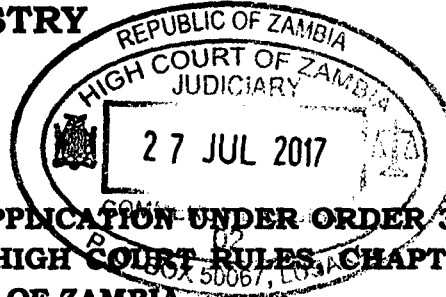


**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2016/HPC/0592



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

IN THE MATTER OF: **THE PROPERTY COMPRISED IN A LEGAL
MORTGAGE RELATING TO PLOT NO. LUB/0902
LUBUTO, NDOLA**

IN THE MATTER OF: **FORECLOSURE, POSSESSION AND SALE OF THE
MORTGAGED PROPERTY**

BETWEEN:

ZAMBIA NATIONAL COMMERCIAL BANK PLC **APPLICANT**

AND

ANDREW MUSONDA T/A GLOMAIL **RESPONDENT**
MARKETING

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

For the Applicant: **Mrs. A. Mwalula – In House Counsel,
ZANACO**

For the Respondent: **No Appearance**

JUDGMENT

LEGISLATION REFERRED TO:

- 1. Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia.**
- 2. Order 35 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia.**
- 3. Halsbury's Laws of England, Volume 32.**

CASES REFERRED TO:

1. Santley v Wilde (1899) CA 474

The Applicant by way of Originating Summons filed into Court on 20th December, 2016 made pursuant to Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia seeks the following remedies or reliefs against the Respondent:

1. Payment of all monies and contractually agreed interest due and owing to the Applicant under a Credit Facility Letter dated 5th November, 2012 for K120,000,000.00 (un-rebased) new short term loan, which facility was secured by a Legal Mortgage and a Further Charge relating to Plot No. LUB/0902 Lubuto, Ndola situate in the Copperbelt Province of Zambia in the name of Lee Andrew Musonda and which moneys stand at K161,934.14 as at 16th October 2015.
2. An Order to Foreclose on the Mortgaged Property.
3. Delivery of vacant possession of the Mortgaged Property by the Respondent to the Applicant.
4. An Order of Sale of the Mortgaged Property by the Applicant.
5. Any other relief the Court shall deem fit.
6. Costs.

The application is supported by an Affidavit in Support and Skeleton Arguments filed into Court on 20th December, 2016. The Affidavit in Support was sworn by George Mubanga Kashoki a Corporate Recoveries Specialist in the Applicant Bank. It is deposed that the Respondent was on 5th November, 2012 availed a

short term loan facility for K120,000,000.00 (un-rebased) which facility was secured by a Legal Mortgage relating to LUB/0902 Lubuto, Ndola in the name of Lee Andrew Musonda. A copy of the Credit Facility Letter dated 5th November, 2012 duly signed by the Respondent is exhibited marked "GMK1".

It is stated that it was an agreed term of the facility offered that the interest would be calculated daily on the daily debit balances and charged monthly and would be paid at the variable Bank of Zambia Policy Rate (which at the time was 9.25%) plus a margin of 17%. That it was further agreed that any interest not covered would be compounded at the rates aforesaid.

It is deposed that it was a further term of the credit facility granted that security would be a 1st Legal Mortgage relating to LUB/0902 Lubuto, Ndola. A copy of the Legal Mortgage is exhibited marked "GMK2". A copy of the Certificate of Title relating to LUB/0902 Lubuto, Ndola is also exhibited marked "GMK3". That it was also an agreed term of the Credit Facility that it would further be secured by a Further Charge relating to the Mortgaged Property, this is exhibited marked "GMK4".

It is averred that although the credit facilities have expired and despite reminders to settle his indebtedness, the Respondent has failed and/or neglected to do so. Copies of the reminders to the Respondent are exhibited marked "GMK5". That to date, the facilities remain unpaid and stand at K161,934.14 as at 27th

November, 2016. Copies of the Respondent's Statement of Account are exhibited marked "GMK6".

Counsel for the Applicant filed Skeleton Arguments into Court on 20th December, 2016. It is submitted that Judge Lindley in the case of **SANTLEY V WILDE (1)** defines a Mortgage 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".

That the Halsbury's Laws of England Volume 32 at paragraph 402 further states that a Mortgage consists of two things, namely a personal contract of a debt and a disposition or charge of the Mortgagor's estate or interest as security for the repayment of the debt.

It was submitted that this Court is canvassed with the jurisdiction to entertain the Applicant's application by virtue of Order 30 Rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia which provides as follows:

"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”.

Learned Counsel for the Applicant stated that demand having been made by the Applicant and the Respondent having failed and/or neglected to pay the money outstanding, it was the Applicant's prayer that it be granted relief as claimed.

The Respondent has not opposed the Applicant's application herein. The Record shows that on 26th January, 2017 the Respondent wrote to the Applicant Bank requesting the Applicant to extend his credit facility for 6 months effective February, 2017 and offered to pay the debt of K161,934.14 within 6 working months. The said letter makes reference to the Applicant's action herein and was received by the Applicant on 6th March, 2017.

On 23rd May, 2017 the Applicant filed Summons for an Order to Enter Judgment on Admission together with an Affidavit in Support and Skeleton Arguments. The Court gave a return date of 30th June, 2017 for hearing of the Summons for entry of Judgment on Admission. An Affidavit of Service filed into Court on 23rd June,

2017 sworn by Mulekwa Shamaleka shows that the Respondent was on 12th June, 2017 served with the Notice of Hearing.

Whilst the Respondent was not present for the hearing of the summons for entry of Judgment on Admission on 31st June, 2017 I proceeded to hear the Applicant's applications pursuant to Order 35 Rule 3 of the High Court Rules, Chapter 27 of the Laws of Zambia.

I have considered the Applicant Bank's claim together with the Affidavits in Support and Skeleton Arguments.

There is no defence or Affidavit in Opposition by the Respondent. The Respondent has in fact admitted owing the amount claimed of K161,934.14 as at 16th October, 2015 but asked that he be given 6 months within which to make payment.

I accordingly enter Judgment in favour of the Applicant Bank against the Respondent for payment of K161,934.14 and contractual interest from 28th November, 2016 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 by the Respondent within 45 days from date hereof.

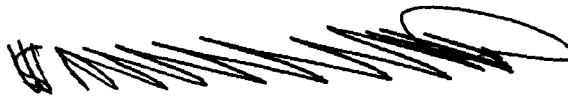
In the event that the Judgment debt and interest remains unpaid at the expiry of the said period of 45 days the Respondent shall deliver vacant possession of the Mortgaged Property being Plot No. LUB/0902 Lubuto, Ndola in the Copperbelt Province of Zambia to

the Applicant Bank which shall be at liberty to foreclose and exercise its right to sell the Mortgaged Property.

I award costs to the Applicant Bank to be taxed in default of agreement.

Leave to appeal is granted.

Delivered at Lusaka the 27th day of July, 2017.

A handwritten signature in black ink, appearing to read 'WILLIAM S. MWEEMBA', written over a dotted line.

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WILLIAM S. MWEEMBA
HIGH COURT JUDGE