

IN THE HIGH COURT FOR ZAMBIA

2017/HP/1366

AT THE PRINCIPAL REGISTRY

AT LUSAKA

(Civil Jurisdiction)



IN THE MATTER OF: AN EQUITABLE MORTGAGE RELATING TO 25 X 25 METRES OF S/D A OF LOT NO. 2414/M, LUSAKA.

IN THE MATTER OF: ORDER 30, RULE 14 OF THE HIGH COURT RULES CHAPTER 27 OF THE LAWS OF ZAMBIA.

BETWEEN:

FELIX LUMBWE

APPLICANT

AND

SAMSON LANJEN TEMBO

RESPONDENT

BEFORE HONOURABLE MADAN JUSTICE P. K. YANGAILO ON THE 12TH DAY OF DECEMBER, 2017.

For the Applicant: Mr. B. Sitali – Messrs. Butler & Co. Legal Practitioners

For the Respondent: N/A

JUDGMENT

CASES AUTHORITIES REFERRED TO:

1. *Magic Carpet Travel and Tours vs. Zambia National Commercial Bank Limited (1999) Z.R. 61;*
2. *S. Brian Musonda (Receiver of First Merchant Bank Zambia Limited) (In Receivership) vs. Hyper Food Products Limited and 2 Others 1999 ZR 124; and*
3. *Pemba Lapidaries, Lapemba Trading Limited vs. Industrial Credit Company Limited, Vol. 3, 2011 ZR 408.*

LEGISLATION AND OTHER WORKS:

1. *High Court Act Chapter 27 of the Laws of Zambia;*
2. *Halsbury's Laws of England, 4th Edition, Volume 32;*
3. *Nigel P. Grovells, Land Law: Text and Materials, 3rd Edition (London, Thomson Sweet and Maxwell, 2004);*
4. *P.G. Osborn, A Concise Law Dictionary, (London, Sweet and Maxwell, 1971); and*
5. *Charles Harpum, Stuart Bridge and Martin Dixon, Megarry and Wade: The Law of Real Property, 7th Edition (London, Sweet and Maxwell, 2008).*

The Applicant **FELIX LUMBWE** applied by way of Originating Summons pursuant to **Order 30 Rule 14** of **The High Court Act**¹ for the following reliefs: -

1. *That the Applicant is entitled to be considered as an equitable mortgagee over a portion of land measuring 25 x 25 metres of Subdivision A of Lot No. 2414/M, Lusaka under and by virtue of an agreement to create a mortgage and by the delivery of title deeds hereinafter mentioned;*
2. *Payment of all sums and money to the Applicant by the Respondent under a loan agreement dated 21st February, 2017, which as at 27th July 2017 stood at K100,500.00;*
3. *Further interest on this amount until payment;*
4. *An Order that the said equitable mortgage may be enforced by foreclosure and sale;*
5. *Any other relief as the Court may consider fit; and*
6. *Costs of and incidental to these proceedings.*

The application is supported by an Affidavit deposed by the Applicant one **FELIX LUMBWE**. The facts of the Case as deposed is that pursuant to a written loan agreement dated 21st February, 2017 between the parties the Applicant lent the Respondent the

