

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

2016/HPC/0209

In the Matter of:

A Mortgage over Stand No. 465,
Kabulonga, Lusaka and a Third Party
Mortgage over Stand 502/CL/A/2,
Lusaka

BETWEEN

J. L Morison (Export) Limited

Plaintiff

and

Chita Chibesakunda
Abode Properties Limited

1st Defendant
2nd Defendant



Coram: Hon. Lady Justice Dr. Winnie S. Mwenda in Chambers this 10th
day of January, 2018.

For the Plaintiff: Mr. E. K. Mwitwa of Messrs Mwenye and Mwitwa
Advocates.

For the Defendants: Mr. B. Luo of Messrs Palan George Advocates

RULING

Cases referred to:

1. *George Andries Johannes White v. Ronald Westerman and Others* (1983) Z.R. 135 (H.C.).
2. *Roger Williams and Others v. Redcard Limited and Others* [2011] EWCA Civ. 466.
3. *Sun Country Limited v. Charles Kearney and Another*, SJZ. No. 20 of 2017.

Legislation referred to:

1. Section 197 of the Companies Act, Chapter 388 of the Laws of Zambia.
2. Section 6 of the Commissioner for Oaths Act, Chapter 33 of the Laws of Zambia.

3. *Order 5, rule 20 (g) of the High Court Rules, Chapter 27 of the Laws of Zambia.*
4. *Conveyancing Act, 1882.*
5. *Section 4 of the Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia.*
6. *Companies Act No. 10 of 2017.*

Other Works referred to:

Halsbury's Laws of England, 4th Edition, Vol. 9 (1) (Re-Issue) 2007, paragraph 618 p.358.

By Notice of Intention to Raise Preliminary Issue pursuant to the Provisions of Order 14A and 33 rule 3 of the Rules of the Supreme Court, 1965 (White Book) 1999 Edition as read together with Order XLVII of the High Court Rules, Chapter 27 of the Laws of Zambia filed on 6th November, 2017 the 1st and 2nd Defendants raised the following preliminary issues, namely: -

1. That from the parties' clause, one of the purported borrowers seems to be a limited liability company and its common seal ought to be affixed to the attestation clause.
2. That the exhibit marked "FM1" was improperly executed owing to the fact that the signature of the second purported borrower is not witnessed by a witness and as such, a nullity and the agreement is therefore, void *ab initio*.

In support of the Notice of Intention to Raise Preliminary Issue, the 1st and 2nd Defendants (hereinafter referred to as "the Defendants"), filed a verifying affidavit sworn by one Bwalya Luo, Counsel seized with the conduct of this matter on behalf of the Defendants wherein he avers that a cursory perusal of the exhibit marked "FM1" reveals that the document is defective and consequently, incompetent and therefore, null and void *ab initio*.

The Defendants also filed into Court on 6th November, 2017 their Skeleton Arguments in Support of Notice of Intention to Raise a Preliminary Issue, which were erroneously entitled Skeleton Arguments in Reply.

