

IN THE SUBORDINATE COURT OF THE FIRST CLASS

FOR THE LUSAKA DISTRICT

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN

CAROLYN NDAWA

AND

PRISCILLA KABONDO



APPLICANT

DEFENDANT

JUDGMENT

Cases cited

Albert Hampako V National Housing Authority (1988 - 1989) Z.R. 61 (S.C.)

Statutes referred to

The Rent Act Chapter 206 of the laws of Zambia

The Applicant in this matter issued out of this court an Originating Notice of Motion with its accompanying affidavit on 23rd June 2017 in which she claimed the following;

1. An order for possession or ejectment of Respondent as a Tenant from flat N. 15DI-5 Chibwa Road, Kabwata Estates.
2. An order for the recovery of rent in excess of K11, 560 being outstanding rental arrears for the said flat for a period of 4 months together with of pocket expenses and bailiff's fee.
3. Any costs the court may deem fit.

The Respondent did file an affidavit in opposition in which she disputed the amount owed not to be K11, 560 instead she averred that she owes the Applicant in rental arrears K7, 950. On the return day both parties opted to rely on the affidavits filed herein with a few additions.

In addition to the affidavit filed, Applicant deposed that Respondent owes her K11, 560 for the months of March to June, 2017. She added that in March she remained with a balance of K960 but the rest of the months she has not paid anything.

The Responded on the other hand told this court that she did tell the Applicant the problems she had with her company.

It is clear to me that most of the facts in this matter are not in dispute. This is so because Respondent does not dispute that she did occupy Applicant's flat and has not paid for March, April, May and June, June, 2017. In March she remained with a balance of K960 while the rest of the months she has not paid anything. I therefore find these to be facts in this case

What seems to be in dispute to me is the amount Respondent owes Applicant in rent arrears. These are the facts in issue I have to resolve in this matter

AMOUNT OWING

It seems not in dispute that Respondent was told that the rent per month was K2650 thus the assertion that she told Applicant that she could only manage K2300 per month does not provide evidence of what she was to be paying per month. In the circumstance I find as a fact that the rent per month was K2, 650. It follows therefore that the amount owing to date is for April to July, 2017 that is to say $4\text{months} \times 2,650 + 960 = \text{K}11,560$. I therefore find as a fact that what Respondent owes Applicant is K11, 560.

Eviction order

The law on eviction orders is found in Section 13 (1) of the Rent Act Chapter 206 of the laws of Zambia which is instructive to this court. It is couched as follows;

No order for the recovery of possession of any premises or for the ejectment of a tenant therefrom shall be made unless among others that;

(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; -----

The foregoing provision is buttressed by the holding of the Supreme Court in Albert Hampako V National Housing Authority (1988 - 1989) Z.R. 61 (S.C.). The brief facts of that case were that the appellant was the tenant of the respondent in terms of an agreement whereby the rent was to be paid one month in advance. The respondent applied to the Court for an eviction order under section 32A of the Rent (Amendment) Act of 1974 alleging that the respondent was in arrears of rent for a period of not less than three months. The trial Court found as a fact that the respondent was in arrears for the months of December, January and February and made an order for possession. The tenant appealed and argued that a tenant could not be in arrears of rent in respect of a period in the future where the rent is payable in advance. He also contended that as he had paid an initial deposit of one month's rent he did not owe three months arrears but only two months arrears.

The Supreme Court upheld the lower court decision and held *inter alia* that;

"Where any rent is payable in advance it becomes in arrears the minute it is not paid on the due date. A deposit is not payable as pre-payment of rent for a month and the payment of such deposit does not in any way relieve the tenant of his obligations under the agreement to pay rent in advance monthly."

It follows therefore that where any rent is payable in advance, it becomes in arrears the minute it is not paid on due date. Once the tenant default and becomes in arrears the Landlord accrues the right to order for possession.

Reverting to this matter before me it seems not in dispute that the parties agreed that Respondent was to be paying rent in advance but failed or neglected to do as agreed and as such ^{he} his conduct flies right in the teeth of section 13(1) of the Rent Act. This is so because Respondent has not only defaulted to make

advance payment but has accrued rent for over 3 months amounting to K11, 560 which is lawfully due to the Applicant. In the circumstances Applicant has proved her case on the balance of probabilities and I accordingly grant an eviction order to the Applicant as prayed.

To this extent therefore the Applicant's claims succeeds which are summarized as follows;

1. **Eviction Order granted**
2. **Rent accrued K11, 560**

In relation to costs of litigation it has been said that costs follow events and as such I do therefore grant costs of or incidental to this case to the Applicant.

DELIVERED IN OPEN COURT

DATED THE _____ DAY OF _____ 2017



F. KAOMA

RESIDENT MAGISTRATE

