

IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA

2014/HPC/0307

(Civil Jurisdiction)

In the matter of:

Order 30 Rule 14 High Court Rules CAP 27 of the  
Laws of Zambia.

In the matter of:

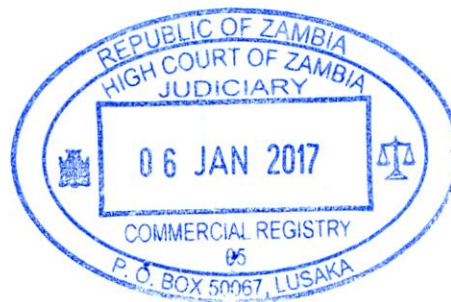
The property comprised in Mortgage Deed  
dated 17<sup>th</sup> September, 2014 relating to  
Plot/Stand No. 2613/3700 Dambwa North,  
Livingstone and made between Finance Bank  
Zambia Plc of the one part and Arnold Nawa  
and Malamo and Arma Investments Limited of  
the other part.

BETWEEN:

FINANCE BANK PLC

AND

ARMA INVESTMENTS LIMITED  
ARNOLD NAWA MALAMO  
MIRRIAM KATUNDU



APPLICANT

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT

Delivered in Chambers before Hon. Mr. Justice Sunday B. Nkonde, SC at  
Lusaka this 6<sup>th</sup> day of January, 2017

*For the Applicant* : J. Mulenga, Esquire of Messrs Isaacs and Partners

*For the Respondents* : M. Chipanzya, Esquire of Messrs ICN Legal Practitioners

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## RULING

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**LEGISLATION REFERRED TO:**

- 1) *High Court Rules, Chapter 27 of the Laws of Zambia.*

**OTHER WORKS REFERRED TO:**

1) *Brayan A. Garner, Black's Law Dictionary, Eighth Edition.*

On 14<sup>th</sup> October, 2016, the Respondents issued a Summon pursuant to **Order 36 Rule 9** of the **High Court Rules** with supporting Affidavit sworn by the 2<sup>nd</sup> Respondent on behalf of the other Respondents embodying two applications. The first application was for an Order to stay execution of the Judgment of this Court dated 1<sup>st</sup> September, 2016 in the Mortgage action between Finance Bank Zambia PLC and the Respondents. The second application was for an Order to pay the Judgment debt in the Judgment referred to above by installments.

Combined Skeleton Arguments and List of Authorities were also filed by the Respondents.

The two applications were opposed in an Affidavit in Opposition sworn by one HENDRIX CHIYENGE, the Debt and Recoveries Manager of the "Applicant", filed into Court on 1<sup>st</sup> December, 2016 together with the Skeleton Arguments and List of Authorities.

As a preliminary step, I need to be satisfied that the two applications are properly before me before delving into the Affidavit evidence and the competing arguments presented by the parties.

The relevant portions of the Summons with emphasis on the parties to the applications is re-produced here below:

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2<sup>ND</sup> RESPONDENT

MIRRIAM KATUNDU

3<sup>RD</sup> RESPONDENT...”

As can clearly be seen, the naming of the Applicant on the Summons as FINANCE BANK PLC instead of FINANCE BANK ZAMBIA PLC is a misnomer of a party to the action in which the two applications were made. (For definition of ‘Misnomer’, see **Black’s Law Dictionary, Eighth Edition at page 1021**. Further, because it is not the duty of the Court to correct mistakes or make amendments to duly filed (into Court) documents on behalf of litigants, the misnomer renders the applications incompetent. The Summons and consequently the applications for Stay of Execution of the Judgment and to settle the Judgment debt by installments are, therefore, struck out.



In terms of the costs of the two applications which have been struck out, since no objection was raised to the misnomer by FINANCE BANK ZAMBIA PLC as the intended Applicant, but which instead replicated the misnomer on documents filed into Court with respect to the applications, I accordingly order that each party shall bear its/their own costs.

Leave to appeal is granted.

Dated at Lusaka this 6<sup>th</sup> day of January, 2017.



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Hon. Mr. Justice Sunday B. Nkonde, SC  
**HIGH COURT JUDGE**