

**IN THE MATTER OF THE LAW OF DISTRESS AMENDMENT ACT 1888  
AND IN THE MATTER OF AN APPLICATION FOR GENERAL  
CERTIFICATE AS A CERTIFICATED BAILIFF AND IN THE MATTER OF  
PATRICK KAMAYA (1987) Z.R. 7 (H.C.)**

HIGH  
MUZYAMBA,  
9TH  
(1987/HP/4218)

COURT  
J.  
SEPTEMBER, 1987

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Flynote

Courts - Bailiff - Application for certificate as certificated bailiff - "Fit and proper person"-  
Meaning of:

Courts - Bailiff - Application for certificate as certificated bailiff - Procedure.

Headnote

The applicant applied under section 7 of the Law of Distress Amendment Act, 1888 for a general certificate as a certificated bailiff. The procedure is governed by the High Court Rules 0.6, Rule 1 of Cap. 50. His affidavit by way of originating summons in support was scanty and the court adjourned the matter into open court for oral evidence in support. A requirement under the Rules of the 1888 Act, amongst other requirements, was that the applicant "is a fit and proper person to hold such a certificate". In his affidavit the applicant dealt only with the matter that he was without a criminal record.

**Held:**

- (i) The applicant must show, as a fit and proper person, that he is fully conversant with the law of distress and the procedure to be adopted in levying a distress.
- (ii) The more appropriate procedure on an application under s.7 is by originating notice of motion under 0.6, Rule 1 (3) of Cap. 50.

**Legislation referred to:**

Law of Distress Amendment Act, 1888 (U.K.) 7, 8, 9

The Distress for Rent Rules, 1953 (U.K.)

High Court Rules, Cap. 50, Order 6, Rule 1(2) (3), Order 30, Rule 8

Rating Act, Cap. 484

Income Tax Act, Cap. 668, s.79A

**Works referred to:**

Atkins Encyclopedia of Court Forms and Precedents in Civil Proceedings.

For the applicant: E.B. Mwansa, Jaques and Partners.

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Judgment

**MUZYAMBA, J.:** delivered the judgment of the court

This is an application by Patrick Kamaya under section 7 of the Law of Distress Amendment Act 1888 (hereinafter called 'the Act') for a General Certificate as a Certificated Bailiff. The application is supported by an affidavit sworn by him and filed on 9th July, 1987. Before I deal with the application I would like to comment on the procedure adopted. Section 8 of the Act provides:

" The Lord Chancellor may from time to time make, alter, and revoke the rules -

- (1) For regulating the Security (if any) to be required from Bailiffs
- (2) For regulating the fees, charges and expenses in and incidental to distress
- (3) For carrying into effect the object of this Act."

By Statutory Instrument No. 1702 of 1953 the Lord Chancellor has made some rules called 'The Distress for Rent rules 1953' ( hereinafter called 'the rules'). The rules do not provide for a special procedure of how to commence an application to court under section 7 of the Act. Our High Court rules therefore apply. Order VI rule 1 sub-rules (2) and (3) of the High Court rules, Cap. 50 provide:

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- "(2) Any matter which under any written Law or these rules may be disposed of in chambers shall be commenced by an originating summons.
- (3) Any application to be made to the court in respect of which no special procedure has been provided by any written law or by these rules shall be commenced by an originating notice of motion."

Looking at the rules made by the Lord Chancellor and in view of the fact that the affidavit in support is scanty the court felt that this application could not be disposed of in chambers. The court therefore amended the application to read 'originating Notice of Motion' and in terms of order XXX rule 8 of the High Court rules, Cap. 50 adjourned the matter into court for the applicant to give viva voce evidence in support of his application. At this stage I would like to say that in future any person wishing to make an application under section 7 of the Act would be well advised to do so by way of originating notice of motion because the rules require him to satisfy the court on a number of issues.

Having said that I now turn to the application. Briefly, the applicant's evidence is that for six years he had been working as a Bailiff under the Sheriff's office. Later he was pruned and since then he has been unemployed. He does not own any rateable property and has no security to give for the due performance of his duties in the event that his application was granted. That he has no place of business and is not conversant with the Law of Distress and the procedure to be followed in levying distress. He further stated that he had never before applied for a certificate and that if granted a General Certificate he would levy distress for rent, rates, taxes, debts and/or other demands in the Republic. That he was fit to be a certificated bailiff because he had no criminal record and was physically fit.

In my view the application raises two important issues for determination of this Court and these are:

- (i) Is the Act restricted to distress for rent only or it also applies to distress for rates, taxes, debts and/or other demands.
- (ii) Has the applicant satisfied the requirements of the rules.

I will deal with these issues in that same order.

The words "Landlord", "tenant", and "rent" are used throughout the Act. Also the rules made pursuant to section 8 of the Act are titled "Distress for rent rules." There is no mention of rates, taxes, debts or other demands in both the Act and rules. Further form 92 of the General Certificate in Lord Atkin's Encyclopedia of Court Forms and Precedents in Civil Proceedings, Volume 8 reads:

"Pursuant to section 7 of the Law of Distress Amendment Act, 1888 and section 3 of the Law of Distress Amendment Act 1895 and the rules made thereunder, I hereby authorise A.B. of .... to act as a bailiff to levy distress for rent in England and Wales."

This form does not also mention rates, taxes, debts or other demands. I therefore find and hold that the Act is restricted to distress for rent. It does not in any way apply to distress for rates, taxes, debts and/or other demands. One might ask the question - who then has authority to distress for rates and taxes. In England distress for rates and taxes are levied under the General Rate Act 1967 and Taxes Management Act 1970 respectively. In Zambia they can be levied under the

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Rating Act, Cap. 484 and the Income Tax Act, Cap. 668. Section 19 subsection (2) of the Rating Act provides:

"If, after such demand, such person fails to pay such sum, its-hall lawful for the principal officer of the rating authority, upon such a resolution of the rating authority in that behalf to issue a warrant to the - sheriff requiring him to distrain upon the personal goods and chattels of such person to the -value of such sum, whether or not such goods and chattels be found upon the hereditament in respect of which the rates are due."

There is a provisio to this subsection which is not relevant to the application. It is quite clear from this section that only the Sheriff of Zambia and his officers are authorised to levy distress for rates. And Section 79A subsection (1) of the Income Tax Act, as amended by section 16 of the Income Tax (Amendment) Act, No. 14 of 1976 provides:

"Any officer appointed for the purpose of carrying out the provisions of the Act may, under warrant by the commissioner, levy distress upon the goods and chattels of the person or partnership from whom tax is recoverable."

Again it is quite clear from this section that only an officer appointed by the Commissioner of Taxes has authority to distress for taxes. Therefore, at the moment and until the above two Acts are amended, a certificated bailiff has no authority to levy distress for rates and taxes. As for debts and other demands of whatever nature, I am not aware of any rule of law which authorises a creditor to recover a debt or money without first commencing a court action against the debtor. In passing off

on this issue I would like to say that I have ventured this far because I have a strong feeling that some subordinate courts have granted certificates under section 7 of the Act authorising some certificated bailiffs to levy distress for rates, taxes, debts and other demands, in addition to distress for rent. And in certain cases the certificates are not renewable contrary to what the rules provide. Such certificates are irregular and the concerned courts would be well advised to recall and cancel the same and upon proper application(s) to issue proper certificates in form 92 supra, renewable every year.

The second and last issue is whether or not the applicant has satisfied the requirements of the rules. Rules 7, 8 and 9 of the rules read:

- "7. Subject to the last two preceding rules, a general or special certificate may, on payment of the prescribed fee, be granted to any applicant who satisfies the authority granting the certificate that he is a fit and proper person to hold it, and in particular does not carry on the business of buying debts, and who gives the undertaking that he will not levy distress at any premises in respect of which he is regularly employed in person to collect weekly rent.
8. An applicant for a general certificate shall satisfy the Judge that he is resident or has his principal place of business in the district of the court, and shall state whether he has ever been refused a certificate, or had a former certificate cancelled or declared void.
9. Where an applicant for a certificate is not a ratepayer rated on a rateable value of not less than 25pounds per annum, he may, if the authority applied to thinks fit, be required to give security for the due performance of his duties."

It is quite clear from the rules that an applicant for either a General or special certificate must satisfy the court that he is a fit and proper person to hold such a

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certificate; that he is not in the business of buying debts, i.e. he is not a money lender; and that he is either resident or has his principal place of business within the jurisdiction of the court. Where the applicant does not own immovable property and therefore not a rate payer and is regularly employed to collect rent he must satisfy the court that he is prepared to give a deposit, bona or guarantee for the due performance of his duties, if granted a certificate and must undertake not to distress for rent from the tenants he is regularly employed to collect rent. In my view it is quite easy for any applicant to make an undertaking required by the rules and/or to show that he is capable of raising a deposit, bond or guarantee for due performance of his duties in the event that he is granted a certificate. What appears to be difficult however is for him to satisfy the court that he is a fit and proper person to hold a certificate. I say so because and in my view the words 'fit and proper' do not only mean without a criminal record or just respectable, of high integrity or of good credit but also mean fully conversant with the Law of Distress and the procedure to be adopted in levying a distress. The applicant must therefore satisfy the court that he knows that he cannot levy distress for rent in respect of a dwelling house without leave of the court; that in executing a warrant of distress issued by a landlord he is required by the Law, upon being on the tenant's premises, to produce his certificate when requested by the tenant to do so and to prepare a notice for distress showing the amount of rent due and give the tenant the statutory period of five days within which to meet the demand and also to prepare an inventory of the goods and chattels of the tenant distrained;

that if he removes the goods from the tenant's premises they should be stored, at his own peril, at a safe place and that the tenant may replevy the goods within the statutory period given and that the goods so distrained may not be auctioned until the time given to pay the rent due has elapsed.

In the application presently before the court the applicant has only shown that he is without a criminal record. He has not shown that he is conversant with the Law of Distress for rent and the procedure to be followed in levying any distress. Nor has he, not being a rate payer, shown that he is capable of making a security for due performance of his duties. In the circumstances I am not satisfied that he is a fit and proper person to hold a certificate under the Act. Accordingly the application is refused.

Application refused

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