

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

**2016/HPC/0003**



BETWEEN:

**ARTHUR NDHLOVU**

(Suing as Attorney for Chongo Coreem Musonda  
and Ireen Chiwala)

**1<sup>ST</sup> PLAINTIFF**

**A. M. WOOD & COMPANY**

(Suing as a firm)

**2<sup>ND</sup> PLAINTIFF**

AND

**ZIMCO LIMITED (IN LIQUIDATION)**

**DEFENDANT**

**Delivered in Chambers before Hon. Mr. Justice Sunday B. Nkonde, SC at  
Lusaka this 9<sup>th</sup> day of November, 2016**

For the Plaintiffs : Mr. J. Banda of Messrs A. M. Wood and Company

For the Defendant : Mr. M. Museba of Messrs Simeza Sangwa & Associates

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**JUDGMENT**

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By Originating Summons filed on 2<sup>nd</sup> February, 2016, the Plaintiff commenced this action claiming from the Defendant the following reliefs, namely:

- 1. An Order that the Defendant's properties listed in the schedule herein subject to the Charging Order Absolute**

dated 11<sup>th</sup> December, 2015 in favour of the Plaintiffs be sold without further reference to the Court.

2. An Order that the Plaintiffs' Lawyers will have conduct of the sale.
3. An Order vesting the title of the properties aforesaid into the Plaintiffs names for purposes of carrying out the sale.
4. An Order that the Defendant deliver up possession of the property to the Plaintiffs.
5. An Order that the Plaintiffs do apply the proceeds of sale to;
  - i. Pay the costs and expenses of effecting the sale;
  - ii. To retain the amount due to the Plaintiffs;
  - iii. To pay all interest accrued over the charged amounts;
  - iv. To pay the balance (if any) to the Defendant or into Court as the Court shall direct;
6. An Order that the Defendant shall pay the Plaintiffs costs of this action.
7. Further or other relief.

The schedule referred to in 1) above is:

- i. Stand 4560/CL/B1, Lusaka
- ii. Stand 4560/CL/1/1, Lusaka
- iii. Stand 4560/CL/1/2, Lusaka
- iv. Stand 4560/CL/1/3, Lusaka

- v Stand 4560/CL/1/4, Lusaka
- vi Stand 4560/CL/1/5, Lusaka
- vii. Stand 4560/CL/1/6, Lusaka
- viii. Stand 4560/CL/1/7 Lusaka
- ix. Stand 4560/CL/1/8, Lusaka
- x. Stand 4560/CL/1/9, Lusaka
- xi. Stand 4560/CL/1/10, Lusaka
- xii. Stand 4560/CL/1/11, Lusaka
- xiii. Stand 7393/CL/1/1, Lusaka
- xiv. Stand 7393/CL/2/1, Lusaka
- xv. Stand 7393/CL/1/2, Lusaka
- xvi. Stand 7393/CL/M/2, Lusaka
- xvii. Stand 73930/CL/M/4, Lusaka
- xviii. Stand 4560/CL/4/1, Lusaka
- xix. Stand 4560/CL/4/2, Lusaka
- xx. Stand 4560/CL/4/3, Lusaka
- xxi. Stand 4560/CL/4/4, Lusaka
- xxii. Stand 4560/CL/4/5, Lusaka
- xxiii Stand 4560/CL/4/,6, Lusaka
- xxiv Stand 4560/CL/4/7, Lusaka
- xxv. Stand 4560/CL/4/8, Lusaka
- xxvi. Stand 4560/CL/4/9, Lusaka
- xxvii. Stand 4560/CL/4/10, Lusaka
- xxviii. Stand 4560/CL/5/1, Lusaka
- xxix. Stand 4560/CL/6/1 Lusaka
- xxx. Stand 4560/CL/7/1, Lusaka
- xxxi. Stand 4560/CL/8/1, Lusaka
- xxxii. Stand 4560/CL/9/1, Lusaka

- xxxiii. Stand 4560/CL/10/1, Lusaka**
- xxxiv. Stand 4560/CL/11/1, Lusaka**
- xxxv. Stand 4560/CL/12/1, Lusaka**
- xxxvi Stand 4560/CL/13/1, Lusaka**
- xxxvii. Stand 4560/CL/14/1, Lusaka**
- xxxviii. Stand 4560/CL/15/1, Lusaka**
- xxxix. Stand 4560/CL/16/1, Lusaka**
- xl. Stand 4560/CL/17/1, Lusaka**
- xli. Stand 4560/CL/18/1, Lusaka**
- xlii Stand 4560/CL/19/1, Lusaka**
- xliii. Stand 4560/CL/20/1, Lusaka**
- xliv. Stand 4560/CL/21/1, Lusaka**
- xlv. Stand 4560/CL/22/1, Lusaka**
- xlvi. Stand 4560/CL/23/1, Lusaka**
- xlvii. Stand 4560/CL/23/2, Lusaka**

The Originating Summons was accompanied by two supporting affidavits, one sworn by the 1<sup>st</sup> Plaintiff, ARTHUR NDHLOVU, dated 24<sup>th</sup> February, 2016 and the other, a further affidavit sworn by JAMES BANDA the Managing Partner of the 2<sup>nd</sup> Plaintiff dated the same day 24<sup>th</sup> February, 2016. The 1<sup>st</sup> Plaintiff's affidavit is here below reproduced in part for completeness.

The affidavit of ARTHUR NDHLOVU from paragraph 5 to 17 is as follows:

- 5. That on the 19<sup>th</sup> day of December 2007, CHONGO COREEM MUSONDA and IREEN CHIWALA (herein called**

the Claimants) took out an action against the Defendant under Cause 2007/HPC/0343 claiming the sum of US\$ 814, 422 being the outstanding liquidator's fees due and owing by the Defendant, interest, costs and any other relief.

6. That on the 19<sup>th</sup> day of January, 2009, Judgment was passed by the High Court granting the reliefs sought by the Claimants.
7. That having been dissatisfied with the judgment, the Defendant appealed to the Supreme Court on the 28<sup>th</sup> day of January, 2009. The Supreme Court dismissed the appeal and upheld the judgment of the High Court.
8. That the Defendant only paid the principle sum of USD\$14,422 and has failed to pay the interests and costs as awarded by the Court.
9. That as at 14<sup>th</sup> August, 2015, the interest and costs stood in the sums of USD\$ 537, 049.93 and K800, 000 respectively. There is now produced and shown to me marked 'AN1', a copy of an Order of this Court in this regard.
10. That on the 23<sup>rd</sup> day of September, 2015, the Claimants applied for an order imposing a charge over the Defendant's properties in order to secure and subsequently settle the debt herein.

11. That a Charging Order Nisi was granted on the 23<sup>rd</sup> day of September, 2015. Produced and shown to me marked 'AN2' is a copy of the Charging Order Nisi.
12. That a Charging Order Absolute was later issued by the Court on the 11<sup>th</sup> day of December, 2015 charging the Defendant's properties with payment of the sums of USD\$ 537, 049.93 as interest and K800, 000 as costs thereon due on the Judgment together with the costs of the application for the imposition of the charge. Produced and shown to me marked 'AN3' is a copy of the Charging Order Absolute.
13. That the Defendant holds a beneficial interest as owner of certain properties around Lusaka and that to the Plaintiffs knowledge the said Defendant is in effective sole possession of the said properties. (The properties as in the schedule referred to are then listed)

**There is now produced and shown to me marked 'AN4' the Ministry of Lands and Deeds Lands Register printouts showing the ownership and status of the properties.**

14. That as far as I have been able to ascertain, there are no other Creditors of the Defendant having a prior charge or security over the properties listed in paragraph 13 above.

15. That at the date of the application herein, the Defendant stills remains indebted to the Plaintiff's in the sum of USD\$ 537, 049.93 as interest and K800, 000 as costs. The amounts keep accruing further interest.
16. That I propose to sale the property by advertisement in both a newspaper of daily nationwide circulation and advertisement with various estate agents.
17. That my estimates as to the gross price of the properties listed above is about K65, 415, 000 and the costs of sale is approximately 20% of the said price. Produced and shown to me marked 'AN5' is a true copy of a valuation report.

The affidavit of JAMES BANDA was substantially a repeat of that of ARTHUR NDHLOVU referred to except for the addition that the costs of K800, 000-00 were agreed and confirmed by an Order of the Court.

What followed, thereafter, was that on 7<sup>th</sup> day of July, 2016, the parties executed a Consent Order which read as follows:

***"WHEREAS the 1<sup>st</sup> Plaintiff commenced proceedings under cause No 2007/HPC/0343 claiming the sum of USD 814, 422 being outstanding fees owing and due from the Defendant as well as interest and costs.***

***WHEREAS in a judgment awarded by the High Court and upheld by the Supreme Court, the 1<sup>st</sup> Plaintiff was awarded the reliefs sought but the Defendant only paid***

*the principle sum of USD814, 422 and left the interest and costs unpaid.*

*WHEREAS the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs commenced this action to recover the interest due under the judgment and costs awarded under cause No. 2007/HPC/0343 which stood at USD537, 049.93 and K800, 000 as at August, 2015.*

*THE PARTIES having agreed upon the terms of settlement and consenting to an order being drawn up on such terms.*

**BY CONSENT**

*IT IS HEREBY ORDERED that the Defendant shall pay to the 1<sup>st</sup> Plaintiff the sum of USD537, 000 and the sum of K1, 000, 000 to the 2<sup>nd</sup> Plaintiff in full and final settlement of all their claims under cause No. 2007/HPC/0343 and in this action to be paid on or before 30<sup>th</sup> September, 2016.*

*IT IS FURTHER ORDERED that each party shall bear its own costs of this action.*

*Upon payment of the above sums to the Plaintiffs, the Defendant and its Joint Liquidators shall be discharged from all further liability in respect of the Plaintiffs claims under cause No. 2007/HPC/0343 and in this action or arising from the issues raised under cause No. 2007/HPC/0343 and in this action.*

*IT IS FURTHER ORDERED that in the event the Defendant defaults in paying the sums agreed by 30<sup>th</sup> September,*



*2016, the Plaintiff shall be at liberty to proceed with its claims under the originating summons herein with no further recourse to a negotiated settlement.*

*Dated this 7<sup>th</sup> day of July, 2016.*

*Signed*

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**HON. MR. JUSTICE S. B. NKONDE, SC  
HIGH COURT JUDGE**

*This Order was drawn and consented to on behalf of the Defendant by Counsel of:*

*Signed*

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**Simeza, Sangwa & Associates  
Suite C, The Coliseum  
Bwinjifumu Road  
Rhodes Park  
LUSAKA  
Tel. No. 260 211 227484/227574  
Fax No. 260 211 220568  
E-mail: [simezasangwa@iconnect.zm](mailto:simezasangwa@iconnect.zm)  
Advocates or the Defendant”**

*This order was consented to on behalf of the Plaintiffs by:*

*Signed*

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**A.M. Wood & Company  
Villa 6, Millennium Village  
Birdcage Walk  
Longacres  
LUSAKA  
E-mail: [info@amwlegal.com](mailto:info@amwlegal.com)  
Advocates for the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiffs**

On 3<sup>rd</sup> November, 2016, the Plaintiffs applied by summons to have the Originating Summons herein cause listed and determined on the ground that the Defendant had defaulted to pay the sum agreed upon in the Consent Order dated 7<sup>th</sup> July, 2016.

At the hearing on 7<sup>th</sup> August, 2016, the Defendant's advocates wasted no time in telling the Court that there was no objection to the applications as in fact, the understanding of the Defendant was that payment of the whole outstanding sum was made on Friday 4<sup>th</sup> November, 2016 and only proof of payment was being awaited from the Ministry of Finance. To put it differently, it appears the Learned Counsel for the Defendant was saying that although the Defendant had defaulted on the Consent Order, the default had already been remedied and only proof of payment was yet to be shown.

In the circumstances, there being no objection to the Plaintiff's applications and on the basis of a clear admission of the indebtedness by the Defendant's Learned Counsel at the hearing on 7<sup>th</sup> November, 2016, I accordingly enter Judgment for the Plaintiffs and make the following Orders:

**1. An Order that the Defendant's properties subject to the Charging Order Absolute dated 11<sup>th</sup> December, 2015 in favour of the Plaintiffs be sold and the properties are namely:**

- i. Stand 4560/CL/B1, Lusaka**
- ii. Stand 4560/CL/1/1, Lusaka**
- iii. Stand 4560/CL/1/2, Lusaka**

- iv. Stand 4560/CL/1/3, Lusaka
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- xlv. Stand 4560/CL/22/1, Lusaka
- xlvi. Stand 4560/CL/23/1, Lusaka
- xlvii. Stand 4560/CL/23/2, Lusaka

2. An Order that the Plaintiffs' Lawyers will have conduct of the sale.
3. An Order that the purchase price(s) for the properties and other conditions of the contract(s) of sale shall be subject to prior approval of this Court.
4. An Order vesting the title of the properties aforesaid into the Plaintiffs names for purposes of carrying out the sale.
5. An Order that the Defendant deliver up possession of the property to the Plaintiffs.

- 6. An Order that the Plaintiffs do apply the proceeds of sale to;**
- v. Pay the costs and expenses of effecting the sale;**
  - vi. To retain the amount due to the Plaintiffs;**
  - vii. To pay all interest accrued over the charged amounts;**
  - viii. To pay the balance (if any) to the Defendant or into Court as the Court shall direct;**
- 7. An Order that the Defendant shall pay the Plaintiffs costs of this action.**

Dated at Lusaka this 9<sup>th</sup> day of November, 2016.

  
\_\_\_\_\_  
Hon. Mr. Justice Sunday B. Nkonde, SC  
**HIGH COURT JUDGE**