

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**

2013/HPC/0456

(Civil Jurisdiction)

IN THE MATTER OF: Order 30 Rule 14 High Court Rules Cap 27 of the Laws of Zambia.

IN THE MATTER OF: The property comprised in Mortgage Deed dated 8th January 2010 relating to Plot/Stand No. KL 62 Kamirenda, Luanshya and made between Finance Bank Zambia Limited of the one part and Kabwe Charles Mubanga and Shindaiwa Haulage Limited of the other part.

BETWEEN:

FINANCE BANK ZAMBIA LIMITED

APPLICANT

AND

SHINDAIWA HAULAGE LIMITED

1ST RESPONDENT

KABWE CHARLES MUBANGA

2ND

RESPONDENT

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN
CHAMBERS ON THE 27TH DAY OF MARCH, 2014**

For the Applicant: M. Mwiya (Ms) Manager, Legal Services

For the 1st Respondent: N/A

For the 2nd Respondent: N/A

J U D G M E N T

Legislation referred to:

- The High Court Act, Chapter 27 of the Laws of Zambia

The **Applicant Finance Bank Zambia Limited** commenced the proceedings herein against **Shindaiwa Haulage Limited and Kabwe Charles Mubanga**, the 1st and 2nd Respondents respectively by way of an Originating Summons on the 16th day of September 2013 claiming the following reliefs:

- 1. Payment of all monies which as on the 9th day of September 2013 stood at K65,796.32 plus interest and other charges due and owing to the Applicant by the 1st Respondent under an overdraft facility dated the 12th day of January 2010 and a third party mortgage over Plot No. KL 62, Kamirenda Luanshya, owned by the 2nd Respondent**
- 2. Foreclosure**
- 3. Delivery up by the 2nd Respondent to the Applicant of the mortgaged property**
- 4. Sale of the said mortgaged property.**

The Originating Summons is supported by an affidavit deposed to by Hendrix Chiyenge, the Debt Recoveries Manager, Credit Department in the employee of the Applicant.

According to the said affidavit, the 1st Respondent was on the 12th day of January 2010 availed an **overdraft facility of K50,000** which was to attract interest at the agreed rate of 38 per centum per annum on a compounded basis and the facility was to expire on the 31st day of December 2010.

It is deposed that the overdraft facility was secured by a Third Party Mortgage in the property namely **Plot/Stand No. KL 62 Kamirenda Statutory Housing Area, Luanshya.**

The 2nd Respondent also personally guaranteed the loan as guarantor and surety. It is further deposed that the 1st Respondent has defaulted in its payment obligations as no payment has been made so far and the account has remained inactive.

Exhibited to the aforestated affidavit is the Credit facility Offer and Acceptance letter, copy of Third Party Mortgage duly registered, copy of the **Certificate of Title No.11429** and a Statement of Accounts as at 9th day of September 2013.

At the hearing of the Originating process, neither of the Respondents were present or represented. I noted from the record that the Respondents were duly served with the Originating process and it was in fact of that, that they appointed Messrs I C Ng'onga and Company as their Advocates, who for reasons unknown to the Court subsequently withdrew.

I have also noted that the Respondents have not filed any documentation to oppose the Applicants process. I therefore decided to proceed and hear the matter because I was of the view that the Respondents were unduly procrastinating the matter.

After considering the application which has been made by the Applicant under **Order 30 Rule 14 of The High Court Rules** and the affidavit evidence and also taking into consideration that the application is not opposed despite the fact that the

Respondents are fully aware of these proceedings, I am satisfied that this is a proper case for granting of the reliefs as sought.

For the removal of doubt, the Judgment is hereby granted as follows:

1. That the Respondents do pay to the Applicant the sum of K65,796.32 being the monies outstanding as on the 19th day of September 2013 together with interest at the agreed contractual rate of 38 per centum per annum compounded from the 16th day of September 2013 being the date of the Originating Summons to the date of Judgment and thereafter at the current Commercial Bank lending rate as determined by Bank of Zambia till full satisfaction of the Judgment debt.
2. The Respondents are hereby given a moratorium of thirty (30) days within which to pay the Judgment debt together with interest, failure to which the Applicant shall be at liberty to foreclose, possess and dispose of the mortgaged property namely **Plot/Stand No. KL 62 Kamirenda Statutory Housing Area, Luanshya.**
3. Costs to the Applicant, to be taxed in default of agreement.

Dated at Lusaka this 27th day of March 2014.

JUSTIN CHASHI
HIGH COURT JUDGE

