

IN THE COURT OF APPEAL FOR ZAMBIA
HOLDEN AT KABWE AND LUSAKA
(Civil Jurisdiction)

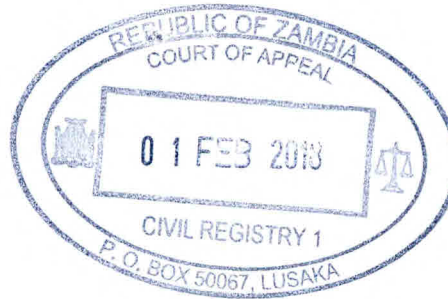
APPEAL NO. 069/2017

BETWEEN:

MIYOMBO INVESTMENTS LIMITED

AND

ECOBANK MALAWI LIMITED



APPELLANT

RESPONDENT

Coram: Mchenga, DJP, Mulongoti and Sichinga JJA

On 4th October 2017 and 1st February 2018

For the Appellant: M. Mutemwa SC, Mutemwa Chambers

For the Respondent: A. Shonga Jnr. SC, with S. Lungu, Shamwana & Company

J U D G M E N T

Mchenga, DJP, delivered the Judgment of the court.

Cases referred to:

1. Communication Authority v Vodacom Zambia Limited, SCZ Judgment No. 21 of 2001
2. Edgar Hamuwele (Joint Liquidator of Lima Bank Zambia Limited (In Liquidation)) and Another v Ngenda Sipalo and Another, SCZ Judgment No. 4 of 2010
3. Sharp v Wakefield House [1981] A.C. 17
4. Attorney General v Achiume [1983] Z.R. 1
5. House v R [1936] 40, 55 CLR 499
6. Zulu v Avondale Housing Project [1982] Z.R. 172

7. **Zambia Telecommunications Company Limited v Aaron Mweene Mulwanda and Another, SCZ Judgment No. 7 of 2012**
8. **Nkolongo Farms Limited v Zambia National Commercial Bank and two Others, SCZ Judgment No. 19 of 2007**
9. **S Brian Musonda (Receiver of First Merchant Bank (In liquidation) v Hyper Food Products and Two Others [1999] Z.R. 124**
10. **Aetna Financial Services Limited v Feigeiman and Others [1986] LCR(comm) 276**
11. **Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others [1987] LRC (const.) 822**

Legislation referred to:

1. The High Court Act, Chapter 27 of the Laws of Zambia

The circumstances surrounding this appeal can be summarised as follows; on 29th May 2014, Miyombo Investments (Malawi) Limited, obtained a short-term loan facility for US\$15,000,000.00 from the respondent. The loan was at an interest rate of 11.5% and repayable in 12 months. Further, it was secured by a corporate guarantee issued by the appellant, Miyombo Investments Limited.

Miyombo Investments (Malawi) Limited defaulted on the loan and in March 2016, the respondent issued a demand notice for US\$13,137,788.74, plus interest. The respondent subsequently commenced an action against Miyombo Investments (Malawi) Limited in the High Court of Malawi and obtained Judgment on 6th October 2016.

