

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA.
(Civil Jurisdiction)

SCZ APPEAL NO.70/99

MUTALE JAMES KABWE
AND
MULUNGUSHI INVESTMENTS LTD
CHIMANGA CHANGA LTD

PLAINTIFF
1ST DEFENDANT
2ND DEFENDANT

Coram: Sakala, Chirwa and Chibesakunda

7th September and ..8th...December, 1999.

For the Appellant, Mr. H.B. Mbushi, Ndola Chambers.

For the Respondent, Mrs. P.S. Kamanga of Kamanga and Company.

J U D G M E N T

Sakala JS delivered the Judgment of the Court.

This is an appeal against a ruling of the High Court refusing the appellant an order to pay a Mortgage Loan by way of instalments.

The facts of the case are that the appellant was once an employee of ZCCM seconded to work for the first respondent who assigned him to work for the second respondent. It was not in dispute that in the course of the appellant's employment he had obtained a home ownership loan under a scheme operated by ZCCM Limited. The history leading to the present appeal is that the appellant succeeded in another appeal in the Supreme Court on the question of sale to him of household equipment at nominal rates.

In relation to the counter-claim against the appellant in that appeal regarding the house loan the Supreme Court observed: His complaint was

that the order by the learned trial judge for the immediate repayment of the balance plus commercial interest, run counter to the rules of the scheme to pay by monthly instalments over many years. He requested us to order payment by instalments, allegedly in keeping with a new scheme devised by ZCCM. The short answer is that we are not a suitable forum to entertain and investigate the propriety of making an instalment order at first instance. The appellant should apply to the court below, if so minded, for permission to pay by instalments if appropriate.”

Taking advantage of these observations by the Supreme Court, the appellant applied to the High Court, among others that the liquidation of the mortgage loan be as by the ZCCM Ltd Conditions. The application was supported by an affidavit. There was also an affidavit in opposition. To these affidavits were exhibited different documents.

The learned trial judge considered the affidavit evidence that was before him as well as the submissions from both counsel. The court noted that the appellant had earlier been offered by the District Registrar to liquidate the debt in K300,000-00 monthly instalments and failed. The court took a deem view of the application as an abuse of process. The court refused to order payment by instalments. Hence the appeal to this court.

Both learned counsel filed detailed heads of argument. We have considered those arguments. We are satisfied on the facts and documents on record that the appellant obtained a home ownership loan under a

scheme operated by ZCCM Ltd which entitled the appellant to apply in writing to a Mortgage Redemption Committee to consider his case. These facts were common cause. But the learned trial court never alluded to them. This appeal is therefore allowed with costs. The appellant should be allowed to pay the household loan by way of instalments as per the agreement and the scheme. Either party is at liberty to apply before the Deputy Registrar.



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E. L. Sakala,
SUPREME COURT JUDGE.

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D. K. Chirwa,
SUPREME COURT JUDGE.

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Chibesakunda,
SUPREME COURT JUDGE.