

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

*(Civil Jurisdiction)*



**2017/HP/1464**

IN THE MATTER OF:

**ORDER 30 RULE 14 OF THE HIGH  
COURT RULES CHAPTER 27 AND  
ORDER 88 OF THE RULES OF THE  
SUPREME COURT, 1999 EDITION**

**B E T W E E N :**

ZAMBIAN HOME LOANS LIMITED

**APPLICANT**

**AND**

AARON KAMANGA

**RESPONDENT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 7<sup>th</sup>  
day of November, 2017**

<i>For the Plaintiff</i>	:	<i>Mr. G. Pindani, Messrs Chonta Musaila &amp; Pindani Advocates</i>
<i>For the Defendant</i>	:	<i>No Appearance</i>

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## **J U D G M E N T**

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**Legislation Referred To:**

1. *High Court Act, Chapter 27*

By Originating Summons made pursuant to Order 30 Rule 14 of the High Court Rules and Order 88 of the Rules of the Supreme Court the Applicant seeks the following reliefs:

- (i) *Payment of all monies which as at 31<sup>st</sup> July, 2017 stood at a total sum of K810,521.81 plus interest thereon at the agreed rate of 24% and other fees and charges due and owing to the Applicant by the Respondent under a Construction Finance Mortgage (CFM) Loan availed on 1<sup>st</sup> February, 2016 by the Applicant to the Respondent at the Respondent's own request and instance secured by a Legal Mortgage and Certificate of Title over Subdivision 'B' of Subdivision No. 80 of Farm No. 610, Foxdale Lusaka.*
- (ii) *Foreclosure, possession and sale of the said mortgaged property.*
- (iii) *Any further or other relief the Court may deem fit.*
- (iv) *Legal costs of and incidental to this action.*

**Chabota Mwanamoonga** a Securities and Governance Manager in the Applicant organization swore an Affidavit, where he deposes that on 1<sup>st</sup> February, 2016, the Applicant under Reference No. 000000125, availed the Respondent a home construction loan at his own request in the sum of ZMW700,000.00. That it was to be repaid with capitalized fees and interest at the agreed rate of 24% per annum in initial monthly installments of K20,387.46 through salary deductions. Further, that the Respondent was to repay the loan over a period of one year as shown in the exhibit marked **"CM1."**

The deponent states that the Respondent's borrowing was secured by a Legal Mortgage over his property, Subdivision 'B' of

Subdivision No. 80 of Farm No. 610 Foxdale Lusaka together with the improvements and residential structures built thereon as shown in the exhibit marked "**CM2.**" That the Respondent has continuously breached his loan repayment obligations.

The deponent states that the Applicant organization sent letters of reminder to the Respondent on 24<sup>th</sup> March and 10<sup>th</sup> July, 2017 demanding payment. Further, that the Applicant requested the Respondent to attend a meeting to discuss proposals on liquidation after which he made several unfulfilled promises to repay the loan. This is shown in the exhibit marked "**CM3.**" The deponent also states that as at 31<sup>st</sup> July, 2017, the outstanding balance on the loan was ZMW810,521.81 with accruing interest as shown in the exhibit marked "**CM4.**" That the Respondent admits his indebtedness to the Applicant and has no defence for his action.

The Respondent did not file an Affidavit in Opposition.

At the hearing, Learned Counsel for the Applicant relied on the Affidavit and Skeleton Arguments filed herein. He reiterated the



contents of the Affidavit in Support. He prayed to the Court to grant the Applicant the reliefs sought and for the Respondent to be given a moratorium of sixty days before invoking foreclosure, possession and sale.

I have anxiously considered the Affidavit and Skeleton Arguments filed herein. There is no dispute that the Respondent borrowed ZMW700,000.00 from the Applicant for home construction. The Applicant secured the loan by a legal mortgage on Subdivision 'B' of Subdivision No. 80 of Farm No. 610 Foxdale, Lusaka. According to clause 4 of the offer letter dated 28<sup>th</sup> January, 2016, the Respondent was to repay the loan amount and interest over a period of one year, 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 Subdivision 'B' of Subdivision No. 80 of Farm No. 610, Foxdale Lusaka, which the Respondent pledged as collateral. It is incontrovertible that the

Respondent defaulted in servicing the loan, only having repaid a paltry sum out of the expected ZMW700,000.00. Due to the Respondent's default and charge of interest, the amount due on the loan has increased to ZMW810,521.81.

I accordingly enter judgment for the Applicant in the sum of ZMW810,521.81 outstanding as at 31<sup>st</sup> July, 2017. This amount shall accrue simple interest at 24% per annum from 31<sup>st</sup> July, 2017 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 30 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 60 days from the date of Judgment without further recourse to Court.

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

J6

Dated this 7<sup>th</sup> day of November, 2017

*M Mapani*

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