

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

2015/HPC/0214

In the matter of:

An application for delivery of possession of the property known as Lot No. 25567/M Central Province to the Applicant as Legal Mortgagee pursuant to a power of sale comprised in the 3rd Party Mortgage Deed dated 7th February 2014 made between the Applicant and the Respondents

BETWEEN:

INDO-ZAMBIA BANK LIMITED
AND
FUCHO TRANSPORT LIMITED
CHOLA MATAKA



APPLICANT

1ST RESPONDENT

2ND RESPONDENT

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

For the Applicant: Mr. Matiya Ndhlovu
MNR Legal Practitioners
For the Respondents: Frank Tembo
Frank Tembo & Partners

JUDGMENT

List of authorities referred to:

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

This is an action commenced by the Applicant by Originating Summons pursuant to **Order 30 Rule 14 of the High Court Rules, Cap 27 of the Laws of Zambia.**

The Originating Summons was supported by an affidavit dated 18th May 2015 deposed to by one **PASCCALINA CHABATENO MWENSO**, the Chief Manager in the employ of the Applicant. The Originating Summons was also supported by skeleton arguments filed on the same date.

The Respondents did not file an affidavit in opposition despite the Court having granted Counsel on record an adjournment to enable them file an affidavit in opposition.

Subsequently a Notice of hearing was issued setting the matter for hearing to today.

Counsel for the Respondents did not appear. No reason for none attendance was communicated to Court for none appearance.

I have perused the documents on record especially Exhibit "*PCMI*", the Overdraft Facility indicating clearly the terms and conditions and the amount advanced to the Respondents by the Applicant, being K250,000.00.

I am therefore satisfied that the Respondents are truly and justly indebted to the Applicant.

I note further that of the amount advanced, the Applicant has acknowledged in paragraph 13 of the affidavit in support of the Originating Summons that the 1st Respondent paid ZMW160,000.00 on 13th January 2015, ZMW3,000.00 ON 6th February 2015 and ZMW4,000.00 on 24th March 2015 thus reducing the principal amount by K167,000.00, leaving an outstanding amount on the principal of K83,000.00.

The Respondents have not filed an affidavit in opposition to the claim nor appeared before Court either in person or by Counsel of record on the hearing date. Clearly the Respondents have no defence to the claim.

In the event and subject to the amounts paid by the Respondents as above, the application is granted.

ORDER:-

1. I enter Judgment in favour of the Applicant for the balance of the amount advanced, less the amounts of K167,000.00 paid on the 13th January 2015, ZMW3,000.00 paid on 6th February

2015 and ZMW4,000.00 on 24th March 2015. The amount due and owing to the Applicant being K83,000.00.

2. Interest on the outstanding balance as above shall be at the rate as agreed in the Overdraft Facility dated 8th August 2013 with effect from the Cause of action till final payment. I note from Exhibit "PCM1" the Mortgaged Property was valued at K660,000.00. Taking into account the repayments made by the Respondents and the balance outstanding I find no need to order as requested under (iii) of the Originating Summons.
3. Further, I order that the Respondents shall repay the Judgment Debt with interest as above, within six (06) months from the date of this Judgment. In default the Applicant shall be at liberty to Foreclose/Sale the Mortgaged Property being Stand No. 25567/M Chibombo without further Court Order.
4. In view of the value of the Mortgaged Property stated as K660,000.00 and the relatively small balance outstanding in favour of the Applicant, the property shall be publicly advertised for sale to ensure that the best possible price is realized. In the event the property shall be sold at a price higher than the outstanding balance in favour of the Applicant, the balance shall be liable to be refunded to Respondents.

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

Dated this 7th day of December 2015



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Prisca M. Nyambe, SC
JUDGE