

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

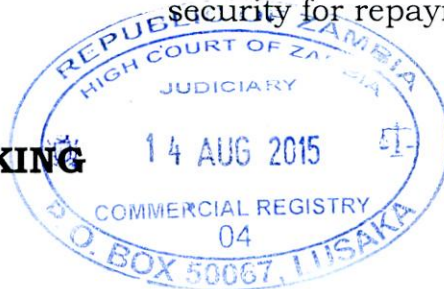
**2014/HPC/0012**

**IN THE MATTER OF:**

An application for an Order of foreclosure, possession and sale of property known as Stand No. 12650 Lusaka which was subject of a Third Party Mortgage between the Applicant and the Respondents as security for repayment of loans.

**BETWEEN:**

**INTERMARKET BANKING  
CORPORATION**



**APPLICANT**

**AND**

**KAVINO LIMITED**

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

**KAMAL SAXENA**

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

**RUBINA MOHAMED IMRAN**

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

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

*For the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs:*

*B. Kasompe (Ms), Messrs Tembo Ngulube &  
Associates*

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

*N/A*

*For the 3<sup>rd</sup> Respondent:*

*S. Chikuba and B.C Mutale, Messrs BCM  
Legal Practioners*

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**RULING**

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**Legislation referred to:**

1. *The Supreme Court Practice (White Book) 1999*

When the matter came up on the 12<sup>th</sup> day of August, 2015 for hearing of the application for leave to appeal on behalf of the 3<sup>rd</sup> Respondent, Counsel for the Applicant indicated that she had filed a Notice of Intention to raise preliminary issues on the 11<sup>th</sup> day of August, 2015.

The Notice is pursuant to Order 14/A/1 as read with Order 33/3 **Rules of the Supreme Court** and is supported by an affidavit deposed to by Counsel and skeleton arguments.

According to the said affidavit, this Court on the 14<sup>th</sup> day of July, 2015 dismissed the 3<sup>rd</sup> Respondents application for abuse of the Court process and Ordered that costs for that sitting be paid before any further application can be filed by the 3<sup>rd</sup> Respondent. That a demand for costs has been made to that effect and the 3<sup>rd</sup> Respondents have not responded and that the process of determining the costs is yet to be concluded.

It is further deposed that contrary to the Order of the Court, the 3<sup>rd</sup> Respondent on the 17<sup>th</sup> day of July, 2015 proceeded to file an application to stay the Ruling of the 14<sup>th</sup> day of July, 2015 and the Judgment of 21<sup>st</sup> day of October, 2014 and leave to appeal and appeal out of time respectively before payment of costs.

In essence the preliminary issue is whether the 3<sup>rd</sup> Respondent can proceed to make the application before payment of the costs as Ordered by the Court.

At the hearing, Counsel relied on the Notice, affidavit in support and the skeleton arguments.

In response, Counsel for the 3<sup>rd</sup> Respondent submitted viva voce that the preliminary issues have wrongly been brought under Order 14/A/1 of the **Rules of the Supreme Court** as that Order relates to issues on a point of law, determination of which brings the matter to finality, further that, the intended appeal is also against the said Ruling on the 14<sup>th</sup> day of July, 2015 which includes the issue of costs.

Counsel urged the Court to dismiss the preliminary issues. In determining the issue, I have carefully taken into consideration the Notice, affidavit evidence, skeleton arguments and the parties respective viva voce submissions. As earlier alluded to, the Notice to raise preliminary issues is premised on Order 14/A/1 as read with Order 33/3 of the **Rules of the Supreme Court**.

Indeed as rightly observed by Mr. Chikuba, Counsel for the 3<sup>rd</sup> Respondent, Order 14/A/1 provides for the Court to determine any question of law or construction of document where it appears to the Court that such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein. Which is not the case herein and Order 14/A/1 is therefore a wrong provision to rely on at this stage. However, the application is also based on Order 33/3 and I will accordingly proceed to determine the issues, based on that Order.

Indeed the Court made an "Unless" Order on the 14<sup>th</sup> day of July, 2015. As is evident from the record, the Order as to costs was a

puritive Order in view of the flagrant abuse of the Court process by Counsel for the 3<sup>rd</sup> Respondent, despite having rightly been advised and directed by the Court.

A glean of the documentation relating to the 3<sup>rd</sup> Respondents application for leave to appeal to the Supreme Court does not by any means seem to suggest that the 3<sup>rd</sup> Respondent is aggrieved by the Order for costs, but by the Order for dismissal of the 3<sup>rd</sup> Respondent application on account of abuse of the Court process.

To allow the 3<sup>rd</sup> Respondent not to comply with the "Unless" Order of the Court will amount to granting an unlimited license to Counsel for the 3<sup>rd</sup> Respondent to continue on the path of unleashing unnecessary applications which are clearly an abuse of the Court process. These "Unless" Orders are meant to streamline the processes and to put an erring party in stead. There is therefore need for parties to comply with such Orders of the Court.

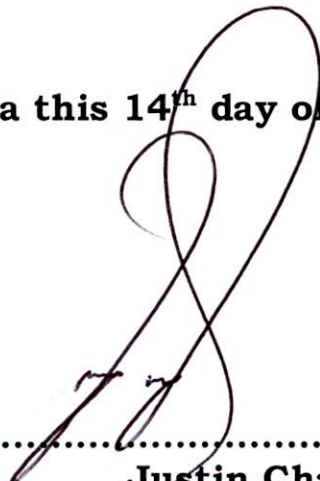
In the view that I have taken, the 3<sup>rd</sup> Respondent should settle the costs pertaining to matters relating to and incidental to the sitting

on the 14<sup>th</sup> day of July, 2015, before engaging the Court on any application.

I was inclined to expunge the 3<sup>rd</sup> Respondent's application from the record, however in exercising my discretion, I will have the same adjourned sine die with liberty to restore once the 3<sup>rd</sup> Respondent has settled the costs.

Costs of this hearing shall be in the cause.

**Delivered at Lusaka this 14<sup>th</sup> day of August, 2015.**

A handwritten signature in black ink, consisting of a large, stylized loop that crosses itself, with a smaller loop below it. The signature is positioned above a horizontal dotted line.

**Justin Chashi  
HIGH COURT JUDGE**