

IN THE HIGH COURT FOR ZAMBIA

2017/HPC/0346

AT THE COMMERCIAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

**IN THE MATTER OF: THE PROPERTY COMPRISED IN A LEGAL
MORTGAGE OVER STAND NO. 12446 LUSAKA**

AND

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

BETWEEN:

STANBIC BANK ZAMBIA LIMITED

APPLICANT

AND

CHISANGA MULENGA

RESPONDENT

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

*For the Applicant: Ms. Ndoyi Sameta – Messrs Mambwe,
Siwila and Lisimba Advocates*

For the Respondent: Mrs. Chisanga Mulenga (In Person)

JUDGMENT

LEGISLATION REFERRED TO:

- 1. Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia.**
- 2. Order 88 of the Rules of the Supreme Court of England, 1965 White Book (1999 Edition).**

CASES REFERRED TO:

1. **S. Brian Musonda (Receiver of First Merchant Bank Zambia Limited (In Receivership) V Hyper Food Products Limited, Tony's Hypermarket Limited and Creation One Trading (Z) Limited (1999) ZR 124.**

OTHER WORKS REFERRED TO:

1. **Sir Robert Megarry, Megarry's Manual of the Law of Real Property, Fourth Edition, London, Stevens & Sons Limited, 1975.**

The Applicant by way of Originating Summons filed into Court on 4th August, 2017 made pursuant to **Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia** as read with **Order 88 of the Rules of the Supreme Court of England, 1965, White Book 1999 Edition** seeks the following remedies or reliefs against the Respondent:

1. Payment of the sum of K397,648.81 plus interest due under the First Legal Mortgage and Further Charge.
2. Delivery up and possession of Stand No. 12446 Lusaka.
3. Foreclosure and Sale.
4. Further or other relief.
5. Costs.

The application is supported by an Affidavit in Support and Skeleton Arguments filed into Court on 4th August, 2017. The Affidavit in Support is sworn by Reuben Matale Malindi the Manager Specialized Recoveries in the Applicant Bank. It is

deposed that by Facility Letter dated 15th August, 2008 the Applicant availed the Respondent a Credit Facility for the sum of K279,000.00. A copy of the Facility Letter dated 15th August, 2008 is exhibited marked "RMM1".

Mr. Malindi states that as security for the Credit Facility, the Respondent surrendered her Certificate of Title relating to Stand No. 12446 Lusaka for purposes of creating a First Legal Mortgage. A copy of Certificate of Title No. 86566 is exhibited marked "RMM2". That in addition, the Respondent executed a First Legal Mortgage Deed which was subsequently registered to secure the Applicant's interest. A copy of the First Legal Mortgage is exhibited marked "RMM3".

It is further deposed that by Facility Letter dated 30th October, 2013 the Applicant Bank availed the Respondent an additional Credit Facility for the sum of K80,000.00. A copy of the Facility Letter dated 30th October, 2013 is exhibited marked "RMM4".

It is stated that as Further Security for the additional Credit Facility the Respondent executed a Further Charge Deed which was subsequently registered. A copy of the Further Charge is exhibited marked "RMM5".

The deponent states that contrary to the Terms and Conditions of the Credit Facility, the Respondent has not been servicing the debt regularly as a result of which the balance outstanding was K397,648.81 at the commencement of the action and will continue

to rise due to interest charges. Copies of the Statements of Account are exhibited collectively marked "RMM6".

It is deposed that despite reminders by the Applicant to settle the debt, the Respondent has neglected, failed and/or refused to settle the same which culminated in the Applicant on or about 12th April, 2017 recalling the Facility. A true copy of the Demand Letter is exhibited marked "RMM7". That the Respondent has no defence to the Applicant's claim and as such the Court is urged to grant the reliefs sought.

Learned Counsel for the Applicant filed Skeleton Arguments into Court on 4th August, 2017. She submitted that the action is predicated on Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia, which provides that:

"Any mortgagee or mortgagor whether legal or equitable or any person entitled to or having property subject to a legal or equitable charge or any person having the right to foreclosure or redeem any mortgage, whether legal or equitable may take as of course an Originating Summons returnable in the Chambers of a Judge for such relief of the nature or kind following as by the Summons be specified and as the circumstances of the case may require that is to say:

"Payment of monies secured by the mortgage or charge,

Sale.

Delivery of possession (whether before or after foreclosure) to the mortgagee or person entitled to the charge by the mortgagor or a person having the property subject to the charge or by any person in or alleged to be in possession of the property”.

It was further submitted that the remedies of a mortgagee are cumulative. The case of **S. BRIAN MUSONDA (RECEIVER OF FIRST MERCHANT BANK ZAMBIA LIMITED (IN RECEIVERSHIP) V HYPER FOOD PRODUCTS LIMITED, TONY’S HYPERMARKET LIMITED AND CREATION ONE TRADING (Z) LIMITED (1)**, was cited for this Submission. In that case the Supreme Court stated that:

“The Appellant commenced a typical mortgage action brought by a mortgagee. He asked for the payment of the money secured by the equitable mortgage, foreclosure, sale, delivery up of possession and further or other relief deemed appropriate by the Court. The mortgagee’s remedies are truly cumulative leaving aside the fact that an equitable mortgagee’s remedies are somewhat more restricted than those of a legal mortgage, we have quoted the terms of the Consent Order in order to underline the fact that the mortgagee’s remedies are cumulative”.

The Applicant also cited the learned author of **MEGARRY'S MANUAL OF THE LAW OF REAL PROPERTY Fourth Edition, London 1975** 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 or all of the remedies to enforce payment”.

It was further submitted that the Respondent has since defaulted in her repayment obligations contrary to the terms and conditions of the Credit Facility. That at the commencement of the action, the outstanding balance was K397.648.81. It was submitted that the Respondent has no defence to the claim and as such the reliefs indicated in the Originating Summons should be granted.

The Respondent has not opposed the Applicant’s application herein. At the hearing of the Originating Summons on 28th September, 2017 the Respondent told the Court that she admits owing the money being claimed by the Applicant but she asked that she be given seven (07) months within which to pay the outstanding debt.

I have considered the Applicant’s claim together with the Affidavit in Support and Skeleton Arguments.

From the evidence adduced by the Applicant, I am satisfied that the Applicant has proved its case on the balance of probabilities.

I accordingly enter Judgment in favour of the Applicant against the Respondent for payment of the sum of K397,648.81 and contractual interest from 13th April, 2017 to date of Judgment and thereafter at the current bank lending rate as determined by Bank of Zambia up to day of full payment.

The Judgment sum together with interest must be paid within 90 days from date hereof.

As espoused in the case of **S. BRIAN MUSONDA (RECEIVER OF FIRST MERCHANT BANK ZAMBIA LIMITED (IN RECEIVERSHIP) V HYPER FOOD PRODUCTS LIMITED, TONY'S HYPERMARKET LIMITED AND CREATION ONE TRADING (Z) LIMITED (1)** cited by the Applicant, a mortgagee has several remedies available which are cumulative. It follows that all the remedies or reliefs endorsed on the Originating Summons are hereby granted.

In the event that the Judgment debt and interest remains unpaid at the expiry of the said period of 90 days the Respondent shall deliver possession of the Mortgaged Property namely Stand No. 12446 Lusaka to the Applicant who shall be at liberty to foreclose and exercise its right of Sale.

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

Leave to appeal is granted.

Delivered at Lusaka the 29th day of September, 2017.



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William S. Mweemba
HIGH COURT JUDGE