

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

2016/HPC/0385



BETWEEN:

LASTON ALIZWAN (T/A LASKA MARKETING)

PLAINTIFF

AND

SIMUNJI SIMUNJI

DEFENDANT

Before Lady Justice B.G Lungu on 25th January, 2017 in chambers at Lusaka.

For the Plaintiff, In Person

RULING

Legislation and Other Materials referred to:

1. Order 30, rule 11(g), High Court Rules, High Court Act, CAP 27
2. Order V, rule 15, High Court Rules, High Court Act, CAP 27

This Ruling relates to the hearing of an application on the part of the Plaintiff for leave to sale Stand No. 15210/1080, Kamwala South, which was pledged as security by the Defendant.

The application was stated to be made pursuant to **Order 30, rule 11 (g) of the High Court Rules, High Court Act, CAP 27 of the Laws of Zambia**, which gives the Court authority to dispose of certain matters in chambers, including, applications for or relating to the sale by auction or private contract of property.

The application was made by Summons, accompanied by an Affidavit in Support sworn by the Plaintiff and Skeleton Arguments, all filed on 2nd November, 2016.

The brief facts of the case, as revealed by the Affidavit in Support, are that on 2nd June, 2016, the Plaintiff granted the Defendant a loan of K25,000, which attracted interest of K10,000, payable within 30 days from 2nd June, 2016, on the security of a pledge, by the Defendant, of Stand No. 15210/1080 Kamwala South.

The Affidavit further revealed that the Defendant had refused or neglected to pay the loan notwithstanding the expiry of the loan term.

The Affidavit in Support also contained several prayers, which I will neither regurgitate nor consider for the simple reason that **Order V, rule 15 of the High Court Rules, High Court Act, CAP 27 of the Laws of Zambia** prohibits the inclusion, in an affidavit, of extraneous matter by way of objection or prayer or legal argument or conclusion.

I find it necessary to also point out that the Affidavit in support did not refer to any documentary evidence, albeit some documents were attached as exhibits.

When the matter came up for hearing, the Plaintiff appeared in person and submitted that he would rely on the Summons, Affidavit and Skeleton Argument filed.

The argument contained in the Skeleton Arguments was that an order for sale of real property is within the realm of mortgage actions and as such leave of court is required to secure a default judgment. Accordingly, the Plaintiff beseeched the Court to grant him leave for an order of sale of the pledged property.

I have carefully examined the Summons, Affidavit in Support and the Skeleton Arguments. It is clear to me, from my examination, that what the Plaintiff seeks at this point is not the determination of the matter on the merits, but leave to enter a default judgment. I must hasten to add that the High Court Rules contains orders which prescribe when leave of court is required as a precursor to entering a default judgment or even to deal with foreclosure. I resist the temptation to offer legal advisory services by delving into those orders, suffice to say that leave of court is not sought under Order.30, rule 11 of the High Court Rules.

In view of the foregoing, I find the Plaintiff's application misconceived and irregular. Consequently, the application is dismissed.

I make no order as to costs.

Leave to appeal is granted.

Dated the 14th day of June, 2017



Justice B.G.Lungu

HIGH COURT JUDGE