

IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 61/2003
HOLDEN AT NDOLA

(CIVIL JURISDICTION)

BETWEEN:

CREDIT AFRICA BANK LIMITED
(IN LIQUIDATION)

APPELLANT

AND

AL SHAMS BUILDING MATERIALS TRADING
COMPANY LIMITED (SUING AS A FIRM)

RESPONDENT

Coram: **SAKALA,CJ, CHIBESAKUNDA and CHITENGI, JJS**
 5th February 2004 and 26th October 2004

For the Appellant: Mr. M M Mundashi of Messrs Mulenga Mundashi &
 Company

For the Respondent: Mrs. N S Phiri of Messrs Sharpe and Howard

JUDGMENT

Chibesakunda, JS, delivered the Judgment in Court

Cases referred to:

1. **Mwila Lumbwe (sued as Liquidator, Receiver/Manager of Credit Africa Bank Limited, O V Gondwe, Bank of Zambia and The Attorney General v Dr. Remmey Kabanda Kaunda Mushota SCZ Appeal No. 72 of 1998**

Laws referred to:

2. **Section 84G (1) of Cap 387 of the Banking and Financial Services Act Cap 387**
3. **Sections 107 and 108 of the Banking and Financial Services Act Cap 387**
4. **Order 48 of the Rules of the Supreme Court 1999 Edition White Book**
5. **Order 42 of the High Court Rules Cap 27**

In this appeal, the record shows that from pages 13 – 18 there was a judgment of the High Court, which was upheld by the Supreme on 21st September 2001 in favour of the Respondent Company, against the Appellant Company that was in compulsory liquidation.

The Respondent Company became a judgment creditor of the Appellant Company (in liquidation).

According to the record, the Respondent Company, as judgment creditor, took out an application in executing the judgment to examine the judgment debtor. This was *ex parte* under **Order 48 of the Rules of the Supreme Court** (4) and **Order 42 of the of the High Court Rules**. The High Court, at the hearing interparties for the purposes of executing the judgment, granted the Respondent Company an order which says:-

"UPON HEARING Counsel for both parties

IT IS HEREBY ORDERED that the defendant produces to Court the following:-

- 1. Bank statements of all the accounts maintained by Credit Africa Bank Limited (In Liquidation) by whatever name called particularly those indicating money maintained by the Bank as at the date Mr Mwila Raymond Lumbwe ceased to be the Liquidation Manager and those showing current moneys owned by the Defendant Bank,**
- 2. List of creditors of the Defendant bank whether preferential or otherwise and the amounts and securities held by those creditors**
- 3. Specific names of person who bought the 23 motor vehicles and how much was realized from the sale**
- 4. All the financial statements made by the immediate past Liquidation Manager and current Liquidation Manager**

And that leave to appeal to the Supreme Court against this order is hereby granted

Dated the 28th day of March 2002

**SIGNED
G.S PHIRI
JUDGE"**

This was the order the Appellant Company – Judgment debtor are challenging before us.

Mr. Mundashi, counsel for the Appellant Company, advanced two grounds but argued them as one ground. He argued very eloquently that the learned trial Judge erred in law and fact by holding that the Appellant Company be

ordered to produce to the court bank statements of all the account maintained by the Appellant Company, by whatever name called, particularly those indicating money maintained by the bank as at the date Mr. Mwila Raymond Lumbwe ceased to be the liquidation manager and those showing current monies owned by the Defendant Bank; list of creditors of the Defendant Bank whether preferential or otherwise and the amounts and securities held by those creditors; specific names of person who bought the 23 motor vehicles and how much was realized from the sale; and all the financial statements made by the immediate past liquidation manager and current liquidation manager.

In support of this ground Mr. Mundashi argued that as the Appellant bank was under compulsory liquidation and that the judgment resulting in this judgment debt was obtained after liquidation, it was wrong for the High Court, firstly to entertain an application to examine the judgment debtor under summons because the judgment debtor can only be examined under Order 14 Rule 13 of the Subordinate Court Act if judgment debt has to be executed and secondly to have made such a broad order. He went on to argue that there is no such procedure under the High Court Act. Under the High Court Act and the Supreme Court Act the procedure employed to execute judgment is provided under **Order 42 of the High Court Rules** (5) as replicated by **Order 48 of the Rules of the Supreme Court** (4). He went on to submit that in this particular case, however, the Supreme Court in its judgment delivered on 21st September 2001 directed that as the Appellant Company was in liquidation the execution of the judgment had to be in line with **Section 99 of the Banking and Financial Services Act** before it was amended by Act No. 18 of 2000. This Section has now been replaced by **Section 84G (1) of Cap 387** (2) which says:

- (1) **No writ of execution, attachment, garnishee order or other process of a similar nature shall be issued or made against the assets or property of a bank or financial institution in the possession of the Bank of Zambia**
- (2) **Where a creditor has issued or made a writ of execution attachment, garnishee order or other process of a similar nature against the movable or immovable property of a bank or financial institution or has attached any debt due to the bank or financial institution the creditor shall not be entitled to**

retain the benefit of the execution or attachment before the date of the Bank of Zambia taking possession of the bank or financial institution.

He cited **Mwila Lumbwe (sued as Liquidator, Receiver/Manager of Credit Africa Bank Limited, O.v. Gondwe, Bank of Zambia and The Attorney General v Dr Remmy Kabanda Kaunda Mushota** (1) as authority and argued that the provisions of **Section 84G (1) of the Banking and Financial Services Act** (2), relating to insolvency of banks and financial institutions, should have been invoked by the learned trial Judge and should have prevailed over any other written law if there is an inconsistency.

In the alternative he canvassed the argument that the order granted by the High Court dated 25th February 2003 amounted to reviewing the order of liquidation process. He amplified this argument by submitting that once a bank has been placed in compulsory liquidation, the Bank of Zambia is mandated in distributing the assets to all creditors to take into account all priorities of paying creditors in accordance with **Section 107 of the Banking and Financial Services Act** (2), which says:

"107. (1) In any compulsory liquidation of a bank there shall be paid in priority to all other debts in the following order:-

- (a) necessary and reasonable expenses incurred by the Bank of Zambia in the application of the provisions of this Part;**
- (b) taxes and rates due, whether payable to the Government or to a local authority;**
- (c) wages and salaries of officers and employees of the bank for the three-months period preceding the effective date of seizure, within the limit of an amount not exceeding one hundred thousand Kwacha per person or such higher amount as may be prescribed by regulation;**
- (d) fees and assessments due to the Bank of Zambia;**
- (e) deposits up to an amount not exceeding five hundred thousand Kwacha per depositor or such higher amount as may be prescribed by regulations;**
- (f) other deposits; or**

