

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

2016/HPC/0593

BETWEEN:



ZAMBIA NATIONAL COMMERCIAL BANK PLC

APPLICANT

AND

DASIL SCHOOL OF EXCELLENCE

1st RESPONDENT

SILVIA CHUNGU

2nd RESPONDENT

Heard and delivered by Lady Justice B.G Lungu on 26th April, 2017 in chambers at Lusaka.

For the Applicant, Mrs K Musana, In-house Counsel.

J U D G M E N T

CASES REFERRED TO:

- 1. Santley vs. Wilde (1899) C.A 474;*
- 2. China Henan International Economic Technical Cooperation v Mwange Contractors Limited, 2002 ZR 28*

LEGISLATION AND OTHER MATERIALS REFERRED TO:

1. *High Court Act, CAP 27 of the Laws of Zambia, CAP 27 of the Laws of Zambia*

This matter was commenced on 20th December, 2016 by way of Originating Summons pursuant to *Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia*, accompanied by an Affidavit in Support of Originating Summons and Skeleton Arguments and List of Authorities.

In the Originating Summons, the Applicant sought the following reliefs:

- i. An order to foreclose on the mortgaged property;
- ii. Delivery of vacant possession of the mortgaged property by the 2nd Respondent to the Applicant;
- iii. An order of sale of the mortgaged property by the Applicant
- iv. An order that the 2nd Respondent, being Guarantor of the 1st Respondent, honour her guarantee in the event of the 1st Respondent failing to settle its indebtedness in full to the Applicant;
- v. Any other relief the Court shall deem fit;
- vi. Costs

The Affidavit in Support was deposed to by a Mr. George Mubanga Kashoki, in his capacity as Corporate Recoveries Specialist in the Special Assets Management Department in the Applicant bank.

The Affidavit in Support revealed that the 1st Respondent was availed a medium term loan facility of K350, 000.00 by the Applicant.

Two terms of the facility were highlighted. Firstly, a contractual variable interest rate, being the Bank of Zambia Policy Rate plus a margin of 9%, to be calculated daily on the daily debit balances and charges monthly. Secondly, that the facility was to be and was secured by a Third Party Mortgage relating to Stand No. 4467, Chingola situate in the Copperbelt Province of Zambia.

The Affidavit also revealed that the mortgaged property was registered in the name of Silvia Chungu, the 2nd Respondent, who, in addition to providing the security, guaranteed repayment of the extended facility.

Mr. Kashoki deposed that as at 28th November, 2016, the loan remained unpaid and stood at K484,182.01, despite reminders to the Respondents.

The Affidavit in Support exhibited several documents as evidence to buttress the application, including: (i) a copy of the Facility Letter, exhibit "**GMK1**"; (ii) a copy of the Third Party Mortgage, exhibit "**GMK2**"; (iii) a copy of the Certificate of Title relating to the mortgaged property, Stand No. 4467, Chingola, exhibit "**GMK3**"; (iv) a copy of the Guarantee, exhibit "**GMK6**"; (v) copies of the reminder letters issued by the Applicant between the period 4th March, 2015 to 27th September, 2016, exhibits "**GMK7**"; and (vi) a copy the Respondent's Loan Statement of Account covering the period 19th February, 2014 to 29th November, 2016, exhibit "**GMK8**".

In its Skeleton Arguments, the Applicant tendered the definition of the term mortgage by quoting Judge Lindley in the case of *Santley vs. Wilde (1899) C.A 474'* where he opined as follows:

“a mortgage is a conveyance of land or an assignment of chattels as a security for the payment of a debt or the discharge of some other obligation for which it is given”

The Applicant also argued that Order 30, Rule 14 of the High Court Rules clothed the Court with the jurisdiction to entertain the Applicant's application.

When the matter came up for hearing on 26th April, 2017, Counsel for the Applicant relied on the Originating Summons, Affidavit in Support and Skeleton Arguments filed on 20th December, 2016. Counsel prayed for the reliefs penned on the Originating Summons.

As regards the Respondents' position, no documents were filed in opposition. On the date of hearing, the 2nd Respondent voiced her admission of the claim. She was resigned to the fact that the mortgaged property would be sold but appealed to be permitted to participate in finding a purchaser. Counsel for the Applicant informed the Court that the Applicant was not averse to working with the 2nd Respondent to sell the mortgaged property.

In view of the admission by the mortgagor, the Court entered Judgment on Admission and granted the reliefs sought, with an undertaking to release a printed Judgment with the ratiocination, as I now do.

The ratiocination of my *ex tempore* Judgment was that given the unequivocal admission of the claim by the mortgagor, judgment on admission simply beckoned the Court. In responding to the call, I drew comfort in the guidance of the Supreme Court in the case of (*China Henan International Economic Technical Cooperation v Mwange Contractors Limited*).² In that case, the Court stated that "it would be absurd to expect a Court which is in control, to pause and wait for an application {for judgment on admission} where clearly the defence is deemed to have admitted the claim."

Bearing in mind the **China Henan** case, and being satisfied that the mortgagor acquiesced to the sale of the mortgaged property for purposes of settling her indebtedness, including costs, I took the view that it was an appropriate case for the Court to enter Judgment on Admission, as I did.

Dated this 16th Day of October, 2017



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Lady Justice B.G.Lungu
HIGH COURT JUDGE