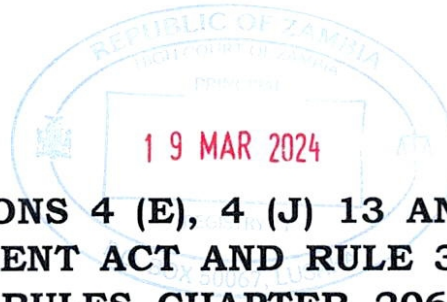


**THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

2023/HP/2217



**IN THE MATTER OF: SECTIONS 4 (E), 4 (J) 13 AND 14 OF
THE RENT ACT AND RULE 3 OF THE
RENT RULES CHAPTER 206 OF THE
LAWS OF ZAMBIA.**

**IN THE MATTER OF: AN APPLICATION FOR AN ORDER FOR
RECOVERY OF RENTAL ARRERS FOR
APARTMENTS 3 AND 11, AZURITE
APARTMENTS, Q1 ELAND LANE,
MEANWOOD, LUSAKA.**

**IN THE MATTER OF: AN APPLICATION FOR AN ORDER FOR
RECOVERY OF POSSESSION OF
APARTMENTS 3 AND 11 AZURITE
APARTMENTS, Q1 ELAND LANE,
MEANWOOD, LUSAKA.**

**IN THE MATTER OF: AN APPLICATION FOR AN ORDER FOR
RECOVERY OF POSSESSION OF
APARTMENTS 3 AND 11 AZURITE
APARTMENTS, Q1 ELAND LANE,
MEANWOOD, LUSAKA.**

BETWEEN:

AZURITE PROPERTIES LIMITED

APPLICANT

AND

SAMMY CHIBANGU

RESPONDENT

Before the Hon Madam. Justice S. Chocho, in Chambers.

For the Applicant: Mr. J. Kapila - Mesdames TMB Advocates

**For the Respondent: Mr. C. Chibwe - Messrs Ysaker Legal
Practitioners**

J U D G M E N T

Cases referred to:

- (i) *Albert Hampako v National Housing Authority (1988-1989)*
Z.R
- (ii) *John Paul Mwila Kasengele and others v Zambia National Commercial Bank Ltd (2000) Z.R 72.*

Legislation referred to:

- (i) *Section 4 (e), (h), (i) and (k) of the Rent Act Chapter 206 of the Laws of Zambia.*
- (ii) *Section 13 (i) (a) and Section 14 of the Rent Act.*
- (iii) *Rule 3 of the Rent Rules, Chapter 206 of the Laws of Zambia*

1. INTRODUCTION

- 1.1 This judgment is in respect of orders sought by the Applicant as regards property known as apartments 3 and 11 Azurite Apartments situated at Q1 Elands Lane, Meanwood Lusaka hereinafter referred to as “the Subject Property”.
- 1.2 The Applicant by Originating Notice of Motion dated 08th December, 2023 claims against the Respondent the following:
- (i) An order for immediate recovery of “the Subject Property” or the ejection of the Respondent from “the Subject Property”.

- (ii) An order for payment of outstanding rentals or arrears of ZMW 200,000.00 as at date of court process.
- (iii) An order for payment of outstanding rentals from date of court process to date of recovery of possession of “the Subject Property”.
- (iv) An order for immediate attachment of motor vehicle Toyota Hilux registration number AJF 4531 belonging to the Respondent.
- (v) An order for leave to levy distress for rentals in respect of motor vehicle Toyota Hilux registration number AJF 4531 belonging to the Respondent.
- (vi) Interest.
- (vii) Costs of the proceedings.

2. BACKGROUND AND AFFIDAVIT EVIDENCE

- 2.1 The background of this matter as per pleadings and Affidavit Evidence is that the Applicant and Respondent entered into a verbal agreement for the lease of “the Subject Property” to the Respondent at the rate of K10,000.00 per month for each of the two units and the Respondent is in default of rental payments.
- 2.2 The Applicant by affidavit sworn by one Lukonde Makungu avers that in 2019 the parties entered into a verbal agreement for the Respondent to take up and occupy a furnished apartment at “the Subject Property” at monthly rental of K10,000.00 payable on the 20th day of every month.

- 2.3 The Applicant further avers that the parties did in 2023 enter into another verbal agreement for the Respondent to take up occupation of a second furnished apartment at “the Subject Property” on the same rental and terms as the first apartment.
- 2.4 The Applicant further avers that the Respondent persistently and consistently neglected, failed and refused to pay rentals, which have accumulated to the total sum K200.000.00
- 2.5 The Applicant avers that the only known property that belongs to the Respondent is motor vehicle Toyota Hilux registration number AJF 4531.
- 2.6 The Applicant further avers that it has lost revenue due to the Respondent’s failure to settle the rentals.
- 2.7 In response to the Applicant’s averments the Respondent filed an affidavit in opposition dated 18th January, 2024.
- 2.8 The Respondent avers that he did enter into a verbal lease agreement over two units on “the Subject Property” at a monthly rental of ZMW 10,000.00 BUT payable as and when the Respondent had funds.
- 2.9 The Respondent further avers that he has been making erratic rental payments to the Applicant and surprisingly received a demand letter on 20th and 27th December, 2023.
- 2.10 The Respondent avers that he made payment to the Applicant the sum of ZMW 50,000.00 on 19th December, 2023 and that he would pay the balance of ZMW 90, 000.00 in two equal instalments during the first and last week of February, 2024.

2.11 The Respondent further avers that he finds it untenable for him to remain on the “the Subject Property” and seeks to vacate by 31st January, 2024.

3. THE LAW AND SUBMISSIONS

3.1 The matter was scheduled for hearing of the main matter on the 15th January 2024 at which hearing the Respondent’s counsel applied for an adjournment to enable them time to file affidavit in opposition and skeleton arguments. Both Counsel for the Applicant and Respondent requested this Court to dispense with a full hearing and instead proceed to deliver its judgment based on the pleadings filed.

3.2 The Applicant filed skeleton arguments in support of their application and further skeleton arguments in response to the Respondent’s skeleton arguments in opposition.

3.3 The record shows that the Respondent also filed an affidavit in opposition to the Applicant’s application for intern attachment of motor vehicle Toyota Hilux registration number AJF 4531. However, the application was determined *ex-parte* on 21st December, 2023.

3.4 I shall not reproduce the submissions and skeleton arguments filed by the parties, suffice it to state that the submissions are on record and I have duly considered the same. I am indeed grateful for the same.

3.5 Principally the Applicant submits that this Court has power to grant leave for the Applicant to levy distress on Respondent’s property for the rentals due and owing.

3.6 The Applicant further submits that this Court has power to grant order for recovery of rental arrears and recovery of possessions of premises. Reference was made to the following authorities:

- (i) Section 4 (e), (h), (i) and (k) of the Rent Act Chapter 206 of the Laws of Zambia.
- (ii) Section 13 (i) (a) and Section 14 of the Rent Act.
- (iii) Rule 3 of the Rent Rules, Chapter 206 of the Laws of Zambia.
- (iv) Albert Hampako v National Housing Authority (1988-1989) Z.R
- (v) John Paul Mwila kasengele and others v Zambia National Commercial Bank Ltd (2000) Z.R 72.

3.7 The Applicant invites this Court to find in its favour and grant the orders as prayed.

3.8 The Respondent submits that he does owe the Applicant the monies as claimed and seeks to pay it in instalments further.

3.9 The Respondent further submits that he will move out of “the Subject Property” as he considers that the relationship between the Applicant and Respondent has broken down.

3.10 The Respondent further submits that the motor vehicle Toyota Hilux registration number AJF 4531 does not belong to him.

4. COURT'S DECISION

- 4.1 The clear and undisputed fact is that there was a verbal agreement for the lease of "the Subject Property" to the Respondent with monthly rental of ZMW 10, 000.00 per unit.
- 4.2 It is also undisputed that the Respondent has unpaid rental arrears on "the Subject Property".
- 4.3 It is abundantly clear to me that the Respondent actually accepts liability and does not dispute the sum due to the Applicant.
- 4.4 The Respondent also on his own accord appears to be ready to vacate "the Subject Property" and surrender possession to the Applicant.
- 4.5 Even before I consider the law on the Applicants claim it is clear that this Court can and should enter judgment on admission as the Respondent does not dispute owing the rent nor that he needs to surrender the property to the Applicant.
- 4.6 I find that the Applicant is entitled to the payment of the rental arrears. The Applicant by its receipt dated 19th December, 2023 reflects rental arrears as at that date at ZMW 90,000.00 and to this amount will be added December and January rentals.
- 4.7 It is within this Court's power to order or grant leave to levy distress, however I find that the Applicant failed to show or prove that the motor vehicle Toyota Hilux registration number AJF 4531 belongs to the Respondent. Infact the Applicant in their further affidavit does concede that title or legal ownership

is not yet changed or transferred into the Respondent's name. Therefore, it follows that Applicant cannot levy distress against the said motor vehicle.

5. CONCLUSION

- 5.1 For the foregoing judgement on admission is entered against the Respondent in the sum of ZMW 90, 000.00.
- 5.2 Judgement in the sum of ZMW 40,000.00 being rentals for the months of December, 2023 and January, 2024, is entered against the Respondent.
- 5.3 Payment of rentals at the agreed sum of ZMW 10,000.00 per month per unit from the 1st of February 2024 to date that the Respondent grants the Applicant vacant possession of "the Subject Property".
- 5.4 An order for the immediate recovery of possession of furnished apartments 3 and 11 Azurite Apartments situated at Q1 Eland Lane, Meanwood Lusaka.
- 5.5 Interest on the judgment sums.
- 5.6 Costs to the Applicant, to be taxed in default of agreement.

Dated the 19th March, 2024



**SITUMBEKO CHOCHO
HIGH COURT JUDGE**

