

Legislation Referred To:

1. *High Court Act, Chapter 27*

The Applicant commenced this action pursuant to Order XXX

Rule 14 of the High Court Rules seeking the following reliefs:

- i) *A declaration that by virtue of depositing certificate of title No. L824 in respect of Stand No. 630 Mongu, the Applicant is entitled to be considered as being an equitable mortgagee of the said Stand No. 630, Mongu;*
- ii) *Payment of all monies which as at 29th August, 2016, stood at ZMW2,859,473.31, interest thereon to the date of payment at the agreed rate, costs and other charges due and owing to the Applicant by virtue of a loan availed to the Respondent and secured by an equitable mortgage over Stand No. 630, Mongu;*
- iii) *A declaration that the sum due to the Applicant is to be considered as being a charge on the said mortgaged property;*
- iv) *An order that the said mortgage may be enforced by foreclosure or sale;*
- v) *Delivery up by the Respondent to the Applicant of the mortgaged property known as Stand No. 630, Mongu;*
- vi) *Any other relief the Court may deem fit;*
- vii) *Costs.*

Victor Manda a Senior Credit Control and Risk Officer in the Applicant organization swore an Affidavit in Support, where he deposes that the Applicant is a statutory body established by the Citizens Economic Empowerment Act No. 9 of 2006, and is

responsible for administering the Citizens Economic Empowerment Fund (the "Empowerment Fund").

The deponent states that the Empowerment Fund consists of monies intended to benefit citizens and citizen owned companies. The deponent further states that the Respondent Company applied for a loan on 2nd July, 2009, as shown in the exhibit "**VM1**". The Applicant organization approved the Respondent's loan facility via a letter dated 10th February, 2010, shown in the exhibit marked "**VM2**".

The deponent avers that the facility letter shows that the Respondent Company was granted ZMW1,997,027, which it was obligated to pay back in monthly installments of ZMW52,589.38. The deponent states that in the event of default, the Applicant was at liberty to immediately recall the loan at an interest rate of 12% per annum.

The deponent further states that the facility letter had a condition precedent, which required the Respondent to provide collateral. The deponent avers that the Respondent deposited the original Certificate of Title No. L824 in respect of Stand No. 630 as collateral, and without executing a memorandum or legal mortgage, as shown in the exhibit marked "**VM3**". The deponent states that the mortgaged property consists of a guest house which is operated and run by the Respondent.

The deponent further avers that the Respondent is in possession of the mortgaged property as mortgagor and has defaulted on the repayment of the principal amount and interest. Further, that the Respondent's state of the account shown in the exhibit marked "**VM4**" reveals the following:

- (i) Amount advanced – ZMW 1 997 027;
- (ii) Amount of periodic payments required to be made – ZMW 52,589.38;

- (iii) Amount remaining due under the mortgage as at 29th August, 2016 – ZMW2,859,473.31 with interest continuing to accrue.

The deponent contends that despite several verbal and oral reminders sent to the Respondent to settle the loan, the Respondent only paid back ZMW2,000.00 on 20th July, 2015, and has failed or refused to settle the balance owing on the loan.

The deponent states that the Respondent admits its indebtedness to the Applicant and has no defence for its action. In consequence, the Applicant desires to recover its money so that it can maintain the Empowerment Fund for the benefit of other targeted citizens.

The Respondent did not file an Affidavit in Opposition. At the hearing of this matter on 31st August, 2017, its Managing Director conceded that it was indebted to the Applicant in the stated amount.

I have seriously considered the affidavit evidence and find that there is no dispute that the Respondent borrowed ZMW1,997,027.00 from the Applicant to purchase a guest house and rehabilitate it. The Applicant secured the loan by an equitable mortgage on Stand 630, Mongu. According to Clause 5 of the facility letter dated 10th February, 2010, the Respondent was to repay the loan on the last day of the fifty-fourth (54) month from the date of the first disbursement. The Applicant was granted liberty to redeem the loan on demand from the Respondent in the event of default.

Therefore, the sole issue to be determined by the Court is whether the Applicant is entitled to redeem Stand No. 630, Mongu, which was pledged as collateral by the Respondent. I find that the Respondent defaulted in servicing the loan, only having repaid a paltry sum of ZMW 2,000.00 on 20th July, 2015 out of the expected ZMW 1,997,027.00. Due to the Respondent's default and charge of

interest, the amount due on the loan has increased to ZMW 2,859,473.31.

In the result, I accordingly enter judgment for the Applicant in the sum of ZMW 2,859,473.31 outstanding as at 29th August 2016. This amount shall accrue simple interest at 12% per annum from 29th August, 2016, to the date of judgment. Thereafter, interest will accrue at the bank lending rate as determined by the Bank of Zambia from time to time until full payment.

I am mindful that under Order XXX Rule 14 of the High Court Rules, a mortgagee's rights are cumulative. Thus, the Applicant is at liberty to exercise its power to sale the mortgaged property without further recourse to Court.

I award costs to the Applicant to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 21st day of February, 2017.

M. Mapani-Kawimbe
M. Mapani-Kawimbe
HIGH COURT JUDGE