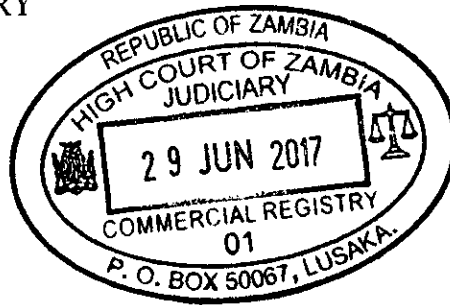


IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2016/HPC/0547



BETWEEN:

CAVMONT BANK LIMITED

AND

KEGAN SERVICES LIMITED

BOBI KWELELE NEBWE

APPLICANT

1ST RESPONDENT

2ND RESPONDENT

Before Hon. Lady Justice Dr. Winnie S. Mwenda in Chambers at Lusaka this 29th day of June, 2017.

For the Applicant:

Mr. S. C. Mwananshiku of Messrs M & M Advocates.

For the Respondent:

Mr. M. Muchende of Messrs Dindi & Company.

RULING

Legislation referred to:

Order 30 rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia.

On 18th November, 2016 the Applicant herein, pursuant to Order 30 rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia, filed an Originating Summons in this Court together with a verifying affidavit sworn by one Martha Lungu Sichone, the Applicant's Recoveries and Securities Manager, for the following relief: -

- (i) Payment of all monies plus interest thereon due to the Applicant from the Respondents and such costs as would be payable by the Respondents if this were the only relief granted;
- (ii) Alternatively, delivery by the Respondents to the Applicant of possession of the mortgaged property or the relief of foreclosure and further, an order for the power of sale of the property by the Applicant;

- (iii) Further or other relief;
- (iv) Costs of this action.

According to Martha Lungu Sichone's affidavit, the Applicant availed the 1st Respondent an overdraft facility in the sum of K2,200,000.00 on 19th June, 2014 which was secured by a Third Party Mortgage executed by the 1st and 2nd Respondents and registered at the Ministry of Lands against Stand No. 10781, Roma, Lusaka. She averred that the 1st Respondent has persistently defaulted in paying equated monthly instalments despite numerous demands and reminders from the Applicant and that the Respondents are indebted to the Applicant in the sum of K3,260,719.26 being the amount outstanding as at 31st October, 2016 on the 1st Respondent's mortgage account with the Applicant.

The Respondents opposed the Summons by filing in Court an Affidavit in Opposition to Originating Summons deposed to by Bates Mukwena, a businessman and director in the 1st Respondent Company and Bobi Kwelele Nebwe the 2nd Respondent herein. Bates Mukwena deposed that it is correct that on or about 19th June, 2014, the 1st Respondent accessed a mortgage secured overdraft to the tune of K2,200,000.00 with the Applicant. This facility was to expire on 31st May, 2015 but was extended by mutual consent of the parties on or about 23rd June, 2015 to allow the 1st Respondent continue accessing the remaining balance against the overdraft facility of K2,200,000.00. The deponent further averred that the 1st Respondent was servicing the facility in the first half of the year 2015 through receipts from the main government projects but from about June, 2015 to date there have been no payments received from their main client, the Government of the Republic of Zambia, on the contracts they have with it.

However, the 1st Respondent anticipated that the company would start receiving funds since the country had gone past the Presidential and General Elections and the 2017 budget had been announced.

Bobi Kwelele Nebwe deposed that he is the mortgagor of the demised property, Stand No. 10781, Lusaka and that the default in paying the debt was inadvertent but not insurmountable.

The Respondents prayed that this Court grants the 1st and 2nd Respondents the equitable right of redemption by allowing the 1st Respondent to service and amortise the debt prior to the sale of the security.

They proposed to amortise the debt in instalments on a quarterly basis at simple interest from the date of the writ to date of judgment and thereafter at average bank of Zambia lending rate on outstanding balance until satisfied. Bobi Kwelele Nebwe contended that he stands to be prejudiced if the Court declines to grant him and the 1st Respondent the equitable right of redemption because it will be impossible to replace the property on Stand No. 10781 if the same is sold but the Applicant will not be prejudiced if the 1st Respondent is allowed to service the facility and amortise the capital outlay in instalments of K600,000.00 because the Applicant will recover the debt and accrued interest.

At the hearing of the Originating Summons, Mr. Mwananshiku, Learned Counsel for the Applicant, indicated that he had had sight of the Affidavit in Opposition to the Originating Summons and had noted that liability is not denied; that the only request that the Respondents have is that the Court grants them a redemption period during which they would pay quarterly. Counsel said the Applicant had no objection to the Court granting the Respondents a redemption period and would leave it to the Court's discretion to determine a reasonable redemption period.

In response, Mr. Muchende, learned Counsel for the Respondents, urged the Court to invoke its discretionary power to allow the Respondents to amortise the debt as contained in paragraph 12 of the Respondent's Affidavit in Opposition to Originating Summons.

I have examined the Originating Summons and Affidavit in Support thereof. I have also perused the Affidavit in Opposition to the Originating Summons and


considered the *viva voce* submissions by Counsel on both sides. Clearly, the Respondents do not deny liability for the debt herein. Their only desire as submitted, is that this Court grants them a redemption period during which to pay the outstanding amount in quarterly instalments of K600,000.00 per quarter.

I, therefore, enter judgment for the Applicant in the sum of K3,260,719.26 plus contractual interest from the date of filing the Originating Summons to date of judgment and thereafter, at average short term bank deposit rate as determined by the Bank of Zambia until full payment. The said sum plus interest shall be paid in six (6) equal quarterly instalments with effect from 1st September, 2017. In the event that the 1st Respondent defaults in the payment of one instalment, the whole amount remaining unpaid shall forthwith become due and payable; whereupon the 2nd Respondent shall deliver to the Applicant vacant possession of the mortgaged property being Stand No. 10781, Roma, Lusaka in the Lusaka Province of the Republic of Zambia who shall be at liberty to foreclose the same, take possession and exercise its right of sale.

I award costs to the Applicant, to be taxed in default of agreement.

Leave to appeal is granted.

Delivered in Chambers at Lusaka this 29th day of June, 2017.


Winnie S. Mwenda (Dr)
HIGH COURT JUDGE