

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

**2016/HP/1044**

**IN THE MATTER OF : SECTION 4(e)(i)(ii)(h) OF THE RENT ACT  
CAP 206 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF : HOUSE NUMBER 1 BISHOPS ROAD OFF  
SIANJALIKA ROAD, WOODLANDS**

**BETWEEN:**

**LAZAROUS KAPAMBWE**

**APPLICANT**

**AND**

**ANDREW BANDA**

**1<sup>ST</sup> RESPONDENT**

**MRS. BANDA**

**2<sup>ND</sup> RESPONDENT**



**Before the Hon. Justice Mrs. M. C. Kombe**

*For the Applicant : Mr. F. Kachamba - Messrs EBM Chambers*

*For the Respondents : In person*

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## **J U D G M E N T**

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**Legislation referred to:**

- 1. The Rent Act, Chapter 206 of the Laws of Zambia.**

By Originating Notice of Motion issued on 27<sup>th</sup> May, 2016, the Applicant seeks orders for reliefs in the following terms:

- (i) *An Order that the Respondents pay to the Applicant the sum of K233,422.00 being the outstanding rental arrears from August 2011 to May 2016 for the Respondents occupant and possession of House No.1 Bishops Close, off Sianjalika Road, Woodlands also known as property No.3098 Lusaka and which house belongs to the Applicant.*
- (ii) *An Order that the Respondents vacate House No 1 Bishops Close off Sianjalika Road and surrender possession of the said house back to the Applicant.*

The Notice is supported by an affidavit deposed to by the Applicant **LAZAROUS KAPAMBWE** and he deposed as follows:

That he was the registered owner of House No. 1 Bishops Close off Sianjalika Road Woodlands and that in November, 2003, he and the Respondents entered into a tenancy agreement for occupation and or possession of the said house on terms and conditions which included that the Respondents pay monthly rentals three months in advance.

That the Respondents had since breached the tenancy agreement and had not paid rentals amounting to a total sum of K233,422.00; that upon numerous reminders to the Respondents to settle or pay their rental arrears, the 1<sup>st</sup> Respondent issued cheques in the sum of USD30,000 which cheques and payments had to date not been honoured. He produced copies of the dishonoured cheques which were marked '**LK2**'.

He explained that because of the aforementioned breach of the tenancy agreement, he wished to remove the Respondents from the dwelling house and take possession of the same.

The Respondents both filed affidavits in opposition. The 1<sup>st</sup> Respondent filed his affidavit on 8<sup>th</sup> February, 2017 in which he denied the contents of paragraphs 5,6,7,8 and 9. He deposed that there was no form of any existing



agreement between the 1<sup>st</sup> Respondent and the Applicant and that there was no breach of any agreement. He produced copies of the tenancy agreement made between the 1<sup>st</sup> Respondent and Marandys Fast Foods Limited and the same was marked **'AB1'**.

The 2<sup>nd</sup> Respondent in her affidavit admitted the contents of paragraph 1 but deposed that she was not responsible for paying rentals for the matrimonial home as that was the responsibility of the 1<sup>st</sup> Respondent. She also denied having produced dishonoured cheques.

The Applicant filed an affidavit in reply which was deposed to by **ASTON KAPESA** the Accounts Clerk in the employ of Messrs EBM Chambers and custodian of the Applicant's Lease Agreements. He explained that the lease agreement exhibited by the 1<sup>st</sup> Respondent had expired and that it came to an end after twelve (12) Calendar months that is on 1<sup>st</sup> February, 2007; that upon expiry of the lease agreement, the agreement for rent became oral between the Applicant and the Respondents. That it was for this reason that all rent payments received from the Respondents were received and receipted in the names of the Respondents as shown by copies of receipts which were marked **'AK1'**.

He further explained that paragraph 6 of the 1<sup>st</sup> Respondents affidavit in opposition was misleading and a misrepresentation of facts. He deposed that the Respondents owed the Applicant rent arrears in excess of the sum of K233, 422.00 and that this was evidenced by the 1<sup>st</sup> Respondents attempt to partially settle the arrears by issuing three (3) cheques dated 26<sup>th</sup> March, 2014, 4<sup>th</sup> April 2014 and 11<sup>th</sup> April, 2014 in the total sum of USD30.000 from his present Bank account which cheques were not honoured. He produced copies of the said cheques which were marked **'AK2.'**

At the hearing of the application on 15<sup>th</sup> August, 2017, learned counsel for the Applicant Mr. F. Kachamba relied on the Originating Notice of Motion and the

affidavits in support and in reply. He informed the court that Applicant sought an order to repossess House No. 1 Bishops Close and also the payment of rental arrears in the amount of K233, 422.00.

The 1<sup>st</sup> Respondent who appeared in person informed the court that he had no objection to surrendering the property and to paying rental arrears due in the amount of K233, 422.00. He only requested that they be given ample time to raise the amount and also time to look for alternative accommodation.

The 2<sup>nd</sup> Respondent equally informed the court that she had no objection to vacating the premises. On the rental arrears, she relied on what she had explained in her affidavit in opposition.

I have carefully considered the affidavit evidence adduced by the parties and the submissions made herein.

This action has been brought under **Section 4 (e) (i) (ii) (h) (j) of the Rent Act Chapter 206 of the Laws of Zambia** for the payment of outstanding rentals and for an order that the Respondents vacate House No. 1 Bishops Close, off Sianjalika Road also known as property No. 3098 Lusaka.

Citing only the relevant portion, the said provision reads as follows:

***'4. The court shall have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in particular shall have power-***

***(a) ....***

***(b) ....***

***(c) ....***

***(d) ....***

***(e) subject to the provisions of section thirteen, to make either or both of the following orders, that is to say:***

***(i) an order for the recovery of possession of premises, whether in the occupation of a tenant or of any other person; and***

***(ii) an order for the recovery of arrears of standard rent, mesne profits and a charge for services;***



- (f) for the purpose of enabling additional buildings to be erected, to make orders permitting landlords (subject to the provisions of any written law) to excise vacant land out of premises where such a course is, in the opinion of the court, desirable in the public interest;***
- (g) when the landlord fails to carry out any repairs for which he is liable, to order the landlord to carry out such repairs;***
- (h) to permit the levy of distress for standard rent;***
- (i) to impose conditions in any order made by the court under the provisions of this section;***
- (j) upon the determination of any application or other proceedings, in its discretion to order any party thereto to pay the whole or any part of the costs thereof;***

It is clear from the foregoing that this court is clothed with the power to make an order for the recovery of possession of premises and also the recovery of rentals which are the reliefs sought by the Applicant in this case. However, according to Section 13 (1) of the said Act, an order for the recovery of possession of any premises or for ejectment of a tenant from the premises can only be made *inter alia* if there is some rent lawfully due and owing from the tenant .

From the submission made by the Respondents, it is very clear that the Respondents do not dispute that the court should grant an order to vacate the property in question. The 1<sup>st</sup> Respondent has also admitted being indebted to the Applicant in the sum of K233, 422.00 being outstanding rental arrears. The 2<sup>nd</sup> Respondent on the other hand has argued that it was not her responsibility to pay rentals. I do not find the argument by the 2<sup>nd</sup> Respondent to be tenable as it is clear from exhibit marked '**AK1**' in the affidavit in reply that the rentals were being paid by the Respondents and the receipts were being issued in the names of the Respondents. This explains why the 2<sup>nd</sup> Respondent does not dispute vacating the house in question.

In view of the foregoing, I find that the Applicant has proved his case on a balance of probabilities that there is rent lawfully due and owing to him from the Respondents. I accordingly enter judgment in favour of the Applicant and order as follows:

- (i) That the Respondents pay the Applicant the sum of K233,422.00 being outstanding rental arrears for the Respondents occupation and or possession of House No.1 Bishops Close, off Sianjalika Road, Woodlands. This amount shall attract interest at the average short term deposit rate from date of Writ of Summons to the date of the judgment and thereafter at the current lending rate as determined by the Bank of Zambia from the date of judgment to the date of final payment.
- (ii) The Respondents vacate House No. 1 Bishops Close, Kabulonga within a period of seven (7) days from the date hereof and surrenders possession of the premises to the Applicant.
- (iii) The Applicant is awarded costs to be taxed in default of agreement.

**DELIVERED at Lusaka this 22<sup>nd</sup> day September, 2017.**



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**M. C. KOMBE**  
**JUDGE**