

IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2018/HPC/0058

BETWEEN:

ZAMBIA NATIONAL BUILDING SOCIETY

AND

JAVERN CHALI MBILIKA



APPLICANT

RESPONDENT

Delivered in Chambers before the Honourable Mr. Justice Sunday B. Nkonde, SC at Lusaka this 20th day of August, 2018.

For the Applicant : Mr. F. Zulu of Messrs MSK Advocates

For the Respondent : N/A

J U D G M E N T

By Originating Summons filed on 15th February, 2018, the Applicant claimed against the Respondent the following reliefs:-

1. Payment of K453,868-33 due under a legal mortgage relating to Plot Number F/32a/E/2/2599, Lusaka.
2. Delivery up and possession of Plot F/32a/E/2/2599.
3. Foreclosure and sale
4. Interest on all monies due
5. Further or other relief

6. Costs

According to the Amended supporting Affidavit sworn by **MARGARET MUSHEKE**, Manager Special Assets Management in the Applicant, sometime in June, 2013, the Respondent was granted a facility in the sum of ZMW390,000-00 which was secured by Plot Number F/32a/E/2/2599 Lusaka; the Respondent's property. However, the Respondent failed to settle the debt arising from the facility which as at 22nd November, 2017 stood at ZMW453,868-00 and despite several demand letters for repayment, the Respondent has failed to do so.

Copies of the Facility Letter, Certificate of Title for F/32a/E/2/2599 and the Mortgage Deed referred to were among documents exhibited to the Affidavit. A supplemental Supporting Affidavit also carried the Respondent's Statement of Account.

The application was not opposed and upon being satisfied that the Originating process was served on the Respondent, I proceeded to hear the application.

I have considered the application and note that the Statement of Account exhibited shows telephone fees on telephone calls made by the Applicant in relation to the facility passed on to the Respondent in accordance with the terms of the Facility Letter with interest compounded. I see no legal basis for the compound interest on the telephone fees. Therefore, while I am inclined to enter Judgment against the Respondent, which I accordingly do, the amount

due on the facility is consequently referred to assessment by the Learned Deputy Registrar.

The following Orders are also made:

1. The amount to be assessed shall attract interest at the contractual rate from 15th February, 2018 to the date of this Judgment and thereafter at the Commercial Bank Lending Rates as determined by the Bank of Zambia from time to time until full payment.
2. The amount due, inclusive of interest, shall be paid within 90 days from the date of assessment and in default, the Respondent shall deliver vacant possession of Plot Number F/32a/E/2/2599 Lusaka to the Applicant who shall be at liberty to foreclose and exercise the right of sale of the mortgaged property.

Costs shall be for the Applicant, to be taxed in default of agreement.

Dated at Lusaka this 20th day of August, 2018.



HON. JUSTICE SUNDAY B. NKONDE, SC
HIGH COURT JUDGE