MANOJKUMAR JIVAN
versus
SALZMAN ET CIE SA
and
THE SHERIFF FOR ZIMBABWE

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 4 November 2021 & 13 April 2022

Date of written judgment: 13 April 2022

Opposed application

Adv L. Uriri, for the applicant
Adv T. Nyamakura, for the respondent
No appearance for the second respondent

MAFUSIRE J

[a] Introduction

[1] HC 1693-21 is the main application. HC 2127-21 is the counter-application. Originally, the relationship between the applicant ["***Jivan***"] and the first respondent ["***Salzman***"] was one of creditor and debtor. Jivan, initially with several others, were the debtors, and Salzman, the creditor. The current dispute stems from efforts by Salzman to execute, through the second respondent ["***the Sheriff***"] a judgment given it by this court in HC 7916-14. Jivan asserts that there is no longer any such relationship of creditor and creditor. He claims that the judgment in question has become superannuated and therefore cannot be enforced without being revived. In the alternative, he claims that he has since paid it all off anyway. On the other hand, Salzman denies that the judgment is superannuated or that Jivan has paid it in full. Nonetheless, it seeks the revival of the judgment. That is the broad scenario. Now the details.

[b] Applicant's claim

[2] In his original formulation in the draft order, Jivan claimed the following relief:

> "1 The application is granted.
>
> 2 Consequently, it is declared:

(i) That the judgment of this court handed down on the 22nd day of June 2016 in case number HC 7916/2014 superannuated on the 21st day of June 2019.

(ii) That the writ of execution issued on the strength of the said order on the 7th of April 2021 without the revival of the superannuated judgment is for that reason a nullity.

Consequently, the writ of execution issued on the 7th of April 2021 in case number HC 7916/2014 and the subsequent attachment in execution based thereon are set aside.

(iii) The judgment debt in HC 7916/14 constituted an 'outstanding obligation' on 22 February 2019 and is therefore subject to the provisions of SI 33/19 in that it is payable in local currency at the rate of one-is-to-one.

(iv) The payment by applicant of RTGS540 000-00 to second respondent on 5th April 2021 to the credit of first respondent fully settled and extinguished the judgment debt.

3 The writ of execution issued in terms of the said order and subsequent attachment of a certain piece of land situate in the District of Salisbury being Stand 5 of Strathaven of Strathaven A measuring 4 381 square metres held under Deed of Transfer Number 11079/97 are unlawful and void.

4 First respondent shall pay costs."

[c] First respondent's counter-claim

[3] In its counter-claim, Salzman claimed the following relief:

"1 The order of this court in HC 7916/14 issued on the 22nd of June 2016, be and is hereby revived.

2 Consequently, the writ of execution against movable and immovable property issued against the 1st Defendant in HC 7616/14 shall remain in force.

3 There is no order as to costs."

[d] Applicant's chamber application

[4] Three days before Jivan launched his application on 23 April 2021, the Sheriff, in execution of the debt, had attached his house, the one referred to in Para 3 of his draft order. Three days after filing that application, he filed a further application through the chamber book under HC 1717/21 to suspend the sale of the house in terms of the rules of this court governing the suspension of sales of dwellings. The suspension was sought, among other things, pending the determination of the main application.

[e] Issues resolved out of court

[5] Initially the applications and the counter-application were all vigorously contested. However, by the time of the hearing, the parties had found each other on some of the issues. Thus, such issues would require no resolution by the court. For the main application, they were these:

- that the judgment of this court on 22 June 2016 had become superannuated by the time Salzman sued out its writ of execution on 7 April 2021;
- that consequently, the writ of execution and the subsequent attachment of Jivan's house was a nullity and therefore had to be set aside;
- concomitantly, that the sale in execution of Jivan's house was to be suspended pending the determination of the main application and the counter-application;

[f] Issues remaining for determination

[6] The crisp issues that remained for determination were these:

- that the judgment debt in HC 7916/14 constituted an outstanding obligation on 22 February 2019 and was therefore subject to the provisions of S.I. 33/19 in that it was payable in local currency at the rate of one-to-one;
- that Jivan's payment of RTGS540 000-00 through the Sheriff on 5 April 2021 to Salzman's credit fully settled the debt;
- whether the order of this court in HC 7916/14 on 22 June 2016 should be revived;
- costs of suit.

[7] Although the outstanding issues aforesaid are fragmented into three separate statements, they are so inexorably intertwined that a resolution of any one of them likely settles the rest. For example, if it is resolved that by reason of S.I. 33/19 an RTGS payment satisfied a US dollar debt on a one-to-one ratio, then Jivan's payment of RTGS540 000-00, which it is agreed was the outstanding balance at the time the writ of execution was issued, should free him from the bondage of that debt. Concomitantly, there would be no need to revive the judgment of this court in HC 7916/14. Conversely, if it should be resolved that this judgment should not be revived, then that should be the end of the matter because Salzman would not be able to execute it in any way.

[8] However, should it emerge that the one-to-one ratio introduced by S.I. 33 /19 does not apply to this debt and that therefore, Jivan's payment of RTGS540 000-00 on 5 April 2021 did not extinguish it, then it will be necessary to go further and decide whether the judgment of this court in HC 7916-14 on 22 June 2016 should be revived. If it revives, either Salzman's writ, which he had already issued, automatically revives also, or Salzman has to issue another one so that it can carry on with execution. If its right to carry on revives, it should be necessary to go further and decide the chamber application to resolve the question whether the sale of Jivan's house should be temporarily suspended in terms of the rules of this court governing the suspension of sales of dwellings.

[g] Preliminary points

[9] I now proceed to determine the outstanding issues. But before I do, three preliminary points stand in the way. They were raised in the papers but somehow seemed to have petered out by the time of argument. But they still seemed pretty live at the time of the hearing.

i/ *Whether the second respondent's counter-application was irregularly filed*

[10] The first, not necessarily in the order that they were raised, was Jivan's objection to the manner Salzman filed its counter-application. When Jivan filed the main application under HC 1693-21, Salzman, apart from filing its notice of opposition within the time allowed, also filed a counter-application on 10 May 2021. But curiously, on 26 April 2021 it had filed separately the same counter-application under a different case number altogether, namely HC 2127-21. Thus, a separate record had been provided. I have not appreciated why Salzman did that. Neither has Jivan. He has taken strong objection to such conduct. He wants the counter-application disregarded for want of compliance with the rules. He makes capital of the wording of r 58[8] that says:

> "Where a respondent files a notice of opposition and opposing affidavit, he or she may file, **together with those documents**, a counter-application against the applicant in the form, with the necessary changes, of a court application or a chamber application whichever is appropriate."
>
> [*emphasis by Salzman*]

[11] Jivan also argues that a counter-application properly ought to counter the relief sought in the main application. It should not seek a completely separate remedy. He says the relief which he seeks in the main application is the setting aside of the writ of execution that Salzman improperly sued out after the judgment in its favour had superannuated and after he himself had paid it all off anyway, yet in its counter-claim Salzman does not answer to that, but seeks the revival of that judgment.

[12] I dismiss Jivan's objection. Evidently it is one of those games of wits lawyers are given to playing. But litigation is not a game of wits. It is a serious process to resolve serious legal dispute: see *Sadiqi v Muteswa* HH 281-20[1]. Salzman might have filed the counter-application under a separate record and got a case number for it different from that of the main case. Rule 58[8] permits the filing of a counter application through the chamber book. And the fact that one files a chamber application instead of a court application, or *vice versa*, is not necessarily a fatal irregularity in terms of r 58[13]. But Salzman also filed the counter-application together with the notice of opposition in compliance with r 58[8]. It is just curious why it did both. But apart from merely increasing the mass of papers all of us have had to read, Jivan has not pointed out any real prejudice suffered by him by reason of such conduct by Salzman.

[13] Salzman was within its rights to counter-claim for the revival of the judgment that Jivan wanted declared superannuated or no longer enforceable by reason of its alleged acquittal by an RTGS payment. Salzman may have been clumsy in its pleadings, not least by apparently approbating [denying that the judgment had superannuated], and reprobating [tacitly acknowledging the superannuation and then going on to seek revival of the judgment]. But it brought out the issues for determination crisply. I dismiss Jivan's first preliminary objection.

ii/ *No valid opposition and counter-claim because of deponent's incapacity*

[14] The second objection by Jivan is that there is no valid notice of opposition or counter-application before the court because Salzman's deponent is disqualified. Salzman's deponent to its notice of opposition and counter-claim is its legal practitioner of record, one Selina Matshiya ["***Matshiya***"]. Jivan charges that Matshiya's affidavit goes further than merely

[1] Para 16

commenting on, or dealing with matters of procedure. He condemns Matshiya's alleged conduct in aiding and abetting alleged duplicity by Salzman. He says Salzman is no more than a front for local businessmen who are in the unlawful business of externalising foreign currency.

[15] Matshiya's affidavits delve quite deeply into the goings-on between the parties. However, from the contents, it seems she was such a central player in dealing with the legal issues in her capacity as legal practitioner as to have had personal knowledge of those facts that she deposed to in the affidavits. She certainly could legitimately comment on the nature of the pleadings filed by herself; the judgment she caused to be obtained for her clients; how that judgment became superannuated; the changes in the monetary policy by central government, and so on. The facts that her affidavits deal with seem inexorably linked to the issues for determination in this matter. Accordingly, I also dismiss Jivan's second preliminary objection.

iii/ *Applicant's answering affidavit sets out a new cause of action*

[16] The third preliminary objection was this. In the main application, after Salzman filed its notice of opposition, Jivan filed an extensive answering affidavit, complete with a whole new set of documents. The bulk of that affidavit and the attendant documents were devoted to showing that Salzman is no more than a fictitious vehicle used by local businessmen to externalise foreign currency, aided and abetted by Matshiya. He says the purported shareholding appearing on Salzman's constitutive documents is counterfeit. The true shareholders are locals. The answering affidavit goes further to invite Salzman to refute these damning allegations by filing a further affidavit, a procedural step no longer open to Salzman but which Jivan says he consents to up-front.

[17] Salzman ignored or declined to file a further affidavit. It objected to the answering affidavit in its entirety. Counsel restated the trite legal position that an application stands or falls by its founding affidavit. He argued that no new material should be introduced in an answering affidavit. No new case should be made out. Council urged that Jivan's answering affidavit be expunged from the record.

[18] I should not be detained by these side-shows. Demonstrably, it was tongue in cheek for Jivan to introduce the issue of Salzman's alleged shareholding for the first time in the answering affidavit and making all those lurid accusations. In the main action under HC 7916/14 he raised no such issues, despite Salzman having described itself in the summons as a foreign company incorporated in Panama but with its principal place of business in Switzerland[2]. Furthermore, no such issues were raised in the founding affidavit. Therefore, it was irregular to raise them in the answering affidavit. It is not done like that. You do not raise new issues in an answering affidavit. You do not bring a completely new cause of action. That amounts to hitting below the belt. Your opponent will no longer have the opportunity to reply. There is a glut of case authority on the point. For example, SANDURA JA in *Mangwiza v Ziumbe No & Anor* 2000 (2) ZLR 489 (S), relying on *Coffee, Tea and Chocolate Co Ltd v Cape Trading Company* 1930 CPD 81, said at p 492D- E:

> "It is well established that in application proceedings the cause of action should be fully set out in the founding affidavit, and that new matters should not be raised in an answering affidavit."

[19] I therefore disregard all the new issues raised in Jivan's answering affidavit, particularly the entire reference to Salzman's shareholding and the alleged illicit dealings in foreign currency. However, I will not expunge the entire affidavit from the record. It has other stuff that legitimately deals with issues raised in the opposing affidavit.

[h] <u>The merits</u>

[20] With the preliminary objections out of the way, I now proceed to decide the merits. It seems logical and practical to start with the first and dominant one, namely whether by reason of S.I. 33/19 Jivan's payment of RTGS540 000-00 on 5 April 2021 extinguished the debt. The truncated background facts are these. In 2014 Salzman sued Jivan and six others in HC 7916-14 for payment of an amount in the sum of USD845 000-00, together with interest thereon, a certain facility funding fee and costs of suit. It also sought an order directing the execution of the immovable property in question. The cause of action was the alleged failure to repay certain

[2] Para 1 of Plaintiff's Declaration in HC 7916-14

monies loaned and advanced by Salzman to a principal debtor, one of the defendants in that action.

[21] As mentioned earlier, Salzman was described in the summons as a company registered in Panama and operating in Switzerland. Jivan and others were sued as sureties and co-principal debtors. Jivan and his co-defendants contested the claim. But eventually the claim was compromised. By a Deed of Settlement in June 2016, Jivan and one other person whose surname was also Jivan, undertook to pay a certain round figure in instalments over an agreed period of time. The amount was less than that in the summons. The details are immaterial. The Deed of Settlement spelt out a number of the reciprocal rights and obligations of the parties. One such was that upon the payment of the first instalment the parties would appear before this court for the embodiment of the terms of the Deed into a court order.

[22] On 22 June 2016 this court issued an order by consent directing the two Jivans, jointly and severally, to pay Salzman USD440 000-00 together with interest thereon in instalments over a period of time. The court order had what is called an acceleration clause. In terms of such a clause, a default in the payment of any one instalment results in the entire balance outstanding at the time of the default becoming immediately due and payable. Apparently, there was a default. It is common cause that by 22 February 2019, the effective date of S.I. 33/19, the balance due and owing by Jivan to Salzman, including interest, was USD540 000-00. On 7 April 2021 Salzman sued out a writ of execution against Jivan for the recovery of the judgment debt. Soon thereafter the Sheriff attached Jivan's house. That triggered the present litigation.

[23] At all relevant times prior to 22 February 2019 Zimbabwe operated a multi-currency system in terms of which a basket of currencies like the United States dollar, the British Pound, the South African Rand and the Botswana Pula, among others, constituted legal tender. The United States dollar was the most predominant. But by S.I. 33/19 [Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act and Issue of Real Time Gross Settlement Electronic Dollars (RTGS Dollars)] Regulations, 2019] central government, through the Reserve Bank, among other things, introduced an electronic currency called the RTGS Dollar with effect from 22 February 2019.

[24] In summary, s 4[1][d] of SI 33/19 provided that for accounting and other purposes, all assets and liabilities that were valued and expressed in United States dollars immediately before the effective date, would be deemed to be values in RTGS dollars at a rate of one-to-one to the United States dollar, on and after the effective date. However, certain assets and liabilities were made exempt from this valuation rate. Such assets and liabilities would be those listed in s 44C(2) of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*], a provision that was contemporaneously enacted together with, and simultaneously inserted by, S.I. 33/19. The exempt assets and liabilities were:

> "[a] funds held in foreign currency designated accounts, otherwise known as 'Nostro FCA accounts' which shall continue to be designated in such foreign currencies; and
>
> [b] **foreign loans and obligations denominated in any foreign currency, which shall continue to be payable in such foreign currency**."
>
> [*emphasis by first respondent*]

[25] Eventually, s 4 of SI 33/19 was incorporated, almost verbatim, as s 22 of the Finance [No 2] Act, 2019 [No 7 of 2019] which was published on 21 August 2019. Following all these developments, and evidently interpreting the new monetary regime as giving an advantage to himself, Jivan paid through the Sheriff the amount of RTGS540 000-00 purportedly in full discharge of the judgment debt and interest. He also paid RTGS60 000-00 towards Salzman's costs. Salzman rejected the payment. It did not agree that its debt could be paid in local currency, let alone at a ratio of one-to-one with the United States dollar.

[i] First respondent's argument

[26] Salzman's argument is multipronged. But distilled, it is that SI 33/19 does not apply to its situation. The amounts due to it by Jivan are 'foreign loans and obligations' denominated in foreign currency which remain payable in foreign currency within the meaning of s 44C[2] of the Reserve Bank of Zimbabwe Act. The consent order on 22 June 2016 did not characterise the nature of the debt as a foreign loan or obligation. But Jivan argues that this fact is self-evident from the Deed of Settlement which was the foundation of that order. Clause 3[g] of that Deed provided that all payments under it would be in United Sates dollars and that if there

was any change of currency and the United States dollar was still legal tender, payment would again be solely in United States dollars.

[27] Salzman further argues that in deciding whether the debt is a foreign loan or obligation, the court must go beyond the consent order and consider not only the Deed of Settlement, but also the proceedings in HC 7916/14 from which it will be noticed that Jivan accepted that Salzman is a foreign entity. It argues that on the authority of the Supreme Court case in *Breastplate Services (Pvt) Ltd v Cambria Africa PLC* SC 66-20 once it is shown that the underlying obligation is owed to a foreign entity then it must be discharged in the foreign currency involved.

[j] Applicant's argument

[28] In counter, Jivan denies that Salzman's debt is saved from the effects of S.I. 33/19 by the exception in s 44C[2] of the Reserve Bank Act. He argues that there is nothing in the previous proceedings to suggest that the debt in question was a foreign loan or obligation. He says he did not admit that Salzman is a foreign entity. At any rate, whatever the dispute between the parties had been, it was compromised by the Deed of Settlement. A compromise extinguishes all the pre-existing rights and obligations in favour of new ones. The issues become *res judicata*. The Deed of Settlement, let alone the order by consent, did not characterise the debt as a foreign loan or obligation. The *Breastplate* case is not applicable. Instead, the position was settled by the Supreme Court case of *Zambezi Gas Zimbabwe (Pvt) Ltd v N.R. Barber (Pvt) Limited & Anor* SC 3-20 in which it was ruled that the origin of the obligations is not a criterion for the exclusion of the application of S.I. 33/19.

[k] Synthesis

[29] I am more persuaded by Jivan's argument. Cases such as *Breastplate*, *supra*, and *Zimbabwe Leaf Tobacco [Pvt] Ltd v Vengesayi & Anor* SC 149-21, which Salzman strongly relies on, are distinguishable on the facts. I consider the *ratio decidendi* of the *Zambezi Gas* case much closer to the situation *in casu*. In the first two cases above, the courts were dealing with the originating cause of the debt. In both, the originating cause was an agreement which

expressed the rights and obligations of the parties in foreign currency. The *Zimbabwe Leaf Tobacco* case is even more removed from this case. The agreement in that case had a statutory imperative. The matter concerned the funding of tobacco growing by local farmers in foreign currency. By legislation, such funding had to be made in foreign currency sourced from abroad. The repayment had to be made in the same currency. Thus S.I 33/19 had no application.

[30] In contrast, even if I were to consider the originating cause of the debt as urged upon me by Salzman, it is a private contractual arrangement between private individuals. No national interest is involved. There is no statutory imperative. I am not in the least suggesting that this is the reason why the exception in s 44C[2] of the Reserve of Zimbabwe Act would not apply. I am merely distinguishing cases such as *Zimbabwe Leaf Tobacco* and several others like *Mushayakarara v Zimbabwe Leaf Tobacco Co [Pvt] Ltd* SC 108-21 that have been decided by the courts on tobacco funding. Admittedly, in both *Breastplate* and the *Zimbabwe Leaf Tobacco* cases, the originating cause of the debt were private agreements. But in the present case, there is now a self-explanatory and self-contained judgment or order of this court. The matter has gone beyond merely trying to enforce the originating cause of the debt. The court order is the start and end of the rights and obligations of the parties. It is the court order, not what lies behind it, that S.I. 33/19 is speaking to.

[31] Relevant portions of s 4 of S.I. 33/19 read:

> "4 [1] For the purposes of s 44C of the principal Act as inserted by these regulations, the Minister shall be deemed to have prescribed the following with effect from the date of promulgation of these regulations …--
>
> [a] ……;
>
> [b] that Real Time Gross Settlement system balances expressed in the United States dollar [other than those referred to in section 44C[2] of the principal Act], immediately before the effective date, shall from the effective date be deemed to be opening balances in RTGS dollars at par with the United States dollar, and
>
> [c] ……; and
>
> [d] that, for accounting and other purposes, all assets and liabilities that were, immediately before the effective date, valued and expressed in United States dollars [other than assets and liabilities referred to in section 44C[2] of the principal Act] shall on and after the effective date be deemed to be values in RTGS dollars at a rate of one-to-one to the United States dollar; and

[e] ……..; and

[f] ……..”

[32] In *Akram v Mukwindidza & Anor* HH 522-21, a case in which substantially the same arguments as herein were advanced, I said in Para 13 of the cyclostyled judgment:

> “After hearing argument, I reserved judgment. This was out of an abundance of caution. I feared there could be something I was missing. Now, after careful consideration I find that the applicant is simply flogging a dead horse. He has no case. His case is squarely on all fours with the *Zimbabwe Gas* case. The Chief Justice spoke. The escape hole the applicant wants to take is a *cul de sac*. One may not fault him though for trying to wriggle out of the reach of S.I. 33/19. It had far reaching consequences. Its effect was profound. On its inception, some people woke up to find that their credit bank balances that had all along been denominated in United States dollars had suddenly transformed into credit balances in some hitherto unknown currency. The conversion ratio of one to one was man-made, not market driven. As a result, some citizens suffered gigantic losses. But others gained enormous advantages. Unfortunately for him, the applicant was one of those that suffered loss. He can only cut down on any further losses, pick himself up and move on. He has no legal leg to stand on.”

[33] MALABA CJ, in *Zimbabwe Gas* case above, at p 9 of the cyclostyled judgment, said:

> “Section 4(1)(d) of S.I. 33/19 is specific as to the type of assets and liabilities that are excluded from the reach of its provisions. **The origin of the liabilities is not a criterion for exclusion**. In other words, the fact that the liability is based on a court order does not exempt the liability from the application of the provisions of s 4(1)(d) of S.I. 33/19. What brings the asset or liability within the provisions of the statute is the fact that its value was expressed in United States dollars immediately before the effective date and did not fall within the class of assets and liabilities referred to in s 44(2) of the Reserve Bank of Zimbabwe Act…”
>
> (*my emphasis*)

[34] I do not accept Salzman’s argument that as a foreign company, a fact allegedly not disputed by Jivan in the original proceedings under HC 7916-14, it is placed in any position different from all those others who have been adversely affected by S.I. 33/19. In the present proceedings, there is no such detail or analysis on Salzman’s identity, nature, manner and place of business in Zimbabwe as was canvassed in the *Breastplate* case. All that there is is Para 1 of the summons in HC 7916-14 as mentioned above. That does not necessarily lead to a classification of whatever it dished out by way of loans as foreign. That such loans might have been disbursed in United States dollars and repayable in that currency does not distinguish them from those assets and liabilities referred to in s 4[1][d] of S.I. 33/19. On the contrary, it is such assets and liabilities as were squarely targeted, except if they were ‘foreign loans and obligations denominated in … foreign currency’.

[35] But the major cordon to Salman's argument is the court order in HC 7916-14. Counsel argues that clause 3[g] of the Deed must be read into it. But why? The court order made no reference at all to the Deed of Settlement, let alone incorporate it in any manner. It merely directed the Jivans to pay by instalments, at specified intervals, a certain sum of money with interest, failing which the entire debt would become due and payable. I find it unsafe to read into the court order things that are not there or go behind it merely to see what might have informed it. The order was obtained by consent. Thus, it was a compromise. A compromise settles previously disputed issues. The law on compromises is settled. It is this. A compromise agreement precludes an action on the original debt, except where it specifically, or by clear implication provides that the original claim shall revive in the event of non-performance of its terms

[36] The headnote to the case of *Georgias & Anor v Standard Chartered Finance Zimbabwe Ltd* 1998 [2] ZLR 488 [S] reads in part:

> "Compromise is the settlement by agreement of disputed obligations, or of a law suit the issue of which is uncertain. The parties agree to regulate their intention in a particular way, each receding from his previous position and conceding something – either diminishing his claim or increasing his liability. The purpose of compromise is to end doubt and to avoid the inconvenience and risk inherent in resorting to the methods of resolving disputes. Its effect is the same as *res judicata* on a judgment given by consent. The cause of action that may previously have existed is extinguished; the party sued cannot rely on defence to the original cause of action."

[37] Salzman argues that the fact that it was a foreign company *domiciled* abroad was not disputed or compromised. The court does not know that. Jivan contests it. But at any rate, in view of the findings above, particularly in Para 34, this argument does not take the matter for Salzman any further. The point is: the exemption in s 44C[2] of the Reserve Bank of Zimbabwe Act is not in relation to foreign companies and their places of *domicile*. It is in relation to foreign loans and obligations. It is not about the lender. It is about the loan. The provision does not say that all lending by a foreigner is automatically a foreign loan. Salzman cannot just point to its foreign origin, which is disputed anyway, and claim automatic exemption under s 44C[2]. It must say more about the character of the funds lent by it, the loan. The *Zimbabwe Leaf Tobacco Co [Pvt] Ltd* cases above illustrate that it is not about a lender's place of incorporation or *domicile* that is decisive. It is about the character of the loan. That company is a local entity. But the debtors were ordered to repay the loans in foreign currency.

[l] Disposition

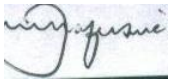
[38] I hold that the order of this court on 22 June 2016 constituted an asset or liability that, for accounting and other purposes, was valued and expressed in United States dollars and which on and after the effective date, 22 February 2019, would be deemed to be a value in RTGS dollars at a rate of one-to-one to the United Sates dollar and that nothing has been shown that it was such an asset or liability as was exempt from that parity ratio by s 44C[2] of the Reserve Bank Act. Thus, the main issue is decided in Jivan's favour. Concomitantly, all the other issues fall away. Costs should follow the result. Therefore, it is declared as follows:

i/ The judgment debt in HC 7916-14 constituted an outstanding obligation on 24 February 2019 and is therefore subject to the provisions of s 4[1][d] of S.I/ 33 of 2019 in that it is payable in foreign currency at the rate of one-to-one.

ii/ The payment by the applicant of RTGS540 000-00 to the second respondent on 5 April 2021 to the credit of first respondent fully settled and extinguished the judgment debt.

iii/ The first respondent shall pay the costs of suit.

13 April 2022



Makiya & Partners, applicant's legal practitioners
Wilmot & Bennett, first respondent's legal practitioners