

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

2013/HPC/0474

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 27<sup>th</sup> February 2009 relating to Stand No. 3775 Lusaka and made between Finance Bank Zambia Limited of the one part and Henry Mulenga Kapoko and Kahekam Limited of the other part

**BETWEEN:**

FINANCE BANK ZAMBIA LIMITED

AND

KAHEKAM LIMITED  
HENRY MULENGA KAPOKO



APPLICANT

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT

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

For the Applicant: Mr. S P Chilembo  
*In-house-Counsel*

For the Respondents: Ms M Mutale  
*K B F & Partners*

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**JUDGMENT**

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**List of authorities referred to:**

1. Order 30 Rule 14 of the Rules of the High Court Cap 27 of the Laws of Zambia

This is an application brought pursuant to **Order 30 Rule 14 of the Rules of the High Court Cap 27 of the Laws of Zambia**; by the Applicant Bank seeking the following reliefs:-

1. Payment of all monies which as at 24<sup>th</sup> September, 2013 stood at ZMW 1,280,731.39 plus interest, costs and other charges due and owing to the Applicant by the 1<sup>st</sup> Respondent under an Over Draft Facility dated on or about 4<sup>th</sup> February 2009, and a Third Party Mortgage over Stand No. 3775, Lusaka, owned by the 2<sup>nd</sup> Respondent.
2. Foreclosure
3. Delivery up by the 2<sup>nd</sup> Respondent to the Applicant of the Mortgaged Property
4. Sale of the said Mortgaged Property
5. Any further or other relief the Court may deem fit.

The application was filed into Court supported by an affidavit with exhibits attached thereto.

The salient points of the Facility are that on or about 4<sup>th</sup> February, 2009 the Applicant availed the Respondent an Overdraft Facility of ZMW 300,000.00 later enhanced to ZMW 400,000.00 agreed to attract interest rate at 15% above base rate at 21% = 36% per annum on a compounded basis as evidenced by "HC1", a copy of the Facility Letter.

The said Loan Facility was secured by a Third Party Mortgage pledged by the 2<sup>nd</sup> Respondent in respect of his property being Stand No. 3775, Lusaka, by way of deposit of Certificate of Title No. 80509 as security to secure the loan plus interest.

The said Third Party Mortgage was duly registered with the Lands and Deeds Registry at the Ministry of Lands as evidenced by Exhibit "HC2" and "HC3", respectively copies of the Third Party Mortgage Deed and Certificate of Title relating to the property pledged. Additionally the 2<sup>nd</sup> Respondent guaranteed the loan given to the 1<sup>st</sup> Respondent as evidence by Exhibit "HC4", a copy of the Guarantee Form signed by the 2<sup>nd</sup> Respondent.

According to paragraph 9 of the affidavit in support of the application the Respondent has defaulted on its repayment obligations and several demands have been made and no payments have been made so far and the account has remained inactive.

The Loan also attracted 2.5% Commission and other charges as per bank's scale of charges.

The Respondent filed an affidavit in opposition to the claim basically admitting the debt but denied that there were several demands for the payment of the monies owed. He went on to give reasons why he was unable to service

the Loan which *inter alia* included the fact that in April 2009 the Anti-Corruption Commission began investigations against him causing his account to be restricted, stopping access to the account and could not operate the same, i.e. he had no access whatsoever to the loan account at the Applicant Bank. He was not allowed to deposit, access, withdraw or have any dealings with the subject account at all “*until further notice*”.

At the hearing Counsel for the Applicant requested the Court to enter Judgment in favour of the Applicant in the total sum of K1,286,731.39 as at 24<sup>th</sup> September, 2013 with continuing interest at 36% per annum.

Ms Mutale for the Respondent requested the Court to consider the difficulties in which the 2<sup>nd</sup> Respondent found himself in.

In reply Mr. Chilembo for the Applicant requested the Court to consider that the 2<sup>nd</sup> Respondent is a guarantor to the 1<sup>st</sup> Respondent and that the issues canvassed in the affidavit in opposition relates to the 2<sup>nd</sup> Respondent and not the borrower, as such requested that Judgment be entered against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as prayed.

From the evidence on record, the Respondents do not deny that they borrowed the monies as stated in the claim. Neither do they deny having defaulted on their repayment obligations. Therefore the Respondents having admitted the

loan and being in default of their repayment obligations, have no defence to the claim.

Indeed the issues canvassed in the affidavit in opposition to the claim do not disclose a defence and are merely explanations as to the difficulties the 2<sup>nd</sup> Respondent who is the Guarantor found himself in. These do not amount to a defence and does not take away the rights of the Applicant to the reliefs sought, to which it is clearly entitled.

In the event the Application is granted as prayed.

However I note that the Facility Letter provides in paragraph 10 "*Other Charges as per bank scale of charges*". To the extent that these have not been disclosed, I order that they not be taken into account in calculating the Respondents' indebtedness, especially taking into account the fact that the bank has already charged Commission at 2.5%, in paragraph 9(ii) of the Facility Letter.

**ORDER:-**

1. I enter Judgment in favour of the applicant on the amount unpaid, with interest at the current lending rate as determined by the Bank of Zambia.

The Judgment Debt shall exclude other charges/costs envisaged in paragraph 10 of the Facility Letter.

2. That the Respondents do settle the Judgment Debt with interest as above within three (03) months from the date of this Judgment. In default the Applicant shall be at liberty to exercise its power for Foreclosure/Sale of the Mortgaged Property being Stand No. 3775, Lusaka, without further Court Order.

3. Costs shall follow the Cause, to be taxed in default of agreement.

Dated this...*25<sup>th</sup>*...day of .....*July*.....2014



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