

(No)

IN THE HIGH COURT FOR ZAMBIA

2016/HPC/0466

IN THE COMMERCIAL DIVISION

HOLDEN AT LUSAKA

(Civil Jurisdiction)

IN THE MATTER OF: An Application under Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia

AND

IN THE MATTER OF: The Property comprised in a Mortgage and Further Charges relating to Stand No. 20440 situate in the Lusaka Province of the Republic of Zambia

AND

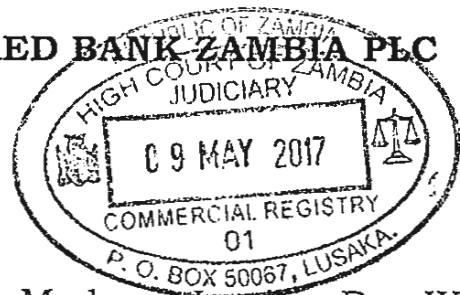
IN THE MATTER OF: Foreclosure, Possession and Sale of the Mortgaged Property

BETWEEN:

STANDARD CHARTERED BANK ZAMBIA PLC **APPLICANT**

AND

CELINE MEENA NAIR **RESPONDENT**



Coram: Before Hon. Madam Justice Dr. W. S. Mwenda at Lusaka the 9th day of May, 2017.

For the Applicant : Mr. N. Nchito, SC of Messrs. Nchito and Nchito

For the Respondent : Mr. M. Z. Mwandenga of Messrs. M. Z. Mwandenga & Co.

JUDGMENT

Cases referred to:

1. *Reeves Malambo v. Patco Agro Industries Limited.* SCZ Judgment No.20 of 2007.

2. *Kasengele v. Zambia National Commercial Bank Limited, SCZ Judgment No.11 of 2000.*
3. *New Plast Industries v. The Commissioner of Lands and the Attorney General (2001)Z.R.51*
4. *New Horizon Printing Press Limited v. Waterfield Estates Limited and Another (2012) Vol. 1 Z.R. 268.*
5. *Lackson Mwabi Mwanza v Kangwa Simpasa, Chisha Lawrence Simpasa 2005/HP/0500.*

Legislation referred to:

1. *Order 30 Rule 14 of the High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia.*
2. *Order 88 Rule 5 of the Rules of the Supreme Court, 1999 Edition (White Book).*
3. *Section 25 (2) of the Conveyancing and Law of Property Act, 1881.*
4. *Section 10 of the High Court Act, Chapter 27 of the Laws of Zambia.*
5. *Order 5 rule 16 of the High Court Rules.*

Publication referred to:

Charles Harpum, Megarry and Wade - The Law of Real Property, 6th Edition, (Thomson, Sweet & Maxwell, 2000)

By Originating Summons dated 22nd September, 2016, the Applicant herein made an application to this Court pursuant to Order 30 rule 14 of the High Court Rules, High Court Act, Chapter 27 of the Laws of Zambia. The remedies sought in the said summons were as follows:

1. Payment of all monies which as at 12th July, 2016 stood at K1,904,566.98 plus interest, costs and all other charges due and owing to the Applicant bank by the Respondent under credit facilities availed to the Respondent and secured by a Legal Mortgage and Further Charges over Stand No.20440 situate in the Lusaka Province of the Republic of Zambia ("the Mortgaged Property") registered in the name of the Respondent;
2. An Order of Foreclosure of the Mortgaged Property;

3. Delivery of vacant possession of the Mortgaged Property by the Respondent to the Applicants.
4. An Order of Sale of the Mortgaged Property by the Applicant;
5. Costs; and
6. Any other relief the Court shall deem fit.

A verifying affidavit also dated 22nd September, 2016 and sworn by one Mwansa Kapeya, the Applicant's Manager of Collections - Retail Banking, was filed together with the Originating Summons.

The affidavit of Mwansa Kapeya discloses that the Respondent herein was availed credit facilities on 26th December, 2006, 14th July, 2008 and 3rd January, 2014 by way of a House Loan in the sum of K1,740,380.00 and that the interest applicable on the said loan as at the date of issue of the Originating Summons was 17.5% per annum.

The affidavit further discloses that it was agreed that interest on the facilities would be calculated on the basis of a 365-day year, irrespective of whether or not the year in question was a leap year; would be calculated on a daily basis owing under a facility, notwithstanding that such balance may have been increased by the debiting of interest to such balance; would accrue from day to day and lastly, be compounded monthly.

The deponent avers that the facility was secured by a Mortgage and Further Charges registered over Stand No.20440 situate in the Lusaka Province of the Republic of Zambia in the name of the Respondent. As proof of the averments, copies of the Facility Letters are exhibited as exhibit "MK 1". Further Charges and a

Ministry of Lands Register printout are exhibited as "MK2"; a copy of the Certificate of Title with the Mortgage and Further Charges entered in the memorials therein, as exhibit "MK3."

The affidavit, additionally, discloses that the conduct of the Respondent's bank account has not been to the Applicant's satisfaction due to the fact that the Respondent has failed to sufficiently fund the account and has also continually failed to meet her monthly repayment obligations resulting in her being in arrears. That despite reminders to settle her indebtedness, the Respondent has failed and/or neglected to do so. Copies of the said reminders have been produced and exhibited collectively as "MK4." It is averred that the facility remains unpaid and stands at K1,904,566.98 as at 12th July, 2016. A statement of account on the credit facilities has been produced and marked as exhibit "MK5." It is the Applicant's contention that the Respondent has no defence to the claims by the Applicant.

In an Affidavit in Opposition to Originating Summons sworn by Celine Meena Nair, the Respondent herein, she deposed that the Affidavit in Support of the Originating Summons, in so far as it is relevant to these proceedings, does not provide material required under Order 88 rule 5 of the Rules of the Supreme Court, 1999 (The White Book). That the affidavit in support does not show how the claimed K1,904,566.98 was arrived at. Further, that the credit facilities referred to in the affidavit in support were availed to her when she was a member of staff of the Applicant bank under which she enjoyed reduced staff interest rates. She avers further, that she left the employ of the Applicant under

circumstances that led her to commence proceedings in the Industrial Relations Court against the Applicant for, *inter alia*, damages for constructive dismissal, a matter that is still pending under cause number Comp/257/2015.

It is the deponent's further averment that before she left the employ of the Applicant she was current with her mortgage payments; that it is her desire to sell the property and apply the proceeds there from towards liquidation of the mortgage. She avers that the Applicant, through its employees, is aware of her desire to sell the property. She states further that she has received serious offers from prospective buyers.

The deponent deposes that the property in question was as at 11th September, 2016 valued at K6,114,000.00. As proof, she has exhibited a copy of an extract of the Valuation Report by Messrs MAK Associates as exhibit "CMN." She avers that she believes that the value of the property far exceeds the amount outstanding on the loan and that if she is allowed to sell the house, she would be in a position to realise enough money to pay off the outstanding amount. She contends that it would be grossly unfair to her if the Applicant is granted an order of foreclosure.

By consent the parties agreed to forego hearing of the Originating Summons. They instead opted to file submissions to be followed by the judgment of the Court. Therefore, this judgment is based on the affidavits filed by the parties in support of their respective cases, Skeleton Arguments and List of Authorities as well as the parties' final submissions.

It is the pertinent to state at this juncture that on 9th February, 2017 the Defendant filed a Summons for an Order to Sale Mortgaged Property pursuant to Section 25(2) of the Conveyancing and Law of Property Act, 1881 which was supported by an affidavit and Skeleton Arguments. The said summons was for an order:

- (a) Pursuant to section 25(2) of the Conveyancing and Law of Property Act, 1881 directing that the mortgaged property be sold;*
- (b) That the conduct of the sale of the mortgaged property be given to the Respondent;*
- (c) That the proceeds of the sale be used for purposes of redeeming the mortgage and the surplus be at the disposal of the Respondent; and*
- (d) That the costs of application be in the cause.*

Included in the consent of the parties to do away with the hearing of the Originating Summons, was an agreement that the Respondent's application for an order of sale would be considered together with the Originating Summons by way of submissions.

In dealing with the Originating Summons before this Court, I am alive to the fact that the Respondent does not deny that she was availed the credit facilities on 26th December, 2006, 14th July, 2008 and 3rd January, 2014 by way of a House Loan in the total sum of K1,740,380. Her bone of contention is that the Affidavit in Support of Originating Summons sworn by Mwansa Kapeya does not show how the claimed K1,904,566.98 was arrived at. It is her contention that the said credit facilities were availed to her when she was a member of staff in the Applicant bank and by virtue of that, she enjoyed reduced staff interest rates. She avers

that before she left the Applicant's employ she was current with her mortgage payments but that since leaving employment she has been unable to find meaningful employment which can enable her meet the mortgage payments. She has also taken issue with the alleged lack of material requirement under Order 88 rule 5 of the Rules of the Supreme Court, 1999 Edition in the Affidavit in Support of Originating Summons.

It is the Respondent's argument that due to a deficiency in Order 30 rule 14 of the High Court Rules, *viz* the conduct of mortgage actions, recourse must be had to the Rules of the Supreme Court of England 1999 Edition and in this regard Order 88 thereof is material. She contends that of particular interest is Order 88 rule 5 which provides what, *inter alia*, must be contained in an Affidavit in Support of Originating Summons for Possession or Payment. That as drafted, the affidavit of Mwansa Kapeya does not provide for matters required under Order 88 rules (2), (3), (6) and (7) and for that reason, this Court has been denied vital information which could be relevant in determining matters in dispute between the parties, and therefore, it is difficult for this Court to be certain that the outstanding amount is indeed K1,904,566.98. That consequently, the proceedings are misconceived and/or incompetent.

Further, and/or in the alternative, the Respondent argues that this is not a proper case for the Court to order foreclosure. That the Applicant's case is that the Respondent's mortgage account has fallen into arrears of K1,904,566.98 and as at 11th September, 2016 the mortgaged property was valued at

K6,114,000.00. Further, that since the end effect of foreclosure is the extinguishment of the mortgagor's equity of redemption thereby giving the mortgagee the right to have ownership of the mortgaged property to the exclusion of the mortgagor, the Applicant would be unjustly enriched to the tune of K6,114,000.00. In addition, that since the value of the mortgaged property far outstrips the outstanding amount on the mortgage, foreclosure by the Applicant would be manifestly unjust. The Respondent submitted that sale of the mortgaged property would be ideal and to this end, quoted Charles Harpum, the learned author of Megarry and Wade - The Law of Real Property, 6th Edition, at page 1190 where he says as follows:

"At the request of the mortgagee or any interested person (e.g. a later mortgagee or the mortgagor), the court may order a sale of the property instead of foreclosure. It may do so notwithstanding that any person dissents. This jurisdiction has always existed ... It is an important safeguard where the property mortgaged is (as is usual) worth substantially more than the mortgage debt..."

The Respondent prays that she be accorded the opportunity to sell the mortgaged property with a condition that the proceeds therefrom be first applied towards liquidating the mortgage. This prayer comes in the wake of the fact that from the Affidavit in Opposition the Respondent gives an indication that she has received positive inquiries from would-be buyers and if given a chance to sell the mortgaged property, she should be able to fetch a good price to enable her realise sufficient money to clear the mortgage.

The Applicant submitted that the Respondent was availed credit facilities on 26th December, 2006, 14th July, 2008 and 3rd January, 2014 in the form of a House Loan totalling K1,740,380.00. The said credit facilities prescribed the interest rate payable and the Applicant reserved the right to adjust the same. There were further terms and conditions that provided that the loan became due and payable upon the Respondent leaving the bank's employment for whatever reason whereupon the commercial rate of interest would apply. The Applicant referred this Court to paragraphs 1-3 of the 2006 and 2008 facility letters exhibited as "MK1" in the affidavit in support.

It was contended by the Applicant that the Respondent pledged her property, stand No. 20440, Lusaka as security for the loan by way of a Mortgage and Further Charges in 2008 and 2014 and has defaulted in her payments since 23rd August, 2015 as evidenced by the loan schedule. Following written demands via electronic mail and letters on 15th April, 2016, 13th May, 2016, and 13th June, 2016, the Applicant commenced this action seeking the relief endorsed on the Originating Summons.

It was the Applicant's argument that this Court is clothed with the jurisdiction to entertain the Applicant's application by virtue of Order 30 rule 14 of the High Court Rules. In support of its case, the Applicant cited the case of *Reeves Malambo v Patco Agro Industries Limited (1)* where the Supreme Court held as follows:

"A mortgagee is at liberty to exercise his right to foreclose and sell the property in the event of default and failure by the mortgagor to redeem the mortgaged property; and that under a Legal Mortgage by demise,

the mortgagee becomes an absolute owner of the mortgage term at law as soon as the day fixed for redemption has passed."

Regarding the Respondent's statement that her leaving employment is the reason for her failure to meet her obligations to pay the instalments as set out in the schedule of payments, the Applicant pointed out that in paragraphs 1, 2 and 3 of the facility letters of December, 2006 and July, 2008, it was agreed that the loan would become payable on demand upon the Respondent leaving employment and that commercial interest rates would be applicable as the Respondent would no longer be entitled to the bank's rates. The Applicant referred this Court to the case of *Kasengele v Zambia National Commercial Bank Limited*(2) where the Supreme Court held, *inter alia*, that inability to pay has never been and is not a defence to a claim and neither is it a bar to entering judgment in favour of a successful litigant.

As regards the Respondent's equitable right to redeem the mortgaged promptly, the Applicant submitted that the law on that is clear and it is that the right only kicks in when payments of the principal sum and interest is made, but in this case the Respondent has been in default since August, 2015 and even after numerous reminders has not made any payments towards discharging the loan amount. It is the Applicant's further argument that the Respondent has not paid the principal sum or interest to be entitled to the equitable right to redeem the mortgage.

To augment its arguments regarding the Respondent's contention that the Applicant's affidavit in support is lacking in material

particular, contrary to Order 88 rule 5 of the Rules of the Supreme Court, 1999 Edition, the Applicant in its Affidavit in Reply, submitted that in the case of *New Plast Industries v. The Commissioner of Lands and the Attorney General (3)* the Supreme Court held that:

"The English White Book could only be resorted to if the Act was silent or not fully comprehensive."

The Court further stated that:

"Thus, where a statute provides the procedure of commencing an action, a party has no option but to abide by that procedure."

The Applicant agreed with the submission by the Respondent that section 10 of the High Court Act enjoins the Court to apply the practice and procedure provided by the Act or such written law and in default thereof, in substantial conformity with the Supreme Court Practice, 1999 (White Book). The Applicant submitted, however, that there is no lacuna with regards to mortgage actions as the same are commenced by Originating Summons in compliance with the Court Forms in the First Schedule to the High Court Act and pursuant to Order 30 rule 14 of the High Court Rules, a subsidiary legislation to the High Court Act, Chapter 27 of the Laws of Zambia, which is an Act of Parliament.

Further that as regards the contents of affidavit evidence in support of the Originating Summons, Order 5 rule 16 of the High Court Rules provides that:

"Every affidavit shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true."

It was the Applicant's contention that the only provision required to be complied with in mortgage actions in Zambia is Order 30 rule 14. Therefore, while Order 88 of the White Book may be used in mortgage actions, it is not a requirement under Zambian statutes and non-compliance would not be fatal. The Applicant submitted that the Affidavit in Support is compliant with the rules and exhibit "MK5" is a statement of account which clearly indicates the Respondent's payment schedule. There is a breakdown of the principal amount, interest amount and the required instalment amount. The top of the schedule also indicates the remaining instalments and outstanding balance. Paragraphs 6 and 7 of the affidavit gives an indication of the rate of interest and how it was calculated.

Further, the Applicant reserved the right to call in the loan upon the Respondent leaving employment and adjust the rate of interest to a commercial one. In addition, section 10 of the Terms and Conditions of the facility letter of 3rd January, 2014 clearly stated that in the event of default in making one repayment, the principal amount and accrued interest would become due and payable and a signed statement of demand would be conclusive evidence thereof. It was the Applicant's further submission that the mails exhibited as "MK4" show that the Respondent was informed numerous times about the outstanding balance and she does not dispute that she is

indebted to the Applicant who only brought this action close to a year after the Respondent failed to service her loan.

The Applicant submitted that the evidence in the Account Schedule, correspondence and terms and conditions contained in the facility letters before Court prove that the Respondent is indebted to the Applicant and also complies with procedural requirements as to mortgage actions.

As regards the Respondent's application for sale which was made pursuant to section 25 (2) of the Conveyancing and Law of Property Act, 1881, the Applicant submitted that the said application is misplaced because the Respondent could have done so through Order 30 rule 14 which has provision for such application.

The Applicant contends that should the Court be of the view that section 25 (2) of the Conveyancing and Law of Property Act, 1881 is applicable, then the Court should be cognisant of the fact that as far back as April, and May, 2016 the Respondent informed the Applicant via email exhibited as "MK4" in the Affidavit in Support, that she was concluding the sale of the property with a buyer and that todate the Respondent has still not sold the house. It was the Applicant's contention that the Respondent cannot be allowed to sell the property in perpetuity.

Responding to the Respondent's submission that the value of the house far exceeds the sum due to the Applicant and that the proceeds of the sale would unjustly enrich the Applicant, the Applicant submitted that in the event of a sale, the mortgagee

has to account for the proceeds to the mortgagor and therefore, it cannot be said that the Applicant would be unjustly enriched.

For purposes of this action the salient provisions of Order 88 rule 5 of the Rules of the Supreme Court, 1999 Edition, referred to by the Respondent are reproduced hereunder.

"5. – (1) The Affidavit in Support of the Originating Summons by which an action (other than an action to which rule 5A applies) to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a Mortgage action in the Chancery Division begun by originating summons in which the Plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The affidavit must exhibit a true copy of the mortgage and the original mortgage or, in the case of a registered charge, the charge certificate must be produced at the hearing of the summons.

(3) Where the Plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any or class of case otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of –

- (a) the amount of the advance;*
- (b) the amount of the periodic payments required to be made;*
- (c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit, and*
- (d) the amount remaining due under the mortgage.*

(4) ...

(5) ...

(6) Where the Plaintiff claims payment of money secured by the mortgage the affidavit must show how the claim is calculated including:-

- (a) *the amount of the advance and the amount and dates any periodic repayments and any interest claimed;*
- (b) *the amount which would have to be paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at the date of commencement of the proceedings and at a stated date not more than 14 days after the date of commencement of the proceedings, specifically the amount of the solicitor's costs and administrative charges which would be payable;*
- (c) *the dates between which a particular rate of interest applied, the number of days in that period, and the capital on which the interest was calculated*

(7) *Where the Plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.*

For ease of reference Order 30 rule 14 is also replicated below:

"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 out as of course an originating summons, returnable in the chambers of a judge for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say:

- *Payment of moneys secured by the mortgage or charge;*
- *Sale;*
- *Foreclosure;*
- *Delivery of possession (whether before or after foreclosure) to the mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge or by any other person in, or alleged to be in possession of the property;*
- *Redemption;*

- *Reconveyance;*
- *Delivery of possession by the mortgagee."*

It is my considered view that contrary to the Respondent's submission, Order 30 rule 14 of the High Court Rules is not deficient as it is supplemented by other provisions of the Rules such as Order 5 rule 16 which stipulates what every affidavit must contain, namely, a statement of facts and circumstances to which the witness deposes either of his own personal knowledge or from circumstances which he believes to be true.

Further, in my view, most of the information required in Order 88 rule 5 of the Rules of the Supreme Court is information which applicants in any case invariably provide in their affidavits in order to prove their cases. Thus, an applicant is expected to and normally provides, particulars of the amount of money advanced; the amount of periodic payments required to be made; the rate of interest applicable to the loan; the number of instalments in arrears and the outstanding balance as at the date of issue of the originating process. To that end, it is usual for statements of accounts to form part of the documents exhibited by applicants in their affidavits in support of originating summons. Further, documents evidencing the loan facility, which normally contain the relevant information relating to the loan, copies of the mortgage and title deeds of the property pledged as security are also tendered as evidence in support of the originating process.

I am in agreement with the Applicant's submission that the only mandatory provision in mortgage actions in Zambia is Order 30 rule 14 of the High Court Rules. Thus, while Order 88 rule 5 is

applicable by virtue of section 10 of the High Court Act, non-compliance with the same is not fatal as long as the applicant has complied with the mandatory provisions in Order 30 rule 14. An earlier decision of this Court cited by the Respondent herein, namely, *New Horizon Printing Press Limited v. Waterfield Estates Limited and Another* (4) is illuminating as to when the Rules of the Supreme Court can be resorted to. The Court held in that case that Rules of the Supreme Court no longer enjoy the force of law themselves and are only to be resorted to where it is necessary to fill a lacuna or gap in the rules of procedure. As can be seen from the explanation above, there is no lacuna in the rules of procedure with regards to mortgages in Zambia.

It is also noteworthy that notwithstanding the fact that compliance with Order 88 rule 5 is not mandatory for mortgage actions in Zambia, all the same the Applicant in this case did satisfy the requirements of Order 88 rule 5 (3) in that the statement of account produced and exhibited in the Affidavit in Support of Originating Summons shows the payment schedule which has a breakdown of the principal amount, interest amount and required instalments as well as the remaining instalments and outstanding balance. While the rate of interest is not reflected in the payment schedule, it is provided for in the facility letters. Thus in the Banking Facility letter dated December 26, 2006 (exhibit "MK1" of the Affidavit in Support of Originating Summons) the interest payable on the House Loan is 10% per annum calculated on the daily overdrawn balances and payable monthly in arrears by debit. The rate is subject to alteration with or without notice at the sole discretion of the Bank.

With regards to the second Banking Facility dated July 14, 2008, interest payable on the House Loan facility is 8% per annum calculated on the daily overdrawn balances and payable monthly in arrears by debit. The rate is also subject to alteration with or without notice at the sole discretion of the Bank.

The third Banking Facility letter dated January 3, 2014, also has provision for payment of interest by the borrower, Celine M. Nair to the Bank at prevailing Bank of Zambia (BoZ) policy rate plus a margin calculated on the daily overdrawn balances and payable monthly in arrears. The applicable rate at the date the facility was entered into was 8% per annum. However, it was a condition of the loan that both the policy rate and the margin could be varied from time to time.

Clause 10 of the Terms and Conditions attached to the Facility Letter of 3rd January, 2014 stipulated that in the event of default in making one repayment on the due date, the outstanding principal amount of the loan and the accrued interest would become immediately due and payable.

From the above, it is evident that there is sufficient information for this Court to determine the issues in dispute.

Coming to the issue of inability to pay, as the Supreme Court held in the case of *Kasengele v. Zambia National Commercial Bank Limited (2)*, that has never been and is not a defence to a claim and neither is it a bar to entering judgment in favour of a successful litigant. Therefore, the Respondent's reason for her failure to meet her obligations to pay the instalments is not a defence to

the Applicant's claim. Further, the Respondent's claim that the Applicant would be unjustly enriched if the order of foreclosure is granted has no basis because, as the Applicant correctly submitted, a mortgagee has to account for the proceeds of sale and any amount in excess of the loan would have to be paid back to the Mortgagor, the Respondent herein.

With regards to the Respondent's application to sell the house made pursuant to Section 25 (2) of the Conveyancing and Law of Property Act, 1881, I concur with the Applicant that the said applicant is misconceived because the Respondent should have brought the said application under the provisions of Order 30 rule 14 of the High Court Rules. In any event, the Respondent has had the opportunity to sell her property since May, 2016 as evidenced from her email to the Respondent in exhibit "MK4" of the Affidavit in Support of Originating Summons. Almost a year has since passed and no sale has taken place. I find no merit in the application and dismiss it accordingly.

By defaulting in her repayments and failing to discharge the debt secured by the mortgage and further charges, the Respondent's equity of redemption was extinguished.

Taking into account the above findings, I find and hold that the Applicant has proved its claims against the Respondent. The remedies that have been sought herein are cumulative. Consequently, I enter judgment in favour of the Applicant in the sum of K1,904,566.98 plus contractual interest from the date of the Originating Summons to the date of judgment and thereafter, at short term bank deposit rate as determined by the Bank of

Zambia until full payment. The said sum shall be paid within ninety (90) days from the date hereof. In default thereof, the Respondent shall deliver vacant possession of the mortgaged property being stand No. 20440 situate in the Lusaka Province of the Republic of Zambia to the Applicant who shall be at liberty to foreclose, take possession and exercise its right of sale.

Costs of and incidental to the action are awarded to the Applicant to be taxed in default of agreement.

Leave to appeal is granted.

Delivered at Lusaka this 9th day of May, 2017.


W. S. Mwenda (Dr)
HIGH COURT JUDGE