

**IN THE HIGH COURT FOR ZAMBIA      2017/HP/0141**  
**AT THE COMMERCIAL REGISTRY**  
**AT LUSAKA**

**(Commercial Jurisdiction)**

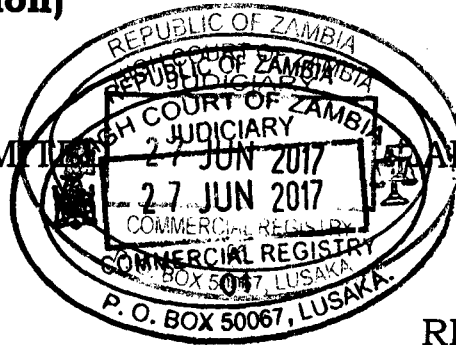
BETWEEN:

INDO ZAMBIA BANK LIMITED      APPLICANT

**AND**

ZEBRON BANDA

RESPONDENT



**Before the Hon Lady Justice Irene Zeko Mbewe in  
Chambers**

*For the Applicant*                    :      *Mr. Ndhlovu of Messrs MRN Legal  
Practitioners*

*For the Respondent*                :      *In Person*

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**RULING**

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**Cases Referred To:**

1.      *Kapiri Glass Products Limited v Maruti Oil Limited [1993-1994] ZR  
73*
2.      *Southern Cross Company Limited v Nonc Systems Technology  
Limited 2011/HK/273*
3.      *SP Mulenga and Others v Investrust Merchant Bank Limited SCZ  
Judgment No 15 of 1999*

4. *Match Corporation Limited v Development Bank of Zambia and the Attorney-General [1999] ZR 13*
5. *Sunday Kawayu and Another v First Alliance Bank (Z) Limited SCZ/8/2008 Unreported*
6. *Zambia Export and Import Bank v Mkuyu Farms Limited and Others [1993-1994] ZR 36*

**Legislation Referred To:**

1. *Rules of the High Court, Cap 27 of the Laws of Zambia*

On the 28<sup>th</sup> November 2016, in this cause I entered Judgment in favour of the Applicant as follows:

1. It is Ordered that Judgment is entered in favour of the Applicant against the Respondent in the sum of ZMW460,558.81 and ZMW118,561.53 of the Judgment sum total being ZMW579,120.34 as at 18<sup>th</sup> February 2016 with interest as contractually agreed from the date of the Originating Summons to date of Judgment. Thereafter interest shall be paid at the Bank of Zambia lending rate until full payment.
2. The Judgment Sum of ZMW579,120.34 shall be paid within 90 days from date hereof. In the event of default

by the Respondent, the Applicant Bank shall be at liberty to foreclose, have vacant possession of the mortgaged properties namely Stand 29514 and Stand 35014, Lusaka, and shall exercise its power of sale of the properties.

This is an application by the Respondent to pay the Judgment debt in monthly instalments and for a stay of execution made pursuant to **Order 36 Rule 9 High Court Rules, Cap 27 of the Laws of Zambia**. The application is accompanied by an affidavit in support deposed to by Zebron Banda the Respondent herein. The deponent avers that this Court on 28<sup>th</sup> November 2016 entered Judgment in favour of the Applicant in the sum of ZMW579,120.34 with contractually agreed interest payable in 90 days from date of the Judgment, and in default the Applicant to foreclose on the mortgaged property and take vacant possession of Stand 29514 and Stand 35014, Lusaka and exercise the power of sale. The deponent avers that the Respondent has since paid a sum of ZMW213,880 to the Applicant leaving an outstanding balance of ZMW579,120.34. That the deponent is willing to settle the debt in instalments having

defaulted due to the business losses he suffered as a result of the prevailing economic situation in the country. According to the Respondent, his business is improving and that he is in a position to pay monthly instalments of ZMW15,000 until the Judgment debt is settled. The Respondent prayed for the Court to grant the application to stay the Judgment of 28<sup>th</sup> November 2016 pending an application for payment of the Judgment debt in instalments.

The Respondent filed skeleton arguments and relied on **Order 47 Rule 1 and Order 45 Rule 11 of the Rules of the Supreme Court, 1999 Edition** by way of submissions which I shall not take into consideration as it is only cited in the skeleton arguments. The case of **Kapiri Glass Products Limited v Maruti Oil Limited, Southern Cross Company Limited v Nonc Systems Technology Limited and SP Mulenga and Others v Investrust Merchant Bank Limited** were cited in support of the application to pay the Judgment debt in instalments. The Court's attention was drawn to the case of **Match Corporation Limited v Development Bank of Zambia and the Attorney-General** where the Court held that

where there are reasonable prospects of payment of the judgment debt, the borrower in a mortgage action may be allowed to pay in instalments.

The Applicant opposed the application by way of affidavit deposed to by Susan Mbangweta the Branch Manager at the Applicant's Kamwala Branch, Lusaka. The deponent avers that on 23<sup>rd</sup> January 2017, the Applicant computed the interest on the Judgment debt which stood at ZMW708,659.69 as at 17<sup>th</sup> January 2017 (**Exhibit "SM1"**). That the Respondent has made no effort to pay the judgment debt and that his proposal to liquidate the judgment debt in monthly instalments of ZMW15,000 is unreasonable as it will take over 48 months to settle thereby effectively depriving the Applicant the fruits of its judgment. The deponent avers that the Order for a stay of execution be discharged to enable the Applicant take possession of and dispose of the mortgaged properties being Stand 29514 and Stand 35014, Lusaka.

In the Applicant's skeleton arguments filed into Court on 24<sup>th</sup> February, 2017, Counsel for the Applicant argues that in the **Match**

**Corporation v Development Bank of Zambia** cited by the Respondent, the borrower made a reasonable proposal of a large initial payment and thereafter reasonable monthly instalments. That in this case, the Respondent proposes to settle the Judgment debt over a period of over 48 months and the Respondent does not indicate when he will be ready to commence the repayments and what efforts the Respondent is undertaking to settle the judgment debt. In support of the proposition that a Judgment debtor can pay a Judgment debt within a reasonable time, Counsel for the Applicant relies on the case of **S Brian Musonda (Receiver of first Merchant Bank Zambia Limited) In Receivership v Hyper Food Products Limited and Others**. Counsel for the Applicant argues that the Respondent has not furnished any good reason to justify an extension of time beyond the ninety (90) days given by the Court to redeem the mortgage. It is Counsel for the Applicant's submission that the Respondent's application to pay the Judgment debt in instalments of ZMW15,000 be dismissed and the stay of execution discharged so that the Applicant can exercise its right as mortgagee.

I have carefully considered the affidavit evidence, skeleton arguments and list of authorities and oral submissions by both parties and the authorities brought to my attention.

The issue for determination is whether or not to grant the Respondent's application to pay the judgment debt in instalments and to stay execution of the Judgment dated 28<sup>th</sup> November 2016.

The Respondent's application is predicated on **Order 36 Rule 9 and 10 High Court Rules, Cap 27 of the Laws of Zambia** which provides as follows:

**"(9) Where any Judgment or order directs the payment of money, the Court or a Judge may for any sufficient reason, order that the amount shall be paid by instalments with or without interest. The Order may be made at the time of giving Judgment or at any time afterwards and may be rescinded or varied upon sufficient cause at any time. The order shall state that upon failure of any**

**instalment, the whole amount remaining unpaid shall forthwith become due.**

**Provided that where there is default in paying any one installment, there shall be no order for stay of execution on the balance;**

**(10) Except as provided for under rule 9, the court or Judge may, on sufficient grounds order stay of execution of a judgment.**

The Court has the powers to grant an order to pay a Judgment debt in instalments. The Court's powers are discretionary and in exercising its discretion, the Court should satisfy itself that there are sufficient reasons to warrant the granting of an order to settle the Judgment debt in instalments. It is trite law that the Court will not deprive a successful litigant the fruits of its judgment unless sufficient cause or special circumstances exist. Instructive is the case of Sunday **Kawaya and Another v First Alliance Bank (Z) Limited** in which the Court held that:

**" There may be cases where the harshness of an execution and its harmful consequences can be avoided without keeping the creditor out of his money and while ensuring**



**that the money is recovered within a reasonable period. This facility is not available as a matter of course: the debtor must make out a good case for instalments which can be considered to be a sufficient reason or special circumstances."**

The Supreme Court in the case of **Zambia Export and Import Bank v Mkuyu Farms Limited and Others** held that:

**"it is quite clear from this order that a court may order a judgment debt to be satisfied by instalments upon sufficient cause being shown by the judgment debtor".**

I concur with the decisions in the cited cases and adopt them for purposes of determining this application.

The Respondent was given a moratorium of ninety (90) days within which to settle the Judgment debt failing to which the Applicant is at liberty to foreclose, take possession and exercise the power of sale over the mortgaged properties. The Respondent proposes to pay the Judgment debt in monthly instalments of ZMW15,000. Counsel for the Respondent argues that the instalment payments will take a

period of over 48 months to settle the Judgment debt. The Respondent cites the case of **Match Corporation Limited v Development Bank of Zambia and the Attorney-General** where the Court's equitable jurisdiction can be exercised in favour of the borrower only in cases where there is reasonable prospects of repayment within a reasonable time. This position was further expounded by the Supreme Court in the case of **Brian Musonda (Receiver of First Merchant Bank Zambia Limited (In Receivership) v Hyper Foods Products Limited and Two Others** where it held that:

**"The Court in exercise of its equitable jurisdiction can interfere with the contractual rights of the mortgage to the extent of enlarging time where there is foreclosure or suspending orders for possession or postponing the alternative reliefs where there is reasonable prospects that the money due can be paid within reasonable time"**

I am mindful that an Order for payment of a Judgment debt in instalment must be on reasonable terms and not at the dictates or whims of any party. It is trite that the Applicant should not be

denied the enjoyment of the fruits of its Judgment unless sufficient cause is shown by the Respondent. A perusal of the record shows that the Respondent has since paid three (3) monthly instalments of ZMW15,500 into Court and the Applicant accepted payment by way of a Notice of Acceptance. In my considered view, this demonstrates the Respondent's willingness to settle the Judgment debt, and I am therefore inclined to exercise my discretion and grant the Respondent's application to pay the Judgment debt in instalments.

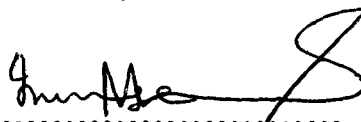
In the exercise of my discretion, I hereby Order that the Respondent settles the Judgment debt in ten (10) equal monthly instalments, the first instalment is payable on or before the 30<sup>th</sup> July, 2017. In default, the entire outstanding Judgment debt shall become due, and the Applicant shall proceed to foreclose, have vacant possession of the mortgaged properties without recourse to Court and further be at liberty to sell the mortgaged properties namely Stand 29514 and Stand 35014 both situate in Lusaka.

In view of the aforesaid, the *ex parte* stay of execution granted on 27<sup>th</sup> January 2017 is hereby discharged.

Costs to the Applicant, to be taxed in default of agreement.

Leave to appeal granted.

Dated the 27<sup>th</sup> day of June, 2017.



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**IRENE ZEKO MBEWE**  
**HIGH COURT JUDGE**