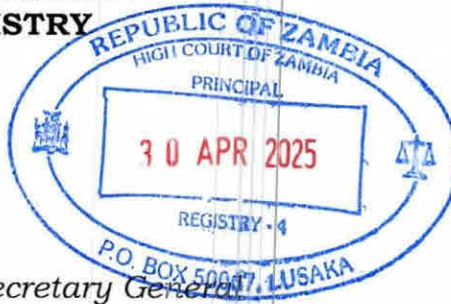


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2023/HP/0142



BETWEEN:

GEORGE MUSONDA

(Suing in his capacity as Secretary General
of the National Union of Technical Education
Lecturers and Allied Workers)

PLAINTIFF

AND

ZAMBIA NATIONAL BUILDING SOCIETY**DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 30th DAY OF APRIL,
2025**

For the Plaintiff : Mr. K Chipungu & Ms. N. Daka, Messrs G M Legal
Practitioners

For the Defendant : Mrs. S. Chisanga Miti, In House Counsel

J U D G M E N T

CASES REFERRED TO:

1. *Printing and Numerical Company v Sampson* 1875 LR19 Eq 462
2. *Betty's Cafes Limited v Philips Furnishing Stores Limited* 1959 AC 20
3. *National Drug Company Limited and Zambia Privatisation Agency v Mary Katongo* Appeal No 79 of 2001
4. *Colgate Palmolive (Z) Limited v Abel Shemu and 110 others* Appeal No 11 of 2005
5. *Spancrete Zambia Ltd v ZESCO Limited* CAZ Appeal 53/2018

LEGISLATION REFERRED TO:

1. *The Landlord and Tenant (Business Premises) Act, Chapter 193 of the Laws of Zambia*

OTHER WORKS REFERRED TO:

1. *An Introduction to Land Law 4th Edition, by J.D Riddal*
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2. **Contract Law in Zambia, by Sangwani Patrick Ngambi and Chanda Chungu, 2nd Edition, Juta and Company (Pty) Ltd, 2021**
3. **Halsbury's Laws of England, 4th Edition, Vol 13**
4. **Halsbury's Laws of England, Volume 19**
5. **Landlord and Tenant, Volume 1 Release 35 Sweet & Maxwell 1996**

1. INTRODUCTION

- 1.1 A dispute in relation to a tenancy agreement is what prompted the Plaintiff, George Musonda, suing in his capacity as Secretary General of the National Union of Technical Education Lecturers and Allied Workers, a Workers Association, that is registered under the Industrial and Labour Relations Act, to sue the Zambia National Building Society, a statutory body that is incorporated in Zambia.
 - 1.2 The proceedings were commenced by Writ of Summons which was filed on 31st January, 2023, and was supported by a statement of claim and the other requisite documents.
 - 1.3 The statement of claim was amended on 9th February, 2023, and the reliefs sought are:
 - i. *An Order that the Zambia National Building Society refunds the sum of ZMW7, 688.00 to George Musonda, being the amount paid as rent for the period October to December, 2022;*
 - ii. *Damages for violating the right to quiet enjoyment, loss of use, unlawful termination of the periodic tenancy, unlawful eviction, damage to equipment and furniture, reputational damage, as well as exposing the National Union of Technical Education Lecturers and Allied Workers to possible deregistration by the Office of the*
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Labour Commissioner for want of notification of change of address;

- iii. Interest;*
- iv. Further or other relief that the Court may deem fit;*
- v. Costs of and incidental to the proceedings.*

2. STATEMENT OF CLAIM

- 2.1 George Musonda stated that the National Union of Technical Education Lecturers and Allied Workers, in 2014 entered into a lease agreement with the Zambia National Building Society, as a tenant of the property known as Suite No 106 Bwafwano House in Ndola for its' business objectives.
 - 2.2 His averment was that the National Union of Technical Education Lecturers and Allied Workers had since 2014 been current in its' rental and other obligations, and had never received any formal notifications or complaints from the Zambia National Building Society.
 - 2.3 However, on an unknown date in October, 2022, the Zambia National Building Society with the aid of officers from the Zambia Police Service forcibly removed, in the absence of the National Union of Technical Education Lecturers and Allied Workers, and without notification to it, its' office equipment and furniture, from the demised premises and deposited the same at a warehouse in Ndola for safe keeping.
 - 2.4 He stated that the Zambia National Building Society immediately assigned the demised premises to a new tenant, notwithstanding that the National Union of Technical Education Lecturers and Allied Workers was not in default
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of its' rental obligations under the lease, and neither had it been issued with the requisite statutory notice to quit as provided under the **Landlord and Tenant (Business Premises) Act**.

- 2.5 Therefore, to its' shock, the National Union of Technical Education Lecturers and Allied Workers found that the demised premises were allocated to a third party, who had already taken possession of the said premises to its' detriment. It was stated that this was without the courtesy of refund being given for the period October to December which was paid as rent.
 - 2.6 George Musonda also contended that during the visit, it was discovered that office equipment and furniture was kept in a state of neglect and was broken/damaged as a result of the Zambia National Building Society's actions.
 - 2.7 He alleged that despite repeated calls to the Zambia National Building Society, the said Zambia National Building Society had refused, neglected and failed to undertake and/or execute its' obligations under the periodic tenancy, resulting in the National Union of Technical Education Lecturers and Allied Workers being severely inconvenienced, and it was forced to find alternative accommodation, despite having paid rent to the Zambia National Building Society.
 - 2.8 Further averment was made, that the National Union of Technical Education Lecturers and Allied Workers had terminated the lease on account of breach by the Zambia National Building Society.
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2.9 The allegation was that due to breach of the lease by the Zambia National Building Society by neglecting to immediately refund the rentals, and violation of the National Union of Technical Education Lecturers and Allied Workers right to quiet enjoyment, deprivation of access to use the demised premises as its' registered office, wrongful termination of the periodic tenancy, unlawful eviction of the National Union of Technical Education Lecturers and Allied Workers, damage to its' office equipment and furniture, reputational damage as well as exposing to it possible deregistration by the office of the Labour Commissioner for want of notification of change of address, the National Union of Technical Education Lecturers and Allied Workers had suffered damage and loss.

2.10 The particulars of damage were stated as:

1. *That as a result of the action by the Zambia National Building Society to unlawfully evict the National Union of Technical Education Lecturers and Allied Workers and changing of the locks for the demised premises, the National Union of Technical Education Lecturers and Allied Workers had lost chance and opportunity to have both its' existing and prospective members attend to at this office;*
2. *That as a result of the actions by the Zambia National Building Society, the National Union of Technical Education Lecturers and Allied Workers had to urgently re-organise its' operations and find alternative office*

- space in Order to conduct any business. Further, the National Union of Technical Education Lecturers and Allied Workers had to inter alia, communicate with third parties, change its' letterhead, reprint business cards for its' officials among other things, at an additional cost;
3. That as a result of the action by the Zambia National Building Society to unlawfully evict the National Union of Technical Education Lecturers and Allied Workers, its' office furniture and equipment had been poorly stored at the warehouse for the Zambia National Building Society;
 4. That as a result of the action by the Zambia National Building Society, a new tenant had been given occupation without notice, thus, the National Union of Technical Education Lecturers and Allied Workers had suffered heavy losses and special damages due to the conduct by the Zambia National Building Society to the tune of a projected income of ZMW60, 000.00 for the period October, to December, 2022;
 5. That by reason of the action by the Zambia National Building Society, the National Union of Technical Education Lecturers and Allied Workers had suffered reputational damage due to the traumatic manner in which the eviction was conducted;
 6. By reason of the action by the Zambia National Building Society, the National Union of Technical Education Lecturers and Allied Workers had been put out of pocket of the sum of ZMW7, 688.00, being the money that was
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paid as rent for the period October to December, 2022, which had never been refunded by the Zambia National Building Society.

3. DEFENCE

- 3.1 In defence, the Zambia National Building Society, admitted the averment that the parties entered into the lease agreement as alleged. It however denied that the National Union of Technical Education Lecturers and Allied Workers was current on the payment of its' rentals and other obligations, stating that it was a perpetual defaulter during the subsistence of the lease, and that it defaulted on its' rental obligations during the months of August to November 2021 and January, April, May and July to September 2022.
 - 3.2 The averments stating that the Zambia National Building Society with the aid of Zambia Police Officers, in the absence of the National Union of Technical Education Lecturers and Allied Workers in October, 2022, and without notification, forcibly removed its' office equipment and furniture from the demised premises and took it to a warehouse for safe keeping was denied.
 - 3.3 The defence was that the National Union of Technical Education Lecturers and Allied Workers was issued several reminders to clear the rent arrears.
 - 3.4 It was also stated that a Bailiff was contacted to pursue the outstanding rentals from the National Union of Technical Education Lecturers and Allied Workers in the months of July and September, 2022, and they had put key blockers
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- on the locks for the National Union of Technical Education Lecturers and Allied Workers, and locked up the premises.
- 3.5 However, the National Union of Technical Education Lecturers and Allied Workers, in complete disregard of the Zambia National Building Society's rights to recover rent as per the lease agreement, removed the locks and re-entered the premises.
- 3.6 The allegation that the Zambia National Building Society leased out the demised premises to a third party who took up occupation of the said premises without a refund of the rentals paid being made, to the shock of the National Union of Technical Education Lecturers and Allied Workers, was denied.
- 3.7 It was the Zambia National Building Society's defence, that it only leased out the premises which were previously occupied by the National Union of Technical Education Lecturers and Allied Workers to new tenants after the National Union of Technical Education Lecturers and Allied Workers had been evicted for non-payment of the rentals.
- 3.8 It was reiterated that the National Union of Technical Education Lecturers and Allied Workers was given sufficient reminders to settle the rent obligations, and it was stated that the Zambia National Building Society was entitled to seek remedies at law in the event of default by a tenant.
- 3.9 It was denied that the National Union of Technical Education Lecturers and Allied Workers was entitled to a refund, stating that the lease agreement provided that the agreed
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rent would be paid quarterly in advance, and that the National Union of Technical Education Lecturers and Allied Workers only settled the rent arrears after it effected the payment on 21st October, 2022.

- 3.10 The defence was also that the lease agreement provided that if the rent reserved or any part thereof remained unpaid for Fourteen (14) days, after becoming payable, whether formally demanded or not, the Zambia National Building Society could re-enter the demised premises. Therefore, in exercise of its' legal rights, the Zambia National Building Society did in fact re-enter upon the demised premises, after the National Union of Technical Education Lecturers and Allied Workers defaulted.
 - 3.11 The assertion further in defence, was that the National Union of Technical Education Lecturers and Allied Workers owed the Zambia National Building Society for the periods as stated above.
 - 3.12 The allegation was further that the National Union of Technical Education Lecturers and Allied Workers had neglected to settle the rent on the agreed dates, and that the Lease Agreement which was duly signed, provided for 5% interest per month for any rent that remained unpaid at the commencement of the quarter.
 - 3.13 It was denied that the National Union of Technical Education Lecturers and Allied Workers, discovered during the visit that its' office equipment and furniture was being kept in a
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state of neglect, and was broken or damaged as a result of the Zambia National Building Society's actions.

3.14 The assertion in defence to that claim, was that the National Union of Technical Education Lecturers and Allied Workers was requested to go and collect its' office equipment and furniture, but it did not respond. It was contended that the said property was still in good condition.

3.15 Denial was made, that the National Union of Technical Education Lecturers and Allied Workers repeatedly engaged the Zambia National Building Society to resolve the matter, and that it terminated the lease agreement due to breach by the Zambia National Building Society.

3.16 The claim for damage and loss was denied, and the Zambia National Building Society stated that the claim for One Million Kwacha (K1, 000, 000.00) as damages for violation of the lease, and quiet enjoyment was irregular, as it could not be ascertained how it was arrived at. The assertion was further it was an unliquidated claim, which had to be assessed by the Court.

4. REPLY TO THE DEFENCE

4.1 The averment in reply, was that it was not true that the National Union of Technical Education Lecturers and Allied Workers was a habitual defaulter when it came to the payment of rentals. It was stated that payment was delayed in some instances for the months which had been stated in the defence, but the account was cleared as at 21st October,

2022, and an advance payment was made for October, to December, 2022.

- 4.2 The reply was further that a receipt was issued by the Zambia National Building Society on 21st October, 2022 which indicated a zero balance.
 - 4.3 Still in replying, the National Union of Technical Education Lecturers and Allied Workers contended that rentals were paid quarterly, and therefore, it was erroneous for the Zambia National Building Society to allege that it paid rentals for February and March, 2022, but that it defaulted to pay for January, 2022.
 - 4.4 The same was stated as regards the defence, that rentals were paid for June, 2022, while there was default in paying the April and May, 2022 rentals, as the payment that was made in June, 2022, cleared the rentals for April and May, 2022.
 - 4.5 The National Union of Technical Education Lecturers and Allied Workers denied that it was sent several reminders to pay the rental arrears.
 - 4.6 It was also denied that the National Union of Technical Education Lecturers and Allied Workers was pursued for payment of the outstanding rent arrears in the months of July and September, 2022, as in early August, 2022, the demised premises was locked, and the Administrative Secretary for the National Union of Technical Education Lecturers and Allied Workers, who was the only person who operated from there, resigned, and when the Zambia
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National Building Society put a key blocker on the lock, the National Union of Technical Education Lecturers and Allied Workers was not informed.

- 4.7 The assertion was further that the office equipment and furniture remained in the demised property until it was unlawfully removed from there.
- 4.8 It was repeated that rentals were paid for the period July to December, 2022, on 21st October, 2022, and the Zambia National Building Society did not state that it had locked the premises or allocated the said premises to a new tenant. Thus, the defence that a new tenant was let to occupy the demised premises as a result of the default of the payment of rent, and hence the eviction of the National Union of Technical Education Lecturers and Allied Workers, was denied.
- 4.9 It was stated that the lease agreement was coming to an end in December 2022, and the purpose of the National Union of Technical Education Lecturers and Allied Workers visiting the Copperbelt was to officially vacate the demised premises, knowing very well that rentals had been paid up to December, 2022.
- 4.10 However, during that visit it discovered that the Zambia National Building Society had removed the office equipment and furniture, and that a new tenant had already occupied the premises. Thus, the National Union of Technical Education Lecturers and Allied Workers was not given sufficient time to vacate the office, as it was occupied by a

new tenant, before the rentals which had been paid were exhausted.

- 4.11 It was denied that the National Union of Technical Education Lecturers and Allied Workers was not entitled to a refund, and the reply was that it paid rent on 21st October, 2022 to clear the same in arrears, and to cover Three (3) months in advance up to 31st December, 2022.
 - 4.12 The denial was further on the basis that the National Union of Technical Education Lecturers and Allied Workers did not owe the Zambia National Building Society any rental arrears or interest charge arrears as indicated on the account receipt which was issued by the Zambia National Building Society.
 - 4.13 It was contended that the Zambia National Building Society re-entered the demised premises and seized the office equipment and furniture for the National Union of Technical Education Lecturers and Allied Workers Fourteen (14) days after the rentals were payable between the months of July and August, 2022.
 - 4.14 However, the said Zambia National Building Society proceeded to receive rental payments for Three (3) months in advance from October to December, 2022, with the full knowledge that it had repossessed the demised premises and had reallocated it to a new tenant.
 - 4.15 The assertion that the National Union of Technical Education Lecturers and Allied Workers owed the Zambia National Building Society for the periods listed was said to be an afterthought, as no claim had ever been made for the
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accrued 5% interest charge on the rentals stated in paragraph 4 of the defence.

- 4.16 It was added that the interest charge was never made by the Zambia National Building Society on the receipts that it issued to the National Union of Technical Education Lecturers and Allied Workers each time it paid the rentals.
- 4.17 Reiteration was made, that the National Union of Technical Education Lecturers and Allied Workers was never notified to collect the office equipment and furniture, and this was pleaded as being because the Zambia National Building Society was aware that rentals had been paid up to 31st December, 2022.
- 4.18 Thus, the claim for damages and loss was stressed. It was however admitted, that it is the preserve of the Court to award damages.

5. EVIDENCE LED AT TRIAL

- 5.1 At trial, the National Union of Technical Education Lecturers and Allied Workers called One (1) witness, while the Zambia National Building Society called (Two) witnesses.

PW1-GEORGE MUSONDA

- 5.2 In his testimony, George Musonda produced his witness statement as his evidence.
- 5.3 In that witness statement, his testimony repeated the averments that had been made in the statement of claim as regards what happened in this matter, save for the particulars as pleaded in relation to the particulars of the claim for damages.
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- 5.4 George Musonda identified page 3 of his bundle of documents, as the inventory of the office equipment and furniture which was removed from the demised premises, and was taken to the warehouse for the Zambia National Building Society for safekeeping.
- 5.5 He further identified page 1 of his bundle of documents, as the deposit slip for the rentals that were paid for the months July to December, 2022.

CROSS EXAMINATION OF GEORGE MUSONDA

- 5.6 In cross examination, George Musonda stated that he had been Secretary General of the National Union of Technical Education Lecturers and Allied Workers since 12th March, 2021. He told the Court that the lease agreement was first entered into in 2014, and that it was renewed in 2022.
- 5.7 He also testified that the said lease was at pages 1-18 of the Zambia National Building Society's bundle of documents. On being referred to the said lease agreement, George Musonda's evidence was that rent was supposed to be paid on the first day of each month, quarterly.
- 5.8 The testimony that he further gave, was that after April, the next rentals were due on 1st July, 2022, and the rentals were paid by cheque which was delivered to an Administrator at the Zambia National Building Society. He added that a receipt would thereafter be issued.
- 5.9 Still in cross examination, George Musonda told the Court that the receipts which were issued, were not before Court

and that he had only produced the receipt which was issued, when there was delay to pay.

- 5.10 When referred to paragraph 4 of his witness statement, George Musonda testified that they were current on the payment of rentals from 2014, and that was why they remained in the premises, otherwise, they would have been evicted.
- 5.11 It was his testimony, when he was referred to the Account Statement which was at pages 41-46 of the Zambia National Building Society's bundle of documents, that he did not know how the rentals were paid, and that the rentals were about K1000.00 plus monthly. He stated that the document read as a loan account so he was not comfortable with it.
- 5.12 George Musonda when referred to paragraph 10 of the reply which was at page 11 of the Zambia National Building Society's bundles of pleadings, testified that he visited the Copperbelt for purposes of vacating the demised premises, but they did not give notice to vacate.
- 5.13 His evidence was that Clause 5 of the lease agreement provided that if rentals remained unpaid for Fourteen (14) days, the landlord could enter the premises, and that under (b), if the premises were not used for a period of Thirty (30) days, the tenancy would be deemed to have been terminated by desertion.
- 5.14 He agreed that paragraph 16 of the reply stated that the National Union of Technical Education Lecturers and Allied Workers was in rental arrears from July to September, 2022.

- 5.15 George Musonda stated that the President of the National Union of Technical Education Lecturers and Allied Workers visited the premises in December, 2022 and that a Union representative being the Deputy General Secretary would pass through in November.
- 5.16 His evidence was that he did not see the reminders to pay rent, and George Musonda when referred to the letters which were at pages 19-22 of the Zambia National Building Society's bundle of documents, stated that they were reminders to pay rent with the last one being dated 2nd August, 2022. It was his testimony that the Administrative Secretary was at the premises at the time.
- 5.17 However, when referred to paragraph 5 of the reply, George Musonda testified that it stated that the Administrative Secretary had resigned.
- 5.18 With reference to the inventory of the office furniture and equipment which was at page 3 of his bundle of documents, George Musonda's evidence was that some of the office equipment and furniture was damaged, while some was in a state of neglect.

RE-EXAMINATION OF GEORGE MUSONDA

- 5.19 In re-examination, George Musonda clarified that page 41 of the Zambia National Building Society's bundle of documents talked about an outstanding loan, but the National Union of Technical Education Lecturers and Allied Workers did not have a loan with the Zambia National Building Society.
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Therefore, the loan statement was not for the National Union of Technical Education Lecturers and Allied Workers.

5.20 It was also his testimony in re-examination, that the account number for the National Union of Technical Education Lecturers and Allied Workers was 1087560560500118 and Mr. Bwalya who lived in Ndola would pass through the demised premises. In conclusion, it was stated that the mode of communication was by notice through letters.

5.21 That marked the close of the case for the National Union of Technical Education Lecturers and Allied Workers.

DW1-MUTALE CHABULEMBWA

5.22 This witness, a Property Officer at the Zambia National Building Society, produced her witness statement as her evidence. She testified in that witness statement, that her job involved among things, leasing properties, collecting rentals, timely billing and maintenance of the commercial properties for the Zambia National Building Society.

5.23 Mutale Chabulembwa confirmed that the National Union of Technical Education Lecturers and Allied Workers and the Zambia National Building Society entered into a lease agreement in which the National Union of Technical Education Lecturers and Allied Workers rented the shop/office on the first floor of Bwafwano House on Stand No 41 in Ndola.

5.24 She stated that the duration of the lease was twelve (12) months from 1st April, 2022, at an agreed fee of K1,282.43 per month, inclusive of VAT, which rentals were payable

quarterly in advance. Pages 1-18 of the Zambia National Building Society's bundle of documents was identified as the said lease agreement.

- 5.25 On other terms of the lease, the evidence that was given was that it was an express term of the agreement under Clause 5 (a), that if the reserved rent remained unpaid for Fourteen (14) days, after becoming payable, the Zambia National Building Society as landlord, could re-enter the property or any part thereof, and the demise would terminate.
- 5.26 Then under Clause 5 (b), where the tenant, in this case the National Union of Technical Education Lecturers and Allied Workers, locked the premises and did not use them for a period of Thirty (30) days, without justification, and without notice being given to the landlord, the tenancy would be deemed to have been terminated by desertion, and the landlord would be entitled to re-enter upon the demised premises and auction or dispose of any goods that would be left behind in the demised premises.
- 5.27 Mutale Chabulembwa testified that the National Union of Technical Education Lecturers and Allied Workers in breach of the lease agreement, started paying rentals late, and instead of paying in advance, at the beginning of every quarter, it would pay either in the second or third month of the quarter, as evidenced by the bank statement which was at pages 41-46 of the Zambia National Building Society's bundle of documents.
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- 5.28 She further stated that late payment became a pattern, and in that regard Mutale Chabulembwa's testimony, was that on 9th May, 2022 and 25th July, 2022, reminders were sent to pay rent, which were at pages 19-21 of the Zambia National Building Societies bundle of documents, and they were slipped under the door of the demised premises, as the demised premises were always locked.
- 5.29 It was added that the reminders which were dated 30th May, 2022 and 2nd August, 2022, which were at pages 20 and 22 of the Zambia National Building Societies bundles of documents, were received by the Administrative Assistant for the National Union of Technical Education Lecturers and Allied Workers.
- 5.30 Mutale Chabulembwa further testified that despite the reminders, the rentals remained unpaid for the quarter July to September, 2022, as shown on the bank statement and the rental statement.
- 5.31 Thus, on 13th September, 2022, Bailiffs locked the demised premises, but the National Union of Technical Education Lecturers and Allied Workers forcefully opened the premises and started illegally operating without the authority of the Zambia National Building Society.
- 5.32 It was stated that the Zambia National Building Society on 19th October, 2022 decided to invoke the provisions of Clause 5 (a) and (b) of the lease agreement, and it evicted the National Union of Technical Education Lecturers and Allied Workers from the demised premises, and took an inventory
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of all the items that were in the office, in the presence of police officers, and secured the same at a warehouse.

- 5.33 Page 47 of the Zambia National Building Society's bundle of documents was stated as being the said inventory.
- 5.34 Mutale Chabulembwa's evidence was that none of the items which were listed on the inventory were damaged as they were well secured.
- 5.35 She went on to state that Two (2) days after the National Union of Technical Education Lecturers and Allied Workers was evicted from the demised premises, it deposited the sum of K7, 688.00 to clear the rental arrears which were outstanding for the quarter July to September, 2022, and made an advance payment for the quarter October to December, 2022. However, by that time, the National Union of Technical Education Lecturers and Allied Workers had been evicted.
- 5.36 The evidence that was further given, reiterated that the National Union of Technical Education Lecturers and Allied Workers was contacted several times to go and collect the goods which were taken to the warehouse, but they had neglected to do so. Mutale Chabulembwa stated that the goods were intact and were not damaged as alleged.
- 5.37 She told the Court that almost Two (2) weeks after the National Union of Technical Education Lecturers and Allied Workers was evicted from the demised premises, the Zambia National Building Society entered into a lease agreement

with another tenant, as seen from the lease agreement which was at pages 23-40 of its' bundle of documents.

5.38 Mutale Chabulembwa testified that the National Union of Technical Education Lecturers and Allied Workers was lawfully evicted from the demised premises as it was a perpetual defaulter, and for failure to respect its' obligations under the lease agreement. Thus, any reputational damage that had been caused to it, was its' own fault, as it did not pay rentals, and not because of the lawful eviction.

5.39 It was stated that on that account, the National Union of Technical Education Lecturers and Allied Workers was not entitled to any of the reliefs which were sought.

CROSS EXAMINATION OF MUTALE CHABULEMBWA

5.40 When cross examined, Mutale Chabulembwa stated that she held a degree in Real Estate which she obtained from the Copperbelt University. As to when she was employed by the Zambia National Building Society, her evidence was that it was in 2013, and that she was appointed to the position of Property Officer in 2019.

5.41 Mutale Chabulembwa admitted that she was not based at the site of the demised premises, but rather officers from the Zambia National Building Society were. She explained that security was on site to help with the day to day operations, adding that in Ndola, the Zambia National Building Society had Three (3) properties with about Thirty (30) tenants.

5.42 It was her testimony that the National Union of Technical Education Lecturers and Allied Workers was evicted from the

premises on 19th, and herself, messengers and Zambia Police Officers were present.

- 5.43 Mutale Chabulembwa also in cross examination, stated that notice was served on the National Union of Technical Education Lecturers and Allied Workers prior to the eviction, even though it was not in the Zambia National Building Societies bundle of documents. Thus, it was agreed that there was no evidence to show that the eviction was done on 19th October, 2022.
- 5.44 Her evidence was that the reminder letters which were at pages 19-22 of the Zambia National Building Society's bundle of documents, were all sent to the National Union of Technical Education Lecturers and Allied Workers.
- 5.45 Mutale Chabulembwa's evidence as regards the inventory of the office equipment and furniture which was at page 47 of the Zambia National Building Society Limited's bundle of documents, was that she signed the documents. She stated that she did not purposefully leave out the date on the document.
- 5.46 When referred to paragraph 12 of her witness statement, she testified that one of the officers from the National Union of Technical Education Lecturers and Allied Workers broke into the demised premises after the Zambia National Building Society had put a key blocker.
- 5.47 As evidence of the same, Mutale Chabulembwa stated that she was informed by one of the officers from the National Union of Technical Education Lecturers and Allied Workers

and she had called its' Administrative Secretary who lived in Ndola.

- 5.48 It was her testimony that they opened the offices on the 19th October, 2022, when they did the eviction, and she explained that the Administrative Secretary was not physically accessible but the said Administrative Secretary gave her his number, but he did not pick up her calls. Mutale Chabulembwa told the Court that she sent him a message on WhatsApp, but he did not respond.
- 5.49 In denying that the K7, 688.00 was paid in advance, Mutale Chabulembwa's evidence was that it was paid for the rental arrears from July to September. She stated that the payment for October to December, 2022 was not refunded, and that the National Union of Technical Education Lecturers and Allied Workers was notified to go and collect the office equipment and furniture, and that the National Union of Technical Education Lecturers and Allied Workers showed up in December.
- 5.50 Still in testifying, Mutale Chabulembwa stated that they did not write but communicated with the Administrative Secretary, who they were given as the contact person and they were not told that she had resigned.
- 5.51 Her testimony was that the new tenant took over the demised premises on 1st November, 2022, as evidenced by the lease agreement which was at pages 23-40 of the Zambia National Building Society's bundle of documents, although proof that
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they paid for rentals to start on 1st November, 2022 was not before Court.

RE-EXAMINATION OF MUTALE CHABULEMBWA

5.52 In re-examination, clarification was made that the Zambia National Building Society has a bank, which is manned by police officers, and that the said police officers were used as the National Union of Technical Education Lecturers and Allied Workers broke into the demised premises.

5.53 Mutale Chabulembwa also stated that the Administrative Secretary was the contact person who would get all the communication, and that from the time that George Musonda came in, she was locked out of the office, and they would call her to collect the notices, and she would make payments through the bank.

DW2-ISAAC KOZA

5.54 This witness, a Carpenter at the Zambia National Building Society, also produced his witness statement as his testimony.

5.55 He told the Court in that witness statement, that he recalled that on 19th October, 2022, he was on short leave when he was informed that a truck had offloaded various office items which he later came to learn, belonged to the National Union of Technical Education Lecturers and Allied Workers.

5.56 Then when he reported for work in or around November, 2022, he had asked for the inventory for the said office equipment which was delivered to the warehouse when he

was on leave, so that he could check it against the physical items.

5.57 His evidence was that the inventory list that he was given, was at page 47 of the Zambia National Building Society's bundle of documents, and it was his testimony that on being given the said inventory, he had verified it against the physical items, and he had noted that they were in good order.

5.58 In concluding his evidence, Isaac Koza testified that the goods were in the state in which they were taken there and had not been damaged.

CROSS EXAMINATION OF ISAAC KOZA

5.59 When cross examined, Isaac Koza's evidence was that he saw the items which were listed on the inventory which was at page 47 of the Zambia National Building Society's bundle of documents before the eviction, when they were in demised premises, prior to him proceeding on leave in August, 2022. He agreed that he had no proof to establish so.

5.60 Isaac Koza stated that he was the person who was keeping the items in the warehouse, and that he was given the inventory on returning from leave. Whilst stating that he did a report on the same, he agreed that it was not before Court.

5.61 That marked the close of the case for the Zambia National Building Society.

6. DECISION OF THIS COURT

6.1 I have considered the evidence and the submissions.

FACTS NOT IN DISPUTE

- 6.2 It is common cause that the National Union of Technical Education Lecturers and Allied Workers and the Zambia National Building Society entered into a lease agreement, in which the National Union of Technical Education Lecturers and Allied Workers rented the property known as Suite No 106 Bwafwano House in 2014.
- 6.3 The facts which are not in dispute, are that the lease agreement was renewed in April, 2022 for a period of One (1) year.
- 6.4 It is not in contention, that sometime between September and October 2022, the Zambia National Building Society took repossession of the demised premises and took the office equipment and furniture for the National Union of Technical Education Lecturers and Allied Workers which was in the demised to its' warehouse.
- 6.5 It is common cause that thereafter, the Zambia National Building Society put in a new tenant in the premises.

ISSUES IN DISUPTE

- 6.6 It is in contention whether the Zambia National Building Society owes the National Union of Technical Education Lecturers and Allied Workers the sum of ZMW7, 688.00 which it paid as rentals for the period October to December 2022.
- 6.7 The issue that is further in dispute, is whether the Zambia National Building Society did violate the National Union of Technical Education Lecturers and Allied Worker's right to quiet enjoyment, loss of use, unlawfully terminated the

tenancy agreement and unlawfully evicted the National Union of Technical Education Lecturers and Allied Workers from the premises and as such, the said the National Union of Technical Education Lecturers and Allied Workers is entitled to damages for the same, as well as damages for its' office equipment and furniture, reputational damage and exposing it to risk of possible deregistration by the office of the Labour Commissioner for want of notification of change of address.

- 6.8 It is also in dispute whether the National Union of Technical Education Lecturers and Allied Workers is entitled to the payment of interest and costs.

ANALYSIS

- 6.9 In laying the basis for the claims, George Musonda testified that the National Union of Technical Education Lecturers and Allied Workers, in 2014 entered into a lease agreement with the Zambia National Building Society in which National Union of Technical Education Lecturers and Allied Workers was as a tenant of the property known as Suite No 106 Bwafwano House in Ndola for its' business objectives.
- 6.10 He also told the Court that the National Union of Technical Education Lecturers and Allied Workers had since 2014 been current in its' rental and other obligations, and that it had never received any formal notifications or complaints from the Zambia National Building Society.
- 6.11 George Musonda's further evidence was that however, on an unknown date in October, 2022, the Zambia National

Building Society with the aid of officers from the Zambia Police Service forcibly removed, in the absence of the National Union of Technical Education Lecturers and Allied Workers, and without notifying it, its' office equipment and furniture, from the demised premises

6.12 His testimony was that the office equipment and furniture was taken to a warehouse in Ndola for safe keeping.

6.13 George Musonda alleged that the Zambia National Building Society immediately assigned the demised premises to a new tenant, notwithstanding that the National Union of Technical Education Lecturers and Allied Workers was not in default of its' rental obligations under the lease, and neither had it been issued with the requisite statutory notice to quit as provided under the ***Landlord and Tenant (Business Premises) Act***.

6.14 It was also stated that the National Union of Technical Education Lecturers and Allied Workers found that the demised premises were allocated to a third party, who had already taken possession of the said premises to the detriment of the National Union of Technical Education Lecturers and Allied Workers.

6.15 George Musonda further testified that this was done without the courtesy of a refund being given for the period October to December which was paid as rent.

6.16 He added that during the visit, it was discovered that office equipment and furniture was kept in a state of neglect and

was broken/damaged as a result of the Zambia National Building Society's actions.

- 6.17 George Musonda alleged that despite repeated calls to the Zambia National Building Society, the said Zambia National Building Society had refused, neglected and failed to undertake and/or execute its' obligations under the periodic tenancy, despite having severely inconvenienced the National Union of Technical Education Lecturers and Allied Workers, which had been forced to find alternative accommodation, despite having paid rent to the Zambia National Building Society.
- 6.18 His evidence was that the National Union of Technical Education Lecturers and Allied Workers terminated the lease on account of breach by the Zambia National Building Society.
- 6.19 George Musonda further testified that due to breach of the lease by the Zambia National Building Society by neglecting to immediately refund the rentals, and violation of the National Union of Technical Education Lecturers and Allied Workers' right to quiet enjoyment, deprivation of access to use the demised premises as its' registered office, wrongful termination of the periodic tenancy, unlawful eviction of the National Union of Technical Education Lecturers and Allied Workers, damage to its' office equipment and furniture, reputational damage, as well as exposing it to possible deregistration by the office of the Labour Commissioner for want of notification of change of address, the National Union

of Technical Education Lecturers and Allied Workers had suffered damage and loss.

- 6.20 In defence, Mutale Chabulembwa, a Property Officer at the Zambia National Building Society, confirmed that the National Union of Technical Education Lecturers and Allied Workers and the Zambia National Building Society entered into a lease agreement in which the National Union of Technical Education Lecturers and Allied Workers rented the shop/office on the first floor of Bwafwano House on Stand No 41 in Ndola.
- 6.21 Her evidence was that the duration of the lease was twelve (12) months from 1st April, 2022, at an agreed fee of K1,282.43 per month, inclusive of VAT, which rentals were payable quarterly in advance. She identified pages 1-18 of the Zambia National Building Society's bundle of documents as the said lease agreement.
- 6.22 Mutale Chabulembwas also stated that it was an express term of the agreement under Clause 5 (a), that if the reserved rent remained unpaid for Fourteen (14) days, after becoming payable, the Zambia National Building Society as landlord, could re-enter the property or any part thereof, and the demise would terminate.
- 6.23 Then under Clause 5 (b), where the tenant, in this case the National Union of Technical Education Lecturers and Allied Workers, locked the premises and did not use them for a period of Thirty (30) days, without justification, and notice being given to the landlord, the tenancy would be deemed to

have been terminated by desertion, and the landlord would be entitled to re-enter upon the demised premises and to auction or dispose of any goods that would have been left behind in the demised premises.

- 6.24 Mutale Chabulembwa alleged that the National Union of Technical Education Lecturers and Allied Workers in breach of the lease agreement, started paying rentals late, and instead of paying in advance, at the beginning of every quarter, it would pay either in the second or third month of the quarter.
- 6.25 She referred to pages 41-46 of the Zambia National Building Society's bundle of documents, as evidence in that regard.
- 6.26 Mutale Chabulembwa added that late payment became a pattern, and she stated that on 9th May, 2022 and 25th July, 2022, reminders were sent to pay rent, which were at pages 19-21 of the Zambia National Building Society's bundle of documents. It was her evidence that the reminders were slipped under the door of the demised premises, as the demised premises were always locked.
- 6.27 It was also Mutale Chabulembwa's evidence that the reminders dated 30th May, 2022 and 2nd August, 2022 which were at pages 20 and 22 of the Zambia National Building Societies bundles of documents, and were received by the Administrative Assistant for the National Union of Technical Education Lecturers and Allied Workers, were further sent.

- 6.28 However, the rentals remained unpaid for the quarter July to September, 2022, as shown on the bank statement and the rental statement.
- 6.29 Therefore, on 13th September, 2022, Bailiffs locked the demised premises, but the National Union of Technical Education Lecturers and Allied Workers forcefully opened the premises and started illegally operating without the authority of the Zambia National Building Society.
- 6.30 Mutale Chabulembwa explained that the Zambia National Building Society on 19th October, 2022, decided to invoke the provisions of Clauses 5 (a) and (b) of the lease agreement, and it evicted the National Union of Technical Education Lecturers and Allied Workers from the demised premises.
- 6.31 She added that they took an inventory of all the items that were in the office in the presence of police officers, and secured the same at a warehouse, as shown on the inventory, which was at page 47 of the Zambia National Building Society's bundle of documents.
- 6.32 Mutale Chabulembwa's evidence was that none of the items that were listed on the inventory were damaged as they were well secured.
- 6.33 She also testified that Two (2) days after the National Union of Technical Education Lecturers and Allied Workers was evicted from the demised premises, it deposited the sum of ZMW7, 688.00 to clear the rental arrears which were outstanding for the quarter July to September, 2022, and

made an advance payment for the quarter October to December, 2022.

6.34 However, by that time, the National Union of Technical Education Lecturers and Allied Workers had been evicted.

6.35 She reiterated that the National Union of Technical Education Lecturers and Allied Workers was contacted several times to go and collect the goods which were taken to the warehouse, but they had neglected to do so. Mutale Chabulembwa stated that the goods were intact and were not damaged as alleged.

6.36 Then almost Two (2) weeks after the National Union of Technical Education Lecturers and Allied Workers were evicted from the demised premises, the Zambia National Building Society entered into a lease agreement with another tenant, with the lease agreement which was at pages 23-40 the Zambia National Building Society's bundle of documents being referred to.

6.37 Mutale Chabulembwa contended that the National Union of Technical Education Lecturers and Allied Workers was lawfully evicted from the demised premises, as it was a perpetual defaulter, and for failure to respect its' obligations under the lease agreement. Thus, any reputational damage that had been caused to it, was its' own fault, as it did not pay rentals, and not because of the lawful eviction.

6.38 It was stated that on that account, the National Union of Technical Education Lecturers and Allied Workers was not entitled to any of the reliefs which were sought.

DECISION**CLAIM FOR THE PAYMENT OF ZMW7, 688.00 BY THE NATIONAL UNION OF TECHNICAL EDUCATION LECTURERS AND ALLIED WORKERS**

- 6.39 In the submissions, the National Union of Technical Education Lecturers and Allied Workers stated that the lease agreement for all intents and purposes was a contract, which was governed by the ordinary rules of contract. **An Introduction to Land Law 4th Edition, by J.D Riddal at page 255** was referred to as authority in that regard.
- 6.40 Thus, in this matter, the provisions of the lease agreement as well as the provisions of the **Landlord and Tenant (Business Premises Act)** governed the lease agreement.
- 6.41 The provisions of **Sections 4 and 5 of the Landlord and Tenant (Business Premises) Act** were referred to on how leases under the Act are terminated. It was submitted that going by the same, notice of not less than Six (6) months and not more than Twelve (12) months before the expiration of the lease had to be given.
- 6.42 The case of **Betty's Cafes Limited v Philips Furnishing Stores Limited** ⁽²⁾ was relied on as authority, stating that the Court in that matter, stated that it is the right of a tenant to know what case they shall meet at the hearing, which is contained in the pleadings, in Order to prevent the party being taken at surprise when the matter comes before Court.
- 6.43 Therefore, **Sections 5 and 6 of the Landlord and Tenant (Business Premises) Act** requires a landlord to state which

of the grounds stipulated in **Section 11 of the said Act** they intend to rely on.

- 6.44 It was stated that Clause 5 of the lease agreement provided that where the tenant locked the demised premises for a period of Thirty (30) days without justification and notice being given to the landlord, the tenancy would be deemed to have terminated by desertion, and the landlord would be entitled to re-enter the demised premises and auction or dispose off any goods left behind in the demised premises.
- 6.45 It was submitted that George Musonda in cross examination, testified that the demised premises were never deserted and that there was a Secretary who would report there on a weekly basis, as the Union was reconstructing.
- 6.46 Reliance was placed on the writing **Landlord and Tenant, Volume 1 Release 35 Sweet & Maxwell 1996** as providing as follows in paragraph 17:214:
- “The fact that a tenant has vacated property does not dispense with the need for a notice to quit unless the inference can be drawn that surrender has taken place.”***
- 6.47 It was contended that on the facts of this case, no such inference could be drawn that the National Union of Technical Education Lecturers and Allied Workers had surrendered the premises.
- 6.48 The last part of the lease at page 39 of the Zambia National Building Society’s bundle of documents was referred to as

stating that the period of notice was Six (6) months by either side giving notice in writing to terminate the lease.

- 6.49 Submission was made, that the terms of the lease could not override the provisions of the **Landlord and Tenant (Business Premises) Act** where any portion of the lease was inconsistent with the said Act.
- 6.50 The assertion was that the Zambia National Building Society terminated the lease without giving the National Union of Technical Education Lecturers and Allied Workers notice.
- 6.51 **Halsbury's Laws of England, 4th Edition, Vol 13 in paragraph 202** was referred to, as stating the following with regard to the right to distrain for rent:

“The right of the landlord to distrain for arrears of rent arises at common law and need not be expressly reserved. It enables the landlord to secure the payment of rent by seizing goods and chattels found upon the premises in respect of which rent or obligations are due.”

- 6.52 Also relied on, was **paragraph 206 of the said Halsbury's Laws of England**, where it states that:

“The common law right of distress for rent in arrears is a right for the landlord to seize whatever moveables he finds on the premises out of which the rent or service issues and to hold them until rent is paid or the service performed.”

- 6.53 Based on the above, the submission was that the goods for the National Union of Technical Education Lecturers and

Allied Workers should have been released, as there was no lien for which they were being held.

6.54 In defence, the Zambia National Building Society submitted that the parties freely and voluntarily entered into the lease agreement. The holding in the case of ***Printing and Numerical Company v Sampson*** ⁽¹⁾ was relied on, stating that it was approved in the cases of ***Colgate Palmolive (Z) Limited v Abel Shemu and 110 others*** ⁽⁴⁾, and ***National Drug Company Limited and Zambia Privatisation Agency v Mary Katongo*** ⁽³⁾.

6.55 The holding in that case was:

“if there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty in contracting, and their contract when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice.”

6.56 Further reliance was placed on ***Evans Mckendricks*** in ***Contract Law 3rd Edition*** as stating that:

“The law of contract is perceived as a set of powers conferring rules which enable individuals to enter into agreements of their own choice on their own terms. Freedom of contract and sanctity of contract are the dominant ideologies. Parties should be free as possible to make agreements on their own terms without the interference of the

courts or parliament, and their agreements should be respected, upheld and enforced by the Courts.”

- 6.57 It was submitted that the evidence on record showed that the parties executed the lease agreement which commenced on 1st April, 2022. The submission was that the rentals due were ZMW1, 282.43 a month and were to be paid quarterly in advance.
- 6.58 Clause 5 (a) of the lease agreement was submitted as giving the Zambia National Building Society, as landlord, power to re-enter the demised premises if rent remained unpaid for fourteen (14) days after becoming payable.
- 6.59 It was stated that the rent statement, which was at pages 41-46 of the Zambia National Building Society’s bundle of documents showed that rent was paid in October, 2022 when it was due as far back as June, 2022.
- 6.60 Therefore, the Zambia National Building Society exercised its right to invoke the provisions of Clause 5 (a) of the lease agreement.
- 6.61 A perusal of the lease agreement, which is at pages 1-17 of the Zambia National Building Society’s bundle of documents shows that indeed where rent was not paid after fourteen (14) days of becoming due, whether formally demanded or not, the Zambia National Building Society could re-enter upon the premises, and the demise would absolutely terminate.
- 6.62 In its’ defence, the Zambia National Building Society contended that rent remained unpaid for the period August
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and September 2021, October and November, 2021, January 2022, April and May, 2022 and July to September, 2022.

- 6.63 In reply, the National Union of Technical Education Lecturers and Allied Workers denied that it was habitual defaulter when it came to the payment of rent, stating that there was just slight delay in doing so. The reply was further that, as rent was paid quarterly, it was erroneous to allege that the January, 2022 rent was not paid, but that for February and March was paid, and there was default to pay rent for April and May 2022. It was stated that the payment which was made in June, covered the months of April and May, 2022.
- 6.64 From the reply, it can be seen that the National Union of Technical Education Lecturers and Allied Workers admitted that rent was not being paid quarterly in advance, in line with the schedule to the lease agreement.
- 6.65 Further, the statement which is at pages 41-45 of the Zambia National Building Society's bundle of documents, although it is termed as a loan statement, and not a rent statement, reveals that a cheque payment of ZMW7, 668.60 was made to the Zambia National Building Society on 21st October, 2022, and that the balance stood at zero as at that date.
- 6.66 Then at page 46 of the said bundle of documents the statement shows that ZMW7, 668.00 was paid on 21st October, 2022. That statement shows that for the period January to March 2022, a deposit of K3, 498.00 was made

on 10th February, 2022, leaving a balance of ZMW110.28. Then for the period April to June 2022, a deposit of ZMW3,740.00 was made on 6th June, 2022.

- 6.67 Then for the rentals for the period July 2022 to September, 2022, a deposit was made 21st October, 2022 in the sum of ZMW7,688.60.
- 6.68 This clearly shows that the National Union of Technical Education Lecturers and Allied Workers was not paying the rentals quarterly in advance, when they fell due. George Musonda in cross examination, agreed that the payment for rent in the sum of ZMW7,688.60 was made on 21st October, 2022 for the period July to December, 2022.
- 6.69 The cheque deposit for the payment, is at page 1 of the National Union of Technical Education Lecturers and Allied Workers bundle of documents, and it is dated 21st October, 2022.
- 6.70 Mutale Chabulembwa testified when the July to September, 2022 rentals were not paid, the Zambia National Building Society, exercised its' right under Clause 5 (a) of the lease agreement, and it re-entered the demised premises in September, 2022, by putting a key blocker on the door. However, an officer from the National Union of Technical Education Lecturers and Allied Workers removed the key blocker and forcibly occupied the demised premises.
- 6.71 Then in October, 2022, the Zambia National Building Society used officers from the Zambia Police to re-enter the premises, and they took the office furniture and equipment

from the demised premises to the warehouse for the Zambia National Building Society.

- 6.72 George Musonda testified that their Administrative Secretary used to man the demised premises. However, in cross examination, when he was referred to the payment reminders which were at pages 19-22 of the Zambia National Building Society's bundles of documents, he stated that the last reminder was dated 2nd August, 2022, and that the Administrative Secretary had resigned.
- 6.73 The reminder to pay rent which is at page 19, is dated 9th May, 2022 and it states that it was slipped under the door. The next one which is at page 20, is dated 30th May, 2022. It has a signature at the bottom, and the date on it is 31st May, 2022. The third one is dated 25th July, 2022, and it states at the bottom that it was placed under the door on 26th July, 2022. Then the one at page 22 is dated 2nd August, 2022 and it had the date 10th August, 2022 at the bottom, and it is signed.
- 6.74 Mutale Chabulembwa testified that the Administrative Secretary for the National Union of Technical Education Lecturers and Allied Workers signed the reminders which are at pages 20 and 22 of the Zambia National Building Society's bundle of documents, which are dated 30th May, 2022 and 2nd August, 2022 respectively. She further stated that they were dealing with the said Administrative Secretary for the National Union of Technical Education Lecturers and Allied Workers.

- 6.75 The statement for rent payment which is at page 46 of the Zambia National Building Society's bundle of documents shows that for the period July 2022 to September, 2022, a deposit was made on 21st October, 2022 in the sum of ZMW7, 688.60.
- 6.76 Clearly fourteen (14) days from when the rent was due on 1st July, 2022, no payment had been made. The reminders to pay were sent on 25th July, 2022 and 2nd August, 2022.
- 6.77 Mutale Chabulembwa testified that the Zambia National Building Society decided to exercise to re-enter the premises in September 2022 when a key blocker was put on the door. However, an officer from the National Union of Technical Education Lecturers and Allied Workers removed the key blocker and forced their way into the premises.
- 6.78 Then on 19th October, 2022, the National Union of Technical Education Lecturers and Allied Workers was evicted from the premises.
- 6.79 Mutale Chabulembwa in cross examination, was taken to task on the date when the actual eviction took place, as she agreed that on the inventory that was taken of the office equipment and furniture for the National Union of Technical Education Lecturers and Allied Workers which were removed from the premises, when the eviction took place, there was no date.
- 6.80 However, the burden is on the National Union of Technical Education Lecturers and Allied Workers, as the party alleging that the eviction was wrongful, to establish when
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exactly the eviction occurred. It not having produced the evidence, I believe Mutale Chabulembwa when she testified that the eviction was done on 19th October, 2022.

- 6.81 It has been seen that when the eviction was done, rentals were owing from July, 2022. In the submissions, the National Union of Technical Education Lecturers and Allied Workers attributed this to it reorganising itself. That assertion is evidence from the bar, as George Musonda did not state so in his testimony.
- 6.82 The fact that rent was due from 1st July, 2022 when the Zambia National Building Society exercised its' right to re-enter the demised premises, shows that it did so pursuant to Clause 5 (a) of the lease agreement.
- 6.83 In the submissions, the National Union of Technical Education Lecturers and Allied Workers, submitted that the schedule to the lease provided that notice to terminate the lease had to be given Six (6) months before it was terminated.
- 6.84 Further reliance was placed on **Sections 5 and 6 of the Landlord and Tenant (Business Premises) Act** as providing that a lease under the Act may be terminated not less than Six (6) months and no later than Twelve (12) months before it comes to an end.
- 6.85 The said Sections provide as follows:

“4. (1) A tenancy to which this Act applies shall not come to an end unless terminated in accordance with the provisions of this Act; and, subject to the

provisions of section ten, the tenant under such a tenancy may apply to the court for a new tenancy-

(a) if the landlord has given notice under section five to terminate the tenancy; or

(b) if the tenant has made a request for a new tenancy in accordance with section six.

(2) The provisions of subsection (1) shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture, or by the forfeiture of a superior tenancy.

(3) Notwithstanding anything in subsection (1)-

(a) where a tenancy to which this Act applies ceases to be such a tenancy, it shall not come to an end by reason only of the cesser, but if it was granted for a term of years certain and has been continued by subsection (1), then (without prejudice to the termination thereof in accordance with any terms of the tenancy) it may be terminated by not less than three nor more than six months' notice in writing given by the landlord to the tenant;

(b) where, at a time when a tenancy is not one to which this Act applies, the landlord gives notice to quit, the operation of the notice shall not be affected by reason that

the tenancy becomes one to which this Act applies after the giving of the notice.

5. (1) The landlord may terminate a tenancy to which this Act applies by a notice given to the tenant in the prescribed form specifying the date on which the tenancy is to come to an end (hereinafter referred to as "the date of termination"):

Provided that this subsection shall have effect subject to the provisions of section twenty-three as to the interim continuation of tenancies pending the disposal of applications to the court.

(2) Subject to the provisions of subsection (3), a notice under subsection (1) shall not have effect unless it is given not less than six months and not more than twelve months before the date of termination specified therein.

(3) In the case of a tenancy which, apart from this Act, could have been brought to an end by notice to quit given by the landlord-

(a) the date of termination specified in the notice under subsection (1) shall not be earlier than the earliest date on which, apart from the provisions of this Act, the tenancy could have been brought to an end by notice to quit given by the landlord on the date of the giving of notice under this section; and

(b) where, apart from the provisions of this Act, more than six months' notice to quit would have been required to bring the tenancy to an end, the provisions of subsection (2) shall have effect with the substitution for twelve months of a period six months longer than the length of notice to quit which would have been required as aforesaid.

(4) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on which, apart from the provisions of this Act, the tenancy would have come to an end by effluxion of time.

(5) A notice under this section shall not have effect unless it requires the tenant, within two months after the giving of the notice, to notify the landlord in writing whether or not, at the date of termination, the tenant will be willing to give up possession of the property comprised in the tenancy.

(6) A notice under this section shall not have effect unless it states whether the landlord would oppose an application to the court under this Act for the grant of a new tenancy and, if so, also states on which of the grounds mentioned in section eleven he would do so."

6.86 The provisions of **Section 4 of the Act** are clear on how a tenancy under the Act comes to an end. Of particular interest is that **Section 4 (2)** states that:

“(2) The provisions of subsection (1) shall not prevent the coming to an end of a tenancy by notice to quit given by the tenant, by surrender or forfeiture, or by the forfeiture of a superior tenancy.”

6.87 What is also noteworthy is that **Section 20 of the said Act** provides that:

“20. Any agreement relating to a tenancy to which this Act applies (whether contained in the instrument creating the tenancy or not) shall be void in so far as it purports to preclude the tenant from making an application or request under this Act, or provides for the termination or surrender of the tenancy in the event of his making such an application or request, or for the imposition of any penalty or liability on the tenant in that event.”

6.88 In relation to this matter, the provisions of **Section 20** are not applicable, as there is nothing in the lease agreement which is at pages 1-18 of the Zambia National Building Society's bundle of documents, which shows that it contains any of the restrictions stated in the Section which I have just cited above.

6.89 The evidence shows that the Zambia National Building Society agreed that it did not give notice to terminate the

lease. It is also on record that George Musonda in cross examination, testified that the President of the National Union of Technical Education Lecturers and Allied Workers went to Ndola with a view to terminate the lease agreement. He agreed that the National Union of Technical Education Lecturers and Allied Workers did not give notice to quit.

- 6.90 Clause 5 (b) of the lease agreement provided that the lease would be terminated by desertion, if the tenant did not use the demised premises for a period of Thirty (30) days without justification, and without notice being given to the landlord, who could then re-enter the premises and auction or dispose of any goods that were left behind in the demised premises.
- 6.91 Mutale Chabulembwa's testimony was that they were not informed that the Administrative Secretary for the National Union of Technical Education Lecturers and Allied Workers had resigned. Her evidence was also that even reminders were placed under the door as the Administrative Secretary was not found at the premises, and they would communicate with that person using their mobile phone.
- 6.92 It has been seen that Mutale Chabulembwa testified that they placed a key blocker on the premises in September, 2022, but an officer of the National Union of Technical Education Lecturers and Allied Workers removed it, and forced their way back into the premises.
- 6.93 Mutale Chabulembwa testified that the office Administrative Assistant for the National Union of Technical Education Lecturers and Allied Workers signed the reminder to pay rent

which is at page 22 of the Zambia National Building Society's bundle of documents. That reminder is dated 2nd August, 2022 and it was signed on 10th August, 2022. This means that as at that date, the Administrative Secretary was still working.

- 6.94 From the evidence, it reveals that when the eviction was done in October, 2022, there was no officer for the National Union of Technical Education Lecturers and Allied Workers who was on site, and this supports Mutale Chabulembwa's testimony that they had deserted the demised premises and no reason was given for the same.
- 6.95 I have stated that the submission by the National Union of Technical Education Lecturers and Allied Workers was re-organising itself cannot stand, as George Musonda did not testify so, and neither was the same pleaded in the statement of claim or the reply.
- 6.96 That being the position, the Zambia National Building Society lawfully exercised its' powers to re-enter the demised premises, as they were left unoccupied without reason being given to it, and rentals were unpaid. The need to give notice of Six (6) months to quit did not apply in line with **Section 4 (2) of the Landlord and Tenant (Business Premises) Act** which I have referred to above, as there was a forfeiture of the tenancy so to speak.
- 6.97 As such, the National Union of Technical Education Lecturers and Allied Workers cannot claim the protection of **Sections 4 and 5 of the Landlord and Tenant (Business**

Premises) Act which would have required the Zambia National Building Society to give it Six (6) months' notice to quit in the prescribed form and indicate that it would object to an application for a new tenancy.

6.98 It has however been seen that after the National Union of Technical Education Lecturers and Allied Workers was evicted on 19th October, 2022, it paid rentals for the period from 1st July, 2022, to 31st December, 2022.

6.99 Mutale Chabulembwa testified that a key blocker was placed on the door of the demised premises in September, 2022 as the rent from July, 2022 had not been paid.

6.100 As seen from the submissions which were made by the National Union of Technical Education Lecturers and Allied Workers, at common law, a landlord has a right to distrain for unpaid rentals, and in order to secure payment, they have the right to enter and seize property which is found there in respect of rent or obligations which are due.

6.101 The Zambia National Building Society relied on the provisions of Clause 5 (c) of the lease agreement to argue that the National Union of Technical Education Lecturers and Allied Workers is not entitled to a refund of the rentals for the period October to December 2022, as it was paying rent late, and there was provision for the imposition of interest at 5% per month on rentals which were paid late.

6.102 Clause 5 (c) of the lease agreement stated that:

“If the rentals hereby reserved or any part thereof shall remain unpaid at the commencement of the

quarter which amount shall be due and payable for that current quarter, the same shall attract interest of 5% per month from the date that it shall become due to the date of actual payment.”

6.103 While this was the provision, the statement which is at page 46 of the Zambia National Building Society’s bundle of documents shows that no interest was charged on rent which was due to paid at the commencement of the quarter, and was in fact paid late.

6.104 Therefore, the Zambia National Building Society waived its’ rights under Clause 5 (c) of the lease agreement by not charging interest at 5% per month on rentals which were paid late.

6.105 In the book, ***Contract Law in Zambia, by Sangwani Patrick Ngambi and Chanda Chungu, 2nd Edition, Juta and Company (Pty) Ltd, 2021***, waiver is discussed at page 330, with reference to the case of ***Spancrete Zambia Ltd v ZESCO Limited*** ⁽⁵⁾ and the learned authors state the following:

“What is clear from the above authority of Spancrete Zambia is that a waiver occurs where one party decides not to insist upon the mode of performance agreed in the contract. This waiver may be either oral, written or inferred from the conduct of the parties. According to the Court of Appeal, the party who forbears will be bound by the waiver of the performance and cannot seek

performance based on the original terms of the agreement...Therefore, if, by words or conduct a party has agreed or led the other party to believe he will accept performance at a later date or in a different manner from that provided in the contract, he will not be able to refuse that performance when it is tendered.”

- 6.106 The eviction was done on 19th October, 2022, which entails that the National Union of Technical Education Lecturers and Allied Workers was formally in occupation of the premises up to that date, and rentals were due to be paid for that period.
- 6.107 At page 23-40 of the Zambia National Building Society's bundles of documents is a lease agreement which it signed with the new tenant, Extrusion Works Limited, on 1st November, 2022 for the demised premises Shop/Office No 104 on Stand No 41 Bwafwano House Ndola.
- 6.108 This effectively means that the Zambia National Building Society was paid twice for the months of November and December 2022, as the new tenant and the National Union of Technical Education Lecturers and Allied Workers both paid rentals for the same premises for the Two (2) months.
- 6.109 It is on record, that as at 1st November, 2022, the National Union of Technical Education Lecturers and Allied Workers had been evicted from the premises. The National Union of Technical Education Lecturers and Allied Workers is therefore entitled to a refund of the rentals that it paid for
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those Two (2) months. The rentals charged were ZMW1,282.43 per month.

6.110 The amount due for the Two (2) months is ZMW2,564.86 and I accordingly enter Judgment in favour of the he National Union of Technical Education Lecturers and Allied Workers for that amount. The amount shall carry interest at the average short-term deposit rate from the date of issue of the Writ of Summons until Judgment, and thereafter, at the Bank of Zambia lending rate until payment.

CLAIM FOR DAMAGES FOR VIOLATION OF THE RIGHT TO QUIET ENJOYMENT, LOSS OF USE, UNLAWFUL TERMINATION OF THE PERIODICAL TENANCY, UNLAWFUL EVICTION, DAMAGE TO EQUIPMENT AND FURNITURE, REPUTATIONAL DAMAGE AS WELL AS EXPOSING THE NATIONAL UNION OF TECHNICAL EDUCATION LECTURERS AND ALLIED WORKERS TO POSSIBLE DEREGISTRATION BY THE OFFICE OF THE LABOUR COMMISSIONER FOR WANT OF NOTIFICATION OF CHANGE OF ADDRESS

6.111 In respect of this claim, the National Union of Technical Education Lecturers and Allied Workers pleaded the damages as follows:

- i. That as a result of the action by the Zambia National Building Society to unlawfully evict the National Union of Technical Education Lecturers and Allied Workers and changing of the locks for the demised premises, the National Union of Technical Education Lecturers and*

- Allied Workers had lost chance and opportunity to have both its' existing and prospective members attend to at this office;*
- ii. That as a result of the actions by the Zambia National Building Society, the National Union of Technical Education Lecturers and Allied Workers had to urgently re-organise its' operations and find alternative office space in Order to conduct any business. Further, the National Union of Technical Education Lecturers and Allied Workers had to inter alia, communicate with third parties, change its' letterhead, reprint business cards for its' officials among other things, at an additional cost;*
 - iii. That as a result of the action by the Zambia National Building Society to unlawfully evict the National Union of Technical Education Lecturers and Allied Workers, its' office furniture and equipment had been poorly stored at the warehouse for the Zambia National Building Society;*
 - iv. That as a result of the action by the Zambia National Building Society, a new tenant had been given occupation without notice, thus, the National Union of Technical Education Lecturers and Allied Workers had suffered heavy losses and special damages due to the conduct by the Zambia National Building Society to the tune of a projected income of ZMW60, 000.00 for the period October, to December, 2022;*
 - v. That by reason of the action by the Zambia National Building Society, the National Union of Technical*
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Education Lecturers and Allied Workers had suffered reputational damage due to the traumatic manner in which the eviction was conducted;

- vi. By reason of the action by the Zambia National Building Society, the National Union of Technical Education Lecturers and Allied Workers had been put out of pocket of the sum of ZMW7, 688.00, being the money that was paid as rent for the period October to December, 2022, which had never been refunded by the Zambia National Building Society.*

6.112 In his testimony, George Musonda stated that the Zambia National Building Society refused, neglected and failed to execute its' obligations under the periodic tenancy which resulted in the National Union of Technical Education Lecturers and Allied Workers being severely inconvenienced as it had to find alternative accommodation despite having paid rent to the Zambia National Building Society.

6.113 In the submissions, it was stated that there was no reason why the Zambia National Building Society distrained for the payment of rent, as no rent was actually owing. Reliance was placed on **Sections 19 and 22 of the Landlord and Tenant (Business Premises) Act** as making provision for the compensation of a tenant. It was submitted that as the Zambia National Building Society did not issue a Notice to quit the tenancy, then the National Union of Technical Education Lecturers and Allied Workers had to be compensated.

6.114 Mutale Chabulembwa in defence maintained that the rentals from July to September, 2022 were not paid, and that was why the eviction was done on 19th October, 2022.

6.115 Isaac Koza, told the Court that he had been on leave when the National Union of Technical Education Lecturers and Allied Workers was evicted. However, when he returned in November, 2022, he had checked the goods which were taken to the warehouse against the inventory which was at page 47 of the Zambia National Building Society's bundle of documents and he found that all the goods which were seized were intact and they were not damaged.

6.116 ***Halsbury's Laws of England, Volume 19 at paragraph 19*** was referred to on the burden of proof, stating that it states that:

“To succeed in any issue the party bearing the legal burden of proof must:

(1) satisfy the Judge or jury of the likelihood of the truth of his case by adducing a greater weight of evidence than his opponent and;

(2) adduce evidence sufficient to satisfy them to the required standard of degree of proof.....

In civil cases, the standard of proof is on a balance of probabilities.”

6.117 It was stated that while the National Union of Technical Education Lecturers and Allied Workers had alleged that the Zambia National Building Society had breached the lease agreement thereby causing it damage and loss, the evidence

showed that reminders to pay rent were sent to the National Union of Technical Education Lecturers and Allied Workers, some which were duly acknowledged by its' Administrative Secretary.

6.118 Further submission was made, that no evidence was led to show how the claim for the payment of ZMW1, 000, 000.00 was arrived at, and further that this claim was misplaced as damages are assessed by the Court.

6.119 It was also stated that even the claim for reputational damage had not been proved, as even after being evicted in October, 2022, the National Union of Technical Education Lecturers and Allied Workers stated that it only became aware of the eviction in December, 2022. Therefore, it could not claim damages as it risked being penalized for failing to notify the Labour Commissioner.

6.120 No evidence was led to show the damage that had been done to the office equipment and furniture as alleged. George Musonda in cross examination, when referred to the inventory of the office equipment and furniture which were taken to the ware house after the eviction was done, stated that the President of the National Union of Technical Education Lecturers and Allied Workers went there, and found that some of the items were damaged while others were in a state of neglect.

6.121 That person did not testify before this Court. When Isaac Koza who had custody of the office equipment and furniture which was taken to the warehouse from the demised

premises was cross examined, he stated he saw the items in the demised premises prior to going on leave and at the warehouse.

6.122 What the evidence does establish is that the National Union of Technical Education Lecturers and Allied Workers alleged that the office equipment and furniture was damaged after it was taken to the ware house from the demised premises on the eviction being done.

6.123 However, no evidence to prove such damage was led.

6.124 I have found that the National Union of Technical Education Lecturers and Allied Workers was owing in rent from July to October, 2022 when the eviction was done. Clause 5 (a) of the lease agreement empowered the Zambia National Building Society as landlord to enter the premises if rent was unpaid for Fourteen (14) days after becoming due whether formally demanded or not, and the tenancy would determine.

6.125 Rent was due more than Fourteen (14) days after becoming due to be paid when the Zambia National Building Society exercised its' right to re-enter and determine the tenancy.

6.126 As such, the claim for damages, for loss of opportunity to have existing and prospective members be attended to at the office, reorganizing of the National Union of Technical Education Lecturers and Allied Workers by finding alternative accommodation space so that it could among others, communicate with third parties, reprinting of business cards at additional cost, damage to the office

equipment and furniture, loss of projected income, and reputational damage cannot succeed, as the default in paying was that of the National Union of Technical Education Lecturers and Allied Workers.

6.127 The claim for damages therefore fails, and it is dismissed.

7. CONCLUSION

- 7.1 The National Union of Technical Education Lecturers and Allied Workers only succeeds on the refund of Two (2) months rent which is ZMW2,564.86. The amount shall carry interest at the average short-term deposit rate from the date of the Writ of Summons until Judgment and thereafter, at the Bank of Zambia lending rate until payment.
- 7.2 I direct that the Zambia National Building Society shall forthwith release the office equipment and furniture that it locked up in its' warehouse to the National Union of Technical Education Lecturers and Allied Workers as the rentals which were in arrears were paid on 21st October, 2022, and no lien on the same has been established.
- 7.3 Having succeeded on the claim for payment of Two (2) months rent, the National Union of Technical Education Lecturers and Allied Workers is awarded costs which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 30th DAY OF APRIL, 2025

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

