

IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2013/HPC/0256

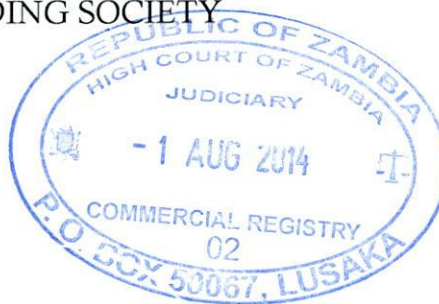
BETWEEN:

ZAMBIA NATIONAL BUILDING SOCIETY

APPLICANT

AND

ESAU PHIRI
NIGEL MUTYOLA



1ST RESPONDENT
2ND RESPONDENT

**BEFORE HON. MADAM JUSTICE PRISCA MATIMBA NYAMBE, SC AT
LUSAKA IN CHAMBERS**

For the Applicant: No appearance

For the Respondents: Mr. Esau Phiri
In Person
Mr. Matyola
In Person

JUDGMENT

List of authorities referred to:

1. Conveyancing and Law of Property Act 1881
2. Order 30 Rule 14 of the High Court Rules Cap 27 of the Laws of Zambia
3. Order 88 Rule 1 and 3 of the Rules of the Supreme Court of England 1999 Edition

This is a matter commenced by the Applicant pursuant to the **Conveyancing and Law of Property Act 1881 and Order 30 Rule 14 of the High Court Rules Cap 27 of the Laws of Zambia and Order 88 Rule 1 and 3 of the Rules of the Supreme Court of England 1999 Edition** seeking the following reliefs:-

1. Payment of Kr343,750.57 being outstanding loan monies.
2. That the Mortgaged Property be enforced by order of or Foreclosure/and Sale.
3. That the Respondents deliver possession of the property known as Stand No. 7878, Woodlands Extension in the Lusaka Province of the Republic of Zambia to the Applicant.
4. Further and any relief that the Court may deem fit to impose.
5. Interest as agreed by the parties and contained in the Deed of Guarantee/Mortgage Deed.
6. Costs.

In supporting the application the Applicant filed an affidavit as well.

According to the said affidavit, on 27th November, 2011 the 1st Respondent applied for a Medium Term Traditional Loan of Kr350,000.00 from the Applicant and the same was approved as evidenced by Exhibit "MM1", a copy of the application form completed by the 1st Respondent.

The 2nd Respondent being the Legal owner of the Property Stand No. 7878, Woodlands Extension, consented to the use of the Property as collateral as evidenced by Exhibits “MM2” and “MM3”, copies of the Certificate of Title relating to the aforementioned Property and Consent granting authority to pledge the subject Property.

On several occasions the Applicant reminded the 1st Respondent to liquidate what is outstanding but the said 1st Respondent has neglected to do so as evidenced by Exhibit “MM5” one of the Letters of reminder from the Applicant to the 1st Respondent.

The outstanding balance on the Mortgage account now stands at K343,750.57 as at 13th March, 2013 as evidenced by Exhibit “MM6”, a copy of the Loan account statement.

In the event the Applicant sought to recover its monies from the 1st Respondent by Foreclosure and Sale of the Mortgaged Property being Stand No. 7878, Woodlands Extension, Lusaka.

At the last but one hearing on 13th May, 2012, the Applicant’s Counsel was ready to proceed, there being no opposition to the claim but the Respondent requested for an adjournment for twelve (12) months to sort out some business.

One of the Respondents was not present. I reluctantly adjourned the matter to 30th July 2014 indicating that this would be the last time, given the fact that this is a Commercial Court matter which should be dealt with expeditiously and taking into account Counsel's submission that there is no opposition to the claim.

When the matter came up for hearing on 30th July, 2014 both Respondents were present but there was no appearance from the Applicant.

Both Respondents accepted that they owe the amount as endorsed on the Originating Summons and that they are in default of their repayment obligations. They requested that they be given twelve (12) months within which to repay the loan at the rate of K2,000.00 per month.

From the above it is evident that the Respondents are truly indebted to the Applicant, there is no opposition to the claim as endorsed, and the Respondents conceded that they are in default of their repayment obligations.

I find the proposal to repay the outstanding amount of Kr350,000.00 at Kr2,000.00 per month untenable as it will take more than four (04) years to liquidate.

Clearly the Respondents have no defence to the claim and the Application is granted as prayed.

ORDER:-

1. I enter Judgment in favour of the Applicant in the sum of Kr343,750.57 being the outstanding loan monies with interest as agreed by the parties.
2. The Respondents do settle the Judgment Debt as above within six (06) months from the date of this Judgment, in default the Applicant shall be at liberty to exercise its right of Foreclosure and Sale of the Mortgaged Property being Stand No. 7878, Woodlands Extension, Lusaka without further Court Order.
3. Costs shall follow the Cause, to be taxed in default of agreement.

Dated this.....15th.....day ofAugust.....2014



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Prisca M. Nyambe, SC
JUDGE