Selected Judgment No. 63 of 2017
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IN THE SUPREME COURT OF ZAMBIA **Appeal No.69/2015**
HOLDEN AT NDOLA **SCZ/8/243/2014**
(Civil Jurisdiction)

BETWEEN:

ZAMBIA STATE INSURANCE CORPORATION LIMITED **APPELLANT**

AND

DAVID MWANAMOYA AND OTHERS **RESPONDENT**

CORAM: **Mambilima CJ, Kaoma and Kajimanga, JJS**
On 5th December 2017 and 12th December 2017

FOR THE APPELLANT : No Appearance

FOR THE RESPONDENT : Mr. J. Muloongo, Messrs MSK Advocates

J U D G M E N T

Kajimanga, JS delivered the judgment of the Court

Cases referred to:

1. **Philip Mhango v Dorothy Ngulube and others (1983) ZR 61 (SC)**
2. **Gastove Kapata v The People (1984) Z. R. 47 (SC)**
3. **Antonio Ventriglia and Manuela Ventriglia v Eastern and Southern African Trade and Development Bank (2010) Z. R. 486**

4. **Shell & BP Zambia Limited v Conidaris and Others (1975) Z. R. 174 (S. C.)**
5. **Harton Ndove v National Educational Company of Zambia Limited (1980) Z. R. 184**
6. **Turnkey Properties v Lusaka West Development Company Limited; B. S. K. Chiti (sued as Receiver) and Zambia State Insurance Corporation Limited (1984) Z. R. 85 (S. C.)**
7. **The Republic of Botswana, Ministry of Works Transport and Communication, Rinceau Design Consultants (sued as a firm previously T/A KZ Architects) v Mitre Limited (1995) Z. R. 113**

Legislation referred to:

Rent Act, Chapter 206 of the Laws of Zambia; sections 2, 9, 11

This is an appeal against a judgment of the High Court which granted the respondents an injunction restraining the appellant from evicting them and demanding rentals at an increased rate.

The appellant is the proprietor of the premises known as Old Nawaitwika Flats situate at Plot No. 5029 in Ndola. On 1st April 2004, the respondents entered into individual standard lease agreements with the appellant. By those agreements, the standard rent for the respective flats was set at K450,000.00 (K450.00) per month. Under clause 3 (c) of the lease agreements, the appellant as landlord

undertook to keep the roof, main wall and other supporting structures of the premises intact to ensure the safety of the tenants. It was also a term of the agreements under clause 3 (d) that the landlord would increase the rent not more than once in a calendar year upon giving three months' notice to the tenant.

On 2nd January 2008, the appellant wrote to the respondents notifying them that rentals would be revised to K900,000.00 (K900.00) per month effective 1st April 2008. Aggrieved by this decision, the respondents issued an originating notice of motion against the appellant on 16th April 2008, seeking the following:

a) **An order to determine the standard rent for the flats occupied by the applicants;**
b) **An order to order [directing] the respondent to carry out repairs, painting and maintenance to the flats;**
c) **An order for an injunction to restrain and prohibit the respondent from evicting the tenants and demanding rentals at the increased rate;**
d) **Costs;**
e) **Any other relief which the court may deem fit under the Rent Act.**

The respondents' affidavit evidence in support of the originating notice of motion disclosed that the appellant had been increasing rentals without any repairs, painting and maintenance to the flats resulting in their dilapidation. The respondents also alleged that the condition of the flats did not warrant any rental increment without the defects thereto being attended to. The respondents stated, however, that they were ready and willing to pay rentals provided that the same reflected the true and correct value of the flats.

In response, the appellant's affidavit evidence disclosed that the annual rental review was in line with clause 3 (d) of the lease agreements and that it would not continue to accommodate any tenant who refused to pay the same. Further, that the respondent did carry out routine repairs and maintenance to the flats although under clause 2 (e) of the lease agreements, these repairs were the responsibility of the tenants. According to the appellant, all expenses in connection with water, security, lights, rates, maintenance, physical external security, refuse collection and general upkeep of the premises were met within the rental amount of K900,000.00

(K900.00) per month. That the appellant had in fact made arrangements to sink a borehole at the premises to resolve the problem of erratic water supply which work required funds being disputed by the tenants.

The appellant's evidence also disclosed that being the owner of the property, the appellant would continue to ensure that the property was in a tenantable state and that the rentals are reasonable and competitive in line with the prevailing market circumstances. Further, that the rentals demanded by the appellant were within the acceptable range set out in the government valuation report.

After considering the affidavit evidence and submissions of the parties, the learned trial judge found that clause 3 (d) of the lease agreements that allowed the landlord to increase rent once in a calendar year was in conflict with section 9 of the Rent Act, Chapter 206 of the Laws of Zambia which prohibits the charging of rent in excess of the standard rent. He reasoned that in the absence of evidence that the rates payable by the landlord had been increased

or that improvements had been undertaken to the premises since 2004 when standard rent was set, it was illegal for the landlord to increase rent.

The learned trial judge also stated that clause 3 (c) of the lease agreements, by which the landlord undertook to keep the roof, main wall and other supporting structures of the premises intact, was not tied to the rental increment under clause 3 (d). That it was, therefore, erroneous for the respondents to base their refusal to pay increased rent on the appellant's failure to attend to the defects at the premises. Consequently, the respondents' relief for the determination of standard rent; and for the respondent to carry out repairs to the leased premises were accordingly dismissed by the learned trial judge. However, the trial judge granted the relief for an injunction and ordered that the appellant be prohibited from demanding rentals over and above the standard rent as set in 2004. He opined, however, that this did not prohibit the appellant from demanding excess rent upon proof that owner's rates had been increased since 2004 and/or that improvements have been undertaken to the premises.

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The appellant now appeals against this decision, advancing the following grounds:

1. **That the Honourable Court below erred in law and in fact when it held that the provision in the standard lease agreement between the parties which allowed the landlord to increase rent once in a calendar year was in conflict with section 9 of the Rent Act which prohibits the charging of rent in excess of the standard rent and thereby holding that the standard rent was one which was set in 2004 and that parties should therefore revert to the said rent.**

2. **That the Honourable Court erred in law and in fact in granting the Respondents herein an injunctive relief while at the same time dismissing all the substantive reliefs sought by the respondents without taking into account the fact that the injunctive relief had to have a legal right as its premise.**

3. **That the Honourable Court erred in law and fact when it narrowly interpreted section 9 of the Rent Act and held that the Appellant is prohibited from demanding rentals over and above the standard rent of K450.00 as set in 2004 without taking into account the rates and ground rent that had been increasing since the year 2004.**

4. **That the Honourable Court erred in law and fact when it contradicted itself by holding that the appellant is not prohibited from demanding excess rent on the basis and upon proof that the rates had increased since 2004; while also holding that the appellant is prohibited from demanding rentals over and above the standard rent set in 2004. The Court did not take into consideration vital evidence in the**

Government Valuation Report which supported the level of rentals increase[d] by the Appellant.

Both parties filed written heads of argument. There was no appearance by counsel for the appellant at the hearing. Mr. Muloongo, the learned counsel for the respondents indicated that he was relying entirely on the respondents' written heads of argument.

In support of grounds one and four, the learned counsel for the appellant referred us to section 9 of the Rent Act which provides that:

"Subject to the provisions of this Act, the landlord of premises shall not be entitled to recover any rent in respect thereof in excess of the standard rent."

We were also referred to section 2 of the Rent Act which defines the term 'standard rent' as follows:

"(a) in relation to unfurnished premises-

i.) if on the prescribed date they were let, the rent at which they were so let;

ii.) if on the prescribed date they were not so let, a rent to be determined by the court at a monthly rate of one and one

quarter per centum of the cost of construction plus market value of the land, the landlord paying all outgoings."

The learned counsel submitted that it was clear from the foregoing provisions that the court below had jurisdiction to determine rent by determining the cost of construction at a monthly rate of 1¼% plus market value of land. Further, that the court below had sufficient information by way of an authentic government valuation report and tenancy agreement before it to proceed and determine standard rent and that section 4 of the Rent Act does empower the court to determine standard rent even on its own motion. He contended that while the court below acknowledged in its judgment that there needed to be evidence of increase in rates and improvement to the premises to warrant an increase in rentals, it simply declared that the 2004 rent would apply. According to counsel, the lower court's declaration completely ignored the need to recognize the market value of the land and there was no evidence before court to suggest that the 2004 rentals were in fact the standard rent. It was his argument that the said judgment fell into error and created an absurdity on the part of both parties herein in

so far as it failed to take into account the relevant matters in determining the standard rent.

In support of ground two, it was submitted that it is trite law that injunctive reliefs are discretionary and equitable remedies and that an injunctive relief will only be granted if a legal right is clearly established. The learned counsel referred us to the judgment of the trial court on page 27 of the record of appeal, where it dismissed the respondent's claims for an order to determine standard rent and an order for the appellant to effect repairs to the leased premises. He argued that although the lower court determined that the respondent's claims were misconceived at law, it went ahead and granted an order of prohibition and then proceeded to set the 2004 rental figures as the standard rent. Counsel also contended that the contradiction in the judgment of the court below must come to this court with a sense of shock in that at page 27 of the record of appeal, the court in its judgment further allowed the appellant to demand excess rent if it could show proof that the rates increased and improvements had been done to the property since 2004. He

submitted that it was inconceivable how the appellant was to provide the proof considering that the court had become functus officio in the matter.

In support of ground three, the learned counsel submitted that the court below should have taken judicial notice that from 2004 to 2013, owners rates had in fact been adjusted, improvements to the flats were done and the market value of the property had increased. However, the court ignored all these vital facts for determining standard rent as provided for in the Rent Act.

The learned counsel accordingly prayed that the appeal be allowed and the judgment of the court below be tampered with in so far as the court misdirected itself. Further, that the contractual relationship of the parties herein be governed by their respective tenancy agreements and that the appellant be at liberty to adjust rentals in accordance with the lease agreements and the Rent Act.

In the respondent's heads of argument, the learned counsel for the respondent submitted in response to ground one, that the court

below was on firm ground when it held that the provision in the standard lease agreement between the parties which allowed the landlord to increase rent once in a calendar year was in conflict with section 9 of the Rent Act and that the appellant had not shown how the court below erred in its holding. On the appellant's argument that the court below had jurisdiction to determine the cost of construction at a monthly rate of 1¼% plus market value of land as was requested by the respondents from the court, counsel argued that the respondents did not at any time ask the court below to determine the cost of construction at the stated rate. That the court below in consequence had no jurisdiction to make such a determination. He argued that conversely, what the court below had jurisdiction and was in fact asked to, and did determine, was standard rent.

It was also submitted that although the appellant produced and sought to rely on the valuation report at pages 82 - 87 of the record of appeal as a basis to demand increased rentals, the same valuation report was tailor-made to conceal the real state of disrepair of the premises. We were referred to the valuation report at page 85 lines

16 - 17 of the record of appeal, where it was stated that:

> **"SERVICES: The subject residential property is serviced with mains, water, electricity and sewerage facilities".**

Counsel submitted, however, that when it came to instructions given by the appellant to the government valuation department, the valuation report reads in lines 18 - 23 at page 85 of the record of appeal as follows:

> **"REPAIR**
>
> **AND**
>
> **CONDITION: We were not instructed and therefore did not carry out a structural survey of the buildings nor were any of the services tested. Therefore, no guarantee can be given in these respects. However, from the extent of the inspection which was limited to readily accessible and visible parts, the subject property generally appears to be in a fair state of repair."**

He contended that it was clear from the foregoing that there was concealment or material non-disclosure of the real state of repair (or otherwise) of the subject property, resulting from the non-testing of services and limiting of the inspection to only the readily accessible and visible parts of the premises. According to the learned counsel, this concealment was duly submitted upon but not challenged in the

court below as shown in the judgment of the trial court at pages 24 - 25 of the record of appeal. He also argued that with the real state of repair concealed, the valuation report could not reliably indicate the correct market value of the land. This, coupled with the lack of the costs of construction, counsel contended, left the court below with the lease agreement as the only basis to use in determining the standard rent at the 2004 rate of K450.00 which conflicted with the Rent Act.

In response to ground two, it was submitted that the court below was on firm ground when it prohibited the appellant from demanding rentals over and above the standard rent. The learned counsel drew our attention to the judgment of the trial court at page 27 of the record of appeal, where it is stated as follows:

> **"It is therefore, erroneous for the appellant to base their refusal to pay increased rent on the Respondent's failure to attend to the defects that have been exhibited in the photographs attached to the affidavit in reply. The only protection the Applicants have is the Rent Act through the provisions cited in this Judgment."**

He also referred us to section 11 of the Rent Act, cited by the

court below earlier in its judgment, which provides that:

> **"(1) A Landlord may, by notice to the tenant increase the standard rent of any premises, that is to say -**
> **(a)...**
> **(i)...**
> **(ii) by the amount of the increase in rates payable by the Landlord since the premises were let, where they were let after the prescribed date.**
> **(b) in any case where the landlord has since the prescribed date, incurred expenditure on the improvement or structural alteration of the premises...by an amount calculated at a rate per annum not exceeding fifteen per centum of the expenditure so incurred."**

He submitted that the above provision specifies the two permitted increases in rent as being in relation to rates and improvements. It was his contention that the appellant totally failed to bring any evidence showing an increase in rates, and/or proof of any expenditure on improvements to the flats since 2004. Having so failed to comply with section 11, the appellant should not now turn round and be heard complaining, let alone allege, that the court below erred in law and in fact in prohibiting an increase in rent over and above the K450.00. That the only document relied upon by the

appellant as a basis for increasing rent was the valuation report tailor-made to conceal the defects to or real state of repair and condition of the flats. Counsel argued however, that section 11 of the Rent Act does not recognize or specify a valuation report as a basis for increasing rent. That therefore, it follows that the appellant's failure to prove in the court below an increase in rates and expenditure on improvements since 2004 was fatal to the appellant's intended increase in rent.

Counsel also contended that the alleged injunctive relief said to have been granted by the court below is an express provision of statute, namely section 9 of the Rent Act. According to the learned counsel, the mandatory nature of the above provision is itself prohibitive enough, and the court below having referred to this provision earlier in its judgment, merely restated the law when it held at page 27 lines 12 and 13 of the record that:

> **"... the Respondent is prohibited from demanding rentals over and above the standard rent as set in 2004".**

Further, that there was no contradiction on the part of the court

when it stated in lines 14 - 17 at page 27 of the record of appeal that:

> **"This does not however, prohibit the respondent from demanding excess rent on the basis and upon proof that owner's rates have increased since 2004 and/or that improvements have been undertaken to the premises".**

The learned counsel submitted that the perceived contradiction which is unsustainable, is a matter of statutory interpretation and section 9 prohibits the increase of rent, except in accordance with the Rent Act, which in section 11 allows increases of rent upon increases in rates, and also on the basis of expenditure on improvements to the premises. He argued that the appellant's failure to prove an increase in rates and expenditure on improvements, meant failure to comply with section 11 and this failure of proof was reflected by the court below on page 26 of the record of appeal when the court stated that:

> **"I therefore, find that in the absence of evidence that the rates payable by the Landlord have been increased or that improvements have been undertaken to the premises since 2004 when standard rent was set, it is illegal for the landlord to increase rent."**

Counsel contended that the above finding that there was no proof of an increase in rates and improvements is a finding of fact by the court below and cannot therefore, be challenged at all on appeal. Further, that had the appellant produced any such evidence and the court below still went on to prohibit the increasing of rent, then there would have been a contradiction, and an appeal on that basis would have been sustainable. He relied on the case of **Philip Mhango v Dorothy Ngulube and others**[1], where this court held that:

> **"The court will not reverse findings of fact made by a trial judge, unless it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which, on a proper view of the evidence, no trial court acting correctly could reasonably make."**

According to counsel, this is not a proper case in which to reverse the findings of fact made by the court below.

In response to ground three, the learned counsel submitted that the appellant had merely canvassed the question of judicial notice under this ground and that this court has in a number of cases

pronounced upon the question of judicial notice. He called in aid the case of **Gastove Kapata v The People,**[2] where it was held as follows:

> **"It is trite law that judicial notice is the cognizance taken by the Court itself of certain matters which are so notorious or clearly so established that the need to adduce evidence of their existence is deemed unnecessary. This is simply a common sense device by which the court's time and the litigant's expenses are saved. It is important, however, that in taking judicial notice of notorious facts, courts should proceed with caution. Thus, if there is room for doubt as to whether a fact is truly notorious, judicial notice should not be taken of it."**

Counsel contended in the first place that section 9 of the Rent Act is simple and straight forward, needing no narrow or broad interpretation. That the provision clearly prohibited a landlord from demanding rentals in excess of standard rent. Having determined standard rent to be that in the 2004 lease agreement, the court below was on firm ground when it held as per section 9 that the appellant as landlord was prohibited from demanding rentals in excess of standard rent set in 2004.

Further, that the appellant's submission that the court below

should have taken judicial notice of improvements to the premises and increase to owner's rates and market value of land is misconceived. The learned counsel argued that section 9 of the Rent Act in its opening part states that it is subject to other provisions of the Act. That these other provisions, particularly section 11, permit the landlord to increase standard rent by the amount of the increase in rates payable by the landlord or by an amount calculated at a rate per annum not exceeding fifteen per centum of the expenditure so incurred.

Counsel further submitted that in the present case, section 11 of the Rent Act permits an increase in rent based on increases in rates and expenditure incurred on improvements to the premises, and that, that is the farthest the said provision goes. He contended that in any event, the court below was not even asked to take judicial notice of anything and that this issue was being raised for the first time on appeal to this court, but couched as an error on the part of the court below. That this ground, therefore, lacks merit.

In response to ground 4, the learned counsel submitted that the court below found as a fact that there was no evidence to prove any increase in owner's rates, and/or expenditure incurred in improvements to the premises since 2004. That this was a finding of fact in relation to which the court below was on firm ground when it held in terms of section 9 of the Rent Act, that the appellant was prohibited from demanding rent in excess of the standard rent set in 2004. That the appellant was, however, not prohibited from increasing rent upon or should it prove an increase in owner's rates and expenditure on improvements to the premises. Counsel contended that in the absence of evidence of the costs of construction and in light of the tailor-made valuation report which hid the state of repair of the premises, the standard rent was as per the lease agreement of 2004 and that the respondents were protected by the provisions of the Rent Act. He accordingly submitted that this appeal lacks merit and prayed that it be dismissed with costs.

We have considered the record of appeal, the judgment appealed against, the heads of argument filed by the parties and the oral

submissions of counsel for the respondents.

Grounds one and three are intertwined and we will consider them collectively. We will then consider ground four and conclude with ground two.

Ground one attacks the lower court's finding that clause 3(d) of the standard lease agreements which allows the appellant to increase rent violates section 9 of the Rent Act. Under ground three, the appellant's grievance is that the trial judge misdirected himself by narrowly interpreting section 9 of the Rent Act and prohibiting the appellant from demanding rent in excess of the standard rent of K450.00 set in 2004 without regard to the rates and ground rent that had been increasing since then.

A reading of section 9 of the Rent Act clearly shows that it restricts the increase of rent in excess of standard rent. The learned trial judge was therefore on firm ground when he found that clause 3(d) of the lease agreements allowing the appellant to increase the standard rent once a year was in violation of section 9 of the Rent Act

as this is the current position of the law. As correctly stated by the lower court, the only instances when a landlord can increase the standard rent are spelt out in section 11 of the Act. These include, where there is an increase in the rates payable by the landlord; and where the landlord has incurred expenses in improving or making structural alteration of the premises.

As aptly observed by the lower court, the appellant did not provide any evidence to show an increase in owner's rates or that improvements had been undertaken to the premises from the time the standard rent was set in 2004. Without doubt, the effect of such evidence lacking is that any annual increases to the rent made by the appellant after 2004 would fly in the teeth of section 9 of the Rent Act, unjust as it may seem. Consequently, the applicable standard rent would have to be the one set at the time the premises were let, i.e. K450.00. We determine therefore, that the learned trial judge cannot be faulted for making such a finding.

The appellant also contended that the court below narrowly

interpreted section 9 of the Rent Act by not taking judicial notice that rates and ground rent had increased since 2004. We have perused the record and agree with the respondents' learned counsel that the issue of judicial notice was not raised in the court below. Applying the principle we enunciated in a plethora of authorities, *inter alia*, the case of **Antonio Ventriglia and Manuela Ventriglia v Eastern and Southern African Trade and Development Bank**[3] that a point not raised in the court below may not be raised on appeal, we are of the firm view that the appellant cannot raise the issue of judicial notice at this stage of the proceedings as it was not canvassed in the court below. We accordingly find no merit in grounds one and three.

The complaint by the appellant under ground four is that the trial judge contradicted himself when in one breath, he held that the appellant was prohibited from demanding rent above the standard rent of K450.00 set in 2004 and yet in another, he held that the appellant was not prohibited from demanding excess rent upon proof that the rates had increased since 2004.

As we have already stated, section 9 of the Rent Act proscribes the increase of rent by a landlord in excess of the standard rent. It was on this basis that the trial court held accordingly. However, the trial court was also cognizant that a landlord can increase rentals in excess of the standard rent under the circumstances set out in section 11. The circumstances are when there has been an increase in rates or where the landlord has incurred expenditure in improving or making alterations to the premises, since the time they were let. It was again in that context that the learned trial judge stated that the appellant was not prohibited from demanding excess rent. In our view, what appears to the appellant as a contradiction is in fact not a contradiction. If we may add, the court below was merely providing guidance to the appellant on how an increase in rent could be made in the future. Consequently, we find that ground four also lacks merit.

Under ground two, the appellant assails the learned trial judge for granting the respondents an injunction after dismissing their substantive reliefs.

As we see it, ground two is at the heart of this appeal. The success or failure of this appeal will depend on the conclusion we are going to reach on this ground.

The principles governing injunctive relief are well settled as illustrated by the various decisions of this court. In the seminal case of **Shell & BP Zambia Limited v Conidaris and Others**[4], we held that a court will not generally grant injunctive relief unless the right to relief is clear. Subsequently, we held in **Harton Ndove v National Educational Company of Zambia Limited**[5] that:

> **"Before granting an interlocutory injunction it must be shown that there is a serious dispute between the parties and the plaintiff must show on the material before court, that he has any real prospect of succeeding at the trial."**

In **Turnkey Properties v Lusaka West Development Company Limited, B. S. K. Chiti (sued as Receiver) and Zambia State Insurance Corporation Limited**[6], we stated that:

> **"An interlocutory injunction is appropriate for the preservation or restoration of a particular situation pending trial."**

Another case worth mentioning is **The Republic of Botswana, Ministry of Works Transport and Communication, Rinceau Design Consultants (sued as a firm previously T/A KZ Architects) v Mitre Limited**[7], where we held that:

> **"An interim or interlocutory injunction is by its nature and name a temporary order granted pending the determination of a matter or an issue and terminates upon such determination."**

The respondents' originating notice of motion filed in the court below was endorsed with the following reliefs:

> **"a) An order to determine the standard rent for the flats occupied by the applicants.**
> **b) An order to order [directing] the respondent to carry out repairs, painting and maintenance to the flats.**
> **c) An order of injunction restraining the respondent from evicting the tenants and demanding rentals at the increased rate.**
> **d) Costs.**
> **e) Any other relief which the court may deem fit."**

We consider (a) and (b) as the substantive reliefs, determination of which the order of injunction sought under (c) was pending. The affidavits in support of the originating notice of motion and summons

for injunction appear at pages 29 – 30 and 50 – 51 of the record respectively. Paragraphs 12 and 13 which are the same in both affidavits are pertinent. They state that:

> **"12. That in view of what has been said above the Applicants pray for an Order [of] the court to determine the standard rentals for the flats and to comply [compel] the Respondent to carry out repairs, painting and maintenance to the said flats.**
>
> **13. That the Respondents should not demand for payment of rentals or evict the Applicants from the rented premises until the court determines the matter herein or upon the court's further directions."** (Emphasis added)

The ex-parte order of injunction dated 8th May 2008 is at page 69 of the record of appeal and states in relevant part as follows:

> **"IT IS HEREBY ORDERED that the Respondent Zambia State Insurance Corporation Limited through its Managing Director and or Estates Manager by themselves or any of its servants or agents are hereby RESTRAINED and PROHIBITED from evicting the Applicants from plot 5029 Old Nawaitwika Flats in Ndola until after the hearing and determination of the inter-partes summons or further order of this court and that the costs hereof and incidental to be in the cause."** (Emphasis added)

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The appellant's affidavit in opposition to the respondents' application for an injunction appears at pages 88 – 89 of the record of appeal. However, we have scanned the record and it is apparent to us that there was no inter-partes hearing. Anyhow, after hearing the parties on the originating notice of motion, the learned trial judge dismissed the two substantive reliefs but he granted the respondents an order for injunction couched in the following terms:

> **"Relief (c) is granted and the Respondent is prohibited from demanding rentals over and above the standard rent as set in 2004."**

The critical question for our determination is whether after dismissing the substantive reliefs, it was appropriate for the learned trial judge to grant such an injunction.

From the respondents' evidence in paragraph 13 of the affidavit in support of the ex-parte summons for an injunction and the ex-parte order of injunction, it is plain that the respondents were seeking an order of injunction to restrain the appellant from evicting

them and increasing the rent pending determination of the matter or upon further order of the lower court.

In the circumstances, we take the view that having finally determined the matter on the merits and dismissed the substantive reliefs, there was nothing pending to justify the grant or continued existence of an injunction. Except for a mandatory injunction and this one was definitely not such an injunction, an interim injunction cannot stand or exist on its own. As this court held in the **Turnkey Properties**[6] case, the purpose of an injunction is to preserve or restore a particular situation pending trial. In this case, there was nothing to preserve or restore after trial. Furthermore, we stated in **The Republic of Botswana**[7] case that since an interim injunction is a temporary order pending the determination of a matter or an issue, it inevitably terminates upon such determination.

We also note that although the respondents were seeking an interim injunction, the learned trial judge exceeded his jurisdiction by purporting to grant a perpetual injunction not warranted by the facts and circumstances of this case. It was contended by the learned

counsel for the respondent that the injunctive relief granted by the lower court was an express provision of section 9 of the Rent Act which prohibits a landlord from increasing rent in excess of the standard rent. We do not agree. Ingenious as this argument may be, it is flawed because the facts clearly show that what the respondents were seeking was not a perpetual but an interim injunction.

In our judgment, it was a serious misdirection on the part of the learned trial judge to grant the respondents an injunction in the manner he did. We therefore find merit in ground two.

Since ground two is at the heart of this appeal, and it is successful, the appeal must be allowed. The upshot of this conclusion is that the purported injunction granted by the court below is reversed. It follows that the appellant is now at liberty to take the necessary steps to increase the rent to the extent permitted by the provisions of the Rent Act.

We award costs to the appellant here and in the court below, to be taxed in default of agreement.

Before we conclude, we are compelled by what has transpired in this case to comment on the efficacy of the Rent Act. The purpose of this Act is described in its preamble as follows:

> **"An Act to make provision for restricting the increase of rents, determining the standard rents, prohibiting the payment of premiums and restricting the right to possession of dwelling-houses, and for other purposes incidental to and connected with the relationship of landlord and tenant of a dwelling-house."**

The Act was enacted in 1972 when the current business environment was not foreseen. We believe that it is not farfetched to posit that the Act is outdated and in its current form, it may be a hindrance to the development of commerce as landlords cannot freely increase rent on the basis of market forces even if the lease contains such a clause. More serious is the fact that the Act provides penal sanctions against a landlord who increases rent in violation of the statutory provisions. In our view, this defeats the principle of freedom of contract.

Needless to mention, the Act appears to be largely tilted in favour of the tenant. While the value of real property such as

dwelling-houses is always appreciating and the Kwacha continues to depreciate, the landlord can only increase rent after complying with the stringent provisions of the Rent Act and in particular, only to the extent of the increase in rates and on the basis of the expenditure incurred by the landlord in respect of improvements and structural alterations to the premises. In the present case, the appellant as landlord has had the misfortune of charging standard rent in the sum of K450.00 from 2004 to not only 2013 when the judgment subject of this appeal was passed, but to date. If this is not injustice, then what is? Perhaps the time is ripe for the legislature to take a keen interest in pieces of legislation such as this one, with a view to addressing particular provisions that are unfavourable to the enhancement of business.

I. C. MAMBILIMA
CHIEF JUSTICE

R. M. C. KAOMA
SUPREME COURT JUDGE

C. KAJIMANGA
SUPREME COURT JUDGE