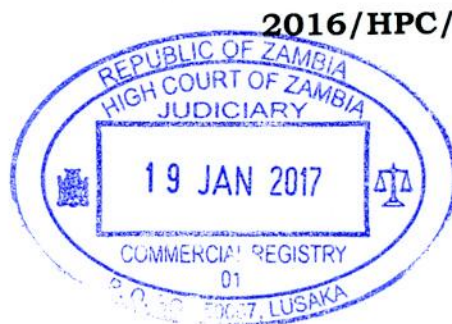


**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**



**IN THE MATTER OF : AN APPLICATION UNDER ORDER 30 RULE 14 OF
THE HIGH COURT RULES, CHAPTER 27 OF THE
LAWS OF ZAMBIA.**

**IN THE MATTER OF : THE PROPERTY COMPRISED IN A LEGAL
MORTGAGE RELATING TO PLOT NO. 684/E83
CHIPATA.**

**IN THE MATTER OF : FORECLOSURE, POSSESSION AND SALE OF THE
MORTGAGED PROPERTY.**

BETWEEN:

STANBIC BANK ZAMBIA LIMITED

APPLICANT

AND

ESTHER REUBEN KAMUNGU

RESPONDENT

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

*For the Applicant : Mr. A. Siwila – Messrs Mambwe, Siwila & Lisimba
Advocates.*

For the Respondent: Mr. Joh Phiri – Legal Aid Counsel.

J U D G M E N T

LEGISLATION REFERRED TO:

1. **ORDER 30 RULE 14 OF THE HIGH COURT RULES, CHAPTER 27 OF THE LAWS OF ZAMBIA.**

CASES REFERRED TO:

1. **S. BRIAN MUSONDA (RECEIVER OF FIRST MERCHANT BANK ZAMBIA LIMITED (IN RECEIVERSHIP) V HYPER FOOD PRODUCTS LIMITED, TONY'S HYPER MARKET LIMITED AND CREATION ONE TRADING (Z) LIMITED (1999) ZR 124.**

WORKS REFERRED TO:

1. **MEGARRY'S MANUAL OF THE LAW OF REAL PROPERTY, FOURTH EDITION.**

The Applicant by way of Originating Summons filed on 11th March, 2016 made pursuant to Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia claims the following against the Respondent:

1. *Payment of the sum of K226,139.62 plus interest due under the First Legal Mortgage.*
2. *Delivery up and possession of Lot No. 684/E83 Chipata.*
3. *Foreclosure and sale.*
4. *Further and Other relief.*
5. *Costs.*

The application is supported by an Affidavit in Support and Skeleton Arguments filed into Court on 11th March, 2016. The Affidavit in Support was sworn by Reuben Matala Malindi on behalf of the Applicant. It is deposed that by Facility Letter dated 17th October, 2011 the Applicant Bank availed the Respondent a Credit Facility for the sum of K222,9000,000.00 old currency. The Facility Letter is exhibited and marked "RMM1". That as security for the said Credit Facility, the Respondent surrendered her Certificate of Title relating to Lot No. 684/E83 Chipata for purposes of creating a First Legal Mortgage. It is stated that the Respondent later executed a First Legal Mortgage Deed which was subsequently registered. Copies of the Certificate of Title and the First

Legal Mortgage are exhibited to the Affidavit marked as "RMM2" and "RMM3" respectively.

It is deposed that contrary to the terms and conditions of the Credit Facilities the Respondent has not been servicing the debt regularly as a result of which the total balance outstanding at the commencement of this action was K226,139.62. That this sum will continue to rise due to interest charges. The Statement of Account is exhibited to the Affidavit and marked as "RMM4".

It is stated that despite reminders by the Applicant to settle the debt the Respondent has neglected, failed and or refused to settle the same. That the Respondent has no defence to the Applicant's claim and in the premises the Court was asked to grant the reliefs sought.

The Applicant in its Skeleton Arguments filed into Court on 11th March, 2016 submitted that the Respondent has no defence to the Applicants claim.

The Applicant also contended that a mortgagees remedies are cumulative. That a mortgagee is not bound to select any one of the remedies and pursue that particular remedy exclusively. That a mortgagee is at liberty to employ one or all of the remedies to enforce payment. The Applicant Bank relied on the case of **S. BRIAN MUSONDA (RECEIVER OF FIRST MERCHANT BANK ZAMBIA LIMITED (IN RECEIVERSHIP) V HYPER FOOD PRODUCTS LIMITED, TONY'S HYPER MARKET LIMITED AND CREATION ONE TRADING (Z) LIMITED (1)** for this submission.

The learned authors of **MEGARRY'S MANUAL OF THE LAW OF REAL PROPERTY, FOURTH EDITION** were also cited at page 479 where it is stated that:

“The Mortgagee’s remedies are cumulative. A Mortgagee is not bound to select one of the above remedies and pursue that and no other, subject to his not recovering more than is due to him he may employ any o all of the remedies to enforce payment”.

I accept the Applicant Bank’s submissions in this regard.

The Respondent has not opposed the application. Although the parties were discussing possible excuria settlement from about 30th May, 2016 and the Applicants Counsel sent a draft Consent Order to the Respondents Counsel in August, 2016 these discussions have not yielded any positive result.

I note that the Respondent who was a member of the Applicants staff obtained a staff loan to purchase and renovate the Mortgaged Property namely Lot No. 684/E83, Kapata, Chipata. The Facility Letter shows that interest on the House Loan Amount of K222,900.00 (then K22,900,000.00) was to be charged at the then staff rate of 7% (Seven Percent) per annum calculated on the daily balances outstanding with monthly rests and was to be debited to the Respondent’s Loan Account monthly. The Respondent therefore consented to Compound Interest being charged and the loan ought to have been repaid over a period of 312 months in equal monthly installments of K1,553.26 (then K1,553,250.93).

As the Respondent has since defaulted in her repayment obligations as evidenced by the Statement of Account as at 19th February, 2016, I hereby enter Judgment in favour of the Applicant Bank against the Respondent for the sum of K226,139.62 together with contractual interest of 7% per annum from 11th March, 2016 to date of Judgment i.e 19th January, 2017 and thereafter at the average lending rate as determined by the Bank of Zambia up to date of full payment.

It is ordered that the Judgment sum of K226,139.62 together with interest be paid within 60 days from date hereof.

It is trite law that the mortgagee's remedies or reliefs indicated in the Originating Summons are cumulative and as such in the event of default by the Respondent in paying the Judgment sum herein, the Applicant Bank shall Foreclosure, have Possession of the Mortgaged Property namely Lot No. 684/E83 Chipata and exercise its Power of Sale.

Costs are awarded to the Applicant to be taxed in default of agreement.

Leave to appeal is granted.

Dated the 19th day of January, 2017.



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WILLIAM S. MWEEMBA
HIGH COURT JUDGE