

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

Appeal No. 267 of 2022

BETWEEN:

INVESTTRUST BANK PLC

AND

VISBERG CONSTRUCTION LIMITED

COSMAS LUNGU

(Sued as Mortgagor and Guarantor)



Appellant

1st Respondent

2nd Respondent

CORAM: Chashi, Sichinga and Sharpe-Phiri, JJA
on 27th March 2024 and 5th April 2024

For the Appellant: Mr. M. Siame of KMG Chisanga Advocates

For the Respondents: Mr. L. Mumba and M. F.LM Kajokoto of Kafue
Chambers

J U D G M E N T

SHARPE-PHIRI, JA, delivered the judgment of the Court.

Legislation referred to:

1. *Judgment Act, Chapter 81 of the Laws of Zambia*
2. *The Banking and Financial Services Act, No. 7 of 2017*

Cases referred to:

1. *Attorney General v Achiume (1983) Z.R. 1*
2. *Roger Scott Miller V Attorney-General (1980) Z.R. 126 (H.C.)*
3. *Gladys Mahlangu Nasilele V Mundia Nasilele (2012) Vol. 1 ZR 455 (HC)*
4. *Abraham Mohammed And Alamtara Transport Ltd V Safeli Chumbu (1993) S.J. 78 (S.C.)*

1.0 **INTRODUCTION**

1.1 This appeal pertains to a Ruling issued by Hon. N.S.K. Muntanga, District Registrar of the Commercial Division of the Lusaka High Court on 19th May, 2022.

2.0 **BACKGROUND**

2.1 The case was initiated by Investrust Bank Plc as the Applicant (now the Appellant) against Visberg Construction Limited and Cosmas Lungu as the 1st and 2nd Respondents respectively.

2.2 It was brought by Originating Summons (refer to page 21-22 of the Record of Appeal) under **Order 30 Rule 14 of the High Court Rules**. Through this action, the Applicant sought the following reliefs:

- i. *Payment of all monies due and contractually agreed interest due and owing to the Applicant under the short-term facility letter dated 16th December, 2019 for the amount of K1,800,000.00 which facility was secured by a Third Party Mortgage relating to Subdivision A of Lot 18087/M, Mungule Road, 10 Miles Chibombo (the mortgaged property) in the name of Cosmas Lungu and which monies stand at K2,531,393.00 as at 7 June 2021;*
- ii. *An Order for foreclosure of the mortgaged property;*

- iii. *Delivery of possession (whether before or after foreclosure) to the Applicant of the mortgaged property;*
- iv. *An Order for sale of the mortgaged property by the Applicant;*
- v. *An Order that the 2nd Respondent being guarantor of the 1st Respondent honour his guarantee in the event of the 1st Respondent failing to settle his indebtedness to the Applicant in full;*
- vi. *Costs and such other relief as the Court may deem fit to grant to the Applicant.*

2.3 In the supporting affidavit filed alongside the summons, (refer to pages 23-25 of the Record of Appeal), which was deposed to by Chisanga Ireen Komeki, the Credit Evaluation Manager of the Applicant company, it was stated that the 1st Respondent obtained a short-term loan facility of K1,800,000.00. This facility was to be repaid over nine months in monthly instalments of K230,886.00 inclusive of interest.

2.4 It was also stated that a condition of the loan was for the 1st Respondent to provide collateral in the form of a Third-Party Mortgage and a personal guarantee from a director. To fulfill this requirement, the 2nd Respondent submitted a personal guarantee dated 16th December 2019, and a Third-Party Mortgage was registered against Subdivision A of Lot number 18087/M, Mungule Road, Chibombo.

2.5 The Applicant also asserted that the Respondents failed to make timely installment payments and to settle the facility as per agreement. As of 7th

day of June 2021, the Respondents owed the mortgage sum of K2,531,393.00 along with the contractually agreed interest. This interest accrued in accordance with the terms and conditions of the short-term facility provided by the Applicant to the 1st Respondent.

- 2.6 In their opposition to the application, the 2nd Respondent acknowledged that the 1st Respondent borrowed K1,800,000.00 from the Applicant but disputed the total amount owed, K2,531,393.00, on the ground that it includes compound interest, which they contend is illegal.
- 2.7 The Respondents further claimed that they were unaware of, and did not agree to, the inclusion of compound or penal interest in the loan agreement.
- 2.8 The 2nd Respondent further indicated that the 1st Respondent had paid K737,255.49 on 27 October 2020.
- 2.9 The 2nd Respondent acknowledged depositing his certificate of title with the bank but claimed that he was unaware of the implications because he was not legally represented. He further argued that the Applicant took advantage of his lack of legal representation, despite the Applicant being represented.
- 2.10 The Respondents admitted to defaulting on the amount borrowed of K1,800,000.00 but maintained that the default occurred when the contract

was terminated, and the 1st Respondent had not been paid for the partial work done.

3.0 **DECISION OF THE TRIAL JUDGE**

3.1 At the hearing, the Applicant objected to the Respondents' affidavit in opposition, arguing that it was improperly before the Court. The Applicant contended that the affidavit had not been filed two days before the hearing, had not been served on them, and was not accompanied by skeleton arguments and a list of authorities. The trial Judge ruled in favour of the Applicant, finding that the affidavit in opposition could not be relied upon as it had breached the Rules of the Court. The trial Judge proceeded to hear the main application.

3.2 After carefully reviewing the Applicant's application and the evidence presented, the trial Judge concluded that he had jurisdiction to consider the matter under **Order 30 Rule 14 of the High Court Rules**. The Judge then stated that due to the ruling that the Respondents' affidavit could not be relied upon because of non-compliance with the Rules of Court, the matter remained unopposed.

3.3 However, the Judge proceeded to review the evidence in the Respondent's affidavit in opposition and noted that in any event, the Respondents

admitted to owing the debt of K1,800,000. The Judge noted the following three issues raised by the Respondents, which did not help their case:

- i) *At paragraph 6, that the Respondent paid a total of K737,255.49 between 27 October 2020 and 3 February 2021.*
- ii) *At paragraph 7 and 8, that the Respondents were unaware of, and did not agree to, the inclusion of compound or penal interest, which clause was sneaked into the loan agreement.*
- iii) *At paragraph 9, that the 2nd Respondent is not aware of the legal implications of depositing his title as he was not represented.*

3.4 The trial Judge emphasized that the only argument warranting consideration was the assertion that certain payments had been made to the Applicant. He further commented that the Respondents' arguments concerning compound interest and the absence of legal representation were not valid. This was due to the loan agreement dated 16 December 2019, which, at clause 3.1 on page 2, stipulated compound interest. Additionally, the trial Judge noted that the Mortgage Deed, exhibited as CIK6, outlined charges (refer to paragraph 4 on page 2) for interest calculated on a daily overdrawn balance and compounded monthly.

3.5 Regarding the 2nd Respondent's assertion of not having legal representation, the Judge highlighted that page 8 of the Director's Guarantee dated 16 December 2019, included the following statement just

above the 2nd Respondent's signature: *'you should seek independent legal advice before entering into this guarantee.'* The Judge remarked that if the 2nd Respondent did not seek legal advice to understand the implications of signing, he is solely responsible for any consequences.

- 3.6 After thorough consideration, the Judge concluded that the Respondents' lacked a defence to the Applicant's claim. He deemed it appropriate to enter judgment in favour of the Applicant and granted the relief sought. The trial Judge held as follows:

'I therefore hereby enter judgment as prayed by the Applicant in the sum of K2,531,393.00 as at 7 June 2021. I take due note that the Applicant has not exhibited the full account statement for the 1st Respondent's loan account and hereby order that the final judgment sum shall be assessed by the Registrar owing to the Respondent's claim that they have paid some amounts in 2020.

I award the Applicant interest on the judgment sum at the contractual rate up to the date of the Originating Summons and at the Judgment Act, Chapter 81 of the Laws of Zambia rate from the date of the Originating Summons to the date of the judgment and thereafter at the short-term deposit rate as determined by the Bank of Zambia until full payment.

I hereby order that the 1st Respondent shall settle the judgment debt within 60 days from the date of assessment of the judgment debt. In default, the Applicant shall be at liberty to foreclose on the mortgaged property over which it has a Third-Party legal Mortgage, being Subdivision A of Lot number 18087/M, Mungule Road, Ten Miles, Chibombo, Lusaka take possession thereof and exercise its right of sale (sell) the same.

The Applicant shall be at liberty to enforce the Director's Guarantee by the 2nd Respondent. In the event that the proceeds of sale of the mortgaged property are not sufficient to extinguish the entire judgment sum.

I award costs of and incidental to this action to the Applicant to be taxed in default of agreement.'

4.0 **ASSESSMENT BEFORE THE DISTRICT REGISTRAR**

- 4.1 After the judgment was entered, the Applicant submitted an application via a Notice of Assessment of the final judgment sum, supported by an affidavit dated 5 October 2021 (*see pages 104 to 111 of the Record of Appeal*).
- 4.2 In the supporting affidavit sworn by Crispin Izukanji Daka, the director of Credit in the Applicant's company, it was stated that the Applicant had commenced legal action against the Respondents on 24th June 2021 to

claim the total sum of K2,531,393.00 plus the contractual agreed interest as of 7th June 2021. Additionally, the affidavit contended that judgment was entered in favour of the Applicant for K2,531,393 on 18 August 2021.

4.3 The Applicant also argued that, as they had not provided the court with a full statement of the 1st Respondents loan account, the Judge ordered an assessment of the final judgment sum. In line with the trial Court's decision, the Applicant requested that the final judgment sum be assessed based on the entries on the 1st Respondent's loan account.

4.4 The Applicant also claimed that according to the statement of account, the Respondents made a partial loan repayment of K500,000 on 7th December 2020. Of this amount, the Applicant collected K317,746.74 as overdue charges on instalments that had fallen due but had not been settled by the Respondents. That remaining balance of K182,253.26 was then collected as a partial payment for the first installment. Furthermore, on 15th December 2020, the Respondent made an additional payment of K200,000. From this sum, the Applicant collected overdue charges of K14,953.45, and an additional K141,349.55 was collected as a partial payment for the second installment.

4.5 The Applicant also stated that the remaining balance on the first installment totaling K43,697.00, was collected by the Applicant to fulfill the payment obligation, as indicated on the Plan-based Loan Statement under the column 'receive date'. A copy of the statement of account dated 22nd September 2021 was attached as CID2. Additionally, considering the

amounts already paid, the 1st Respondent owed the Applicant a total sum of K2,837,435.00 as of 22nd September 2021. The Applicant requested the court to order the Respondent to pay this said amount as final judgment upon the application for assessment.

4.6 In opposition to the assessment application, the Respondents submitted an affidavit dated 14th October 2021 sworn by Cosmas Lungu, the 2nd Respondent, and a director in the 1st Respondent company. He argued that the 1st Respondent only borrowed the sum of K1,800, 000 and therefore cannot be indebted to the Applicant in the sum of K2,532,393.00. The Respondents claimed that they had already paid a total sum of K737,255.49 between 27th October 2020 and 3rd February 2021, leaving a balance of K1,062,744.51 plus interest.

4.7 The deponent further stated that the Applicant had included in the terms and conditions of the loan agreement, the requirement to pay compound interest, which was not discussed or expressly agreed upon by the parties. The 2nd Respondent also claimed that he had sufficient funds to repay the loan facility they had received, and there was no risk of loss on the part of the Applicant. Furthermore, he stated that the Respondents would be able to settle their obligations with the Applicant within three months of the date thereof. He urged the Court not to grant remedies of possession, foreclosure, and sale of the subject property.

5.0 DECISION OF THE DISTRICT REGISTRAR

- 5.1 After considering the evidence of the parties in the assessment application, the District Registrar, by her Ruling of 19th May 2022 determined as follows:

“I have taken time to peruse all the relevant statements of account exhibited for the period between 22nd October 2020, and July, 2021 exhibited as CL1-3 in the Respondents Affidavit in opposition filed into Court on 14th October, 2021.

I have found that the 1st Respondent made the following payments amounting to ZMW700,000.00 as follows:-

- 1. Loan repayments of ZMW500,000.00 on 7th December, 2020.*
- 2. Loan Repayment of ZMW200,000.00 on 15th December, 2020.*

I have further noted that the loan facility that was advanced to the 1st Respondent was in the sum of ZMW1,8800,000.00.

*In the premises I therefore order that the sum of ZMW700,000.00 paid by the 1st Respondent be considered as liquidating the principal amount of ZMW1,800,000.00 leaving a balance of ZMW1,100,000.00 as the judgment sum. The amount shall then be paid at the rate ordered by Mr Justice B. C. Mbewe as follows:
‘Interest on the Judgment sum at the contractual rate up to the date of Originating summons and at the Judgments Act, Cap 81 of the Laws of Zambia rate from the date of the Originating*

Summons to the date of the judgment and thereafter at the short term deposit rate as determined by the Bank of Zambia until full payment.’”

6.0 THE APPEAL

6.1 Being dissatisfied with the Ruling of Hon. N.S.K Muntanga delivered on 19th May 2022, the appellant filed a notice of appeal and memorandum of appeal on 11 March 2022 with the following four grounds of appeal:

- i. *The Honourable District Registrar erred in law and fact when she considered the Respondent's affidavit in opposition to the Originating Summons filed on 14th October, 2021 as the affidavit in opposition to the affidavit in support of the Notice for Assessment of the final judgment sum.*
- ii. *The Honourable District Registrar erred in law and fact when she assessed the final judgment sum by considering the amount of K1,800,000.00 as the principal amount when judgment had been entered for the amount of K2,531,393.00 by the trial Judge.*
- iii. *The Honourable District Registrar erred in law and fact when she misdirected herself by isolating and addressing her mind only to the statement of account exhibited by the 1st Respondent and failed to consider the full statement of account relating to the 1st Respondent's loan account exhibited by the Applicant in her assessment of the final judgment sum.*
- iv. *The Honourable District Registrar erred in law and fact when she did not take into account the overdue charges on the account which were charged*

as part of the administrative costs under Section 109 of the Banking and Financial Services Act No.7 of 2017.

7.0 HEARING OF THE APPEAL

7.1 The appeal was heard before us on 27th March, 2024. All the parties were represented by their respective counsel, as previously mentioned. Counsel for the Appellant relied on their arguments of 15th November 2022. Counsel for the Respondents relied on their arguments dated 7th December 2022. The arguments will not be recast here but referenced in the subsequent analysis section, where necessary below.

8.0 OUR DECISION ON THE APPEAL

8.1 We have carefully reviewed the evidence on record, the ruling under scrutiny, the grounds of appeal, and the arguments presented by the parties. We will now address the four grounds of appeal separately below.

8.2 In the first ground of appeal, the Appellant contends that the learned District Registrar erred in considering the Respondents affidavit in opposition to the Originating summons as the affidavit in opposition to the assessment of the judgment sum. The Appellant contended in the heads of argument that the Respondents did not file any affidavit in opposition to the notice of assessment.

- 8.3 The Appellant's contention on this issue stems from a purported defect in the affidavit that was filed by the Respondents on 14th October 2021.
- 8.4 The Appellant's argument is that the Respondents did not file any affidavit in opposition to the notice of assessment pending determination by the District Registrar. By implication, the Appellant is further contending that that Honorable District Registrar ought not to have considered the evidence of the said affidavit in its Ruling. The Appellant further contended that the Respondents had not filed any other affidavit other than the Affidavit in Opposition to Originating Summons filed on 14th October 2021.
- 8.5 We have taken time to review the record of proceedings before the Honorable District Registrar in the High Court. Particularly at pages 274 and 275 of the record of appeal. It has been recorded on those pages that in reference to the said affidavit, which was submitted as purportedly opposing the notice of assessment, Mr. Siame objected to having not been served with same. But the Court observed that same had been served and acknowledged by the Respondents via letter dated 2nd December 2021. The Court accordingly directed that the Appellants file the Reply to the said affidavit by 4th February 2022 and have the said Reply served on the Respondents by 8th February 2022.
- 8.6 We have taken time to examine the said affidavit filed on 14th October 2021, purported to have been filed in opposition to the assessment

application. It appears at pages 114 to 131 of the record of appeal. The said affidavit clearly states that it is '*an affidavit in opposition to the originating summons for possession, foreclosure and sale of stand property*'. The affidavit was sworn by one Cosmas Lungu, the 2nd Respondent, on his own and on behalf of the 1st Respondent. It states in paragraph 4 thereof as follows: '*I have seen the affidavit of one CHISANGA IREEN KOMEKI and my response is hereunder*'. The said affidavit attempted to oppose the affidavit of Chisanga Ireen Komeki, however the record of appeal at pages 106 to 113 shows that the affidavit in support of notice for assessment of final judgment sum was deposed to by CRISPIN ISUKANJI DAKA and not as alleged in the purported erroneous affidavit in issue.

- 8.7 From the information provided, the affidavit in opposition was clearly not intended to oppose the affidavit in support of notice of assessment which was sworn by Crispin Isukanji Daka. The learned District Registrar fell into error when she overlooked this anomaly and proceeded as she did. It is a well-established principle that the appellate Court will not generally reverse the findings of fact made by the trial Judge, except where the appellate Court is satisfied that the findings of the lower Court were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or they were findings which on a proper view of the evidence, no trial Court acting correctly can reasonably make. This was the holding in the case of **Attorney General v Achiume**. Similarly, we are of the view that this is a proper case in which we find it reasonable

and justifiable to interfere with the way the learned District Registrar proceeded on the issue of the said affidavit. The learned District Registrar ought not to have admitted and relied on the said affidavit in its form.

8.8 Proper labeling of affidavits is crucial as it clarifies the nature of the document and its intended application. Counsel is responsible for ensuring that affidavits are accurately designated. Diligence and attention to detail are expected when counsel is executing instructions, as this not only demonstrates professionalism but also enhances the credibility and trustworthiness of counsel. Furthermore, it aids the Court in effectively identifying and organizing legal documents, thereby preventing confusion, as seen in this case, when referencing documents later. Correctly labelled affidavits also reduce the risk of being invalidated or expunged from the record, as inaccurately titled affidavits can face such consequences. Therefore, the first ground of appeal is successful.

8.9 In the second ground of appeal, the Appellant argues that the District Registrar erred in assessing the final judgment sum by considering the amount of ZMW 1,800,000 as the principal amount, when judgment had been entered for the sum of K2,531,393.00 by the trial Judge. The Appellant contends that the trial Judge had considered all issues, including the computation of interest and compound interest as agreed upon by the parties to the action. That the trial Court had properly determined that the Appellant was entitled to the relief claimed, but that the learned District Registrar failed to consider the principles of accrued interest, compound

interest, and charges arising from the Respondent's default as per contract and the judgment of the High Court.

- 8.10 The Respondents rebutted the Appellant's claim stating that the learned District Registrar did not err in assessing the final judgment. They argued that the District Registrar properly considered the principal amount of ZMW 1,800,000.00 as the judgment was entered for ZMW 2,531,393 by the trial Judge. The Respondents explained that the judgment sum of ZMW 2,531,393.00 did not include the contractual rate up to the date of the Originating Summons and the Judgment Act rate from date of Originating Summons to date of Judgment, and the short-term deposit rate as determined by the Bank of Zambia thereafter.
- 8.11 The Respondents argued that the issue of compound interest does not arise, as the trial Judge's decision was clear. They state that the trial Judge had resolved the issue by giving clear directions on the applicable interest rates. Additionally, the Respondent mentioned that they had already paid ZMW700,000,00 to the Appellant, which would reduce their indebtedness to ZMW 1,831,393.00. The Respondents requested that the contractual interest rate be applied up to the date of filing of the originating process, as directed by the trial Court.
- 8.12 From a review of the District Registrar's ruling, it is evident that she ignored the trial Judge's findings, which had pegged the judgement sum at ZMW 2,531.393.00. The learned District Registrar only considered the

principal amount advanced by the Appellant to the 1st Respondent as ZMW 1,800,000.00 and subtracted what the Respondents had proven to have advanced. This led to the conclusion that the Respondents were only owing a sum of ZMW 1,100,000.00 which was to be repaid with interest as directed.

- 8.13 The trial Judge had determined that the Respondent admitted obtaining the loan and only disputed the quantum due. Additionally, the trial Judge found that the Respondents' arguments on compound interest and ignorance of the legal implications for not being represented were not honest arguments, as the loan agreement of 16th December, 2019 and Mortgage Deed provided for compound interest. The trial Judge also noted from the evidence before him that the Director's guarantee of same date, 16th December 2019, had a bold writing requiring the 2nd Respondent to seek independent legal advice before entering a guarantee.
- 8.14 Having taken the foregoing issues into consideration, the trial Judge then found in favour of the Appellant in the sum of ZMW 2, 531.393.00 as at 7 June 2021 but directed that the final judgment sum due shall be assessed by the Registrar owing to the Respondent's claim that they had paid some amounts in 2020 and the Appellant's failure to provide a full statement of account for the Respondents' loan. The Appellant then made an assessment application before the learned District Registrar in which it filed an affidavit in support thereof on 5th October 2021, which was sworn by Crispin Isukanji Daka. The said affidavit in support acknowledges

under paragraphs 9 and 12 respectively that the 1st Respondent made payment of ZMW 500,000.00 and ZMW 200,000.00 on 7th December 2020 and 15th December 2020 respectively.

8.15 The exhibit to that affidavit marked as “CID1” shows that a credit payment was entered on 7 December 2020 for an amount of ZMW 500,000.00 out of which ZMW 317,746.74 was posted to 6/1 overdue charges recovered and ZMW 182,253 was posted to 6/1 repayment transaction amount. The same statement also acknowledges a credit payment of ZMW 200,000.00 from the 1st Respondent made on 15th December 2020. The said amount was posted as follows: ZMW 14,953.45 to 6/1 overdue charges recovered; ZMW 141,349.55 to 6/1-2 repayment transaction amount; and ZMW 43,697.00 to 6/1-1 repayment transaction amount. In relation to the first payment of ZMW 500,000.00, the Appellant’s explanation as per their affidavit in support of the assessment application was that ZMW 317,746.74 was apportioned as overdue charges on instalments that had fallen due and had not been settled by the 1st Respondent while ZMW 182,253.26 was the amount allocated as partial payment for the instalment due.

8.16 In relation to the second payment of ZMW 200,000.00, the explanation as contained in the affidavit is that ZMW 14,953,451 was apportioned as overdue charges while ZMW 141,349.55 was collected as partial payment for the second instalment. The Appellant further explained that the remainder of ZMW 43,697.00 was collected to complete the payment on the Plan-Based Loan Statement under column ‘*Recv Date*’. The Plan-

Based Loan Statement exhibited as “CID2” in the said affidavit does not show the exact figure of ZMW 43,697.00 but does indicate under the column for interest adjustment that zero interest adjustment for the amount that was due on 10th February 2020 as had been received on 15th December 2020.

- 8.17 Further to the foregoing, the provisions of **Section 109(1) of the Banking and Financial Services Act, No. 7 of 2017** provides that:

"A financial service provider shall not impose on a borrower a charge or penalty as a result of the failure by the borrower to repay or pay in accordance with the contract governing the loan other than—

(a) interest on an overdue payment on a loan;

(b) legal costs incurred in collecting or attempting to collect a payment on a loan; or

(c) costs, including legal costs, incurred in protecting or realising the security on a loan"

- 8.18 Based on the above, it is evident that the learned District Registrar erred in her assessment by overlooking the trial Judge's finding regarding compound interest and other charges accruing from the Respondent's failure to make monthly payments. The Respondent had agreed to a loan agreement that included compound interest, which was to be compounded at the monthly rate of 35 percent on outstanding daily balance.

Additionally, the Banking and Financial Services Act does not preclude a financial service provider from recovering from the borrower costs such as legal costs and such other costs as are necessary for protecting or realizing the security on a loan. The learned District Registrar's approach of simply evaluating the principal amount borrowed and subtracting the payments made by the Respondents disregarded these important factors, which was the basis for the main action below.

8.19 In cases where a matter has been referred to the District Registrar for assessment of the judgment sums, the Registrar must adhere closely to the directions and findings of the trial Judge. The District Registrar's role is not to reassess the case or reconsider the issues afresh but rather to carry out the specific assessment as directed by the trial Judge. Any deviation from the trial Judge's directions, especially in matters involving complex computations like interest and charges, can lead to errors in assessment. It is crucial for the Registrar to carefully review the trial Judge's findings and ensure that the assessment is done in accordance with those findings.

8.20 In the case of **Abraham Mohammed and Alamtara Transport Ltd V Safeli Chumbu** the Supreme Court held that:

“When a trial Judge fails to award interest, it would not in the normal way be proper to apply to the Registrar on assessment of damages to remedy the defect. The proper course would be to

apply for a review of a Judgment and in default of a revision to appeal to the Supreme Court.”

- 8.21 Also, in the case of **Gladys Mahlangu Nasilele V Mundia Nasilele** the High Court affirmed this position when it held that:

“Any person affected by any decision, order or direction of the Registrar, a Deputy Registrar or District Registrar may appeal to a judge at chambers; save all appeals from assessment of damages by the Registrars, Deputy Registrar and District Registrars, lie direct to the Supreme Court.”

- 8.22 The same principle was upheld in the earlier High Court case of **Roger Scott Miller V Attorney-General**. The consistent principle across all these cases is that a decision referred to a District Registrar or Taxing Master by a trial Judge of the High Court for assessment can only be appealed to the Court of appeal and not to the High Court. This is because the position of the District Registrar or Taxing Master, in conducting such assessment only exercises jurisdiction to implement the trial Judge’s judgment. They should not act in a way that contradicts the spirit, intent, or purpose of the original judgment. Therefore, without the option to review such a decision, the appeal will only lie to the Court of Appeal as the assessment is essentially an extension of the judgment of the trial Judge.

8.23 The main argument by the Respondents is that the 1st Respondent only borrowed ZMW 1,800,000.000, out of which an amount of ZMW 700,000.00 had been repaid on 7th and 15th December 2020, leaving a balance of ZMW 1,100,000.00. However, as demonstrated above, this argument was flawed as it did not account for the contractual interest rates and agreed compound interest charges on the remaining unpaid balance. The learned District Registrar therefore fell in grave error by proceeding with her assessment by considering only the principal amount borrowed, an issue which had already been determined by the trial Judge. For the reasons provided, this second ground of appeal is successful.

8.24 The Appellant argues in the third ground of appeal that the District Registrar erred in assessing the final judgment sum by only considering the statement of account submitted by the 1st Respondent and failing to take into consideration the full statement of account submitted by the Appellant. Our detailed considerations of the evidence and the Court's findings lead us to conclude that this third ground of appeal is successful, as outlined in our findings under the second ground above.

8.25 Our position remains the same regarding ground 4 of the appeal, which argues that the District Registrar erred in not considering the overdue charges on the account, which were charged as part of the administrative costs under **Section 109 of the Banking and Financial Services Act No.7 of 2017**. As we have addressed the implications of Section 109 in our analysis of ground 2, we find that this fourth ground of appeal has merit.

8.26 Before we conclude, it is important to comment on the way the Appellant presented its case before the lower court and the way the Judge handled the matter and issued its judgment orders. We observe that although the trial Judge expunged the affidavit in opposition from the record, and indicated that the action would proceed unopposed, the Judge proceeded to review the contentions of the Respondent's contained in the said affidavit and concluded that the Respondent's claims warranted further consideration after judgment and referred the same for assessment by the District Registrar. This, in our view, was a misdirection on the part of the lower Court as having expunged the affidavit from the record, it ought not to have considered the said affidavit.

8.27 Further, the lower Court entered judgment in favour of the Appellant and found the Respondent liable to a liquidated sum of K2,531,393.00, which judgment has not been appealed against. It is now only the subject of comment here in so far as it relates to the subsequent order of the trial Judge referring the matter for assessment before the District Registrar, which is the subject of appeal before us. Having entered a judgment sum, the trial Court ought not to have directed an assessment be made by the District Registrar.

8.28 We have examined the affidavit supporting the originating summons submitted to the lower Court, found at pages 23 to 78 of the record of appeal. This document at page 27 is identified as exhibit CK1 and dated 7th June 2021, is the Plain Based Loan Account Statement. Notably, the

‘Recd. Date’ in the first row and tenth column indicates that the Appellant received a payment on 15th December 2020, resulting in a nil interest adjustment for that period recorded in the seventh column under ‘interest Adj’. The presented statement may be basic, but it does confirm that the Appellant acknowledged the payments made by the Respondent by recognizing the most recent payment received.

- 8.29 It is worth emphasizing that banks and financial institutions must provide comprehensive bank statements to ensure a precise assessment of outstanding amounts and expedite the adjudication process. This will give clarity in legal suits and avert unnecessary protracted proceedings, such as in the present case, where the Appellant did not provide a complete statement of the loan account to the lower Court. Consequently, the Court indicated its inability to verify the deduction of the amounts claimed to have been paid by the Respondents and referred the same for assessment.

9.0 **CONCLUSION**

- 9.1 Having determined as we have in the grounds of appeal, the appeal before us is successful, and we make the following orders:

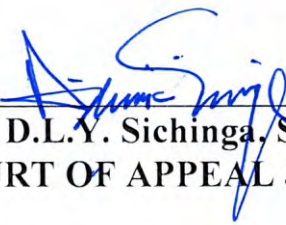
- (i) The ruling of the District Registrar of 19th May, 2022 is hereby set aside.

(ii) The judgment sum of K2,531,393.00 stands as adjudged by the trial Court.

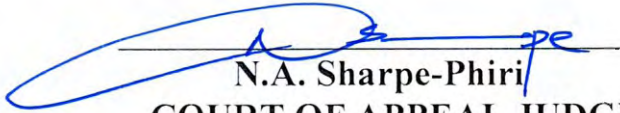
(iii) The costs of these proceedings to be borne by the Respondents, to be taxed in default of agreement.



J. Chashi
COURT OF APPEAL JUDGE



D.L.Y. Sichinga, SC
COURT OF APPEAL JUDGE



N.A. Sharpe-Phiri
COURT OF APPEAL JUDGE