

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

2013/HPC/0392

(Civil Jurisdiction)

**IN THE MATTER OF: ORDER XXX RULE 14 OF THE HIGH COURT
RULES CHAPTER 27 OF THE LAWS OF
ZAMBIA**

AND

**IN THE MATTER OF: AN APPLICATION FOR DELIVERY OF
POSSESSION OF STAND NO. 3688,
LUSAKA TO THE APPLICATION AS LEGAL
MORTGAGEE WITH POWER OF SALE TO
RECOVER DEFAULT AMOUNT OF LOAN
AND INTEREST THEREON.**

BETWEEN:

INTERMARKET BANKING CORPORATION
ZAMBIA LIMITED

APPLICANT

AND

PILLARCON CONSTRUCTION LIMITED
RESPONDENT

1ST

PETER CHISANGA MAPIPO
RESPONDENT

2ND

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN
CHAMBERS ON THE 5TH DAY OF MAY, 2014**

For the Applicant: J. Chibalabala , Messrs Douglas & Partners
For the Respondents: J. Mutime (Ms) Messrs Theotis Mataka & Sampa

J U D G M E N T

Legislation referred to:

1. The High Court Act, Chapter 27 of the Laws of Zambia
2. The Supreme Court Practice (White Book) 1999

The **Applicant, Intermarket Banking Corporation Zambia Limited** commenced the proceedings herein against **Pillarcon Construction Limited** and **Peter Chisanga Mapipo** the 1st and 2nd Respondents respectively by way of Originating Summons pursuant to **Order 30 Rule 14 of The High Court Rules** claiming the following reliefs:

- 1. That the Respondents pay the Accused the sum of K497,854.94 together with interest at the current Bank lending rate;**
- 2. That the Respondents having defaulted on the paying of the principle and interest in respect of the loan granted, the property known as Stand No. 3688 situated in the Lusaka Province be delivered to the Applicant with power to sell, assign, transfer or otherwise dispose of the said property;**
- 3. That costs of these proceedings be borne by the Respondent.**

The Originating Summons is supported by an affidavit deposed to by **Biggie Trywell Banda**, the **Loan Recoveries Officer** in the employ of the Applicant. According to the said affidavit, the Applicant did enter into a loan agreement with the Respondents on or about February 2012 for a loan and overdraft facility in the sum of K500,000.00 .

It is deposed that the loan was to attract interest at 24 per centum per annum. That the loan and overdraft facility were secured by a third party Mortgage on Stand No. 3688, Lusaka.

According to the deponent, the Respondents have defaulted, hence the claim. On the 20th day of August 2014, the Respondents filed an affidavit in Opposition deposed to by Stella Mutale Mapipo, a shareholder in the 1st Respondent and the Administratrix of the estate of the 2nd Respondent, the 2nd Respondent having died on the 2nd of November 2012.

It is deposed in the said affidavit that due to the illness of the 2nd Respondent before his death, the operations of the 1st Respondent were adversely affected as he was the key person in running the activities of the Company. The deponent went on to acknowledge the debt and in view of the aforestated situation as regards the 1st and 2nd Respondents, proposed to liquidate the debt by paying the sum of K250,000.00 on or before the 30th day of September 2013 and the balance in monthly installments of K10,000 commencing on the 10th of November 2013.

By Consent of the parties, the 2nd Respondent was on the 2nd day of September 2013 substituted with Stella Mutale Mapipo the aforestated Administratrix.

At the hearing of the matter on the 2nd day of May 2014, Counsel for the Applicant informed the Court that the Respondents have since the commencement of the action paid some monies and therefore the amount outstanding was now at **K217,854.94** and

that the said amount should be paid at least within four (4) months failure to which the Applicant should be granted delivery and possession of **Stand No. 3688 Lusaka** to recover the outstanding amount.

In response, Counsel for the Respondents relied on the affidavit in opposition aforesaid and in particular paragraph 8 wherein the Respondents have accepted indebtedness to the Applicant and proposed the mode of payment. Counsel urged the Court to take into consideration the fact that the Respondents have so far paid the sum of **K280,000**.

I have carefully considered the Applicants application, the affidavit evidence and the brief submissions by both Counsel.

The Applicant having made a demand for the monies due and the Respondents not disputing its indebtedness, it is evidently clear that the monies outstanding on both the loan and overdraft facilities are immediately due as the Respondents have defaulted on their obligations.

However, I do note as brought to the attention of the Court by both Counsel that the Respondents have paid a substantial amount of the debt since the inception of the action.

However this being a Mortgage action, it is not a proper case for me to grant the Respondents wish to liquidate the balance of the amount now outstanding in monthly installments of K10,000.00 suffice to note that the Applicants have been gracious enough to

indicate that the amount outstanding together with interest can be paid in at least four (4) months from to date.

In view of the aforestated, I hereby Direct and Order as follows:

- 1. That the Respondents do pay the Applicant the sum of K217,854.94 being the balance now outstanding together with interest at the contractual (Agreed) rate of 24 per centum per annum from the 28th day of July 2013 being the date of the Originating Summons to the date of this Judgment and thereafter at the Current Bank lending rate as determined by Bank of Zambia till full satisfaction of the Judgment debt;*
- 2. That the Respondents are hereby given a moratorium of One Hundred and Twenty (120) days within which to liquidate the Judgment debt and interest aforestated failure to which the Applicant shall be at liberty to foreclose, possess and dispose of the property namely Stand No. 3688 Lusaka by way of sale;*
- 3. Costs to the Applicant. Same to be taxed in default of agreement.*

Dated at Lusaka this 5th day of May, 2014.

JUSTIN CHASHI
HIGH COURT JUDGE

