

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



IN THE MATTER OF:

THE LEASE AGREEMENT RELATING
TO PLOT NO. 29454/M IBEX HILL,
LUSAKA

IN THE MATTER OF:

SECTION 13(1)(A) AND 14 OF THE
RENT ACT AND RULE 3 THEREFORE OF
CHAPTER 206 VOL. 12 OF THE LAWS OF
ZAMBIA

IN THE MATTER OF:

THE LAW OF DISTRESS 1888 AND
(AMENDMENT) ACT 1895

AND

IN THE MATTER OF:

AN APPLICATION FOR LEAVE TO ISSUE A
WARRANT OF DISTRESS AND FOR
RECOVERY OF POSSESSION OF PROPERTY
NO. 29454/M IBEX HILL, LUSAKA

BETWEEN:

BENJAMIN BWALYA
(Suing as Landlord)

1ST APPLICANT

MWIINGA CHILALA
(Suing as Landlady)

2ND APPLICANT

AND

ARNOLD MUMBA

RESPONDENT

BEFORE THE HON. MRS JUSTICE S. M WANJELANI IN CHAMBERS ON
THE 14TH DAY OF MAY, 2018

For the Applicant: Mr. W. Muhanga, Messrs AKM Legal Practitioners

For the Respondent: Absent

JUDGMENT

Legislation referred to:

1. The Rent Act, Cap 206 of the Laws of Zambia
2. The Law of Distress (Amendment) Act 1888 and 1895

The Applicants, through their appointed Attorney, commenced this action by way of Originating Notice of Motion, pursuant to **sections 13 and 14** of the **Rent Act**, as well as **Rule 3** thereof. The Applicants seek the following reliefs:

- i. order for leave to issue warrant of distress;*
- ii. Recovering of all outstanding rent up to the time of Judgment;*
- iii. Interest thereon;*
- iv. Costs of these proceedings; and*
- v. Any other relief or order the Court deems fit in the circumstances.*

The Notice of Motion was supported by an Affidavit sworn by **Michelo Special Georges Mwiinga**, who averred that he was granted Power of Attorney by the Applicants, for purposes of dealing with the matter related to **Plot No. 29454/M Ibex Hill** (the "Demised Premises"), as per copy of the said Power of Attorney marked "**MSGM1**", exhibited to the Affidavit in Support.

He averred that the Applicants entered into a Lease Agreement with the Respondent on 9th May, 2013 as per exhibit "**MS9M2**", in respect to the Demised Property, at a monthly rent of Seven Thousand Five Hundred Kwacha (K7,500), payable six (6) months in advance, commencing on 1st June 2013, and thereafter to be paid on a quarterly basis.

The Deponent averred that in December, 2016, the Respondent stopped and/or neglected to pay the rentals and has continued to default to date, despite several reminders from the Deponent.

It was further averred that the Respondent promised to settle the rentals as per extracts of the phone messages between the Respondent and the Deponent, exhibited as **"MS9M3"**, to no avail. The Deponent averred that the Respondent has further locked the Demised Property, which has remained locked and unattended to date. The Deponent therefore, prayed for the reliefs as outlined in the Notice of Motion, to be granted.

The Applicants' Counsel applied for and was granted Leave to serve process by Substituted Service on 9th February, 2018, as the whereabouts of the Respondent remain unknown. To this effect, service of the Court process and Notice of hearing were effected on the Respondent through advertisements in the Zambia Daily Mail Newspaper, as per Affidavits of Service dated 12th April, 2018, 27th April, 2018 and 17th May 2018 respectively.

Being satisfied that the Respondent was aware of the proceedings and that he had opted not to file any opposition or appear at the hearing, I allowed the Applicants' Counsel to proceed. During the hearing, Counsel sought Leave to Re-file the Affidavit in Support as the Affidavit filed with the Originating process on 19th January 2018, was defective in that it did not have the Deponent's residential address. As the defect was not fatal, Leave was granted. Counsel further relied on the Affidavit in Support and the Skeleton arguments filed on 9th May, 2018 and prayed that the reliefs be granted.

I have considered the Notice of Motion, the Affidavit in Support and the Skeleton Arguments on record.

There is no dispute that there was a Landlord and Tenant relationship between the Applicants and the Respondent as evidenced by the Lease Agreement exhibited to the Affidavit in Support and marked "**MSGM2**".

The law regulating the landlord and tenant relationship between the Parties herein, is the **Rent Act**, and thus the Demised Property is subject to the provisions of the said **Rent Act**. A perusal of Rule **3 of the Rent Rules**, one of the provisions being relied on, directs that the appropriate procedure to commence an action under the **Rent Act** is through an Originating Notice of Motion and I, therefore, find that this matter has been properly brought before Court.

In addition, Section **13(1)(a)** of the **Rent Act** provides:

"No order for the recovery of possession of any premises or for the ejectment of a tenant therefrom shall be made unless-

(a) some rent lawfully due from the tenant has not been paid, or some other obligation of the tenancy (whether under a contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act, has been broken or not performed; or..."

There is no dispute that the Respondent has not paid the rent due to the Applicants as evidenced by the fact that the Respondent has not filed any Affidavit in Opposition or offered any explanation. In addition, the exhibited phone messages extracts marked "**MSGM3**"

are a clear testimony of the Respondent admitting being in rent arrears. Thus as there is rent owing, the above requirement of the **Rent Act** has been properly invoked.

Further, in terms of **section 14** of the **Rent Act**, a landlord cannot levy distress for rent on any premises which are subject to the **Rent Act** without first obtaining the Leave of Court and to that effect states:

"No distress for the recovery of rent in respect of any premises shall be levied except with the leave of the court."

Based on the foregoing the facts of this matter and the cited provisions of the **Rent Act**, I am satisfied that this is a proper case for this Court to grant the reliefs as sought. Therefore, in exercise of the powers vested in this Court pursuant to **Section 4(e)(i)** of the **Rent Act**, the Applicants are granted Leave to issue Warrant of distress to recover the outstanding rentals up to the date of this Judgment, with interest at short term deposit rate, and thereafter at six percent(6%) till full payment. The Applicants are further granted Leave to gain access to the Demised Property forthwith. Costs are for the Applicants, the same to be taxed in default of agreement.

Delivered at Lusaka this 14th day of June, 2018.



S. M. Wanjelani
HIGH COURT JUDGE