

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

2013/HP/1711

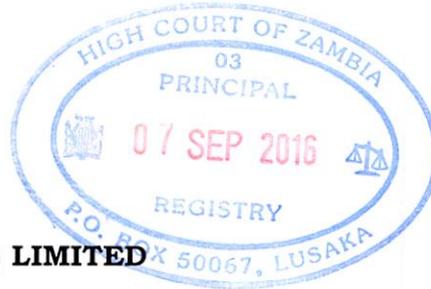
(Civil Jurisdiction)

Between:

RUSKIN JERE

AND

STANBIC BANK (ZAMBIA) LIMITED



PLAINTIFF

DEFENDANT

BEFORE HON. MRS. JUSTICE G.C. CHAWATAMA
ON 2ND SEPTEMBER, 2016 - IN CHAMBERS

For the Plaintiffs : *Mr. G. M. Kaulungombe- Marshall Chambers*

For the Defendant : *Mr.N. Siamondo Corpus Legal Practitioners*

RULING

This is an application brought pursuant to Order 14 Rule 1 of the Rules of the Supreme Court of England (1999 edition). The Plaintiffs application is for this court to determine this matter on a point of law. The question which the Plaintiff seeks to be determined, as contained only in the affidavit and not in the summons is for this court to determine whether there is an obligation on the part of the Defendant to obtain a fair or true market value of the property failing which the Defendant had to account to the Plaintiff for the difference between the sale price and the valuation price at the time of sale.

The Defendant's initial response is that the summons for this application should be set aside as there has been want of compliance with Order 14A which requires the summons for this application to state in clear and precise terms what the question of law or construction is sought to be determined by the court. A perusal of the summons does reveal, as indicated by the Defendant, that it simply states "*...to be heard on the application to dispose of this case or cause on a point of law for reasons outlined in the accompanying affidavit.*"

I deal with this issue before proceeding with the rest of the application. The summons clearly state that they are summons for summary judgment pursuant to Order 14 Rule 1 (which is the correct provision for summary judgment). What is confusing is that the Plaintiffs skeleton arguments (submissions) relate to disposal of case on a point of law pursuant to Order 14A, RSC, 1999 edition.

An application under Order 14 is an application where the Plaintiff believes the Defendant has no defence. Order 14/1/5(c) makes it clear that the affidavit to support the application must, inter alia, contain a statement of the deponent's belief that there is no defence to the claim or part thereof in respect of which the application is made. This is not the case in the affidavit herein. As stated above the summons are for the Plaintiff to be heard on an application to dispose of the case on a point of law: "*a*

determination whether there is an obligation on the part of the Defendant to obtain a fair or true market value of the property failing which they had to account to the Plaintiff for the difference between the sale price and the valuation price at the time of sale.”

In their amended defence the Defendants state that it not under an obligation to notify the Plaintiff prior to the sale of the property and the sale was only after an advertisement in the Post Newspaper of 11th January, 2010. Further that its obligation was merely to take reasonable steps to obtain a fair and true market value of the property which it discharged by conducting a valuation of the property and advertising the property in a newspaper of general circulation.

There is a total mix up of Orders 14 and 14A in this application. This is a serious irregularity.

Notwithstanding the above mix up, I would still not have granted this application because as stated by the Defendant there is a dispute between the parties which will require evidence of facts for me to determine this matter in full.

While the Plaintiff is of the view that the only question to be determined is whether the Defendant was under an obligation to obtain a fair or true market value of the property failing which they had to account to the Plaintiff for the difference between the

sale price and the valuation price at the time of sale. The Defendant's position is that they took reasonable steps to obtain a fair and true market value of the property by conducting a valuation and advertising the property in a newspaper.

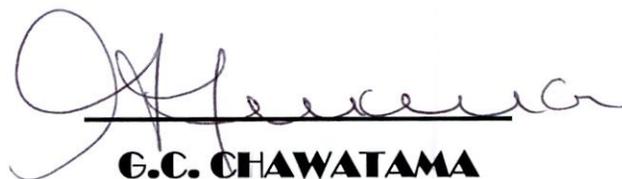
In addition, there is a counterclaim for an alleged balance of ZMW721,966.00 still owing to the Defendant after applying the proceeds of the sold property and therefore a claim for an order to sell stand No. 6983/CL/3 Old Brentwood, Longacres.

This is not a proper case to be determined under whether Order 14 or 14A. This application is therefore dismissed.

The rest of the arguments between the parties pertain to Order 14A and consequently fall off automatically.

Leave to appeal is hereby granted should any party be unhappy with my decision.

DELIVERED AT LUSAKA THIS 2ND DAY OF SEPTEMBER, 2016.



A handwritten signature in black ink, appearing to read 'G.C. Chawatama', is written over a horizontal line.

G.C. CHAWATAMA

JUDGE