

**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**AT LUSAKA**

**2014/HP/0691**

**(Civil Jurisdiction)**

IN THE MATTER OF:

**SECTION 6 (1) OF THE LANDS AND DEEDS  
REGISTRY ACT, CHAPTER 185, OF THE LAWS  
OF ZAMBIA**

**AND**

IN THE MATTER OF:

**AN APPLICATION FOR REGISTRATION OF  
MEMORANDUM OF DISCHARGE OF MORTGAGE  
AND SUPPLEMENTARY MORTGAGE RELATING  
TO SUBDIVISION 1 OF SUBDIVISION "A" OF  
FARM NO. 297a, LUSAKA OUT OF TIME.**

**BETWEEN:**

**IMBWILI INVESTMENTS LIMITED**



**APPLICANT**

**AND**

**THE ATTORNEY GENERAL**

**RESPONDENT**

**Before the Hon. Mrs. Justice A. M. Sitali on the 7<sup>th</sup> day of August, 2014**

***For the Applicant* : *Mr. R. Mainza of  
Messrs Mainza and Company***

***For the Respondent* : *Miss M. Kampamba, Assistant Senior  
State Advocate***

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**J U D G M E N T**

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**Legislation referred to:**

**1. The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, section 6 (i).**

The applicant commenced this action by originating notice of motion on 8<sup>th</sup> May, 2014 seeking an order that the Chief Registrar of Lands and Deeds be compelled to register the memorandum of discharge of mortgage and supplementary mortgage relating to Subdivision 1 of Subdivision "A" of Farm No. 297a, Lusaka out of time. The originating notice of motion is supported by an affidavit deposed to by Elias Andrew Kashita, a director and shareholder in the applicant company.

The facts of the case as stated in the affidavit in support of the application are that on 23<sup>rd</sup> August, 2011, Finance Bank Zambia Limited executed a memorandum of discharge of mortgage and supplementary mortgage relating to Subdivision 1 of Subdivision "A" of Farm No. 297a, Lusaka, following the liquidation of the loan facilities availed to the applicant by the said Bank. The applicant stated that the said memorandum of discharge of mortgage and supplementary mortgage was prepared by Messrs Wilson and Cornhill who at the material time were acting for Finance Bank Zambia Limited. A copy of the memorandum of discharge of mortgage and supplemental mortgage is exhibited marked "EAK1".

The applicant stated that despite the memorandum of discharge of mortgage and supplementary mortgage having been executed on 23<sup>rd</sup> August, 2011, the same was only registered at the Lands and Deeds Registry by the said Advocates on 28<sup>th</sup> November, 2011 by which date the thirty (30) days statutory grace period within which the memorandum of discharge ought to have been registered had elapsed. The applicant further stated that by Judgment dated 11<sup>th</sup> December, 2013, his Lordship Mubanga Kondolo SC declared the registration of the said memorandum of discharge of mortgage and supplementary mortgage on 28<sup>th</sup> November, 2011 null and void as

section 6 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia was not complied with. The applicant states that it is desirous to formalise the registration of the memorandum of discharge of mortgage and supplementary mortgage, hence this application.

On 19<sup>th</sup> June, 2014, the respondent filed an affidavit in opposition deposed to by Paul Kachimba, a Legal Officer at the Ministry of Lands. The respondent stated that a memorandum of discharge of mortgage relating to Subdivision 1 of Subdivision "A" of Farm No. 297a, Lusaka, was registered at the Lands and Deeds Registry on 28<sup>th</sup> November, 2011. However, by a judgment dated 11<sup>th</sup> December, 2013, his Lordship Judge Kondolo SC declared the registration of the memorandum of discharge of mortgage null and void because section 6 the Lands and Deeds Registry Act had not been complied with. A copy of the judgment to that effect is exhibited marked "PK1". The deponent stated that he had been advised by counsel for the respondent that the judgment brought the application before the Court to its finality and that the plaintiff ought to appeal or seek review of the said judgment and not proceed by way of originating notice of motion as this constitutes an abuse of court process. On that basis, the respondent opposed the application and urged me not to grant the application to register the memorandum of discharge of mortgage and supplementary mortgage relating to Subdivision "A" of Farm No. 297a, Lusaka out of time.

At the hearing of the application, Mr Mainza counsel for the applicant relied on the affidavit in support of the application deposed to by Elias Andrew Kashita. He submitted that the applicant seeks leave of this court to register the memorandum of discharge of mortgage and supplementary mortgage relating to Subdivision 1 of Subdivision "A" of Farm No. 297a, Lusaka out of time. Counsel submitted that paragraph (i) of the proviso to section 6 of the Lands and Deeds Registry Act, Chapter 185 confers jurisdiction on this court to extend time within which documents may be registered at the Lands and Deeds Registry. Counsel submitted that he had read the affidavit in opposition to the application in which the respondent stated that the way

forward was for the applicant to appeal against the judgment rendered by Judge Kondolo, SC in which he observed that the failure to register the documents within the prescribed period rendered the registration of the said document null and void. Mr Mainza submitted that as Judge Kondolo SC correctly interpreted section 6 of the Lands and Deeds Registry Act Cap. 185 it would not be proper to proceed to the Supreme Court by way of an appeal. Counsel stated that the correct remedy to the predicament the applicant found itself in was to apply for leave to register the document out of time as opposed to appealing against the judgment in question.

Counsel contended that the suggestion that the applicant ought to have sought review of the judgment was equally misconceived in law as section 6 of the Act only provides for one procedure which is to apply for extension of time from the High Court. Counsel urged that I should grant the application as prayed for in the originating notice of motion.

Miss Kampamba, counsel for the respondent stated that the respondent did not oppose the application.

I have considered the affidavit evidence and the submissions by counsel for the applicant. The applicant seeks an order that the Chief Registrar of Lands and Deeds be compelled to register the memorandum of discharge of mortgage and supplementary mortgage relating to Subdivision 1 of Subdivision "A" of Farm No. 297a, Lusaka out of time.

The Lands and Deeds Registry Act Chapter 185 of the Laws provides for the registration of documents for the grant, conveyance or transfer of land or any interest in land or which create a charge upon land by way of mortgage or otherwise including documents which evidence the satisfaction of any mortgage or charge. These documents must be registered in the Lands and Deeds Registry within thirty days of their execution as

stipulated in section 5 of the said Act. A document which is required to be registered in terms of the Act and is not registered within the stipulated period is null and void.

Section 6 (i) of the Act provides that the Court may extend the time within which such a document may be registered or authorise its registration after the expiration of such period. To that effect section 6 (i) of the Act provides as follows:

*"6. Any document required to be registered as aforesaid and not registered within the time specified in the last preceding section shall be null and void:*

*Provided that-*

*(i) the court may extend the time within which such documents must be registered, or authorise its registration after the expiration of such period on such terms as to costs and otherwise as it shall think fit, if satisfied that the failure to register was unavoidable, or that there are any special circumstances which afford ground for giving relief from the results of such failure, and that no injustice will be caused by allowing registration.*

It is clear from the provisions of section 6 (i) of the Act, which is set out above, that the Court has the discretion to extend the time within which to register a document which is required to be registered under the Act provided that there are good reasons for the failure by the applicant to register the document within the stipulated period and that no injustice will result from allowing the registration.

In the present case, the memorandum of discharge of mortgage and supplementary mortgage was executed by Finance Bank Zambia on 23<sup>rd</sup> August, 2011. However, it was only registered at the Lands and Deeds Registry by the Bank's lawyers Messrs Wilson and Cornhill on 28<sup>th</sup> November, 2011 which was way beyond the 30 days period

stipulated by the Act for the registration of such documents. It was for that reason that the Court declared the registration of the memorandum of discharge of mortgage and supplementary mortgage null and void as no leave to register the document out of time was obtained from the court. No reason has been given for the failure by the Bank's advocates to register the memorandum of discharge of mortgage and supplemental mortgage within the stipulated period. However, as Counsel for the respondent did not object to the application and given that the document evidences the satisfaction of a mortgage which is currently registered as an encumbrance against the applicant's property, I do consider that this is an appropriate case for me to exercise my discretion to allow the registration of the memorandum of discharge of mortgage and supplemental mortgage out of time as, in my view, no injustice will be caused by registering the document out of time.

I, accordingly grant the application for leave to register the memorandum of discharge of mortgage and supplemental mortgage relating to Subdivision No. 1 of Subdivision A of Farm No. 297a, Lusaka out of time. The said document shall be registered at the Lands and Deeds Registry within 30 days of the date of this judgment.

Each party will bear its own costs.

Dated the 7<sup>th</sup> day of August, 2014.



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**A. M. SITALI**  
**JUDGE**