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IN THE HIGH COURT FOR ZAMBIA 2023/HP/1393
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



IN THE MATTER OF: THE LEASE AGREEMENT RELATING TO NO. 4, STAND NO.5657, IMANSA STREET, HIGHRIDGE KABWE.

IN THE MATTER OF: SECTION 4 (e) (i) AND (ii) OF THE RENT ACT AND RULE 3 THEREOF CHAPTER 206 OF THE LAWS OF ZAMBIA.

IN THE MATTER OF: SECTION 13(1) (a) AND 14 OF THE RENT ACT, CHAPTER 206 OF THE LAWS OF ZAMBIA.

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO ISSUE A WARRANT OF DISTRESS AND FOR RECOVERY OF POSSESSION OF THE LEASED PREMISES KNOWN AS NO.4, STAND NO.5657, IMANSA STREET, HIGHRIDGE KABWE.

BETWEEN:

VIOLET MWANZA *(Suing through her attorney Victor Mulela Mwanza)*

APPLICANT

AND

JOHN CHILUFYA

RESPONDENT

BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA

IN CHAMBERS ON THE 08TH APRIL, 2025.

For the Applicant : Miss. M. Saketi from Mesdames Chalwe & Kabalata Legal Practitioners.

For the Respondent: In person

RULING

1.0 INTRODUCTION

1.1 Following the delivery of judgment in this matter in favor of the Plaintiff, the Plaintiff filed an ex parte application for examination of the judgment debtor. I directed that the application be heard inter parte in order for the judgement debtor to appear before this Court to be orally examined in respect of his ability to satisfy the judgment and to inquire from the judgment debtor the value of his property and of any debts that the judgment debtor may own. This is therefore a Ruling of the Plaintiff's application for examination of judgment debtor.

2.0 AFFIDAVIT EVIDENCE

2.1 The affidavit in support was sworn by Victor Mulela Mwanza, who by virtual of a power of attorney deposed that on the 16th August 2023, the judgment creditor commenced proceedings against the judgment debtor for the sum of ZMW 104,700 being rental arrears due as at July 2023 which rentals remained outstanding from 2018 to date, up to the date of judgment at a monthly rent amounting of ZMW2,500 under a lease agreement signed by the judgment debtor with the judgment creditor for house No. 4, stand 5657 Imansa Street, Highridge Kabwe and an order for leave to issue warrant of distress and recover possession of the leased property.

- 2.2 That on the 6th February, 2024 judgment was rendered by this Court, which granted the judgment creditor leave to issue warrant of distress for the amount of ZMW 104,700 as at July 2023 which rentals remain outstanding from 2018 to date up to the date of this judgment at a monthly rent of K2,500 with interest at short term current bank lending rate from the date of this matter to the date of this judgment and until full payment, costs and that the Judgment debtor vacate the property within 2 days from the date of the judgment. A copy of the judgment was exhibited and marked "VMM2".
- 2.3 It was the deponent's further averment that following the judgment, the judgment debtor was served with the judgment on the 15th February, 2024, and vacated the leased premises on the 24th February, 2024. A copy of the letter serving the judgment, duly acknowledged, was exhibited and marked "VMM3".
- 2.4 It was averred that the judgment debtor after receipt of the judgment, indicated that he would start making payments to offset the judgment sum, additional rentals, interest and costs of which and the judgment debtor between the 5th April, 2024 and the 16th April, 2024 indicated that he was in the process of facilitating, obtaining a loan from the bank which would help him offset an already outstanding loan with ZNBS and what was due to the Judgment creditor, however, there has been no

further communication from the judgment creditor since and neither have any payments been made. Copies of the whatsapp correspondence were exhibited and marked "VMM4".

2.5 Furthermore, that in fact, it is currently impossible to proceed with execution on the judgment creditor because his whereabouts since leaving the leased property are unknown and a search for any assets and information related to any assets have proven futile such that the only information known is the judgment debtor's mobile number which the record will show was used to make all rental payments that were paid and the judgment debtor's employer being Zambia Air Force. A copy of the payment schedule of the judgment debtor was exhibited and marked "VMM5".

2.6 That because of the failure to execute on account of the unknown whereabouts of the judgment debtor or information about any assets owned by the judgment debtor being unknown and the judgment debtor's failure to make any payments towards the money owed, the judgment creditor wishes to examine the judgment debtor on oath to determine how the latter can make good on the debt owed to the former.

3.0 AFFIDAVIT IN OPPOSITION

3.1 The sum total of the affidavit in opposition filed was that the Respondent is a civil servant, a medical licentiate practitioner

employed in the Zambia Air Force and holds the rank of Lieutenant Colonel. The following documents were exhibited, 6 months' pay slip marked JCC1, Bank statements for 6 months marked JCC2, Zambia National Building Society loan statement marked JCC3, statement of loan from Bay port marked JCC4, statement of loan for extenda Fin Limited marked JCC5, statement of loan for Stargate Fin Limited marked JCC6, tenancy agreement marked JCC7 and proof of children's university fees marked JCC8.

- 3.1 It was averred that the Respondent propose to pay the judgment creditor the sum of K5,000, Five Thousand kwacha, each month until full payment of the sums owed.

4.0 SKELETON ARGUMENTS


- 4.1 The Applicant also filed skeleton arguments, but I will not reproduce them, but I include the same in my decision.

5.0 ANALYSIS AND THE DECISION OF THIS COURT

- 5.1 At the hearing of this matter, Counsel for the Applicant, Miss. Saketi, informed the court that she has perused the Applicant's Affidavit in opposition, the documents contained, and that the Applicant is agreeable to the proposed payment of K5,000 per month of liquidating the judgment sum.

- 5.2 Although the Applicant was agreeable to the proposed sum, this Court proceeded to orally examine the Respondent on the income and liabilities as per the documents the Respondent produced.
- 5.3 I have orally examined the judgment debtor as to his circumstances and in particular his assets, income and his liabilities. I am satisfied that the judgment debtor has the means and the capacity to liquidate the judgment sum by paying K5,000 monthly instalments.
- 5.4 I accordingly, hereby grant the Applicant the relief sought. The Respondent Mr. John Chilufya is hereby Ordered to pay the sum of K5,000 every calendar month from the 1st May, 2025 until payment of the full judgment sum and interest, or any other Orders of the Court.

DELIVERED AT LUSAKA THIS 05TH DAY OF MAY, 2025.



**G.C. CHAWATAMA
HIGH COURT JUDGE**