

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)**

2025/HP/0052

IN THE MATTER OF: ORDER 88 RULES OF THE SUPREME COURT OF ENGLAND AND WALES 1965 (WHITE BOOK 1999 EDITION)

AND

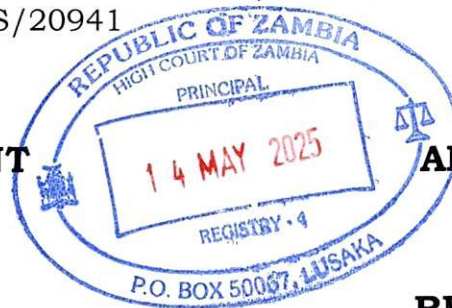
IN THE MATTER OF: AN APPLICATION FOR AN ORDER OF SALE OF STAND NOS. LUS/10869, LUS/20940 AND LUS/20941

BETWEEN:

FAR EASTERN RESTAURANT

AND

PACIFIC PARTS (Z) LTD



APPLICANT

RESPONDENT

Before: ***The Hon. Mr. Justice C. Zulu.***

For the Applicant: Mr. M. Mando, of Messrs Mando & Pasi Advocates.

For the Respondent: Mr. W. Mwenya of Messrs Lukona Chambers.

J U D G M E N T

Legislation referred to:

- 1. Rules of the Supreme Court of England and Wales 1965, (White Book 1999 Edition).***
- 2. Judgments Act Chapter 81 of the Laws of Zambia.***

1.0 INTRODUCTION

1.1 This judgment is in respect of an application via originating summons dated January 17, 2025 at the instance of the

Applicant, Far Eastern Restaurant Limited, for an order of sale of the Respondent's properties, namely Stand Nos. LUS/10869, LUS/20940 and LUS/20941 liable under a charging order absolute. The application was made pursuant to Order 88 of the **Rules of the Supreme Court of England and Wales 1965, (White Book 1999 Edition)**.

2.0 BACKGROUND

- 2.1 Pacific Parts (Z) Limited as the Plaintiff under Cause No. 2012/HP/0299 took out a writ of summons and statement of claim dated March 21, 2012, against Far Eastern Restaurant, seeking recovery of land, and a declaration that the Plaintiff was entitled to the ownership of Stand Nos. LUS/20938 and LUS/20939. The two plots were alienated to Far Eastern Restaurant by the Commissioner of Land. And in a judgment delivered on April 8, 2022, the Plaintiff's claims were dismissed with costs.
- 2.2 Far Eastern Restaurant as a costs creditor took out a notice of taxation before the District Registrar. The costs were taxed, and a certificate of taxation was issued dated June 1, 2023. The total awarded to Far Eastern Restaurant was the sum of K303, 394.21. And in pursuit to execute the certificate of taxation, Far Eastern Restaurant by ruling dated October 28, 2024 under Cause No. 2012/HP/0299, was granted a charging order absolute.
- 2.3 The charging order absolute was against the Respondent's properties, namely: Stand Nos. LUS/10869, LUS/20940 and LUS/20941 Lusaka.

3.0 AFFIDAVIT EVIDENCE

3.1 An affidavit in support of the application was deposed to by Luo Zhiqing, a Chinese National, and shareholder/director in the Applicant Company. He stated that the debt owed to the Applicant by the Respondent was K303, 394.21 (principal sum), and K227, 545.65 (estimated interest). It was stated that the Respondent had failed to pay the judgment debt of K303, 394.21 together with interest.

3.2 An undertaking was made to sale the properties to the highest bidder after advertising the same at an estimated price of K1, 000.000.00.

3.3 An affidavit in opposition was deposed to by Sadat Limpo Mutaawe, the Operations Manager in the employ of the Respondent. He stated that the Respondent was opposing the application on the basis that, the amount amenable for recovery as stated in the charging order was only K303, 394. 21, without the inclusion of interest in the sum of K227, 545.65.

4.0 THE ARGUMENTS

4.1 The Applicant's advocates did file its written arguments, basically citing the relevant applicable rules as regards the order for sale following the grant of a charging order absolute. And Mr. Mwenya relied on the affidavit in opposition.

5.0 DETERMINATION

5.1 The procedure for enforcement of a charging order is set out in Order 88 rule 5A of the **Rules of the Supreme Court of**

England and Wales 1965 (White Book 1999 Edition). The same provides:

5.1.1 **88(1) This rule applies to a mortgage action in the Chancery Division to enforce a charging order by sale of the property charged.**

(2) the affidavit in support of the originating summons must –

(a) identify the charging order sought to be enforced and the subject matter of the charge;

(b) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the affidavit;

(c) verify, so far as known, the debtor's title to the property charged;

(d) identify any prior incumbrancer on the property charged stating, so far as is known, the names and addresses of the incumbrancers and the amounts owing to them;

(d) identify any prior incumbrancer on the property charged stating, so far as is known, the names and addresses of the encumbrancers and the amounts owing to them;

(e) set out the plaintiff's proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on sale in that manner and of the costs of such sale.

4.3 In the present case, the Applicant has endeavored to disclose the proposal as to the manner of sale of the charged property, and has also stated the proposed estimates of the possible gross price. Further, the Applicant has also demonstrated that the same shall be sold by open bidding to the highest bidder.

4.4 Notably, section 2 of the **Judgments Act Chapter 81 of the Laws of Zambia**, provides:

4.4.1 ***Every judgment, order, or decree of the High Court or of a subordinate court whereby any sum of money, or any costs, charges or expenses, is or are to be payable to any person shall carry interest at the per centum per annum from the time of entering up such judgment, order, or decree until same shall be satisfied, and such interest may be levied under a writ of execution on such judgment, order, or decree.***

4.5 Therefore, I discern no procedural impediments to the grant of the order sought. The argument that the inclusion of interest takes away the Applicant's right to the order sought is untenable. The inclusion of interest is not a caveat to the grant of the application. Indeed, as correctly observed by Mr. Mando, all money judgments carry interest in the light of section 2 of the **Judgments Act**. As such, an order for sale is hereby granted.

5.0 CONCLUSION

5.1 The order for sale of Properties Nos. LUS/10869, LUS/20940 and LUS/20941 is granted as prayed. And the sale to be conducted by the Sherriff of Zambia.

5.2 Costs for the Applicant to be taxed in default of the agreement.

5.3 Leave to appeal is granted.

DATED THE 14TH DAY OF MAY, 2025



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THE HON. MR. JUSTICE CHARLES ZULU