

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

2016/HPC/0416

(Civil Jurisdiction)

IN THE MATTER OF THE CONVEYANCING AND LAW OF PROPERTY ACT 1881 AND IN THE MATTER OF AN APPLICATION FOR FORECLOSURE AND POSSESSION OF PROPERTY KNOWN AS LOT NO. 7505/M CHILANGA IN THE LUSAKA PROVINCE OF THE REPUBLIC OF ZAMBIA WHICH WAS MORTGAGED PURSUANT TO A LEGAL MORTGAGE

BETWEEN:

ZAMBIA NATIONAL BUILDING SOCIETY

APPLICANT

AND

CEPHAS ZULU

RESPONDENT



Before Lady Justice B.G Lungu on 1st February, 2016 in chambers at Lusaka.

For the Applicant

Mr. W. S Kankondo- In-house Counsel

For the Respondent:

In person

J U D G M E N T

CASES REFERRED TO:

- 1. China Henan International Economic Technical Cooperation v Mwange Contractors Limited, 2002 ZR 28***

LEGISLATION AND OTHER MATERIALS REFERRED TO:

- 1. Order, 30., rule 14, High Court Rules, High Court Act, CAP 27 of the Laws of Zambia, CAP 27 of the Laws of Zambia***

This matter was commenced on 7th November, 2016 by way of Originating Summons pursuant to Order 30., rule 14 of the High Court Rules, Chapter 27 of the Laws of Zambia, which was accompanied by an Affidavit in Support of Originating Summons.

In the Originating Summons, the Applicant sought the following reliefs:

- i. Payment of K116, 031.75 being the outstanding balance on the loan secured by the mortgage;
- ii. That the mortgage be enforced by an Order for foreclosure and sale;
- iii. That the Respondent delivers vacant possession of property Lot No. 7505/M Chilanga in Lusaka Province to the Applicant;
- iv. Interest accruing on the loan as agreed by the Parties; and
- v. Further and any relief that the Court may deem fit to impose plus costs.

The Affidavit in Support of the Originating summons was sworn by Nkula Lesa, who deposed that the Respondent applied and successfully obtained a Medium Term Loan of K100,000 from the Applicant, on the security of a registered Further Charge.

It was further deposed that the Respondent's loan account performed poorly notwithstanding several reminders and that the outstanding loan stood at K116, 031.75 as at 10th August, 2016.

Several documents were exhibited, as referenced in the Affidavit in Support, in aid of the claim, namely: (i) a copy of the Applicant's Medium Term Traditional Mortgages Application Form, completed by the Respondent, dated 14th May, 2012, exhibit "**NL1**"; (ii) a copy of Certificate of Title No. L536 in respect of Lot No. 7505/M, Lusaka, registered in the name of the Respondent and endorsed, in the Memorials, with a Mortgage to the Applicant to secure K30, 000, 000 and a Further Charge to secure 30, 000,000, exhibit "**NL2**"; (iii) a copy of the Further Charge entered between the Applicant and the Respondent, registered with the Registry of Deeds on 31st July, 2012, exhibit "**NL4**"; (iv) a copy of the letter of demand dated 23rd June, 2016 from the Applicant to the Respondent requesting for settlement of the outstanding debt, exhibit "**NL5**"; and (v) a copy of the Respondent's Mortgage Account Statement reflecting a balance of K116,031.75 as at 10th August, 2016.

When the matter came up for hearing on 1st February 2017, Counsel for the Applicant relied on the Originating Summons and the Affidavit in Support thereof.

The application was not opposed. The Respondent appeared in person and informed the Court that he understood the claim and admitted that he got a loan which was not being serviced. The Respondent requested that he be given time to clear the debt and proposed a period of one year to clear all the arrears including the interest.

The Applicant indicated its willingness to give the Respondent time to settle the debt, albeit urged the Court to consider reducing the period to 90 days.

Having heard the submissions of both parties and having read the Affidavit of Nkula Lesa filed in support of the Originating Summons herein, I am satisfied that the Respondent has admitted the Applicant's claim in its entirety.

My position is premised on the express admission made by the Respondent, reinforced by the fact that no Affidavit in Opposition was filed into Court. Consequently, Judgment on Admission beckons the Court. In this regard, I draw attention to the findings of the Supreme Court in the case of **China Henan International Economic Technical Cooperation v Mwange Contractors Limited**.¹ In that case, the Court stated that *"it would be absurd to expect a Court which is in control, to pause and wait for an application {for judgment on admission } where clearly the defence is deemed to have admitted the claim."*

Bearing in mind the **China Henan** case, and being satisfied that the Respondent has unequivocally admitted his indebtedness to the Applicant, with an attendant acquiesce to the reliefs sought by the Applicant, I take the view that this is an appropriate case for the Court to enter Judgment on Admission. Accordingly, Judgment on Admission is hereby entered in favour of the Applicant in the sum of ZMW 116,031.75.


I note that the Applicant does not oppose the request by the Respondent for the Court to order that the Judgment Debt be settled within a predetermined time. Having considered the positions of both parties, I consider that this is an appropriate case for me to exercise my discretion as prescribed under Order XXXVI., r 7 of the High Court Rules, to direct the time for payment of the Judgment Debt. In so doing, my Judgment is as follows:

1. Foreclosure nisi: The Respondent shall, within 180 days of the date of this Judgment, pay the Applicant the outstanding balance of ZMW 116, 031.75 together with interest. Interest shall be applied at the contractual rate from 7th November, 2016 to date of Judgment and thereafter at the Bank of Zambia short term lending rate until date of full and final settlement.
2. Foreclosure absolute: In the event that the Respondent fails to liquidate the Judgment Debt and interest within 180 days

from the date of Judgment, foreclosure relating to Lot No. 7505/M, Lusaka shall be rendered absolute immediately upon the expiry of the 180 days.

3. Possession and Sale: The Applicant shall be entitled to take possession of Lot No. 7505/M, Lusaka and exercise its right of sale effective the day following the expiry of 180 days from the date of this Judgment should the Judgment Debt not be settled in full by that date.
4. Costs incidental to these proceedings shall be borne by the Respondent, such costs to be taxed in default of agreement.

This 23rd Day of February 2017



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Lady Justice B.G.Lungu
HIGH COURT