

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**



2018/HP/0071

**IN THE MATTER OF: THE LAW OF DISTRESS AMENDMENT
ACT 1888**

**AND IN THE MATTER OF: THE PROPERTY KNOWN AS PLOT NO.
2374/1 LEOPARDS HILL ROAD, NEW
KASAMA, LUSAKA**

**AND IN THE MATTER OF: AN APPLICATION UNDER SECTION 13 &
14 OF THE RENT ACT CAP 206 OF THE
LAWS OF ZAMBIA TO ENTER UPON THE
PREMISES AFORESAID AND DISTRAIN
FOR RENT ARREARS AND TAKE
POSSESSION**

BETWEEN:

CHISUWO MURRU

APPLICANT/LANDLORD

AND

CARMAN HACHANDI

RESPONDENT/TENANT

**BEFORE THE HON. MRS JUSTICE S. M WANJELANI IN
CHAMBERS ON THE 10TH DAY OF MAY, 2018.**

For the Applicant: N/A

For the Respondent: N/A

RULING

Case referred to:

1. *Leopard Ridge Safaris Ltd V Zambia Wildlife Authority (2008) ZR 97*
2. *Pouwels Construction Ltd and Another V Inyatsi Construction Ltd, SCZ Judgment No. 23 of 2016*

Legislation referred to:

1. *Arbitration Act No. 19 of 2000*
2. *Rules of the Supreme Court 1999*

The Applicant commenced this action by way of Originating Summons pursuant to the Rent Act seeking:

- a) *An order for leave to distrain upon the goods of the Respondent to recover a sum of K13,000.00 being overdue payable to the Applicant in respect of premises known as **Plot No. 2374/1, Leopards Hill, New Kasama;***
- b) *A further order for payment of the sum of K20, 000.00 to renovate the said premises as it is in a deplorable state as a result of the Respondent's action,*
- c) *Interest at current bank lending rate,*
- d) *Loss of business,*
- e) *Costs incidental to this action,*
- f) *Any other relief that the Court shall deem fit.*

The Respondent filed a Notice of Motion to raise Preliminary Issues pursuant to **Order 33 Rule 3 of the Supreme Court Rules** requiring the Court to determine:

- i. *That the matter be dismissed as the action relating to a tenancy for a business premise has been commenced under the Rent Act which is inapplicable to the relationship between the Parties;*
- ii. *The matter be dismissed as the Court lacks jurisdiction as the Lease Agreement contains a valid arbitration agreement.*

The Notice of Motion is accompanied by an Affidavit in Support sworn by the Respondent, in which she avers that the Lease Agreement related to Didi Farms which she runs and the premises were used as business premises. She added that there was an arbitration clause in the Lease Agreement, hence the action before Court was irregularly commenced by way of Originating Summons and ought to be dismissed or alternatively referred to arbitration.

I have perused the documents on record and decided to proceed with the Ruling without hearing the Parties viva voce, in view of the issues raised and the law applicable.

The Lease Agreement exhibited as “**CH1**”, in **Clause 42** states:

“In the event of dispute between the Landlord and Tenant touching on the provisions of this Agreement, the Parties hereby agree to resolve such dispute by way of Arbitration Act No. 19 of 2000--- the decision made by the Arbitration shall be final and binding on the Parties hereto.”

The said **Arbitration Act, in Section 10** provided as follows:

1) ***A Court before which Legal proceedings are brought in a matter which is subject of an arbitration agreement shall, if a Party so requests at any stage of the proceedings, and notwithstanding any written law, stay those proceedings and refer the Parties to arbitration, unless if it finds that the agreement is null and void, inoperative or incapable of being performed.*** (underline for emphasis only)

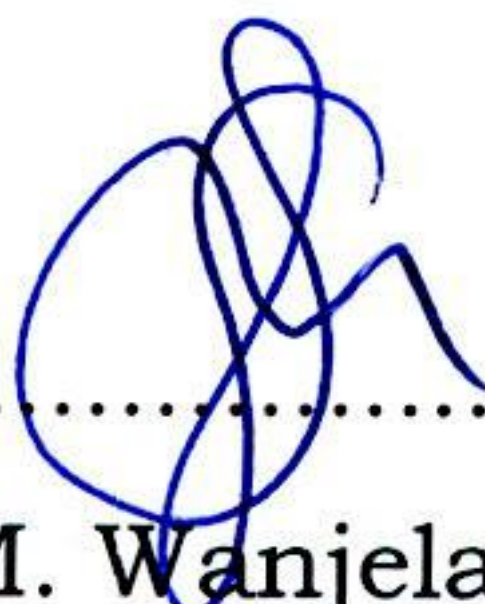
Having perused **Clause 42** of the Lease Agreement, I do not find the arbitration agreement to be null and void, inoperative or incapable of being performed. In view of the request by the Respondent that the matter be referred to arbitration as provided in the Lease Agreement, this Court has no option but to do so.

I am fortified in my view by the holding of the Supreme Court in cases of **Leopard Ridge Safaris Ltd V Zambia Wildlife Authority⁽¹⁾** and **Pouwels Construction Ltd and Another V Inyatsi Construction Ltd⁽²⁾**, where in the latter case it was stated:

“Since there was a valid arbitration agreement, the Learned trial Judge had no jurisdiction to adjudicate the matter. He had an obligation to stay the proceedings and refer the Parties to their choice of dispute resolution forum. In the circumstances, we hold that the subsequent legal proceedings -- were a nullity.”

I therefore stay these proceedings and refer the Parties to arbitration as provided in the Lease Agreement. I make no order as to costs.

Delivered at Lusaka this 10th day of May, 2018.



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S. M. Wanjelani

HIGH COURT JUDGE