



The Plaintiff commenced this action on 11<sup>th</sup> January, 2018 by way of Originating Summons claiming;

- i. Payment of all monies which as at 25<sup>th</sup> November, 2017, stood at ZMW113, 863.54, interest thereon to the date of payment at the agreed rate, costs and other charges due and owing to the Plaintiff by virtue of a loan availed to the Defendants and secured by a legal mortgage over Stand No 5622, Mpika.*
- ii. An order that the sum due to the Plaintiff be considered as a charge on the said mortgaged property.*
- iii. An order that the said mortgage be enforced by foreclosure or sale.*
- iv. Delivery up by the 2<sup>nd</sup> Defendant to the plaintiff of the mortgaged property known as Stand No 5622, Mpika.*
- v. Delivery up of all assets procured by the Commission*
- vi. Any other relief that the court may deem fit.*
- vii. Costs.*

The affidavit in support of the Originating Summons shows that the Plaintiff, a statutory body established under the Citizens Economic Empowerment Act No 9 of 2006 is the custodian of the Citizens Economic Empowerment Fund called the empowerment fund. That the 1<sup>st</sup> Defendant presented itself to the Plaintiff as a citizen owned company, and in or about 2013 applied to access the empowerment fund, by way of a loan for a Dairy Fodder Production Business. It is states that the said loan was approved as set out in the facility letter dated 20<sup>th</sup> July, 2015, and signed by the Defendants, which is exhibited as 'AL1' to the affidavit.

The affidavit further states that it was an express and fundamental term of the agreement that the 1<sup>st</sup> Defendant would be given ZMW533, 938.80 to procure

processing equipment for livestock feed, a five (5) tonne Isuzu light truck and farming machinery, and repay the Plaintiff ZMW13, 438.01 per month. That in default thereof, the outstanding balance would be due and payable to the Plaintiff together with interest at the agreed rate of twelve (12) percent per annum.

It is also stated that it was a precondition of the 1<sup>st</sup> Defendant being granted the loan facility that security in the form of Stand No 5622 Mpika would be provided, and to this effect a third party mortgage dated 22<sup>nd</sup> September, 2014 was executed between the Plaintiff as mortgagee, and the 2<sup>nd</sup> Defendant as mortgagor, wherein Stand No 5622 Mpika was demised and charged to secure repayment of the loan in the amount of ZMW1, 053, 188.00, with interest at twelve percent per annum.

The third party mortgage is exhibited as 'AL2' to the affidavit, and provides in clause 1 that the mortgagor would pay or discharge to the Plaintiff all monies and liabilities due to the Plaintiff, together with interest at twelve percent. Further that clause 2 of the said agreement provides that the mortgagee charged the mortgaged property with payment to the Plaintiff and discharge of all monies and liabilities then or thereafter due from or incurred by the mortgagor and.

The affidavit also states that clause 9 of the third party mortgage states that all costs, charges and expenses incurred by the Plaintiff in connection with the security, and proceedings to enforce the security, are recoverable from the Defendant as mortgagor as a debt, and shall be charged to the mortgaged property in addition to any other charges.

It is further deposed that the mortgaged property is held under the certificate of title exhibited as 'AL3' to the affidavit, and that the mortgagor is in possession of the mortgaged property, and is in default of payment of the principal and interest. That the Plaintiff on or about 24<sup>th</sup> September, 2014 registered a specific and floating charge to secure ZMW540, 640.00 plus interest on all the

assets procured from the Citizens Economic Empowerment loan, as shown on exhibit 'AL4'. Then on or about 4<sup>th</sup> April, 2016, the Plaintiff approved disbursement of a further ZMW71, 690.00 to the 1<sup>st</sup> Defendant, to enable it clear the farm equipment at the border in Tanzania, which amount was not enough to clear the equipment due to fluctuation of the kwacha against the dollar, and the said loan was set out in the facility letter exhibited as 'AL5'.

It is averred that the amount of ZMW71, 690.00 would be repaid in monthly instalments of ZMW15, 787.46, and in the event of default, the outstanding balance would become due and payable, together with interest at the agreed rate of twelve percent per annum.

Further that on or about August, 2016, the Plaintiff approved the additional disbursement of ZMW645, 510.00 to the 1<sup>st</sup> Defendant, out of which ZMW321, 520.00 was meant to enable the 1<sup>st</sup> Defendant to redeem the farm equipment which was still at the port in Tanzania, and ZMW324, 990.00 was meant to enable the 1<sup>st</sup> Defendant finish constructing the feed processing plant, install the livestock feed equipment, connect power and water to the plant and for working capital to support the purchase of raw materials in order to operationalize the business.

The terms of that agreement are stated as being those set out in the facility letter exhibited as 'AL6', and under which the amount disbursed would be repaid in monthly instalments ZMW31, 304.19, and in the event of default of payment, the outstanding amount would become due and payable, together with interest at twelve percent per annum. The Plaintiff alleges that the 1<sup>st</sup> Defendant has to date not put the project to operation and the statement of account shows that ZMW1, 431, 341.50 was advanced and that the periodic payments would not exceed ZMW25, 336.11, and that the amount in arrears as at 25<sup>th</sup> November, 2017 on the instalments and interest was ZMW113, 863.54, and that the loan amount called in was ZMW1, 431, 341.50. The full statement is exhibited as 'AL7'.

