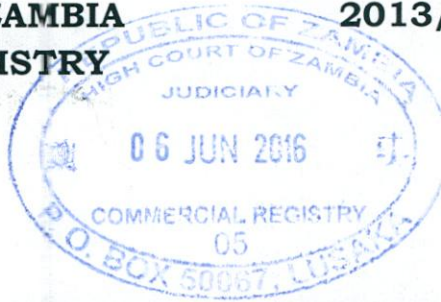


**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

2013/HPC/245



**IN THE MATTER OF : ORDER 30 RULE 14 OF THE HIGH
COURT RULES CAP 27 OF THE
LAWS OF ZAMBIA**

BETWEEN:

**CITIZENS ECONOMIC EMPOWERMENT
COMMISSION**

PLAINTIFF

AND

**SURELINK LIMITED
BRIAN SOVI
MADELEINE SOVI
PETER SHABA**

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT**

Before the Honourable Mr. Justice W.S. Mweemba at Lusaka in Chambers.

For the Applicant : *Mrs C. Chaikanika- Messrs Mululeza
Mwiimbu & Company.*

For the Respondents : *No Appearance*

J U D G M E N T

LEGISLATION REFERRED TO:

- 1. Order 30 Rule 14 of the High Court Act, Cap 27 of the Laws of Zambia*

CASES REFERRED TO:

- 1. Reeves Malambo v PATCO Agro Industries Limited SCZ Judgment No. 20 of 2007.*

The Plaintiff is claiming the following reliefs against the Defendants:

- 1. Payment of K49, 800. 00 together with all interest accrued thereon and other charges due and owing to the Plaintiff by the Defendants charge over the equipment of Surelink Limited, charge over debtor's books and Director's personal guarantees.*
- 2. Foreclosure.*
- 3. Possession.*
- 4. Sale of the Mortgaged Property.*
- 5. Any other relief the Court may deem fit.*
- 6. Costs.*

There is an Affidavit in Support of the Originating Summons sworn by Nchimunya Monde the Credit Control and Risk Manager of the Plaintiff. It shows that the Plaintiff availed the 1st Defendant a facility of project finance in the sum of ZMW49, 800. 00 on or about 21st January, 2009.

That the 1st Defendant's borrowing was secured by a charge over equipment of Surelink Limited, a charge over the debtor's book and Director's personal guarantees.

That the 1st Defendant executed a Guarantee with the Plaintiff but has since defaulted in its payment obligations and demand had been effected.

He also deposed that another demand letter was written to the 1st Defendant who was clearly indebted to the Plaintiff in the sum of K49, 800.00 with interest.

There is no Affidavit in Opposition filed into Court by the Defendants.

Counsel for the Plaintiff filed Skeleton Arguments into Court on 19th August, 2014. She submitted that the matter had been commenced pursuant to Order 30 Rule 14 of the High Court Act, Cap 27 of the laws of Zambia which states that:-

“14. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclosure or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable in the chambers of a Judge for such relief of the

nature or kind following as may by the summons be specified...”.

Counsel contended that the Originating Summons issued against the Defendants were for the payment of K49,800.00 together with all interest accrued thereon and other charges due and owing to the Plaintiff by the Defendants over the equipment of Surelink Limited, charge over debtors books and Director's personal guarantees, foreclosure, possession, sale of the mortgaged property, any other relief that the Court may deem fit and costs.

Counsel also stated that it was not in dispute that the Plaintiff availed the 1st Defendant with a sum of K49, 800.00 on or about 21st January, 2009 as shown by loan facility letter.

That the 1st Defendant's borrowing was secured by a charge over the equipment of Surelink Limited, charge over debtor's book and Director's Personal Guarantees.

Further that the 1st Defendant had defaulted in its payment obligation and a letter of demand had been effected on the 7th of December, 2010 whilst the second one had been effected on 10th April, 2012.

Counsel then argued that the Plaintiff sought the reliefs herein as the 1st Defendant was clearly indebted to the Plaintiff in the sum of K49,800.00 with interest and that it had no defence whatsoever.

There were no Skeleton Arguments from the Defendants filed into Court.

I have considered the Affidavit evidence and Skeleton Arguments filed into court by Counsel for the Plaintiff. I note from the record that the Defendants were served with the Originating Summons, Affidavit in Support and Notice of Hearing on 26th July, 2013. I also note that on all the hearings after this, the Defendants made no appearance before Court.

It is not in dispute that the Plaintiff advanced the Defendants a loan of K49, 800.00 on or about 21st January, 2009 which was secured by a Charge over the equipment of Surelink Ltd, a charge over the Debtor's book and Director's Personal Guarantees.

Counsel for the Plaintiff contended that it was not in dispute that the Plaintiff availed the 1st Defendant a loan of K49, 800.00 on or about 21st January, 2009 and that the 1st Defendant defaulted in his payment obligation. Thus, the Plaintiff sought these reliefs as the 1st Defendant was clearly indebted to the Plaintiff in the sum of K49, 800.00 with interest.

Counsel commenced this action under Order 30 Rule 14 of the High Court Rules, Cap 27 of the Laws of Zambia which states that:-

“14. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having

property subject to a legal or equitable charge, or any person having the right to foreclosure or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable in the chambers of a Judge for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say-

Payment of moneys secured by the mortgage or charge;

Sale;

Foreclosure;

Delivery of possession (whether before or after foreclosure) to the mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge or by any other person in, or alleged to be in possession of the property;

Redemption;

Reconveyance;

Delivery of possession by the mortgagee”.

Further in the case of **REEVES MALAMBO V PATCO AGRO INDUSTRIES LIMITED (1)** the Supreme Court held that a mortgagee was at liberty to exercise his right to foreclosure and

sell the property in the event of default and failure by the mortgagor to redeem the Mortgaged Property.

In the present case, the Plaintiff has shown the Court uncontested evidence in form of the facility letter dated 2nd January, 2009 and the guarantees executed on 1st January, 2009 that it advanced the 1st Defendant a loan of K49,800.00 on or about 21st January, 2009 and that the 1st Defendant defaulted in repaying it back.

Based on the foregoing reasons I hereby award the Plaintiff the reliefs it sought.

I enter Judgment in favour of the Plaintiff against the 1st Defendant in the sum of K49,800.00 being the principal sum and interest outstanding as at date of filing of the Originating Summons. The said sum shall attract contractual interest as agreed under Clause 6 of the Loan Facility Letter dated 2nd January, 2009 up to date of final payment.

I further order that the said sum plus interest shall be paid within 30 days from today.

In default thereof, the Plaintiff shall be at liberty to foreclose, take possession and sell the Charged Equipment.

Should there be any amount outstanding after such sale the 2nd, 3rd and 4th Respondents shall as Guarantors pay any shortfall.

Costs to the Applicant.

Leave to appeal is granted.

Delivered in Chambers at Lusaka this 6th day of June, 2016.



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WILLIAM S. MWEEMBA
HIGH COURT JUDGE