

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

2009/HP/1110



IN THE MATTER OF :

**ORDER 30 RULE 14 OF THE
HIGH COURT RULES CHAPTER 27**

B E T W E E N:

INDO-ZAMBIA BANK LIMITED

PLAINTIFF

AND

JOSEPH CHISANGA

DEFENDANT

**Before Honourable Mrs Justice M. Mapani-Kawimbe in Chambers on 21st
February, 2017**

For the Applicant : Mr G Pindani, Messrs Chonta Musaili
& Pindani Advocates
For the Defendant : No Appearance

J U D G M E N T

Case Authorities Referred To:

1. *S. Brian Musonda (Receiver of First Merchant Bank Zambia Limited (In Receivership) v Hyper Food Products Limited, Tony's Hypermarket Limited, Creation One (Z) Limited, SCZ Judgment No. 16 of 1999*

Legislation Referred To:

1. *High Court Act, Chapter 27*

The Applicant commenced this action by way of Originating Summons seeking the following reliefs:

1. *Payment of all monies which as at 17th July 2009 stood at K9,181,881.26 interest, costs and other charges due and owing to the Plaintiff by the Defendant by virtue of banking facility dated 4th January 2007 granted to the said Defendant and secured by equitable mortgage over Plot/Stand No. 06 Block 182 Chawama Lusaka.*
2. *Foreclosure.*
3. *Delivery by the Defendant to the Plaintiff of the mortgaged property.*
4. *Sale of the said mortgaged property.*
5. *Any further or other relief the Court may deem fit.*
6. *Costs.*

Munaki Derrick Farai a Supervisor in the Plaintiff Bank, Advances Department, Lusaka Main Branch swore an Affidavit where he deposed that the Plaintiff advanced the Defendant a loan of K7,000.00 (rebased) on 4th January, 2007, at the Defendant's instance, as shown in the exhibit marked "**MDF1**". Further, that under the facility letter, the loan was to be repaid within 12 months from the date of disbursement at 10% interest above the annual base rate and compounded monthly.

The deponent states that the Defendant's loan was secured by an equitable mortgage of his Plot No. 06 Block 182 Chawama, Lusaka, whose Occupancy Licence is shown in the exhibit marked "**MDF2**". The deponent further states that the Plaintiff registered a caveat on the Defendant's property as shown in the exhibit marked "**MDF3**".

That deponent avers that the Defendant has defaulted on the loan repayments and the Plaintiff has since recalled the loan as shown in the exhibit marked "**MDF4**". The deponent further avers that the Defendant admitted his indebtedness to the Plaintiff but has neglected or failed to settle the balance due on the loan, as shown in the exhibit marked "**MDF5**".

The Affidavit discloses that as at 17th July, 2009 the Defendant was indebted to the Plaintiff Bank in the sum of K9,181,881.26. The Statement of the Defendant's Account is shown in the exhibit marked "**MDF6**". The deponent concludes with a

prayer to the Court to grant the Plaintiff the reliefs set out in the Originating Summons.

The Defendant did not file an Affidavit in Support.

At the hearing, Learned Counsel for the Plaintiff placed reliance on the Affidavit in Support and Skeleton Arguments. He reiterated the contents of the Affidavit and prayed to Court to grant the Plaintiff the reliefs sought.

I have seriously considered the affidavit evidence, skeleton arguments and the oral submissions of Counsel. There is no dispute that the Plaintiff availed the Defendant a loan facility of K7,000.00 (rebased). The Defendant was under an obligation to service the loan within twelve months. The rate of interest was agreed at an annual rate of 23% by the parties. Hence, the sole issue that falls for determination is whether the Defendant's default entitles the Applicant to redeem the equitable mortgage.

Order XXX Rule 14 of the High Court Rules provides that:

"14. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclosure or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable in the chambers of a Judge for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say-
Payment of moneys secured by the mortgage or charge;
Sale;
Foreclosure;
Delivery of possession (whether before or after foreclosure) to the mortgagee or person entitled to the charge by the mortgagor or person having the property subject to the charge or by any other person in, or alleged to be in possession of the property;
Redemption;
Reconveyance;
Delivery of possession by the mortgagee."

In the case of **S. Brian Musonda (Receiver of First Merchant Bank Zambia Limited (In Receivership) v Hyper Food Products Limited, Tony's Hypermarket Limited, Creation One (Z) Limited¹** cited by Counsel for the Plaintiff, the Supreme Court stated thus:

"The Appellant commenced a typical Mortgage action brought by a Mortgagee. He asked for the payment of the money secured by the equitable Mortgage: foreclosure; sale; delivery of possession; and further or other relief deemed appropriate by the Court. The Mortgagee's remedies are truly cumulative, leaving aside the fact that an equitable Mortgage's remedies are somewhat more restricted than those of a legal Mortgage... We have quoted the

terms of the Consent Order to underline the fact that Mortgagees remedies are cumulative.”

On the basis of the affidavit evidence I am satisfied that the Plaintiff has proved its claims against the Defendant. I accordingly enter judgment for the Plaintiff in the sum of K9,181,881.26 outstanding as at 17th July, 2009. The judgment sum shall accrue simple interest at 23% per annum from 17th July, 2009 to the date of judgment. Thereafter, interest shall accrue at the bank lending rate as determined by the Bank of Zambia from time to time until full payment.

Bearing in mind that a mortgagee's remedies are cumulative, the Plaintiff is at liberty to foreclose the mortgaged property and exercise its power of sale without further recourse to the Court.

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

Dated this 21st day of February, 2017.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE