally into that business. In this regard they averred that whereas they contributed the sum of US$8 930 plus an opening stock of US$11 592.20, the plaintiffs only contributed the sum of US$3 100. They therefore insisted that given the unequal capital injection into the Baby supplies shop the plaintiffs were not entitled to a half share of the remaining stock.

As far as the question of damages is concerned, they denied having unilaterally terminated the partnership agreement. It was their version that the termination was by mutual consent brought about by the COVID -19 pandemic induced economic down-turn. They therefore prayed for a dismissal of the claim for damages.

The defendants' counter claim is predicated on the expenses they claim to have incurred in securing and storing the outstanding stock post the demise of the partnership and for the payment of salaries.

They itemised the counter claim as follows:

(i) An order for the refund of the sum of US$1 350 being half share of salaries for the hardware shop for the month of October, November and December 2020
(ii) An order for payment of half share of holding over damages in the sum of US $ 500.00 per month (from) June 2021 until date of sharing of unsold stock
(iii) An order for the refund of US$1 250.00 being half share of the cost of hiring a container for storage
(iv) An order for the refund of US$225.00 being half share for hiring security
(v) An order for the refund of US$300.00 being half share of salaries for October 2020
(vi) Payment of interest as the prescribed rate
(vii) Payment of costs on the Attorney (and own) client scale

The plaintiffs filed a replication to the defendants' plea insisting that they were entitled to all the amounts claimed and maintained their stance that the defendants were entirely to blame for the collapse of the two businesses hence their (i.e., plaintiffs') entitlement to the said damages.

They disputed every material averment of the defendants' claim in reconvention. As for claim for their contribution towards the October 2020 salaries, they indicated that these (as of the time of the replication) had already been paid. They denied that the defendants had incurred any expenses relating to the storage and security of the remaining stock from the hardware store and put them to the proof thereof. For convenience the term "plaintiffs" shall also refer to the defendants in the claim in reconvention, and similarly the term "defendants" will throughout this judgment will be used to also refer to the plaintiffs in the claim in reconvention.

When the matter was referred for a pre-trial conference (PTC), before MAWADZE J, the parties agreed to have the business books of accounts be subjected to an audit. This was duly done and a report thereto submitted.

At a further PTC hearing, the parties made certain admissions. Similarly, at the commencement of the proceedings the parties made more admissions and further refined the scope of the areas of contestation. The parties agreed as follows:

Hardware store

1. That the capital injected in respect of the hardware store by the plaintiffs was US$17 389 and the by the defendants was US$9 411
2. That the total expenses incurred was US$3 446.80
3. That the net profit realised and to be shared equally was US$ 6 811.15
4. That the closing stock as per the auditor's inventory to be shared equally between the parties
5. That the plaintiffs hold US$1 625 and the defendant US$965 (i.e., from the hardware store)

Baby supplies store

1. That the capital injected in respect of the baby supplies shop by plaintiffs was US$5 144 and by the defendants US$12 467.12
2. That the net profit realised for the period of operation was US$8 151.14
3. That the closing stock that was to be shared as of the date of termination was valued at US $15 195.24
4. That the plaintiffs hold US$3 358.00
5. That the defendants hold US$161.05

The following issues were, as per the joint PTC memorandum, referred to trial:

(i) Whether or not the parties agreed to an equal sharing ratio of profits in respect of the baby supplies shop despite each party's contribution.

(ii) At whose instance was the partnership prematurely terminated.

(iii) Whether or not the plaintiffs are entitled to damages for loss of investment in the sum of US$20 433.45 in regards to the hardware store.

(iv) Whether or not the defendants incurred costs as claimed in respect of rentals, hiring of a container for the storage of stock, security and salaries for the month of October 2020.

(v) Whether or not the plaintiffs are liable to reimburse the defendants half share of the costs incurred by the defendants.

Two further significant concessions were made immediately prior to the leading of oral evidence, namely – (i) the plaintiffs reduced their claim for damages from US$20 433 down to half that amount (i.e., US$10 216.72). This was born out of a realisation that had the partnership not collapsed, they (i.e., plaintiffs) would have been entitled to only half the net profits that would have been realised (the defendants being entitled to the other half).

The plaintiff's claim for US$17 389 purportedly representing their capital injection into the partnership was abandoned.

The Evidence

The parties were the sole witnesses for their respective cases. Heavy reliance was placed by the parties on messages exchanged between them on the instant messaging platform "WhatsApp", excerpts of which were printed and tendered in evidence by consent.

Given that most of the facts are common cause, it shall not be necessary to recount of each individual witness account, suffice it to highlight the following. It is common caused that the idea of forming a business partnership was conceived and implemented as between the parties in July 2020. Initially the partnership related to the hardware store. However, in the period that followed the baby supplies shop came into existence. Whether the hardware store and the baby supplies shop were fell under "one global partnership" as contended by the plaintiffs or they were two stand-alone businesses as insisted by the defendants is contested terrain.

It is further common cause that after operating for roughly three months the partnership unceremoniously collapsed. The cause for the demise is hotly contested as between the parties, whereas the plaintiffs put the blame squarely on the defendants' doorstep (hence their claim for damages), the defendants for their part deny this. They claim that the hardware shop was closed down by mutual consent. This issue will be dealt with in some detail shortly.

In determining whether or not to find for either party on any consented issue in a civil claim, the court is guided firstly the question onus and incidence of proof. Secondly there is a technique usually employed for the overall assessment of evidence where there are two competing versions.

On the question of onus of proof, the following passage from the case of *Astra industries Ltd* v *Peter Chamburuka* SC-12-12 is instructive:

> "The position is now settled in our law that in civil proceedings a party who makes a positive allegation bears the burden to prove such allegations.
>
> In *Book v Davidson* 1988 (1) ZLR 365 (S) at 384 B-F DUMBUTSHENA CJ quoted with approval the words of POTGEITER AJA in *Mobil Southern Africa (Pvt) Ltd* v *Mechin* 1965(2) SA 706 AD at 711 E-G:
>
> "The general principle governing the determination of the incidence of the onus is the stated in *Corpus luris Simper necessitas probandilcumbitilli quur agit*. In other words, he who seeks a remedy must prove the grounds therefore"

The same principle was stated by Schwikkard & Van der Merwe, *"Principles of Evidence"* 3rd ed at page 572-73 where the following was stated:

> "Where the incidence of the burden of proof in relation to a particular rule of law has not been authoritatively settled it necessary to refer the following general approaches set out in *Pillay v Krishna and Anor* 1946 AD 946 at 951 -2
>
> > "If one person claims something from another in a court of law, then he has to satisfy the court that he is entitled to it. But there is a second principle which must always be read with it : where the person against whom the claim is made is not content with a mere denied of the claim, but sets out a special defence, then he is regarded *quoad* that defence, as being the claimant: for his defence to be upheld he is entitled it succeed on it : HC who asserts, proves and not the one who denies, since a denial of a fact cannot naturally be proved provided it is fact that is denial is absolute……The onus is on the person who alleges something and not his opponent who merely denies it.

The implications of his principle to the present matter are profound but can be summarised as follows - For the claim in convention in general, and the claim for damages for the alleged unilateral termination of the partnership in particular, is concerned the onus prove such unilateral termination and the damages suffered thereby rested squarely on the plaintiffs. Further, they also bore the onus to prove that the sums they claim are held by the defendants which are subject to distribution as between the parties. This applies to both the hardware store and the baby supplies shop.

Similarly, the onus to prove the counter claim comprising employees' salaries for October 2020, storage and security for the remaining stock rested on the defendants.

This then brings into sharp focus the question of how the assessment of evidence is done. The case of *Stellenbosch Farmers'winery group Ltd & Anor* v *Martell et cie & Ors* 2003 (1) SA 11 SCA, provided as useful general guideline. The following was said:

> On the central issue; as to what the parties decided, there were two irreconcilable versions. So, too, on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make a finding on (a) the credibility of the various factual witness; (b) their reliability and (c) the probabilities. As to (a) the courts findings will depend on its impression about the veracity of the witnesses. That in turn will depend on a variety of subsidiary factors not necessarily in order of importance, such as (i) the witness candour and demeanour in the witness box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded on his behalf or with established fact or with his own extra-curial statements or actions (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to other witnesses testifying on the about the same incident or event. As to (b) a witness's reliability will depend apart from the factors mentioned under (a) (ii) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed facts. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."

It is against the backdrop of these two basic principles that I will proceed to analyse each of the claims in convention and those in reconvention.

The Claims in convention

The claim for damages

Visser et al in their seminal work Gibson: South African Mercantile & Company Law, 8th ed at page 253 have this to say about a partner's unilateral termination of a partnership:

> "A partner may terminate a partnership by his unilateral act in giving notice of renunciation, if a definite time for time for the partnership has not been fixed (Voet 17.2.24). A partnership without a definite term is a partnership "at will" and can be dissolved by any partner at his own discretion. *Even if the partnership is for a definite term one partner may terminate by notice before the term*

has expired. The partner will be in breach of his contract and no doubt liable in damages, but the partnership is still terminated (*Wiehahn* & Ors v *Marais* 1965 (1) SA 398 (T)" (italics for emphasis)

In the present case the question first and foremost is whether the defendants unilaterally terminated the partnership agreement. I must however hasten to point out that should this particular claim succeed, the damages that accrue to the plaintiffs are not necessarily the diminution of the projected profits that would have been realised for the remining life of the partnership but for the period equivalent to what would have constituted reasonable notice in the circumstances.

The resolution of this particular issue hinges to a greater extent on whether the hardware shop and the baby supplies shop fell under the so-called "global partnership" as alleged by the plaintiff. This is because in that instance the second defendants' message of 29 of October 2020 informing the first plaintiff of the termination of their partnership would have amounted to a termination of the partnership as it related to both the hardware store and baby supplies shop.

In support of their contention that the defendants unilaterally terminated the agreement, the plaintiffs point to the WhatsApp message sent by the second defendant (Mrs Chimeura) to the second plaintiff Mrs Gogwe) on 29 October 2020. On account of the relative importance of this particular message I am constrained to reproduce it, it reads:

"*Good evening Mrs Chimeura. Hope this finds you well. When we got into this partnership we were hoping for the best, however there seems to be an irretrievable breakdown of the relationship. In regards baby bliss, I have decided not see you today because I do not emotions to take over, I want this break up to be as amicable as possible. We have come to this conclusion because of the following reasons:*

1. *You caused a great deal of confusion, conflicts in the organisation. You have even recorded people gossiping and some employees have resigned because of this. We find it very awkward that a person gets to record family members, employees gossiping, it is not healthy for any organisation to have employees in constant conflict.*
2. *Because of this my family is now in serious conflict, it's sad to be advised that there is a serious snake in the family by you, you have been around for only 3 months and already know the snakes not in the business but in the family.*
3. *Mutual respect and trust have been lost. This partnership has caused us to lose peace of mind which is very expensive. We have come to the conclusion to leave the partnership. I have instructed baby bliss to close tomorrow so as to help us dissolve and share what is available. Please advised if you will be able to come if not, please advise when you are able to come through. Should you decide not to respond we will take it as a response as well."*

It is pertinent to note that although the parities would exchange messages directly to each other's accounts, they also shared two group platforms, one for the baby supplies shop and one common platform for all four of them. As things turned out, it was not second plaintiff who responded to that message but her husband the first defendant who did. He did so on the common platform. His response was the following:

> "*Thank you very much for the shared information. For your own information alone cannot instruct closure of business without Vongai's consent. A due process must happen."*

A holistic evaluation of the evidence does not support the contention that the hardware store and the baby supplies store fell under "one global partnership" as contended by the plaintiffs. First and foremost, that message by the second defendant to the second plaintiff clearly refers to the closure of then baby bliss shop. Such reference was by no means incidental nor was it a loose or casual use of language. It was a pointed reference to the particular business that was being terminated *via* that message-namely the baby supplies shop.

This also dovetails with the earlier messages on the closure of the hardware store exchanged between the first plaintiff and the first defendant. In those earlier messages, the first plaintiff and the first defendant exchange ideas on the modalities of winding down the hardware business. Their dialogue went like this:

1st Defendant:	*Ok so when do you propose we meet to finalise the wind down process and all*
1st Defendant:	*I know Mondays are usually hectic*
1st Defendant:	*Have you come up with a proposal on how best we can wind down*
1st Plaintiff:	*Assessing options currently*
1st Defendant:	*I will inform you once am through with some processes. We haven't had the books done by an accountant*
1st Defendant:	*So, in the meantime what do we do?*
1st Defendant:	*I will just keep the daily sales and stop restocking whilst we want for a plan on the way forward*
1st Plaintiff:	*In the interim we allow stocks to run down without replenishing*
1st Defendant:	*Noted*

Although the plaintiffs strove to suggest in their respective accounts that the messages related to relocating the hardware store to a smaller place, nothing can be further from the truth than that. From the language used and tenor thereof, the unmistakable conclusion conveyed by the exchange of 11 October 2020 shows that they were talking of closing claim the hardware business.

There are several other facts which support the fact that the hardware store was distinct and separate from the baby supply store. These include but are not limited to the following; that the messages surrounding the opening, branding, and operations of the baby supplies shop was exclusively done by the second plaintiff and 2nd defendant (the ladies). Similarly, the discussion of the closure of the hardware shop excluded the baby supplies shop and vice versa. I could on *ad infinitum*, but the evidence apart from the plaintiffs' mere *ipse dixit* admits of no doubt that the two entities were separate and distinct. I say this, obviously mindful of the fact that, in businesses like these, run along family and friendship lines, there would be the inevitable overlap of their operations. This overlap, however, does not detract from the fact that the clear impression created from the evidence as a whole is that the two businesses were separate and distinct.

Related to the above is the fact that the closure of the baby bliss shop by the second defendant had no impact on the closure of the hardware shop. I found the evidence of the defendants credible in that regard. Although there were palpable simmering tensions between the first plaintiffs' and first defendant in their discussion on the modalities of closing the hardware shop, the unmistakable impression from their exchanges is that the closure of the hardware shop was by mutual consent. That being the case the claim for damages is unsustainable.

The claim for a share of the profits of the hardware store

The parties are in agreement that the profits from the hardware store are to be shared equally. They are further agreed that the net profit realised from the hardware store was US$ 6 811.15. This figure was extracted from the audit report. Out of that amount, the parties agree that the plaintiffs hold the sum of US $1 625 and the defendants hold US $965. The parties however, cannot agree on who is in possession of the balance (which should amount to US $4 221.15.) They each accuse their opponents of being in possession of this amount.

Unfortunately, their bookkeeping was less than stellar. As matter of fact, it was downright shambolic. In such circumstances it would be expecting too much from the trier of fact to come up with any meaningful conclusion as to who possesses how much. The onus however rested on the plaintiffs to prove on a balance of probabilities that defendants are in possession of that balance. They failed to do so and their claim stands to be dismissed.

The claim for the profits from the baby supplies shop

The parties haggled over what formular to be applied to a sharing of the profits realised from the baby supplies shop. The plaintiffs argue that this should be on a 50/50 basis as this was what was agreed at its inception. The defendants on the other hand contend that the 50/50 ratio was conditional upon both sets of parties contributing equally. It is common cause however that the defendants (or at least the second defendant) ended up contributing more. The defendants therefore seek an order of the sharing of profits on a *pro-rata* basis.

The plaintiff's whether by design or by oversight, however, did not include a claim for the sharing of such profits in their summons. Although in their joint PTC minute the parties referred this issue to trial, no formal application was made to amend their pleadings to incorporate this claim. I therefore refrain from making any definitive pronouncement in this regard. I would however encourage the parties to consider the ratio under the heading "claim for sharing of outstanding stock of the baby supplies shop" discussed hereunder.

Share of stock in the baby supplies shop

Most of the fats under this claim are common cause. It is agreed firstly that at the inception of this venture the second plaintiff and the second defendant agreed that they would share profits and losses equally in the event of them contributing equally towards its establishment. Secondly, it is common cause that the second defendant however ended up injecting US $12 467.12 against the second plaintiff's US $5 144. It is agreed that the closing stock as of the date of termination was US $15 195.24.

In Gibson, South African Mercantile & Company Law *ibid* at page 243 the learned authors, Visser at al state the following:

> "It remains to note that on termination of the partnership, the partnership property is, generally returned to the individual partners in the proportion in which it was contributed, unless they have expressly agreed otherwise (Voet 17.2.27)."

In the context of this case, there was no *express agreement* between the partners that the outstanding stock would be shared equally upon the dissolution of the partnership. In any event ordering an equal sharing of the outstanding stock would yield an inequitable outcome. In terms of their unwritten agreement equal sharing was predicated on an equal contribution. The corollary is that an unequal contribution would result in an unequal sharing. Holding otherwise would mean

that a party would be entitled to an equal sharing even where they had contributed nothing and the other has contributed 100 percent of the capital.

An equal distribution of that stock cannot be justified on the basis of the indirect contribution (for example the manual exertion of second plaintiff) towards the business. This is not only because both ladies expended their energies thereto but also the exertion was not quantified. The established position is that where one partner's contribution (such as labour or skill) has had no value placed upon it, or has no clearly ascertainable value, the share of each partner on dissolution depends on his or her share of profits, not the distribution of the stock; see Commissioner for *Inland Revenue* v Estate *Whiteaway* 1933 TPD 486 at 501 & *Fink v Fink & Anor* 1945 WLD 226 at 242

Similarly, an equal division of the stock cannot be justified on the basis of the alleged unequal contributions in the hardware store. First and foremost, it was demonstrated that the contributions of the parties in the hardware venture was virtually equal. Secondly, having found hereinbefore that the hardware store and the baby supplies shop were separate entities, it would amount to a non sequitur to use the formula in the hardware store for the baby supplies shop.

In the final analysis, a distribution based on a pro-rata contribution accords with the principles stated above. This means the second plaintiff would be entitled to stock valued at US $ 4 438 and the second defendant the rest (i.e., US $10 757).

The claims in reconvention

It is pertinent to point out from the onset that the defendants' counterclaims are based on events that took place after the dissolution of the partnership. The general rule is that all rights and duties of the partners and especially their authority to bind the partnership, end with the dissolution of the partnership: *Alberts* v *Bryson* 1976 (2) RLR 193 (A). However, as Christie puts it in Business law in Zimbabwe at page 372, "this general rule gives way to the necessity of winding up the affairs of the firm and completing transactions begun but not finished at the time of the dissolution, and so far, as necessary for these purposes the authority, rights and duties of the partners continue: *Brighton* v *Clift* 1970 (2) RLR 14 at 16 G".

In casu, the defendants' counterclaim appears to be anchored on the basis that the expenses he incurred in procuring security and storage for the goods were necessary. It is against this background that I shall deal with each of the defendants' counter-claim.

The claim for the October 2023 salaries

This claim is disputed by the plaintiffs who claim that by the time of dissolution of the partnership at the end of October the employees had since been paid.

The defendant conceded that the final audit report shows that salaries October 2020, had since been paid though at the time of the institution of the claim they had not been. This claim naturally falls away.

The claim for security for unsold stocks

This claim is equally doomed. No supporting documents were availed to show that the defendants entered into an agreement with any security firm or individual to provide security services at a particular monthly fee. The stock in question was not frightfully large covering as it does a space of not more than 6m x 7m according to the evidence. The possibility of such stock being stored in a place not requiring hired security personnel cannot be discounted. This claim cannot succeed.

The claim for hiring a storage container

There are two basic shortcomings with this claim. Firstly, the hiring of the container was done rather unilaterally. While admittedly the remaining hardware stock needed to be stored, the most efficacious and cost-effective method needed to be employed. This in part stems from the duty to act in utmost good faith at all times. In *Wegner* v *Surgeson* 1910 TS 571 at 579, WESSELS J likened a partnership to a relationship between brothers. In all dealings with one another partners must display *uberrima fides*, which principle in my view extends to those transactions conducted in the name of the partnership post its dissolution, see *Marais* v *Kennedy* HH-149-96.

Secondly, the receipts produced by the defendants purportedly as proof of the storage originate from a company in which the first defendant admits to having an interest. He is a co-director thereof. While the first defendant was not necessarily precluded from dealing with a

company in which he is a co-director, it none the less casts serious doubt of the *bona fides* of the arrangement and consequently his claim.

From the evidence as a whole I have serious reservations of the genuineness of the hiring of the container for the purposes of storage of the outstanding hardware stock. The defendants could have sought corroborative evidence in the form of say photographs depicting the goods in question stored therein and/or oral evidence from the container hirers. I do not believe that this claim was proven on a balance of probabilities either.

The claim for the refund of rentals from October to December 2020

This claim is hard to sustain as it is not backed by only documentary evidence. Given the rather abrupt and unfriendly terms under which the partnership ended, it would have been prudent to keep a paper trail of all necessary expenses the defendants incurred to obviate any potential disputation thereto. Sight must not be lost that there is duty reposed on each partner to account to the remaining partners, which duty in my view extends to transactions conducted in the name of the partnership its dissolution. In Gibson South African Mercantile Law ibid at page 256 the duty is expressed in the following terms:

> "Upon the termination of a partnership each partner may demand an account from fellow partners (Voet17.2.11; Mostert v Mostert 1913 TPD 255) and can inspect and examine the partnership books (*Romersa* v *Buch* 1917 TPD 266; *Carr* v *Hinson* 1966 (3) SA 303 (W)."

Although the plaintiffs did not bring a claim based on the duty to account, *per se*, the defendants in the present case nonetheless failed to properly account for this particular expense which they now want to be borne by the partnership. Mindful of their duty to account the respondents needed to maintain a proper record of such expenses. In the absence of the requisite receipts, invoices or similar documentation to support it, this particular claim cannot succeed.

The claim for rentals for storing the hardware stock from February 2021 to date

In this respect the defendants testified that having moved the hardware stock from a container, the goods were then taken to a place in the central business district of Shurugwi where they have been incurring monthly rentals of US $500. This was disputed by the plaintiffs.

There are several factors mitigating against granting this claim. These may be summarised as follows. Firstly, neither were receipts nor the relevant lease agreement(s) produced to demonstrate that indeed a room was rented for purpose of storage of the stock. There was a belated attempt during the course of the trial to produce some receipts. That attempt was withdrawn as it flouted the rules of court relating to the discovery of documentary exhibits.

Secondly, no oral evidence from the owner or lessor of the alleged rental premise was adduced to confirm the existence of such an arrangement. The danger in granting this claim, of course, is that the goods may very well be stored in a place where they are not attracting any rent.

Thirdly, it is indeed curious that business persons of the defendant's calibre, who alongside the plaintiffs demonstrates astuteness in the running of a business would allow themselves to incur monthly rentals of US $500 for a period of over twenty months up to the date of trial to store goods valued at US $8 000. The storage for outstripped the value of the goods which to my mind makes very little economic sense.

Fourthly and related to the above, the defendants spurned reasonable offers by the plaintiffs to have the remaining hardware stock shared. The letter dated 16 January 2021 by the plaintiffs to defendant's legal practitioners proves this. From the evidence, the defendants neither responded nor heeded to the acceptance by the plaintiffs to have the remaining hardware stock shared. The defendants cannot have their cake and eat it too. They cannot spurn the offer to have the stock shared with the necessary implication that such storage costs would have been avoided, and in the same breath claim storage costs. That is untenable. In any event the same principles on the duty to account discussed hereinabove apply.

Accordingly, the claim for storage costs in the form of rentals from February 2021 to present cannot succeed.

Costs

The general rule is that the substantially successful party is entitled to his or her costs. Neither party scored a decisive victory against the other. Save for relatively minor successes, both sets of parties were unable to prove their claims and claims in reconvention respectively. An order that each party bears its own costs would be proper. Accordingly, it is hereby ordered as follows:

1. The partnerships between the parties in both the hardware store and the baby supplies store are hereby dissolved.

2. The claims in convention

(a) The claim for the sharing of profits from the hardware store partially succeeds: the total sum of US $9 590 cash on hand to shared equally between the parties.

(b) The remaining stock for the hardware shop to be shared equally.

(c) The stock remaining in the baby supplies shop to be shared as follows: the second plaintiff is awarded stock valued at US $4 438 and the second defendant is awarded stock valued at US $10 757.

(d) The claim for damages for loss of investment is hereby dismissed.

3. The claim in reconvention

(a) The claim for US$ 135 being half share of rentals for the hardware store for October to December 2020 is hereby dismissed.

(b) The claim for half share of holding over damages in the sum of US$500 per month from June 2021 to date of sharing of stock is hereby dismissed.

(c) The claim for the refund of US$1 250 being half share of the cost of hiring a container for storage is hereby dismissed.

(d) The claim of the refund of US$ 225 being half share of the cost of hiring security is hereby dismissed.

(e) The claim for the refund of US$ 300 being half share of the payment of salaries for October 2020 is hereby dismissed.

4. Each party to party to bear its own costs.

Kwande Legal practitioners, the plaintiffs' legal practitioners.

Chitere Chidawanyika & Parnters, Legal practitioners, the defendants' legal practitioners