

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

2013/HPC/0036

In the matter of:

A Legal Mortgage relating to Stand No. 9320, Ndola,  
Copperbelt Province

BETWEEN:

CITIZENS ECONOMIC EMPOWERMENT COMMISSION PLAINTIFF

AND

MARITIME FREIGHT AND FORWARDING LIMITED

1<sup>ST</sup> DEFENDANT

MISHECK CHITORA

2<sup>ND</sup> DEFENDANT

VERONICA CHIWALA

3<sup>RD</sup> DEFENDANT

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

For the Plaintiff: Mr. George Mpundu Kanja  
*Palan & George Advocates*

For the Defendants: Miss Precious Tembo  
*Musa Mwenye Advocates*

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**JUDGMENT**

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**List of authorities referred to:**

1. Order 30 Rule 14 of the High Court Act Cap 27 of the Laws of Zambia
2. Order 10 Rule 3 of the High Court Act Cap 27 of the Laws of Zambia



The Plaintiff commenced this action in January by way of Originating Summons pursuant to **Order 30 Rule 14 of the High Court Act Cap 27 of the Laws of Zambia**, seeking the following reliefs:-

1. Payment of all monies and interest due to the Plaintiff under the loan facility agreement entered into between the Plaintiff and Defendants, and a legal mortgage relating to Stand No. 9320, Ndola, Copperbelt Province under which the said property was charged by the Defendants by way of legal mortgage in favour of the Plaintiff to secure the repayments of following: the principal sum of Kr1,607,740.00 (K1,607,740.00) plus interest at a rate of 12 percent per annum to the charged and recovered monthly in arrears on the daily outstanding balances.
2. The Legal Mortgage may be enforced by Foreclosure.
3. Delivery up of possession of the mortgaged property by the Defendants to the Plaintiff.
4. Sale of the Mortgaged Property.
5. Enforcement of the Fixed Charge Deed or Debenture over the 1<sup>st</sup> Defendant's Assets and all Equipment including motor vehicles registration namely ABV 6176, ABT 8677, AST 1129 and ABV 6181 procured by the Plaintiff on behalf of the 1<sup>st</sup> Defendant.
6. Enforcement of Personal Guarantees.
7. Any other relief as the Court may deem fit.
8. Costs of and incidental to the proceedings.



The Summons was supported by an affidavit filed on 28<sup>th</sup> January, 2013 and on 25<sup>th</sup> February, 2013 the Plaintiff filed an application for an Order of substituted service to enable the Plaintiff's Advocates to serve Originating process on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants by way of public advertisement in accordance with **Order 10 Rule 3 of the High Court Act Cap 27 of the Laws of Zambia**. This was supported by an affidavit as well as skelton arguments of even date.

On 2<sup>nd</sup> May, 2013 the Defendants entered a Conditional Appearance and an affidavit in opposition to the Originating Summons was filed on 27<sup>th</sup> May, 2013.

The gist of the affidavit in opposition to the Originating Summons is that the contents of paragraph 5 to 13 are accurate. The sum total of these paragraphs is that the Plaintiff advanced funds to the Defendants to be repaid over a period of Fifty-Four (54) months. The said Loan Facility was secured by a legal mortgage created over the 1<sup>st</sup> Defendant's property namely Stand No. 9320, Ndola and a fixed charge over the 1<sup>st</sup> Defendant's motor vehicles, viz ABV 6176m ABT 8677, ABT 1127, ABT 1129 and ABV 6181 as evidenced by exhibits "JM4" to "JM11" respectively. The legal mortgage was registered at the Lands and Deeds Registry as evidenced by exhibit "JM12". The Directors of the Company also provided further security in the form of Personal Guarantees by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as evidenced by exhibit "JM13". The 1<sup>st</sup> Defendant was required to make monthly repayments of K48,113.17 commencing after a grace period of three (03) months. The 1<sup>st</sup> Defendant



defaulted on its repayments and as at 12<sup>th</sup> November 2012 the total amount due for payment was K1,934,366.40, principal and interest as evidenced by exhibit "JM14". The sum total of the above affirms the fact that the Defendant is in default of its repayment obligations.

The Defendants' response that the 1<sup>st</sup> Defendant's failure to repay was not deliberate and the explanation as to why this is so does not amount to a defence.

At the hearing on 6<sup>th</sup> October 2014 I declined an application for an adjournment because there was no useful purpose to be served as the 1<sup>st</sup> Defendant clearly admitted the claim, was in default and had no defence.

Counsel for the Defendant **Ms Precious Tembo** requested that in the event the Court grants the reliefs as endorsed, that the Defendant be granted a reasonable period within which to repay the debt. **Mr. Kanja** for the Plaintiff had no objection to the request for payment over a period of six (06) months.

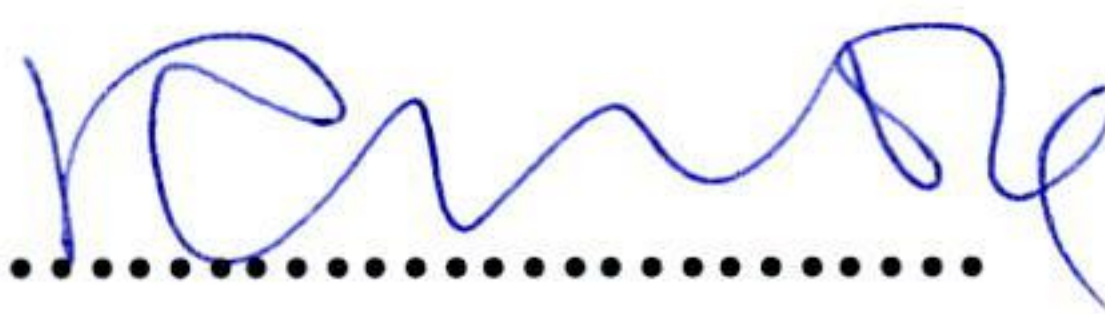
I have perused the documents filed herein, I have considered the submissions by both Counsel and find in favour of the Defendant and grant the reliefs as endorsed.



**ORDER:-**

1. I enter Judgment in favour of the Plaintiff in the principal sum of K1,607,740.000.00 plus interest at 12% per annum.
2. The Defendants shall repay the Judgment Debt with interest as above within six (06) months from the date of this Judgment. In default the Applicant shall be at liberty without further Court Order to enforce the legal mortgage and the personal Guarantees as indicated herein.
3. Costs shall follow the Cause, to be taxed in default of agreement.

Dated this...14th...day of October.....2014

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**Prisca M. Nyambe, SC**  
**JUDGE**