

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

2014/HPC/0271

In the matter of:

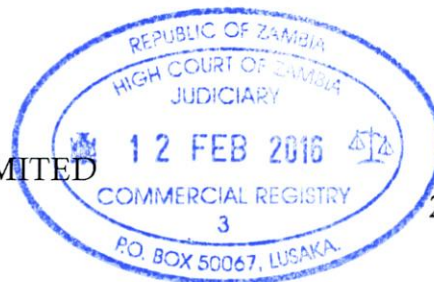
An application for delivery of possession of the property known as Subdivision No. 301 of Subdivision F of Farm Number 33a Lusaka to the Applicant as Legal Mortgagee pursuant to a right of sale in a Mortgage Deed dated 26th January 2012 made between the Applicant and the 1st and 2nd Respondents.

BETWEEN:

INDO-ZAMBIA BANK LIMITED

AND

VICTORY PLUMBERS ZAMBIA LIMITED
PRISCILLA MUNTANGA



APPLICANT

1ST RESPONDENT
2ND RESPONDENT

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

For the Applicant: Mr. M N Ndhlovu
M N R Legal Practitioners

For the Respondents: *No appearance*

JUDGMENT

Legislation referred to:

1. Order 30 Rule 14 of the High Court Rules Chapter 27 of the Laws of Zambia
2. Section 4 of the Law Reform (Miscellaneous Provisions) Act

Cases referred to:

1. Union Bank (Zambia) Ltd. Vs Southern Province Co-operative Marketing Union
SCZ Judgment No. 7 of 1997 (1995/1997) ZR 207

This is an application by the Applicant brought pursuant by **Order 30 Rule 14 of the High Court Rules Chapter 27 of the Laws of Zambia** seeking the following reliefs:-

1. That the 1st Respondent immediately settles the Principal and Interest of ZMW116, 369.63 due to the Applicant.
2. That should the 1st Respondent fail to pay the principal and interest in respect of the said ZMW116, 369.63 due to the applicant, the property belonging to the 2nd Respondent comprised in the third party legal mortgage dated 26th January 2012 and known as Subdivision No. 301 of Subdivision F of Farm Number 33a Lusaka be delivered to the applicant to enable the applicant duly exercise its power to sell, assign, transfer or otherwise dispose of the said Mortgaged Property.
3. That the costs of and occasioned by these proceedings be borne by the Respondents.

The application was supported by an affidavit with exhibits marked “*KNL1*” to “*KNL7*” as well as skeleton arguments and list of authorities.

The Respondents did not file an affidavit in opposition either in person or by Counsel.

On 20th May 2015 the Applicant obtained an order for substitute service. In pursuance of the same the Applicant did cause to be published in the Zambia Daily Mail Edition of 21st and 22nd September 2015, an advertisement notifying the 1st and 2nd Respondents of this action and the date of hearing. An affidavit of service was filed as evidenced by exhibits "GN1" and "GN2" respectively.

At the hearing date as advertised the Respondents did not appear either in person or by Counsel. By leave of Court **Mr. Ndhlovu** argued the matter on behalf of the Applicant.

On the basis of the evidence on record I am satisfied that the Respondents are justly indebted to Applicant.

The Respondents not having filed an affidavit in opposition and having failed to appear before Court as indicated have no defence to the claim.

In the event the Application succeeds on principle.

However I note from Exhibit "KNL1" the Facility Letter provides that interest shall be compounded monthly and that additional interest at the rate of 15% per annum above the normal rate shall be charged on all excess amounts above the limit and on all overdue amounts allowed at the bank's discretion and such interest shall be compounded monthly.

I, consider compound interest as envisaged in **Clause 4(i) and (ii)** to be penal interest and therefore prohibited within the context of the Case of **Union Bank (Zambia) Ltd. Vs Southern Province Co-operative Marketing Union¹**, which held *inter alia* that:-

“Penal interest is certainly not part of banking practice or custom in Zambia, and even if there had been an agreement to pay penal interest, such would have been liable to be struck down for being a penalty objectionable at common law”.

In addition the compounding of interest flies in the teeth of **Section 4 of the Law Reform (Miscellaneous Provisions) Act,² Cap 74 of the Laws of Zambia** which specifically prohibits the charging of interest upon interest.

Taking into account the above authorities, I struck down **Clause 4(i) and (ii)** which provides for the charging of compound interest and additional interest at 15% per annum above the normal interest as the same is contrary to the law as provided above. Compound interest by its nature is extravagant unconscionable and amounts to unjust enrichment.

¹ SCZ Judgment No, 7 of 1997 (1995/1997) ZR 207

Section 4

² *In any proceedings tried in any Court of record for the recovery of any debt or damages, the Court may if it thinks fit, order that there shall be included in the sum for which Judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of Judgment.*

Provided nothing in this Section

(i) shall authorize the giving of interest upon interest.....”

The effective rate of interest on the Overdraft Facility shall be as provided for in **Clause 4(i)** until final settlement.

With the above in view I make the following Order:-

1. I enter Judgment in favour of the Applicant in the sum of the principal Loan advanced still outstanding with effect from the cause of action until final settlement.
2. That the Respondents shall pay 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 exercise its right of Foreclosure/Sale of the Mortgaged Property without any further Court Order.
3. Costs shall follow the Cause, to be taxed in default of agreement.

Right to Appeal granted.

Dated this.....^{12th} day of February.....2016



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Prisca M. Nyambe, SC
JUDGE