

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

**2012/HPC/0144**

(Civil Jurisdiction)

**IN THE MATTER OF:** Order 30 Rule 14 of the Rules of the High Court Cap 27 of the Laws of Zambia and Order 88 Rule 1 of the Rules of The Supreme Court Rules (1999).

**BETWEEN:**

GENESIS FINANCE LIMITED  
**APPLICANT**

**AND**

LONGREACH COMMODITIES LIMITED

**1<sup>ST</sup> RESPONDENT**

BENNIE BERNARD MAKWATI  
**RESPONDENT**

**2<sup>ND</sup>**

JOSHUA MUKONKOTO  
**RESPONDENT**

**3<sup>RD</sup>**

ENVIOLATE EMMA NHERERA  
**RESPONDENT**

**4<sup>TH</sup>**

TENDAI THOMAS MAKWATI MULENGA

**5<sup>TH</sup> RESPONDENT**

FARAI CHRISTOPHER MULENGA

**6<sup>TH</sup> RESPONDENT**

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN  
CHAMBERS ON THE 24<sup>TH</sup> DAY OF APRIL, 2015**

*For the Applicant:* M J Kawama, Messrs D Findlay & Associates

*For the 1<sup>st</sup> 2<sup>nd</sup> Respondent:* N/A

*For the 3<sup>rd</sup> Respondent* M Mukupa, Messrs Isaac & Partners

*For the 4<sup>th</sup>, 5<sup>th</sup>, & 6<sup>th</sup>  
Respondents* M.C Kaoma (Ms) Messrs KMG Chisanga Advocates

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## R U L I N G

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**Legislation referred to:**

1. The High Court Act, Chapter 27 of The Laws of Zambia
2. The Commissioners For Oaths Act, Chapter 33 of The Laws of Zambia

On the 23<sup>rd</sup> day of March 2012, **Genesis Financial Limited** commenced proceedings herein against **Longreach Commodities Limited, Bennie Bernard Mukwati** and **John Mukonkoto**, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively by way of an Originating Summons accompanied by an affidavit in support.

A lot of developments thereafter took place. Amongst them was the entering of a Judgment on admission against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the 31<sup>st</sup> day of October 2012, which led to the issuance of a Writ of possession on the 1<sup>st</sup> day of November 2012.

On the 16<sup>th</sup> day of September 2013, the Applicant and the 1<sup>st</sup> Respondent filed a Consent Order in which it was agreed that the 1<sup>st</sup> Respondent would pay a reduced sum of **K425, 000.00** and the Applicant would then discharge the two Mortgaged properties namely **Subdivision 13 of Stand No. 3506 Kitwe** and **Subdivision 20 of Stand No.11062 Libala, Lusaka**. It is not clear as to what has happened as regards to adherence of that Order.

The Writ of possession was subsequently stayed and Enviolate Emma Ngerere, Tendai Thamas Makwati Mulenga and Ferai Christopher Mulenga, the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents were subsequently joined as parties to the proceedings. Further to that, the Judgment on admission as it related to the repossession and sale of **Subdivision 20 of Stand No. 11062, Libala** was set aside and it was ordered that the rest of the Judgment on admission will subsist.

Counsel for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents then filed an affidavit in opposition to the Originating Summons on the 4<sup>th</sup> of September 2014.

It should also at this juncture be noted that there is an application by the 3<sup>rd</sup> Respondent still pending to set aside the Writ of possession in respect of the Mortgaged property on the basis that the amounts due under the aforestated Consent Order have since been paid.

At the hearing of the Originating Summons, Counsel for the Applicant relied on the affidavit in support deposed to by John Siakachoma and Counsel for the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents equally relied on their affidavit in opposition.

A careful perusal of the affidavit in support of the Originating Summons reveals that although the same is commissioned, it is however not dated.

**Order 5 Rule 20 (g) of The High Court Rules<sup>1</sup>**, on affidavits states that:

“ The **jurat** shall be written, without interlineations, alteration or erasure (unless the same be initialed by the Commissioner) immediately at the foot of the affidavit and towards the left side of the paper and shall be signed by the Commissioner.

It **shall** state the **date** of the swearing and the **place** where it is **sworn**”

Equally, **Section 6 of The Commissioners For Oaths Act<sup>2</sup>** provides as follows:

**“Every Commissioner for Oaths before whom any Oath or affirmation is taken or made under this Act, shall state truly in the jurat or attestation at what place and on what date the Oath or affidavit is taken or made”.**

It is clear from the aforesaid provisions of the law that it is mandatory that the **jurat** to an affidavit must state the date of the swearing. Therefore an affidavit that does not show in the **jurat** the **date** the Oath or affirmation was taken as is the case in the affidavit in this Cause, offends the Mandatory Provisions of **Order 5 Rule 20 (g) of The High Court Rules<sup>1</sup>** and **Section 6 of The Commissioners For Oaths Act<sup>2</sup>** and to that extent is incurably defective.

In the view that I have taken the affidavit in issue is expunged from the record and as a consequence, the Applicant's claim has no leg to stand on and **is accordingly dismissed.**

It follows therefrom that any outstanding Writ of possession is also set aside.

I will grant the Respondents costs with the exception of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who shall bear their own costs.

Same to be taxed in default of agreement.

**Leave to appeal is hereby granted.**

**Delivered at Lusaka this 24<sup>th</sup> day of April 2015.**

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Justin Chashi  
**HIGH COURT JUDGE**