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IN THE SUPREM COURT OF ZAMBIA
HOLDEN AT NDOLA

APPEAL NO. 69/2006

(Civil Jurisdiction)

BETWEEN:

STATOR ELECTRICAL LIMITED	APPELLANT
AND	
DUNLOP (ZAMBIA) LIMITED	RESPONDENT

Coram: Chitengi, Mushabati,JJS and Kabalata, AJS

On 6th September, 2006 and 5th December, 2006 and 8.3.8

For the Appellant: Mr. M. Forrest, Forrest Price and Company

For the Respondent: Mr. C. Siamutwa, Corpus Globe

JUDGMENT

Kabalata AJS., delivered the judgment of the Court

Cases referred to:

*(1) **Stream Properties Limited vs. Davis and Others 1972 ZVL ER 746***
*(2) **Nkhata and 4 Others vs. Attorney General (1966) ZR 134.***

This is an appeal against the ruling of the High Court dated 22nd February, 2006 in which the court fixed the rent pending re-trial with effect from 1st January, 2001, the date of commencement of the proceedings.

The ruling of the court below was quite brief, numbering only two pages. We shall also attempt to be brief as the issue(s) involved are indeed straight forward.

The application before the lower court was originally for a grant of a new tenancy to the appellants which was refused by the court. On a subsequent appeal to this court, we allowed the appeal and ordered a retrial before a different judge. In the meantime and pending the retrial, the respondent filed a notice of motion on 14th March, 2005 for determination of standard rent.

After considering the application and the submissions by Counsel, the lower court fixed the interim rent at US$1,500 per month with effect from the date of commencement of these proceedings. Dissatisfied with the ruling of the lower court, the appellant has appealed to this court on the following grounds:

The Plaintiff says that the Learned Judge in the High Court misdirected himself in two important respects namely;

(i) He failed to take into account in fixing the interim standard rent the effect of Section 16(c) of the Landlord and Tenant (Business Premises) Act as the tenant the (applicant) was under a duty under the lease of the premises to maintain on a "full repairing" basis. The rent therefore should be adjusted to give effect thereto.

(ii) The date of commencement of the interim standard rent fixed by the Court should have been the date of the Landlords' Summons namely the 14th March 2005 and not the date of commencement of the proceedings on 31st January 2001. The case of ***Stream Properties Limited vs. Davis and Others***[1] makes this clear.

(2) The Defendant on filing its application to fix the interim standard rent did not file a current valuation of the premises. The amount of US$3,000-00 per month mentioned by the Defendant was a notional figure not supported by evidence. The Plaintiff filed a current valuation of its premises in Court on the 15th June, 2005 showing the current value to be K3,000,000-00. At the time the exchange rate was about US$3,500-00. Consequently, the K3,000,000-00 represents about US$900-00 only per month. The learned judge in the High Court therefore misdirected himself in fixing the standard rent at US$1,5000-00 per month.

(3) The application was heard by the High Court on the 6th June, 2005. The Ruling was delivered on 22nd February 2006. The Plaintiff submits that it is manifestly unjust to have the effective date of an increase back dated for almost 9 months.

Both Counsel filed written heads of arguments which were augmented with oral submissions.

The gist of the Mr. Forrests' arguments, on behalf of the appellant, was that in assessing the interim standard rent the fact that the tenants were liable as on a tenants full repairing lease, allowance should have been made to adjust the rent accordingly. Section 16 of the Landlord and Tenant (Business Premises) Act, Cap. 193 was cited in support of this proposition. Secondly, the new rent should have commenced on the date of issue of the application namely 31st January 2005. Thirdly that the rent fixed by the High Court was excessive since the learned judge had no evidence on which to impose a rent

of US$1,500-00 per month. He therefore urged this court to allow the appeal.

Mr. Siamutwa, on behalf of the respondent, informed the court that he adopts and entirely relies on the heads of arguments filed into court.

We have carefully considered the affidavit evidence on record and the submission by both learned Counsel. It is common cause that the rent that was determined by the lower court is only interim pending the retrial of this matter. The figure is not final. By reference to all the circumstances of the tenancy, the court obviously took into account every relevant factor. If any repairs have been undertaken those can only have operated to enhance the value of the property. The Appellant has failed to show how the enhancement of the value of the premises by the Appellants' alleged improvements can result into a lower amount of rent.

As regards the challenge to the amount of rent determined by the court, we wish to re-affirm what we said in **Nkhata and 4 others vs. Attorney General[2].** We said that a trial judge sitting alone without a jury can only be reversed on questions of fact if (1) the judge erred in accepting evidence, or (2)the judge erred in assessing and evaluating the evidence by taking into account some matter which he should have ignored or failing to take into account something which he should have considered, or (3) the judge did not take proper advantage of having seen and heard the witnesses,(4) external evidence demonstrates that the judge erred in assessing manner and demeanour of witnesses.

None of these conditions obtain here and in consequence the judge's findings cannot be disturbed.

In determining the interim rent, the court below took into account all the circumstances of the case including the evidence before it. Just by way of example there were two valuation reports before it and these appear at page 31 and page 40 of the record of Appeal. The valuation report appearing at page 31 opines that rentals in respect of the premises are in the region of K3,000,000-00. The valuation report appearing at page 40 recommends rentals of US$4,000-00 for the premises. There is also affidavit evidence at page 38 to the effect that the other tenants in the premises were paying US$1,000-00 per month. This fact is confirmed by the lease agreement appearing at page 45. In view of all this evidence the lower court cannot be faulted in making the decision that it made. In our considered view the amount of US$1,500 fixed by the lower court is neither outrageous nor incompatible with the evidence before the court. Plainly, the court was extremely conservative in arriving at a modest figure of US$1,500 considering the circumstances of the tenancy. Furthermore, no effort whatsoever has been made by the appellant in this case to demonstrate that this case is one of those rare cases in which findings of fact may be interfered with. The appeal against the amount of rent fixed by the lower court therefore fails.

With regard to the date of commencement of the interim standard rent fixed by the lower court, this should have been the date of the Landlords summons namely the 14th March 2005 as shown on page 36 of the record of appeal and

not the date of commencement of the proceedings on 31st January, 2001. To this end, the appeal partially succeeds.

Each party will bear their own costs here and below.

P. Chitengi

JUDGE OF THE SUPREME COURT

C.S. Mushabati

JUDGE OF THE SUPREME COURT

T.A. Kabalata

ACTING JUDGE OF THE SUPREME COURT