

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

2017/HP/0679

B E T W E E N :

MADISON FINANCE COMPANY LIMITED

APPLICANT

AND

KAYO TRADING LIMITED
HAPPY MACHAI KWASEKA
ANNIE CHANDA

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
19th day of July, 2017**

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

J U D G M E N T

Legislation Referred To:

- 1. High Court Act, Chapter 27*
- 2. Rules of the Supreme Court, 1999 Edition*

By Originating Summons made pursuant to Order 30 Rule 14
of the High Court Rules and Order 88 of the Rules of the Supreme

Court, the Applicant seeks the following reliefs:

1. *Repayment of the sum of ZMW919,942.48 together with the interest at the rate aforesaid owed to Madison Finance Company Limited by the Respondent and secured by a Third Party Mortgage over Stand No. 12092, Lusaka.*
And/or in alternative:
2. *An order of foreclosure of the mortgaged property referred to paragraph 1 hereof.*
3. *An order for delivery of possession of the mortgaged property;*
4. *An order for sale of mortgaged property;*
5. *The balance due in the event the mortgaged property is of less value than the loan obtained;*
6. *Interest on the sums found due under (1) above at such rate and for such period as the Court may deem fit.*
7. *Costs*
8. *Any other reliefs that the Court shall deem fit.*

An Affidavit was filed in Support. The deponent **Martin Phiri**, avers that the 1st Respondent is registered under the Companies Act. That the 2nd and 3rd Respondents are directors in the 1st Respondent Company as well as the beneficial owners of Stand No. 12092, Lusaka, which was pledged as collateral to secure a loan from the Applicant. This is shown in the exhibit marked **"MP1."**

The deponent further avers that the 1st Respondent obtained a loan from the Applicant in the principal sum of K740,418.06 on 7th

October, 2015 and was secured by a third party mortgage on Stand No. 12092, Lusaka as shown in the exhibit marked **"MP2."**

The deponent states that the 1st Respondent breached the agreement by failing to remit the required installments. That by virtue of the breach, the Respondent owes the Applicant Nine Hundred, Sixteen Thousand, Nine Hundred Forty Two and Forty-eight Ngwee (ZMW 916,942.48) inclusive of interest as at 25th April, 2017.

The deponent further states that the Respondents have failed to pay the outstanding loan sum. Further, a number of reminders have been sent to the Respondents to settle the loan with no success. The deponent concludes with a prayer to the Court urging it to order the Respondents to pay the outstanding loan amount or in the alternative to order foreclosure, possession and sale of the property offered as collateral for the loan. He also prays that in the event that the proceeds from the sale are unable to fulfill the outstanding loan obligations, the Applicant should recover the balance from the 2nd and 3rd Respondents.

I have seriously considered the affidavit evidence. It is not gainsaid that the Applicant granted the 1st Respondent a loan facility, which was secured by a legal mortgage on Stand No. 12092, Lusaka. It is also not gainsaid that the 2nd and 3rd Respondents are directors in the 1st Respondent Company and are the beneficial owners of the mortgaged property. The sole issue to be determined by the Court is whether the Applicant can recover the loan from the property pledged as security by the Respondents.

From the Applicant's Affidavit, it is abundantly clear that the 1st Respondent is in default of its loan obligations by ZMW916,942.48 inclusive of interest as at 25th April, 2017. Accordingly, I enter judgment for the Applicant on that sum, which will accrue annual interest at the rate of 36% per annum from 26th April, 2017 to the date of this judgment. Thereafter, interest will accrue at the bank lending rate as determined by the Bank of Zambia from time to time until final payment.

The 1st Respondent shall liquidate the said judgment sum and interest within ninety days from the date of judgment. In default

the Applicant will be at liberty to foreclose the mortgaged property and exercise its power of sale without further recourse to Court. The Applicant will also be at liberty to recover from the 2nd and 3rd Respondents in the event that the mortgaged property is of less value than the loan obtained.

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

Dated this 19th day of July, 2017.


M. Mapani-Kawimbe
HIGH COURT JUDGE