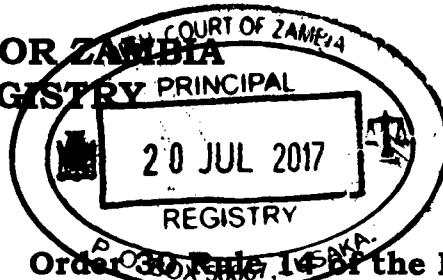


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2017/HP/661



IN THE MATTER OF:

Order 30, Rule 14 of the High Court Rules Cap 27 of the Laws of Zambia and Order 88 of the Rules of the Supreme Court of England (1999) Edition

AND

IN THE MATTER OF:

Third Party mortgage relating to Stand No. 04/33 Kalingalinga, Lusaka

B E T W E E N :

PAN AFRICAN BULDING SOCIETY

APPLICANT

AND

YAMIKANI CHIUTA PROPERTY LIMITED

1ST RESPONDENT

PEGGY KALUBA HARA

2ND RESPONDENT

Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 20th day of July, 2017

For the Applicant : *Mr. B.C. Mutale & Mr. E. Banda, Messrs BCM
Legal Practitioners*
For the Respondent : *No Appearance*

J U D G M E N T

Legislation Referred To:

1. *High Court Act, Chapter 27*

I was approached by way of Originating Summons in this matter, wherein the Applicant seeks the following reliefs:

- (i) *Immediate payment of the Sum of ZMK553,280.00 owed to the Applicant as at 5th April, 2017, plus the accruing interest arising from a third Party Mortgage relating to Stand No. 04/33 Kalingalinga, Lusaka.*
And/or in the alternative
- (ii) *An order for foreclosure;*
- (iii) *An order for delivery of possession of the mortgaged property;*
- (iv) *Payment of the balance due after sale of the mortgaged property;*
- (v) *Interest on the sums found due under (i) above at such rate and for such period as the Court may deem fit;*
- (vi) *Costs*
- (vii) *Any other relief the Court may deem fit*

The Affidavit in Support discloses that on 21st December, 2015, the 1st Respondent was granted a loan facility by the Applicant amounting to K500,000.00. It was to be repaid with in 36 months with interest as shown in the exhibit marked **“WC1.”** The loan was secured by a third party mortgage over Stand No. 04/33 Kalingalinga, Lusaka as shown in the exhibit marked **“WC2.”**

The Affidavit further discloses that the 1st Respondent defaulted on the repayments and as at 5th April, 2017, the amount outstanding

was K553,280.00 as shown in the exhibit marked "**WC3.**" Since the default, the Respondents have not made any attempt to settle the debt, which remains outstanding. The Applicant prays to the Court to grant it the reliefs sought in the Originating Summons.

The Respondents did not enter an appearance, but Messrs Hobday Kabwe & Co., who had not filed a Notice of Appointment as Advocates attempted to represent them. I was not satisfied that they had been duly instructed by the Respondents and by implication the Respondents did not defend this action.

I have seriously considered the Affidavit evidence. I find that it is not in dispute that the Applicant advanced the 1st Respondent K500,000.00 and as at 5th April, 2017, the loan had accrued to K553,280.00. It is also incontrovertible that the loan was secured by a third party mortgage on Stand No. 04/33 Kalingalinga, Lusaka. The sole issue to be determined by this Court is whether the 1st Respondent has serviced the loan?

I will not chatter a difficult discourse given that this is an

undefended action. It is abundantly plain from exhibit "**WC3**" in the Affidavit in Support that the 1st Respondent has a credit of K553,280.00, which has not been serviced according to the last entry on the Loan and Advances Statement.

In view of the foregoing, I am satisfied that the Applicant has proved its case and I accordingly enter judgment in the sum of K553,280.00 outstanding as at 5th April, 2017. This judgment sum shall accrue simple interest from the date of originating process to judgment; thereafter at the bank lending rate as determined by the Bank of Zambia from time to time until final payment.

The Respondents shall liquidate the said judgment sum and interest within ninety days hereof. In default, the Applicant will be at liberty to foreclose the mortgaged property and exercise its power of sale without further recourse to the Court.

Costs shall abide the event to be taxed in default of agreement.

J5

Dated this 20th day of July, 2017.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE