

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

2013/HPC/0323

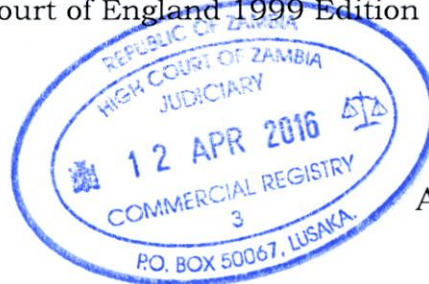
In the matter of: Order 30 Rule 14 of the High Court Rules Chapter 27 of the Laws of Zambia and Order 88 Rule 1 of the Rules of the Supreme Court of England 1999 Edition

**BETWEEN:**

GENESIS FINANCE LIMITED

AND

COMFORT SELECT INVESTMENT LIMITED  
NEVES LOIVER LUAMBULA



APPLICANT

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT

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

For the Applicant: Mrs. D Findlay  
Assisted by Ms. M Kabimba  
*Messrs D Findlay & Associates*

For the 1<sup>st</sup> Respondent: *No appearance*

For the 2<sup>nd</sup> Respondent: Mr. M L Hamachila  
*Ivan Mulenga & Company*

---

**RULING**

---

**Legislation referred to:**

1. Order III Rule 2 of the High Court Act Cap 27 of the Laws of Zambia
2. Order 30 Rule 14 of the High Court Rules Chapter 27 of the Laws of Zambia
3. Order 88 Rule 1 of the Rules of the Supreme Court of England 1999 Edition

This is the 2<sup>nd</sup> Respondent's application to set aside sale for being unfair, and inconceivable and manifestly unjust Pursuant to **Order III Rule 2 of the High Court Act Cap 27 of the Laws of Zambia**. The application is supported by an affidavit and affidavit in reply together with skeleton arguments.

The application was opposed and the Applicant filed an affidavit in support dated 5<sup>th</sup> June 2015 together with skeleton arguments and lists of authorities.

The history of this case is that the action was commenced on 13<sup>th</sup> June 2013 before Judge Wood. On 13<sup>th</sup> September 2013 Judge Wood granted the Applicant an Order for Foreclosure, Possession and Sale of the Mortgaged Property. Writ of possession was issued on 22<sup>nd</sup> January 2014. The 2<sup>nd</sup> Respondent then made an application to Stay the Writ of Possession, Stay the sale and regain possession.

This application was heard by Judge Wood on 4<sup>th</sup> February 2014. Judge Wood dismissed the application with costs in a ruling dated 10<sup>th</sup> March 2014.

In his ruling Judge Wood found that: *"The explanation being advanced (by the 2<sup>nd</sup> Respondent) in the affidavit in reply can only be described as the work of a very creative mind and a pack of lies in the light of the overwhelming documentary evidence which shows that he (the 2<sup>nd</sup> Respondent) signed all the documents freely and without coercion"*. He accordingly dismissed the application with costs.

The above facts were not challenged by the 2<sup>nd</sup> Respondent in the hearing before this Court. Judge Wood was on firm legal grounds in dismissing the aforesaid application.

Mrs. Finlay also submitted that the subject property has been sold, and an account rendered showing that there is still an amount owing to the Applicant. In view of this fact there is nothing to stay as the subject property has already been sold.

With regard to the affidavit of one Neves Oliver Luambula filed in support of the application to Stay Execution of Judgment dated 10<sup>th</sup> September 2013 on account of another Judgment dated 20<sup>th</sup> August 2014, firstly the 2<sup>nd</sup> Respondent has already made an application to Stay Execution of the Judgment dated 10<sup>th</sup> September 2013, which application was heard and determined in a Ruling dated 10<sup>th</sup> March 2014. The application was dismissed with costs. No appeal has been lodged against the Ruling dated 10<sup>th</sup> March 2014.

The record will show that neither the Judgment dated 10<sup>th</sup> September 2013 granting Possession and Foreclosure and Sale to the Applicant, nor the Ruling dated 10<sup>th</sup> March 2014, dismissing the application for Stay have either been set aside or appealed against. Therefore both the Judgment and Ruling are valid and binding on the Respondents.

Until either of the Court orders have been set aside or stayed, the Applicant is entitled to enjoy the fruits of its Judgment by way of enforcement, execution and sale of the Mortgaged Property.

Moreover as stated above events have overtaken the 2<sup>nd</sup> Respondent's application aforesaid as the Applicant following the Court order of 10<sup>th</sup> September 2013, and the ruling dated 10<sup>th</sup> March 2014 the Applicant has already disposed off the subject property with the registration and transfer having been effected in accordance with laid down legal procedures.

On the basis of the foregoing the Application is dismissed with costs to the Applicant, to be taxed in default of agreement.

Dated this.....12<sup>th</sup>.....day of .....April.....2016



.....  
**Prisca M. Nyambe, SC**  
**JUDGE**