

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

**2017/HPC/0368**

*(Commercial Jurisdiction)*

**IN THE MATTER OF:**                    **The Property comprised under a Legal  
Mortgage over Holding No. 268 ZESCO  
Compound, Lundazi.**

**AND**

**IN THE MATTER OF:**                    **An application for Foreclosure, Possession  
and Sale of the Mortgage Property.**

**BETWEEN:**

**PULSE FINANCIAL SERVICES LIMITED  
(T/A Entrepreneurs Financial Centre "EFC")**

**APPLICANT**

**AND**

**MACHWIN MWALE**

**RESPONDENT**

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

*For the Applicant:*                    *Ms C. S. Mwamba – Mesdames SCM Legal Practitioners*

*For the Respondent:*                *No Appearance*

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**JUDGMENT**

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**LEGISLATION REFERRED TO:**

- 1. Order 30 Rule 14 of the High Court Rules 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 all monies which as at 8<sup>th</sup> July, 2017 stood at a total sum of K51,756.00 plus interest, costs and other charges due and owing to the Applicant by the Respondent under a Facility Loan Agreement dated 22<sup>nd</sup> July, 2014 and an Equitable Mortgage over Holding Number ZESCO LUN/268 Lundazi;
2. An Order for foreclosure, delivery up and sale by the Respondent to the Applicant of the Mortgaged Property;
3. An Order that the Collateral Agreement relating to the surrendering of the White Book be honoured;
4. Any further or other relief the Court may deem fit; and
5. Costs.

The Affidavit in Support sworn by Julius Nkhuwa the Legal Officer of the Applicant Company dated 23<sup>rd</sup> August, 2017 shows that by Loan Facility Agreement dated 22<sup>nd</sup> July, 2014 the Applicant availed the Respondent a loan in the sum of K150,000.00. That the Respondent Pledged personal chattels as collateral to secure the payment of the said loan facility by signing a Collateral Agreement with the Applicant relating to the surrendering of a vehicle Registration Number ALK 4044. That there was further created a Mortgage over the Respondent's immovable asset namely Holding Number ZESCO LUN/268 Lundazi. He signed Mortgage Deeds and deposited a Land Record Card relating to the property with the Applicant to secure the payment of the said sum of K150,000.000 and interest.

Copies of Assignment and Transfer of specific Assets (Immovable) dated 23<sup>rd</sup> July 2014, Mortgage of Holding No. 268 ZESCO Lundazi and Land Record Card relating to the Mortgaged Property are exhibited to the Affidavit marked "JN4", "JN5" and "JN6" respectively.



That it was a term of the Agreement that the loan granted to the Respondent was repayable in monthly instalments according to the payment schedule and the same was due on 5<sup>th</sup> September, 2014.

That the Respondent failed to pay back the amount borrowed as agreed and as at 8<sup>th</sup> July, 2017 was indebted to the Applicant in the sum of K51,756.00. It is deposed that the Respondent has failed, refused and neglected to repay the loan to the Applicant's detriment and thereby depriving the Applicant of the use of its money as it is in the business of lending money.

That the Respondent has no meritorious defence whatsoever to the claim.

There is proof of service of the Originating Summons and Affidavit in Support 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 K51,756.00 together with contractual interest from 9<sup>th</sup> July, 2017 to date of Judgment and thereafter at the average lending rate as determined by Bank of Zambia up to date of full payment.

I find and hold that the contractual interest is 3.5% per month.

The Judgment sum together with interest must be paid by the Respondent to the Applicant within 45 days from the date hereof.

It is trite law that a mortgagee's remedies or reliefs are cumulative. However a mortgagee's remedies or reliefs do not include a sale of a mortgaged property by a mortgagor to the mortgagee. I find and hold that the Assignment and Transfer of Specific Assets (Immovable) dated 23<sup>rd</sup> July, 2014 is of no legal effect or force in as far as it purports to assign Holding No. 268 ZESCO Compound, Lundazi from the Respondent to the Applicant. In this respect the relief of sale by the Respondent to the Applicant of the Mortgaged Property is untenable.



In the event that the Judgment debt and interest remains unpaid at the expiry of the said period, the Applicant shall be at Liberty to foreclose on the Mortgaged Property, have possession and exercise its power of Sale of Holding, Number ZESCO LUN/268 Lundazi.

It is ordered that the Respondent surrenders the White Book relating to Motor Vehicle Registration No. ALK 4044 and the vehicle to the Applicant to enable it sale it.

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

Leave to appeal is granted.

**Delivered in Chambers this 24<sup>th</sup> day of July, 2018.**



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**WILLIAM S. MWEEMBA**  
**HIGH COURT JUDGE**