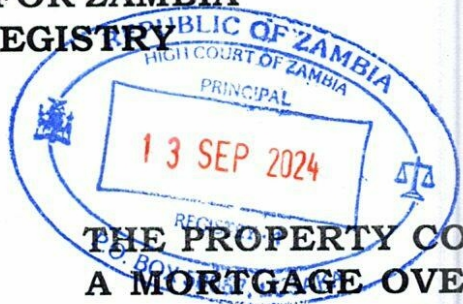


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2022/HP/0466



IN THE MATTER OF:

**THE PROPERTY COMPRISED UNDER
A MORTGAGE OVER FARM NO. T48
MBALA, NORTHERN PROVINCE OF
ZAMBIA**

IN THE MATTER OF:

**FORECLOSURE AND POSSESSION OF
FARM NO. T48 MBALA, NORTHERN
PROVINCE OF ZAMBIA**

BETWEEN:

PRUDENCE BANK (IN LIQUIDATION)

APPLICANT

AND

ADMINISTRATOR OF THE ESTATE OF

RESPONDENT

R.C. CHUNGU

BEFORE THE HONOURABLE MRS. JUSTICE M.C. KOMBE

For the Applicant:

*Ms. G. Mukulwamutiyo - Senior Legal
Counsel- Bank of Zambia.*

For the Respondent:

*Mrs. M. M. Harawa - Messrs. M.C
Mulenga & Co*

R U L I N G

Cases referred to:

1. **Thynne v. Thynne [1955] 3 All E.R. 129.**
2. **Indo Zambia Bank Limited v. Fucho Transport Limited and Chola Mataka (2015/HPC/0214).**
3. **Sachar Nahendra Kumar v. Joseph Brown Mutale (Appeal 35 of 2011).**
4. **Brenda Muzyamba v. Sinabbomba and Others (Appeal 11 of 2019).**
5. **Tildesley v. Harper (1876) 10 CH. N 343.**

Legislation and other material referred to:

1. **The Rules of the Supreme Court, 1999 Edition.**
2. **The High Court Rules, Chapter 27 of the Laws of Zambia.**

1.0 INTRODUCTION

1.1 This ruling is in respect of an application for Summons to amend the Judgment of the Court Delivered on 29th September, 2023. The application is made pursuant to Order 20 Rule 11 of the Rules of the Supreme Court 1999 Edition.

1.2 A brief background of the matter as distilled from the record is that the matter was commenced by Originating

Notice of Motion for an Order to Register Order Dated 1st March, 2000 Out of Time. The Applicant filed an Affidavit in Support on 28th March, 2022. The application was heard and Judgment was subsequently entered in favour of the Applicant on 29th September, 2023.

2.0 APPLICANT'S AFFIDAVIT EVIDENCE

2.1 The present application is supported by an affidavit deposed to by **MUKUMWA COLLINS JR**, Legal Counsel in the employment of the Applicant Bank.

2.2 The deponent deposed that the Applicant obtained Judgment on 1st March, 2000, for the foreclosure and possession of Farm T48 Mbala in the Northern Province of Zambia. Owing to the protracted land disputes surrounding Farm T48 Mbala, the Applicant's interest in the Judgment was not registered with the Lands and Deeds Registry within the prescribed time. The Applicant commenced an action by Originating Notice of Motion dated 28th March, 2022, for an Order to register the Order of 1st March, 2000, out of time.

- 2.3 The deponent asserted that this Court delivered Judgment on 29th September, 2023, wherein it was ordered that the Judgment be registered with the Registrar of Lands and Deeds within thirty days thereof.
- 2.4 It came to the Applicants attention that a clerical error was made on the first page of the Judgment, through no fault of the Court but due to clerical error on the documents filed into Court by the Applicant. Page 1 of the Judgment erroneously referred to Stand No. 9486 Lusaka while page 2 of the Judgment correctly referred to T48 Mbala, Northern Province.
- 2.5 It was further deposed by the deponent that he had perused the rules of the Court as regards to amendment of Judgments, and it was his understanding that an application by notice or summons could be made to amend a judgment if there was some clerical mistake in the judgment.
- 2.6 The deponent believed that it was a proper matter for this Court to amend and correct the clerical error on page one

of the Judgment of 29th September, 2023. That the application would in no way injure or prejudice the Respondent's interest in the matter.

3.0 RESPONDENT'S AFFIDAVIT IN OPPOSITION

- 3.1 The Respondent filed an affidavit in opposition to summons to amend the judgment of the Court delivered on 29th September, 2023, pursuant to Order 20 Rule 11 of the Rules of the Supreme Court 1999 Edition (White Book) on 15th July, 2024.
- 3.2 The affidavit was deposed to by **YORUM R. CHUNGU** co-administrator of the estate of his late father Robinson Chikweto Chungu. The deponent produced the Order of Appointment of Administration that was marked as **"SYRC1"**.
- 3.3 The deponent denied being the Administrator of mortgage of Chikweto Robinson who obtained a loan from Prudence Bank that was now under liquidation. He alleged that the administrator of the late Chikweto

Robinson Mulenga Chungu was Aaron Kambole Chungu. Thus, he produced the Order of Appointment of Administration that was marked as **“AKC1”**.

3.4 The deponent asserted that Farm No. T48 of Mbala was used as collateral for the mortgagee without consent from either the administrator of the estate, or administrators of their father's estate the property known as Farm No. T48 of Mbala. The deponent refuted that neither himself as administrator of his father's estate nor the administrator of the mortgagee's estate of Farm No. T48 of Mbala were parties to the proceedings leading the Judgment delivered on diver dates.

3.5 He added that the property known as No. T48 of Mbala was mortgaged through misrepresentation by loan applicant. That the Respondent did not have the capacity to pass title to the Applicant nor give consent to use the purported mortgaged property known as Farm No. T48 Mbala.

3.6 It was further deposed that the Respondent was erroneously made a party to both proceedings including the present one as he was non-existent in the Chungu family. The only person close to the Respondent's name was their father, Robinson Chikweto Chungu (deceased) and the mortgagee who was also deceased.

3.7 The deponent further deposed that the Applicant deliberately mislead the court by purporting that he had brought bonafide appointed administrators of the said property. Thus, he requested that the Court does not entertain the Applicant's application and believed that if the application was granted it would injure and prejudice the Chungu family interest in the property and be unjust.

4.0 APPLICANT'S AFFIDAVIT IN REPLY

4.1 The Applicant filed an affidavit in reply which was deposed by **MUKUMWA COLLINS JR.**

4.2 He deposed that he had read the rules of the Court and firmly believed that the application to amend the

Judgment of the Court dated 29th September, 2023, was proper and appropriately before the Court.

4.3 The deponent believed that the application would not prejudice any rights of the Respondent, since the matter had already been determined and the amendment sought was a clerical error to allow the Applicant to enjoy the fruits of the Judgment.

4.4 The deponent deposed that the affidavit in opposition was misplaced since the matter had been adjudicated upon and Judgment had been rendered.

5.0 HEARING

5.1 At the hearing of the matter on 23rd August, 2024, learned counsel for the Applicant Ms. G. Mukulwamutiyo relied on the affidavit in support, the skeleton arguments and affidavit in reply.

5.2 Counsel relied on Order 3 rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia which stipulates that:

“Subject to any particular rules, the court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to benefit of the order or not.”

5.3 Further reliance was placed on Order 20 Rule 11 of the Rules of the Supreme Court 1999 Edition (White Book) which provides that:

“Clerical mistakes and judgments or orders, or errors arising therein from accidental slip or omission, may at any time be corrected by the court on motion or summons without an appeal.”

5.4 Counsel submitted that the above rule applied in cases where there was a clerical mistake in a Judgment or order or an error arising from an accidental slip or omission. That the application for an amendment made under this rule was made to correct the record to bring the judgment into harmony with the order that the Court obviously meant to pronounce. She cited the English

case of **Thynne v. Thynne** ⁽¹⁾ at page 145 and 146 where Morris L.J. stated as follows:

“I prefer not to attempt a definition of the extent of the Court’s inherent jurisdiction to vary, modify or extend its own orders if, in its view, the purposes of justice require that it should do so.”

5.5 Morris J. illustrated a few of the courts powers in this respect which can be summarized as follows:

“...(b) if there is some error in a judgment or order which arises from any accidental slip or omission, there may be correction both under Order 28 Rule 11, and under the Court’s inherent powers...”

5.6 Based on the above, it was the Applicant’s submission that this Court had inherent powers and powers under Order 20 Rule 11 to amend errors in the Judgment of 29th September, 2023, as the error arose out of mistake or omission by Counsel for the Applicant.

5.7 Ms. Mukulwamutiyo also referred to the case of **Indo Zambia Bank Limited v. Fucho Transport Limited and**

Chola Mataka⁽²⁾ where the Court allowed an amendment to a Judgment upon an application by the Plaintiffs. It was stated therein that:

“In sum the Plaintiff was asking the Court to correct the figure in the Judgment sum of K83, 000.00 and replace it with the figure of K941, 065.76. I note that the Respondent admits the error made in the Judgment of 7th December, 2015. To that extent the application to amend the Judgment is granted. In paragraph 1 of the Judgment the amount due and owing shall be reflected as K941, 065.76”.

5.8 Counsel humbly submitted that this Court had the inherent powers and authority under Order 20 Rule 11 of the Rules of the Supreme Court 1999 Edition to make an amendment correcting clerical errors even after Judgment had been passed in the interest of justice.

5.9 In the verbal submissions, Ms. Mukulwamutiyo submitted that the Respondent’s affidavit in opposition was misconceived and misplaced as it did not respond to the issues raised in the application.

5.10 She further submitted that there were two positions in the matter, the first being that, they had brought an application before this Court, to register out of time, the court order dated 1st March 2000, relating to mortgaged property No. T48 Mbala. This Court exercised its jurisdiction, as provided in section 46 of the Lands and Deeds Registry Act, to extend the time within which to register the Order, in favour of the Applicant herein.

5.11 She further submitted that the application before this Court did not pertain to whether the mortgage was rightfully or wrongfully executed, as any such contentions were conclusively dealt with by Hon. Justice G.S Phiri, and culminated into an Order, in the year 2000, which adjudged that the Defendant was to pay the sum of K2, 000,000.00 and that in default, the right to foreclose would be granted.

5.12 That this Court rendered a judgment in favor of the Applicant, to extend the time within which to register the order made by this Court in the year 2000, with the Lands and Deeds Registry. However, the error in the

description of the property ought to be amended by this Court, and such amendment would not affect any substantive matter.

5.13 Counsel for the Applicant further submitted that it was within the power of this Court to grant the amendment but that the Respondent's affidavit sought to delve into issues that were not before this Court, neither did it respond to the application which was properly before this Court.

5.14 She reiterated that the issues raised by the Respondent were misconceived and misplaced, submitting that the Respondent missed his window to raise his issues, and this was a glaring method to escape the course of justice. Even if they were within the allowable time frame for him to raise such issues, it was their submission that they would not meet a useful end, as they were misconceived and misplaced.

5.15 She invited the Court to disregard the Respondent's affidavit and prayed that the Court grants the application and proceeds to amend the clerical error made on the 29th

September 2023, which related to the description of the property, as T48 Mbala.”

5.16 In opposing the application, learned counsel for the Respondent Mrs. M. M Harawa relied on the affidavit in opposition and submitted on the contents of the affidavit.

I shall not replicate the same.

5.17 Ms. Mukulwamutiyo augmented the reply with authorities regarding the finality of Judgment. She cited the case of **Sachar Nahendra Kumar v. Joseph Brown Mutale** ⁽³⁾ where the Supreme Court emphasized that once a judgement was delivered and appeals were exhausted, it became final and binding. This principle ensured that litigation came to an end and parties could rely on the judgment as conclusive.

5.18 Counsel further relied on the case of **Brenda Muzyamba v. Sinabbomba and Others** ⁽⁴⁾ which reinforced the principle that judgments once rendered and not appealed within the stipulated time attained finality. This was the binding nature of Judgments in a legal system.

6.0 DECISION OF THE COURT

- 6.1 I have carefully considered the evidence adduced by the parties and their submissions herein and I am grateful for the same.
- 6.2 Before I proceed to consider the application before this Court, the Respondent contends that the administrators of the Estate of the Late R. C. Chungu were unaware of the proceedings against Farm No. T48 of Mbala that led to the foreclosure and possession of the said property. I must make mention that these assertions have come too late in the proceedings as the matter was deliberated on and an Order of the Court was rendered in the year 2000.
- 6.3 I am ably guided by what was stated by the Supreme Court in the case of **Sachar Nahendra Kumar v. Joseph Brown Mutale** that once a judgement is delivered and appeals are exhausted, it becomes final and binding.
- 6.4 In this regard, I find that the Respondent's assertions are misguided and inappropriate for the present application.

I will therefore focus on the Applicant's application to amend the Judgment delivered on 29th September, 2023.

6.5 The law governing amendments on Judgments is **Order 20 Rule 11 of the Rules of the Supreme Court 1999 Edition** as has correctly been cited above. The said provision permits the court to correct any clerical errors, accidental slips and omissions without an appeal. The case of *Thynne v. Thynne* provides exceptions to when a Judgement can be amended after delivery. Judge Morris, L.J. illustrated the Courts powers in this respect as follows:

“(a) If there is some clerical mistake in a judgment or order which is drawn up there can be correction under the powers given by R.S.C., O.28.

(b) If there is some error in a judgment or order which arises from any accidental slip or omission, there may be correction both under O.28,

r.11, and under the Court's inherent powers...”

6.5 It is clear from the above provision that if judgment contains some clerical errors, the Court has the discretion to amend the Judgment so that it is sound. When an application for an amendment of judgment will unfairly prejudice the other party, the court will decline to amend the judgement. This was established in the case of **Tildesley v. Harper**⁽⁵⁾ where Bramwell L.J stated therein that:

“My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting malafide or that by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise.”

6.6 In granting the Applicant leave to amend, I must be satisfied that these amendments will in no way prejudice the Respondent. In the present case, the

Applicant has exhibited the inconsistencies in the judgment at page 1 of the judgment where it was erroneously referred to as Stand Number 9486 Lusaka while at page 2 it was referred to as Farm Number T48 Mbala, Northern Province.

6.7 In this regard, I find that there was indeed a clerical error in the description of the property and such an error is one that may hinder the Applicant from properly registering the Order rendered by this Court its favour in the year 2000.

6.8 I am therefore of the view that an amendment of the judgment would bring uniformity to the judgment and make it sound and would not in any way disadvantage the Respondent.

6.9 In view of the foregoing, I find merit in the application and I accordingly grant the Applicant's application. The judgment delivered on 29th September, 2023 is hereby amended by the deletion of "Stand No. 9486" at the first page and replacing the same with "Farm No. T48 Mbala."

6.10 Consequently, the Order dated 1st March, 2000 shall be registered within thirty (30) days from the date hereof.

6.11 I make no order as to costs.

DELIVERED AT LUSAKA THIS 13TH DAY OF SEPTEMBER, 2024



M.C. KOMBE
JUDGE