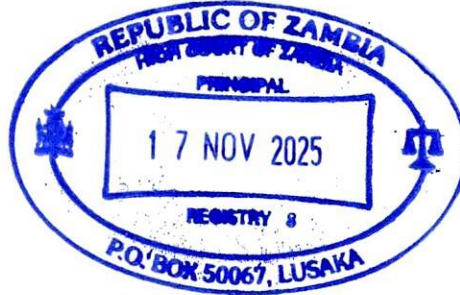


**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
**(Civil Jurisdiction)**

**2023/HP/1215**



**BETWEEN:**

**WISDOM MUNDUSU**

**PLAINTIFF**

**AND**

**HARTEPAR LOANS**

**1<sup>st</sup> DEFENDANT**

**HARTLEY LUBUWA**

**2<sup>ND</sup> DEFNDANT**

**BEFORE HON. JUSTICE E. P. MWIKISA**

*For the Plaintiff: Mr. T.N. Mwansa- Messrs Legal Aid Board.*

*For the Defendant: Mr. T. Chikainde- Messrs Teeford and Company.*

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# **RULING**

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**Cases referred to:**

1. *Colgate Palmolive vs. Shemu and Others Appeal No. 18 of 2005.*
2. *Angel Musonda vs. Pulse Financial Services Appeal No. 132 of 2017*
3. *Da Cheng Wood Processing Company vs. John Chibichabo and Another Appeal No. 278 of 2021*
4. *Davies vs. Paget (1986) 10 FCR 226*
5. *Exhildah Mtonga and Halive Mtonga vs. Money Matters Limited (2010) ZRL Vol. 1 p. 382*
6. *Mukelabai vs. Nalwamba and Others (2013)2 Z.R 312*
7. *African Banking Corporation Limited v. Mubende Country Lodge Limited Appeal No. 116/2016.*

**Legislation referred to:**

1. *The Constitution of Zambia, Chapter 1 of the Laws of Zambia.*
2. *The Rules of the Supreme Court of England 1999 Edition (Whitebook) .*
3. *High Court Act, Chapter 27 of the Laws of Zambia.*

**1. Introduction.**

1.1 On 29<sup>th</sup> February 2024, the Defendants filed into Court notice of motion to determine the matter on point of law.

The notice of motion was pursuant to Order 14A of the Rules of the Supreme Court of England, 1999 edition.

1.2 The preliminary issues raised for determination are the following;

- i. Whether the document namely settlement agreement dated 2<sup>nd</sup> May 2023 amount to an account sated between the Plaintiff and the Defendants;**
- ii. If paragraph (1) is in affirmative, whether the Defendants are entitled to judgment for the sum on the account stated;**
- iii. If the Court upholds paragraph (2), whether the Defendants are entitled to an order of foreclosure and sale of property known as Stand No. S/KAF/0040/110 situated in Kafue District of the Lusaka Province pursuant to paragraph 5 of the aforesaid settlement agreement.**
- iv. If the Court upholds the above paragraphs, judgment on the account stated be entered together with costs to the Defendants.**

1.3 The notice of motion to determine the matter on a point of law was accompanied by an affidavit in support and skeleton arguments of an even date.

1.4 The Plaintiff contested the application and filed an affidavit in opposition and skeleton arguments on 14<sup>th</sup> April 2025.

## **2. Background.**

2.1 The Plaintiff commenced an action against the Defendants on 14<sup>th</sup> July 2023 by way of a Writ of Summons and a Statement of Claim. The claims advanced against the Defendants are as follows;

- i. An order that the Defendants to be stopped from advertising property known as House No. SKAF/SLN0040/110 in Kafue District of Lusaka Province in the Republic of Zambia.**
- ii. An order that the Plaintiff be allowed to settle the remaining balance in installments as agreed.**
- iii. Any other relief the Court may deem fit.**
- iv. Costs of this suite.**

## **3. The Affidavit in support**

3.1 It was deposed by on Hartley Lubuwa, the 2<sup>nd</sup> Defendant herein.

3.2 It was deposed that on 18<sup>th</sup> January 2023, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants executed a loan agreement with the Plaintiff

wherein he was supposed to repay back the said loan on the 17<sup>th</sup> February 2023. That the Plaintiff placed his property known as Stand No. SKAF/SLN0040/110 in Kafue District of Lusaka Province in the Republic of Zambia as collateral.

3.3 It was stated that when the amount was due, the Plaintiff defaulted and efforts to recover the loan proved futile.

3.4 Furthermore, on 24<sup>th</sup> May 2024, the parties herein entered into a settlement agreement, wherein it was agreed that the Plaintiff shall pay the Defendants the total sum of ZMW87,880.00 in weekly installments of ZMW15,000.00 effective 5<sup>th</sup> May 2023. A copy of the settlement was exhibited and marked "HL1".

3.5 It was deposed that the Plaintiff defaulted on the payments stipulated in the settlement agreement and till date has not made good of the same.

3.6 It was stated that clause 5 of the said settlement agreement entitles the Defendants to sale the collateral on default of payment to recover the money.

#### **4. Skeleton Arguments in support of the application.**

4.1 Counsel moved this Court pursuant to **Order 14A** of the Rules of the Supreme Court of England and argued that the matter herein is suitable for determination without a full trial. It was Counsel's argument that as per exhibit "HL1", the parties herein entered into the agreement freely and voluntarily, thus, it should be given its meaning as intended by the parties as stated in the case of **Colgate Palmolive vs. Shemu and Others**<sup>1</sup>.

4.2 That it is not in dispute that the Plaintiff has defaulted on the said settlement agreement. Thus, as the holding in the case of **Angel Musonda vs. Pulse Financial Services**<sup>2</sup>, the Court should respect the terms and conditions of the settlement agreement.

4.3 Furthermore, it was argued that there is no question as to the legality of the agreement between the Plaintiff and the Defendants, thus, the role of the Court as espoused in the case of **Da Cheng Wood Processing Company vs. John**

**Chibichabo and Another**<sup>3</sup> is to enforce the contract freely and voluntarily entered into by the parties.

4.4 In conclusion, Counsel submitted that this Court finds in favor of the Defendant's application and order the Plaintiff to pay the amount claimed, interest and costs. That should the Plaintiff fail to pay, the Court should grant the Defendants the order for delivery of possession, foreclosure and sale of the property herein.

**5. Affidavit in Opposition to the application.**

5.1 It was deposed by the Plaintiff herein. It was deposed that the loan agreement was executed on 18<sup>th</sup> November 2022 and not 18<sup>th</sup> January 2023, that the first payment fell due in December 2022 which was paid via e-wallet to the 2<sup>nd</sup> Defendant.

5.2 That the property known as House No. SKAF/SLN0040/110 in Kafue District of Lusaka Province in the Republic of Zambia was never placed as collateral as there was an encumbrance on it from the lands register

at the Ministry of Lands, thus it did not qualify legally to be a collateral.

5.3 Furthermore, it was stated that there was no default on the part of the Plaintiff rather, he paid the amount earlier than the agreed date of 18<sup>th</sup> February 2023. A copy of the transaction from airtel money was exhibited and marked “WM1”.

5.4 It was deposed that prior to the settlement agreement being signed, he was verbally agreeable to making the payment monthly unfortunately, after he had signed, he was told that the payment of ZMW15,000.00 was to be remitted weekly and that this was brought to the attention of the 2<sup>nd</sup> Defendant who agreed that it was an error and that they could proceed to make monthly payments as agreed.

5.5 Furthermore, it was stated that the Defendant was paid the sum of ZMW15,000.00 through his lawyers on 11<sup>th</sup> May 2023 which had left the balance at ZMW72,888.00. That the Defendant refused to get the remaining balance thus, resulting to this action where he is claiming the sum

of ZMW267,330.96. A copy of the airtel money transaction was exhibited and marked “WM2”.

**6. Skeleton Arguments in support of the affidavit in opposition.**

6.1 The Court was addressed to Article 118 (2)(e) of the Constitution which provides as follows;

***“In exercising judicial authority, the courts shall be guided by the following principles: justice shall be administered without undue regard to procedural technicalities.”***

6.2 To buttress further, Counsel relied on the case of **Davies vs. Paget**<sup>4</sup> where it was stated that;

***“The fundamental duty of the Court is to do justice between the parties. It is in turn, fundamental to that duty that the parties should each be allowed a proper opportunity to put their cases upon the merits of the matter. Any limitation upon that opportunity will generally be justified only by the necessity to avoid prejudice to the interest of some other party, occasioned by misconduct, in the case of the party upon whom the limitation is sought to be imposed.”***

6.3 Placing reliance on the law and case cited above, Counsel submitted that it is not in dispute that in November 2022, the Plaintiff borrowed the sum of ZMW40,000.00 from the Defendant to which the money would accrue interest per

month. That the amount of interest in the settlement agreement was 30% per month in an instance of default. That the amount in the settlement agreement was ZMW87,880.00. That further to execute the settlement agreement, the sum of ZMW15,000.00 was paid leaving a balance of ZMW72,880.00.

6.4 Counsel's contention is whether it was legal for the Defendant to charge the Plaintiff the sum of ZMW15,000.00 per week in view of the outstanding balance. To fortify his argument, Counsel relied on Section 15(1) of the Money Lenders Act and argued that the law is clear that a money lender who charges more than 48% per annum, such interest should be considered harsh and unconscionable. That 48% per annum culminates into 4% per month as reasonable profit interest to be charged by a money lender. Counsel submitted that in the case in casu, the Defendants were charging the Plaintiff way beyond the 4% monthly interest on the initial ZMW40,000.00 loan. According to Counsel, this is 7.5 times more than what the law has prescribed. That the 30% per month profit charge

means that the Defendant charged the Plaintiff 360% per annum on the amount which is harsh, unconscionable and punitive as held in the case of **Exhildah Mtonga and Halive Mtonga vs. Money Matters Limited**<sup>5</sup>.

6.5 Furthermore, it was Counsel's contention that the settle agreement was frustrated after the first installment of ZMW15,000.00 was paid, thus, in accordance with the law above-mentioned, the Defendant was only supposed to charge the profit interest of 4% per month for the duration of the loan agreement.

6.6 In conclusion, Counsel submitted that in the interest of justice and fair trail, the proceedings herein should be allowed to proceed and be determined on the merits.

## **7. Hearing.**

7.1 The matter came up on 2<sup>nd</sup> June 2025, Counsel for the both the Plaintiff and Defendants were present.

7.2 Both Counsel for the Plaintiff and Defendant informed the Court that they will rely on the affidavit in support and

skeleton arguments and affidavit in opposition and skeleton arguments.

**8. Consideration and Determination.**

8.1 I have considered all the evidence and the submissions by both parties.

8.2 This Court is moved pursuant to Order 14A of the Rules of the Supreme Court of England which provides as follows;

**“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that-**

**A) such question is suitable for determination without a full trial of the action, and**

**B) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.**

**(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just”**

8.3 Order 14A quoted above clearly shows that an application can be made by a party to proceedings at any stage by summons or motion but the said application must satisfy the conditions listed in Rule 1. The Defendants herein filed a Notice of Motion to Raise Preliminary Issues which was

supported by an affidavit, thereby satisfying the requirements of Order 14A Rule 2.

8.4 There are certain requirements that need to be met before one can use the provision under Order 14A. These have been clearly stipulated in Order 14A/2/3 and reinforced in the case of **Mukelabai vs. Nalwamba and Others**<sup>6</sup> which provides as follows;

- i. **The defendant must have given notice of intention to defend**
- ii. **The question of law or construction is suitable for determination without a full trial of the action.**
- iii. **Such determination will be final as to the entire cause or matter or any claim or issue therein and**
- iv. **The parties had an opportunity of being heard on the question of law or have consented to an order or judgment being made on such determination**

8.5 Furthermore, the supreme court in the case of **African Banking Corporation vs. Mubende Country Lodge**<sup>7</sup>

stated that Order 14A and Order 33 Rule 3 of RSC operate in tandem. Thus, Order 33 Rule 3 cannot be invoked independently or to the exclusion of the mandatory requirements of Order 14A of RSC which requires the filing

of a notice of intention to defend as a pre-requisite to raising a preliminary point of law.

8.6 It is common cause that this case was commenced by way of a Writ of Summons and Statement of Claim. The Defendants entered appearance and filed their defence on 4<sup>th</sup> August 2023, thus, adhering to the procedural requirement as guided by the.

8.7 A perusal of the application herein shows that the Defendants did not invoke **Order 33 Rule 3** of the Rules of the Supreme Court of England as it operates in tandem with **Order 14A**, thus, I am of the view that this application falls short of the requirements of the law and as guided by the Supreme Court in the case of **African Banking Corporation vs. Mubende Country Lodge**<sup>7</sup>, the application cannot be sustained.

8.8 Further, Order 18 Rule 19 (1) of the Rules of the Supreme Court of England 1999 edition, it reads as follows:

**“19 - (1) The court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in**

**any pleading or in the indorsement, on the ground that**

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- (a) It discloses no reasonable cause of action or defence, as the case may be; or**
  - (b) It is scandalous frivolous or vexatious; or**
  - (c) It may prejudice, embarrass or delay the fair trial of the action; or**
  - (d) It is otherwise an abuse of the process of the court; and may order the action to be stayed or dismissed or judgment to be entered accordingly as the case may be.**
- (2) No evidence shall be admissible on an application under paragraph (1) (a)**
- (3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.”**

8.9 A perusal of the writ and statement of claim simply states that the court should order that the defendant stop advertising property House No. SKAF/SLN0040/110 in Kafue District of Lusaka Province in the republic of Zambia, an order that the plaintiff be allowed to settle the remaining balance in instalments as agreed.

8.10 I am of the considered view that the plaintiff has not disclosed a reasonable cause of action in this matter as he has not stated how much is owed to him by the defendants, neither has he stated why the defendant should stop advertising the house in issue. It is also for

this reason that I am dismissing this matter in its entirety  
as it is an abuse of the court process.

8.11 I award no Costs.

Leave to appeal is hereby granted.

Dated at Lusaka this.....17<sup>th</sup>.....day of.....November.....2025



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**ELITA PHIRI MWIKISA**  
**HIGH COURT JUDGE**