

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

2017/HPC/0491

(Commercial Jurisdiction)

**IN THE MATTER OF: The Property comprised under an Equitable
Mortgage over Subdivision A of Stand No.
29341 Lusaka**

AND

**IN THE MATTER OF: An application for possession and Sale of the
Mortgaged Property**

BETWEEN:

INDO-ZAMBIA BANK LIMITED

APPLICANT

AND

**KENNY KANANAPEMBA (T/A CHEF
KENNY RESTAURANT & BAR)**

RESPONDENT

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

For the Applicant: Mr. M. R. Ndhlovu – Messrs MRN Legal Practitioners

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. Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia.**

This is an application by the Applicant against the Respondent pursuant to **Order 30 Rule 14 of the High Court Rules Chapter 27 of the Laws of Zambia** for the following:

1. Payment of the Sum of K33,634.90 being principle and contractual interest thereon due and owing to the Applicant under an Equitable Mortgage over Subdivision A of Stand No. 29341 Lusaka.
2. Delivery and possession of Subdivision A of Stand No. 29341 Lusaka.
3. Costs.

The Affidavit in Support sworn by Martin Kunda dated 20th November, 2017 shows that by Facility Agreement dated 23rd April, 2012 the Applicant availed the Respondent a facility by way of an Overdraft of K30,000.00 (then K30,000,000.00). The said overdraft was to attract interest of 12% above the prevailing Bank of Zambia Policy Rate. The facility was to be secured by an Equitable Mortgage over Subdivision A of Stand No. 29341 Lusaka belonging to the Respondent. The Respondent deposited his Certificate of Title No. 152628 relating to Subdivision A of Stand No. 29341 Lusaka with the Applicant and signed a Memorandum of Deposit of Title Deed on 23rd April, 2012. The Memorandum of Deposit of Title Deed is exhibited to the Affidavit marked "MK2".

That the Respondent has defaulted in his obligations to settle the facility and as at 31st January, 2017 the debt outstanding together with interest was K33,634.90.

I find and hold that the Respondent created an Equitable Mortgage over Subdivision A of Stand No. 29341 Lusaka when he surrendered his Certificate of Title and signed the Memorandum of Deposit of Title Deed.

There is proof of service of the Originating Summons, Affidavit in Support and Skeleton Arguments and there is no Affidavit in Opposition. Quite clearly there is no defence to this claim. I therefore enter Judgment in favour of the Applicant against the Respondent for the sum of K33,634.90 together with

contractual interest from 2st February, 2017 to date of Judgment and thereafter at the average lending rate as determined by Bank of Zambia up to date of full payment.

This sum together with interest must be paid by the Respondent to the Applicant within 30 days from the date hereof.

In the event that the Judgment debt and interest remains unpaid at the expiry of the said period, the Applicant Bank shall be at liberty to foreclose on the Mortgaged Property namely Subdivision A of Stand No. 29341 Lusaka. Once the Mortgaged Property is foreclosed, the Mortgagor's (Respondent's) right of redemption will be completely extinguished and the Respondent shall deliver up possession of the said Subdivision A of Stand No. 29341 Lusaka to the Applicant Bank.

The Respondent shall also convey the Mortgaged Property to the Applicant Bank unconditionally. In default Deeds of Transfer shall be executed by the Registrar of the High Court in terms of **Section 14 of the High Court Act, Chapter 27 of the Laws of Zambia**. The Applicant shall then be at liberty to exercise its right of sale of Subdivision A of Stand No. 29341 Lusaka.

Costs to the Applicant to be taxed in default of agreement.

Leave to appeal is granted.

Delivered in Chambers this 23rd day of July, 2018.



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WILLIAM S. MWEEMBA
HIGH COURT JUDGE