

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

2013/HPC/0574

In the matter of: Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Law of Zambia and Order 88 Rule 1 of the Rules of the Supreme Court 1999 Edition

And

In the matter of: A Third Party Mortgage Relating to Subdivision 362 of Subdivision A Farm 378a

**BETWEEN:**

INVESTTRUST BANK PLC

AND

RONALD JOHN BANDA, ANNA K. BANDA

MUKANDILA BANDA AND MWAPE BANDA

TRADING AS – R.J. BANDA ENTERPRISES

RONALD JOHN BANDA

ANNA K BANDA

MUKANDILA BANDA

MWAPE BANDA



APPLICANT

1<sup>ST</sup> RESPONDENT

2<sup>ND</sup> RESPONDENT

3<sup>RD</sup> RESPONDENT

4<sup>TH</sup> RESPONDENT

5<sup>TH</sup> RESPONDENT

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

For the Applicant: Miss L Shula  
*Isaachs & Partners*

For the Respondents: Mrs. Anna K. Banda – 3<sup>rd</sup> Respondent  
*In Person*  
Mr. Mwape Banda 5<sup>th</sup> Respondent  
*In Person*

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**JUDGMENT**

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**List of authorities referred to:**

1. Order 30 Rule 14 of the High Court Rules Cap 27 of the Laws of Zambia
2. Order 88 Rule 1 of the Rules of the Supreme Court of England 1999 Edition

This is an application by the Applicant brought pursuant to **Order 30 Rule 14 of the High Court Rules Cap 27 of the Laws of Zambia** as read with **Order 88 Rule 1 of the Rules of the Supreme Court of England 1999 Edition**; seeking the following reliefs:-

- i. Payment of the sum of ZMW119,188.58 due and owing from the 1<sup>st</sup> Respondent to the Applicant on account of a loan facility in the sum of ZMW 106,137.00 on the loan principal and interest obtained by the 1<sup>st</sup> Respondent from the Applicant and secured by an agreement dated 7<sup>th</sup> June, 2013 and also an overdraft facility in the sum of ZMW 13,051.58 obtained by the 1<sup>st</sup> Respondent;
- ii. As against the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents jointly and severally as Guarantors pursuant to the Guarantee dated the 11<sup>th</sup> June 2013, an order that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents do forthwith pay to the Applicant the sum of ZMW 119, 188.58 due and owing to the Applicant plus interest thereon at facility rates by reason of the 1<sup>st</sup> Respondent's Default in meeting its obligations to the Applicant;
- iii. An order that under and by virtue of the Agreement hereinafter mentioned and the Third Party Mortgage it is holding, the Applicant is entitled to be considered as being the Legal Mortgagee of the property described in the said Agreement namely Subdivision No. 632 of Subdivision A of Farm No. 387a, Lusaka (hereinafter the "*mortgaged*

*property*”) and to exercise all the powers of a Legal Mortgagee including the power of sale, foreclosure and possession;

- iv. An order of foreclosure or sale of the mortgaged property namely Subdivision No. 362 of Subdivision A of Farm No. 378a, Lusaka.
- v. Delivery by the 5<sup>th</sup> Respondent to the Applicant of possession of the mortgaged property;
- vi. Interest on all sums found due and owing from the Respondents to the Applicant;
- vii. Any other order that the Court may deem fit and just in the circumstances; and
- viii. Costs.

The Applicant is claiming the sum of K119,188.58 plus interest at 17.25% per annum in default, the Applicant wish to exercise its right of possession and/or Sale/Foreclosure of the Mortgaged Property being Stand No. 632 of Subdivision A of Farm No. 387a, Lusaka.

The application was supported by an affidavit sworn by one **Essau Mtonga** Head of Credit Controls in the employment of the Applicant.

By a Facility Letter dated 6<sup>th</sup> June 2013, the Applicant approved a Loan Facility in the sum of K100,000.00 to the 1<sup>st</sup> Respondent and entered into a Loan Agreement as evidenced by Exhibit “EM1” and “EM2”, a copy of the Facility Letter and Loan Agreement respectively.

The loan was secured by a Third Party Mortgage dated 11<sup>th</sup> June 2013 entered into between the Applicant and the 5<sup>th</sup> Respondent over Subdivision No. 362 of Subdivision A of Farm No. 378a, Lusaka which was duly registered by the Applicant as evidenced by Exhibits “EM3” and “EM4” the Third Party Mortgage and Certificate of Title respectively.

Further security was provided by way of personal guarantees by the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> and 5<sup>th</sup> Respondents as Partners in the 1<sup>st</sup> Respondent’s Firm as evidenced by Exhibit “EM5”, a copy of the said Guarantees.

The Respondents defaulted in their repayment obligations as evidenced by Exhibit “EM6” and “EM7”, copy of the Demand Letter and Notice of Default respectively.

The Applicant submitted that, the above shows that the Respondents have failed to settle their debt which as at 4<sup>th</sup> November, 2013 stood at ZMW 119,188.58 as evidenced by Exhibit “EM8” the Statement of accounts herein. In the event the Applicant requested the Court to grant the reliefs as endorsed on the Originating Summons.

At the hearing the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> Respondents did not appear either in person or by Counsel, but the 3<sup>rd</sup> and 5<sup>th</sup> Respondents did appear in person. Both admitted the claim.

**Miss Shula**, submitted further that since the loan was advanced not a single repayment had been made to liquidate the loan and the Respondents lack the goodwill to liquidate their indebtedness.

The Respondents did file an affidavit in opposition the sum total of which does not disclose or amount to any defence.


From the totality of the evidence, it is clear that the Respondents do not dispute that they are indebted to the Applicant or that they are in default of their repayment obligations. They ought to have paid off the loan within twelve (12) months but failed to do so and as at the time of hearing they in fact

had not made a single repayment. In the event the Applicant's application is granted as endorsed on the Writ.

**ORDER:-**

1. I enter Judgment in favour of the Applicant in the sum of K119,188.58 with interest as agreed.
  
2. That the Defendants do settle the Judgment Debt as above, within three (03) months from the date of this Judgment, in default the Applicant shall be at liberty to exercise its right of possession Foreclosure/Sale in respect of the Mortgaged Property being Subdivision No. 632 of Subdivision A of Farm No. 378a, Lusaka, without further Court Order.
  
3. Costs shall follow the Cause.

Dated this 7<sup>th</sup> day of August 2014

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