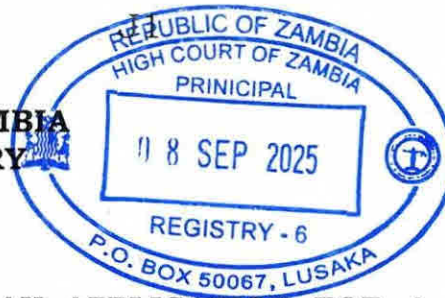


**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2024/HP/1372

IN THE MATTER OF:

**AN APPLICATION FOR A NEW TENANCY IN
RESPECT OF SUBDIVISION A OF SUBDIVISION
87 OF FARM 441a, STAND NO 5258 LUSAKA**

AND

IN THE MATTER OF:

**RULES 5 & 6 OF THE LANDLORD AND TENANT
(BUSINESS PREMISES) RULES**

AND

IN THE MATTER OF:

**SECTION 4 OF THE LANDLORD AND TENANT
(BUSINESS PREMISES) ACT CHAPTER 193 OF
THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF:

**SECTION 10 OF THE LANDLORD AND TENANT
(BUSINESS PREMISES) ACT CHAPTER 193 OF
THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF:

**SECTION 19 OF THE LANDLORD AND TENANT
(BUSINESS PREMISES) ACT CHAPTER 193 OF
THE LAWS OF ZAMBIA**

BETWEEN:

ROBUST TRAILERS AND BODIES LIMITED

APPLICANT

AND

DOBRIVOJE RANKOVIC

RESPONDENT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 8th DAY OF
SEPTEMBER, 2025**

*For the Applicant : Mr C. Dioma and Mr J. Zulu, Messrs Patrick Chulu Legal
Practitioners*

*For the Respondent : Mr S. Musonda and Mr M. Lwanga, Messrs AMW & Co
Legal Practitioners*

J U D G M E N T

CASES REFERRED TO:

1. *Afro Butcheries Limited v Evees Limited* 1987 ZR 39
2. *ZIMCO Properties Ltd v Dinalar Randee Enterprises (T/A Empire Cinema)* SCZ No 1 of 1989
3. *Noor Properties Centre Limited v Sarof Mahant (T/A Kirtees Fashions) and Nu Fashions Centre Limited* SCZ Appeals No 16 and 21 of 1993
4. *Finance Bank (Z) Limited v Dimitrios Monokandilos Filandria Kouri* 1997/ HP/136
5. *Gregory and another v Turner and another R (on the application of Morris) v North Somerset Council* 2003 2 ALL ER 1145
6. *BP Zambia Plc v Yuyi Mubita Lishomwa and others* SCZ Appeal No 72 of 2007
7. *James Chungu v Gerald Makungu* Appeal No 15 of 2016
8. *Boardroom Investment Limited v Lusaka Golf Club* Appeal No 119/2019
9. *Posa Estates and another v First National Bank* SCZ/8/1/19/2020

LEGISLATION REFERRED TO:

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

OTHER WORKS REFERRED TO:

1. *Halsbury Laws of England, 5th Edition, Vol 1*

1. INTRODUCTION

1.1 Following the grant of an extension of time within which to apply for a new tenancy, which was made pursuant to **Section 10 (4) of the Landlord and Tenant (Business Premises) Act, Chapter 193 of the Laws of Zambia**, on 7th October, 2024, Robust Trailers and Bodies Limited the Applicant herein, filed an Originating Notice of Motion on 11th October, 2024, seeking the following reliefs against Dobrivoje Rankovic:

- i. *An Order that Robust Trailers and Bodies Limited be granted a new tenancy in respect of the property No*

/a, Stand No 5258 Lusaka, where Robust F441^c and Bodies Limited currently conducts the business of body building of heavy-duty trucks and motor vehicle repairs using industrial machinery;

In the event that a new tenancy is not granted, that Dobrivoje Rankovic compensates Robust Trailers and Bodies Limited.

IT IN SUPPORT OF THE ORIGINATING NOTICE OF

N

Jonathan Dalitso Ngoma, the Operations Manager for Robust Trailers and Bodies Limited, and affiant of the affidavit which was filed in support of the Originating Notice of Motion, deposed that Robust Trailers and Bodies Limited is in the business of body-building of heavy duty-trucks and motor vehicle repairs using industrial machinery, and had been operating as such since 2008:

- 2.2 He stated that Robust Trailers and Bodies Limited had been conducting its' business from the property known as F/441a/87/A, Stand No 5258 Lusaka since mid 2019, having entered into a tenancy agreement with the former landlord, Shonga Steel Limited, to whom it had been paying rent at a monthly fee of Eleven Thousand Kwacha (K11,000.00).
- 2.3 Exhibited as 'JDN1' was the said tenancy agreement.
- 2.4 The averment was that however, on 12th April, 2024, Dobrivoje Rankovic as the new landlord, issued a notice to terminate the lease, which was exhibited as 'JDN2'.

- 2.5 Jonathan Dalitso Ngoma deposed that in response, Robust Trailers and Bodies Limited on 12th June, 2024, notified Dobrivoje Rankovic of its' unwillingness to give up possession of the demised property at the end of the notice period, as evidenced by exhibit 'JDN3'.
- 2.6 He stated that Robust Trailers and Bodies Limited had operated at the premises for over four (4) years, and the nature of its' business, involved the use of heavy duty highly specialised and sensitive machinery, which ought not to be moved around often, as such movements could result in damage which could be difficult and/or very costly to repair.
- 2.7 Jonathan Dalitso Ngoma also averred that the property F/441a/87/A, Stand No 5258 Lusaka, was an ideal location for Robust Trailers and Bodies Limited's business, as it is in the industrial area, and it catered for the unique needs of Robust Trailers and Bodies Limited's business, such as space, electricity and conduciveness to noise, as some of Robust Trailers and Bodies Limited's equipment is noisy.
- 2.8 In further deposing, Jonathan Dalitso Ngoma stated that in entering into the lease agreement for the premises F/441a/87/A, Stand No 5258 Lusaka, it was on the understanding that the lease would be renewed for a minimum term of at least ten (10) years, as the then landlord understood the sensitive nature of Robust Trailers and Bodies Limited's equipment.
- 2.9 He deposed that Dobrivoje Rankovic had no intention of renewing the tenancy.

2.10 The rest of the averments in the affidavit are legal arguments and conclusions, which I will not recite, as they offend **Order 5 Rule 15 of the High Court Rules, Chapter 27 of the Laws of Zambia.**

3. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN SUPPORT

- 3.1 In the List of Authorities and Skeleton Arguments which were filed in support of the Originating Notice of Motion, it was argued that the application had been made pursuant to **Section 4 (1) of the Landlord and Tenant (Business Premises) Act, Chapter 193 of the Laws of Zambia,** as read with **Rule 5 (1) of the Landlord and Tenant (Business Premises) Rules.**
- 3.2 The argument was that this was on the basis that Robust Trailers and Bodies Limited had been a tenant of the premises known as F/441a/87/A, Stand No 5258 Lusaka.
- 3.3 Also cited, were the provisions of **Section 10 of the Landlord and Tenant (Business Premises) Act,** and it was argued that the letter, which was exhibited as 'JDN3' was written, in which Robust Trailers and Bodies Limited had informed Dobrivoje Rankovic that it would not be willing to give up possession of the property which was comprised in the tenancy.
- 3.4 Therefore, Robust Trailers and Bodies Limited had met the conditions precedent to apply, and be granted a new tenancy.

- 3.5 Further reference was made to **Section 19(1) (2) of the Landlord and Tenant (Business Premises) Act**, stating that by virtue of that provision, a tenant on quitting the holding could recover compensation from the Landlord.
- 3.6 The argument was that if the Court would be precluded from making the order for a new tenancy, Robust Trailers and Bodies Limited would be seeking compensation based on **Section 11 (1) (e) (f) (g) of the Landlord and Tenant (Business Premises) Act**.
- 3.7 This was stated as being, because it conducted a business of body building of heavy-duty trucks and motor vehicle repairs using industrial machinery, and it would suffer grave financial loss, and loss of good will in respect of the premises, if a new tenancy was not granted.
- 3.8 The case of **Boardroom Investment Limited v Lusaka Golf Club** ⁽⁸⁾ was relied on as authority.

4. AFFIDAVIT IN OPPOSITION

- 4.1 Nikola Rankovic, the son to Dobrivoje Rankovic, and the holder of a Power of Attorney, which was exhibited as 'NR1' and which he deposed, enabled him to represent Dobrivoje Rankovic, stated that he deposed to the information from within his knowledge and belief.
- 4.2 It was his averment, that Robust Trailers and Bodies Limited rented the property known as Stand No 5258 Lusaka.
- 4.3 Nikola Rankovic went on to depose how Dobrivoje Rankovic was the holder of the certificate of title for the property, and

stating that he had been advised by his advocates, Messrs AMW & Co Legal Practitioners that:

- 4.3.1 Dobrivoje Rankovic by way of Writ of Summons and statement of claim which was filed under cause number 2018/HP/0611, commenced an action against Shonga Steel, in which he claimed the sum of USD405, 203.00.
- 4.3.2 Then as Shonga Steel did not enter appearance and file a defence, the default Judgment which exhibited as 'NR2' was entered.
- 4.3.3 Following the failure by Shonga Steel to pay the Judgment sum, Dobrivoje Rankovic applied for, and was granted a charging order nisi, which was made absolute to enforce payment of the Judgment sum. The Charging Order was exhibited as 'NR3'.
- 4.3.4 Then thereafter, Dobrivoje Rankovic applied for enforcement of the Charging Order, by way of sale of the property under cause number 2018/HP/2009.
- 4.3.5 Due to the failure by Shonga Steel to respond to the application, Judgment in default of appearance was entered on 21st December, 2018, while summary Judgment was entered on 20th May, 2019, as evidenced by the Default Judgment and the Summary Judgment which were exhibited as 'NR4'.
- 4.3.6 Thereafter, it was ordered and directed that the certificate of title for the property should be vested in Dobrivoje Rankovic for purposes of carrying out a sale, and that

Shonga Steel should yield vacant possession of the property.

- 4.3.7 As a result, a certificate of title was issued in the names of Dobrivoje Rankovic on 23rd May, 2021, as shown on the certificate of title which was exhibited as 'RN5'.
- 4.3.8 In enforcing the Judgment, Dobrivoje Rankovic, caused to be issued, a Writ of Possession, which was executed by the Sheriff of Zambia on 9th September, 2022. Exhibit 'RN6' was a copy of the Writ of Possession and the execution report.
- 4.3.9 At the time of execution of the Writ of Possession, Robust Trailers and Bodies Limited informed Dobrivoje Rankovic that it had a subsisting tenancy agreement with Shonga Steel.
- 4.3.10 In a bid to stop Dobrivoje Rankovic from evicting it from the property, Robust Trailers and Bodies Limited commenced an action at the Commercial Division of the High Court, under cause number 2023/HPC/0001, seeking inter alia, an Order that it was a lawful tenant pursuant to the tenancy agreement that was made between itself and Shonga Steel. Robust Trailers and Bodies Limited also sought an Order that Dobrivoje Rankovic should not evict it, in breach of the tenancy agreement.
- 4.3.11 During the subsistence of the Court proceedings, the tenancy agreement which had a duration of one year expired due to effluxion of time.

- 4.3.12 By a Judgment dated 25th March, 2024, the Court held inter alia, that the actions by Dobrivoje Rankovic in attempting to evict Robust Trailers and Bodies Limited were wrong and unlawful, and as such, Robust Trailers and Bodies Limited was entitled to remain on the property, subject to the unexpired term of the lease agreement, until the lease was terminated lawfully. A copy of the Judgment was exhibited as 'NR7'.
- 4.3.13 Thus, in line with the directive of the Court, Dobrivoje Rankovic on 12th April, 2014, issued a notice to terminate the lease on 12th October, 2024, which was exhibited as 'NR8' on the basis that it bought the property on 25th August.
- 4.4 It was admitted that Shonga Steel was previously the landlord to Robust Trailers and Bodies Limited with averment being made, that Shonga Steel had entered into a lease agreement with Robust Trailers and Bodies Limited.
- 4.5 Further agreement was made, that a notice to terminate the lease was issued by Dobrivoje Rankovic with Nikola Rankovic deposing that this was done in line with the Judgment. He also stated that the notice to terminate the lease was validly issued.
- 4.6 Nikola Rankovic deposed that the averment that Robust Trailers and Bodies Limited in response to the notice to terminate the lease, notified Dobrivoje Rankovic of its' unwillingness to give up possession of the demised premises, due to the nature of its' business, was within Robust Trailers

and Bodies Limited's peculiar knowledge, as that did not form a basis for stopping a title holder from exercising his right to terminate the tenancy via a notice.

- 4.7 Nikola Rankovic further deposed that it was denied that it was an understanding, when the lease agreement was being entered into, that it would be renewed for a minimum term of ten (10) years, as Shonga Steel understood the sensitive nature of Robust Trailers and Bodies Limited's equipment, as the said tenancy agreement did not contain anything in respect of Robust Trailers and Bodies Limited's continued stay on the property.
- 4.8 It was averred that in any event, the Judgment of the High Court expressly stated that Robust Trailers and Bodies Limited was to remain on the property on the same terms and conditions, as contained in the tenancy agreement.
- 4.9 Nikola Rankovic deposed that he had been advised by his advocates, that Robust Trailers and Bodies Limited was accorded sufficient notice in line with the law.

5. SKELTON ARGUMENTS IN OPPOSITION

- 5.1 In the List of Authorities and Skeleton Arguments in opposition, the law in **Sections 4, 5, 6, 10 and 11 of the Landlord and Tenant (Business Premises) Act** was cited.
- 5.2 Reliance was placed on the cases of ***Afro Butcheries Limited v Eves Limited*** ⁽¹⁾, ***Noor Properties Centre Limited v Sarof Mahant (T/A Kirtees Fashions)*** and ***Nu Fashions Centre Limited*** ⁽³⁾ and ***ZIMCO Properties Ltd v Dinalar Randee Enterprises (T/A Empire Cinema)*** ⁽²⁾,

which cases stressed that a notice to terminate a lease had to rely on any of particular instances that are spelt out in **Section 11 of the Landlord and Tenant (Business Premises) Act**.

- 5.3 Argument was also made, citing **Section 12 of the Landlord and Tenant (Business Premises) Act** that Dobrivoje Rankovic had to the satisfaction of the Court, established grounds under **Section 11 of the said Act** in opposing the application, and the application for the grant of a new tenancy should be denied.

6. AFFIDAVIT IN REPLY

- 6.1 In the affidavit in reply, Jonathan Dalitso Ngoma deposed that the affidavit in opposition was irregular, as he had been advised by his advocate, Ms Mary Mukobe, that when attempt was made to serve the originating process on Nikola Rankovic at Flat No 9 Zesco Flats, Kabanga Road Rhodespark, Lusaka, he was informed by the owner, that Nikola Rankovic no longer resided there, but did so some years back.
- 6.2 It was also his averment, that he had been advised by his advocate, that Dobrivoje Rankovic could not defend this action through an agent. Jonathan Dalitso Ngoma further stated, that he had also been advised by his advocate, that a person cannot give evidence on behalf of another person even if he has a power of attorney, as the same is hearsay evidence.

6.3 In still deposing, it was stated that Jonathan Dalitso Ngoma had further been advised by his advocate, that Dobrivoje Rankovic had not indicated whether he opposed the new tenancy, and on what grounds, if any.

7. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN REPLY

7.1 The arguments in the List of Authorities and Skeleton Arguments in reply, were that Hon Mr Justice Dr Patrick Matibini in the case of ***Finance Bank (Z) Limited v Dimitrios Monokandilos Filandria Kouri*** ⁽⁴⁾ held that it was essential for the 1st Respondent to be personally available to prosecute the claim, and that he was not aware of any rule of procedure that permitted the conduct of litigation through a power of attorney, and that no such authority had been brought to his attention.

7.2 Also cited, was the case of ***Gregory and another v Turner and another R (on the application of Morris) v North Somerset Council*** ⁽⁵⁾ stating that in that case, a question arose as to whether a holder of an enduring power of attorney could conduct litigation on behalf of the donor.

7.3 The submission was that the power of attorney in that matter, stated that the donee could represent the donor and act in their place if need arose in any legal proceedings, and any other legal processes, which were necessary to safeguard and protect the donor's proprietary interests, including authority to sign and execute on the donor's behalf, any legal document required in the causes.

- 7.4 It was argued that the Court in that matter, held that there was no law that allowed the donee to represent the donor and that the donee had no right to conduct litigation in Court on behalf of the claimant.
- 7.5 Thus, it was argued that there is no law that allowed Nikola Rankovic to represent Dobrivoje Rankovic more so, as **Order 24 Rule 1 of the High Court Rules** which allows a third party to appear and attend proceedings on behalf of a party to the proceedings, provides that the party to be represented by a third party should not have a lawyer on record.
- 7.6 It was also argued that Nikola Rankovic had deposed to facts which were within the personal knowledge of his father on the basis that he was acting under a power of attorney.
- 7.7 However, the rules governing the swearing of affidavits state that a deponent must swear to facts within their personal knowledge and belief, and where the source of the information is from other than their personal knowledge, they have a duty to disclose the source in the affidavit.
- 7.8 **Order 5 Rules 16 and 17 of the High Court Rules** were referred to in that regard.
- 7.9 Argument was also made, that **Order 5 Rule 20 (f) of the said High Court Rules** provides that an affidavit must be signed by the witness, and if they cannot read or write, it shall be marked by him by his thumb mark in the presence of the Commissioner for Oaths.
- 7.10 In still arguing, it was stated, citing **Order 16 Rule 1 of the High Court Rules**, that Nikola Rankovic had to make an

application for alteration of a party, so that he could have the right to represent Dobrivoje Rankovic.

7.11 It was argued that the affidavit in opposition had not complied with the provisions of **Section 6 of the Landlord and Tenant (Business Premises) Act**, as Dobrivoje Rankovic had not given reasons why he would oppose the grant of a new tenancy, and on what grounds.

7.12 The contention was that the only reason that had been given for opposing the tenancy, was that the property had been sold to African Building Supplies Limited on 25th August, 2022.

7.13 The provisions of **Section 11 of the Landlord and Tenant (Business Premises) Act** were quoted, and it was argued that selling the premises was not recognised as a ground for opposing the grant of a tenancy.

8. FURTHER AFFIDAVIT IN OPPOSITION TO THE AFFIDAVIT IN REPLY

8.1 Nikola Rankovic in the further affidavit in opposition, deposed that he is the holder of the power of attorney, which was granted by his father Dobrivoje Rankovic. He maintained his residential address as that which he had given in the affidavit in opposition.

8.2 He further averred that he had handled the affairs for Dobrivoje Rankovic from the time that he was granted the power of attorney. Therefore, he was privy to the facts relating to the property, including the notice to terminate the

lease for the property, and the proceedings under cause number 2023/HPC/0001.

- 8.3 Nikola Rankovic stated that as advised by his advocates, the Originating Notice of Motion, and the affidavit which was filed in support of the said Originating Notice of Motion, did not contain particulars of the current tenancy, notices which were received in respect of the tenancy, and the proposals in the new tenancy to be applied for, including the duration and the rent payable.
- 8.4 Further averment was made, that Robust Trailers and Bodies Limited had brought applications in respect of two properties being F441a/87/a and Stand No 5258, but had not shown the particulars of the tenancies. Exhibited as 'NR1' was the Land Registers for the properties.
- 8.5 It was stated that the application for a new tenancy had been opposed as the property had been disposed of.

9. FURTHER SKELETON ARGUMENTS IN OPPOSITION

- 9.1 It was argued that the quotation from the case of ***Finance Bank Zambia Limited v Dimitrios Monakandilos Filandria Kouri*** ⁽⁴⁾ had not been made in full.
- 9.2 Argument was also made, that the case of ***Gregory and another v Turner and another R (on application of Morris)*** ⁽⁵⁾ was distinguishable from this case, as in that matter, the litigant was operating under a power of attorney which allowed him specifically to represent and act in place of the principal in legal matters.

- 9.3 It was additionally argued, that the litigant was appearing through a lay person, and not a lawyer for purposes of prosecuting the case.
- 9.4 Further in argument, it was stated that Robust Trailers and Bodies Limited, had suggested that Nikola Rankovic needed to have obtained leave to depose to the affidavit, which was contrary to the law that a person who is privy to the facts can depose to them.
- 9.5 The argument was that Nikola Rankovic was operating under a power of attorney that authorised him to deal with the properties, and anything incidental thereto. As such, he had personal knowledge of the facts that had been deposed to, and he was not representing Dobrivoje Rankovic as Counsel.
- 9.6 It was further argued, that by virtue of the power of attorney, Nikola Rankovic had personal knowledge of the matters in issue, as he had been handling Dobrivoje Rankovic's affairs since 2019, and he issued the notice to terminate the lease. Thus, he could appear in Court.
- 9.7 Reliance was placed on the case of ***James Chungu v Gerald Makungu*** ⁽⁷⁾, stating that the Court of Appeal in that matter, guided on use of a power of attorney to commence and defend proceedings.
- 9.8 It was argued that the application for the grant of a new tenancy had been sufficiently opposed in line with ***Section 11 of the Landlord and Tenant (Business Premises) Act.***

9.9 Further reliance was placed on the case of ***Afro Butcheries Limited v Evees Limited*** ⁽¹⁾, stating that the Court in that matter noted that:

“The language of section 11 in stating that “the court shall make an order” makes it abundantly clear that, in order for the court to refuse to grant a new tenancy, the court must have been persuaded by the landlord to accept his ground under section 11 for opposing the tenant’s application.”

9.10 The contention was that Nikola Rankovic had opposed the application by showing that the properties had been disposed of as a whole, and the contract of sale for the properties had been exhibited to the affidavit in opposition.

9.11 Therefore, a ground had been stated in accordance with ***Section 11 (e) of the Landlord and Tenant (Business Premises) Act***, being a point of objection, that the landlord had disposed of the property as a whole, which was valid opposition.

9.12 The argument was also that the application had been made in violation of ***Rule 5 of the Landlord and Tenant (Business Premises) Act Rules*** as Robust Trailers and Bodies Limited had argued that Nikola Rankovic had not set out the proposals in respect of the tenancy.

9.13 It was stated that a perusal of that Rule, showed that it was the tenant to show the particulars of the current tenancy of the premises, the notices that were given or requests made

in respect of that tenancy, under **Section 5 or 6** and the applicants' proposal as to the terms of the new tenancy applied for, and in particular, terms as to the duration and the rent payable.

- 9.14 Further argument was made, that **Rule 6 (1) of the Landlord and Tenant (Business Premises) Rules** fortified this position.
- 9.15 Therefore, the requirements had not been satisfied, and the case of **Posa Estates and another v First National Bank** ⁽⁹⁾ was stated, as where the Supreme Court stated that a Court determines the nature of the application before it, with reference to the endorsement on the summons or the notice of motion.
- 9.16 It was stated that the Supreme Court in that matter, also noted that it is the endorsement that further informs the opposite party of the case that it has to respond to.
- 9.17 Further reliance was placed on the case of **BP Zambia Plc v Yuyi Mubita Lishomwa and others** ⁽⁶⁾.

DECISION

- 9.18 The first issue for determination is whether Nikola Rankovic can properly defend this action in the capacity of Attorney for Dobrivoje Rankovic by virtue of the Attorney of Attorney. Robust Trailers and Bodies Limited, citing the case of **Finance Bank (Z) Limited v Dimitrios Monokandilos Filandria Kouri** ⁽⁴⁾ argued, that the Court in that matter, held that there is no law that allows a person to conduct litigation through the use of a power of attorney.

- 9.19 The argument was further that the Court in that matter, stated that litigation must be conducted by the litigant in person.
- 9.20 Further reliance was placed on the case of ***Gregory and another v Turner and another R (on the application of Morris) v North Somerset Council*** ⁽⁵⁾ as where the Court held that the donee of the power of attorney could not conduct litigation on behalf of the donor.
- 9.21 It will be noted that in the case, ***Gregory and another v Turner and another R (on the application of Morris) v North Somerset Council*** ⁽⁵⁾ one of the questions that was raised in the appeal, was whether the power of attorney given by the claimants, enabled the applicant in effect, to stand in their shoes, and so to exercise their undoubted rights under the 1990 Act, as individuals, to conduct litigation and appear in Court in their own behalf.
- 9.22 It was noted in that case, that the grant of a power of attorney, is in principle no more than the grant of a form of agency. The Court also noted that the recommendations that were made in the Law Commission Report in 1983, led to the Enduring Powers of Attorney Act 1985, under which the power was granted in that case. It was stated that the main purpose of that Act was to allow the grant of a power which would survive subsequent mental incapacity.
- 9.23 Thus, Section 3 provided that an enduring power of attorney could confer either 'general authority' on the attorney to act in relation to 'all or a specified part of the property and affairs

of the donor'; or authority to do specified things on the donor's behalf. The Court stated that where the instrument was expressed to confer general authority, it gave power 'to do on behalf of the donor anything, which the donor could lawfully do by an attorney'.

9.24 It was further stated by the Court, that the possibility of an attorney having power to conduct litigation, or to appear in Court on behalf of the donor of the power, was not addressed in any of the Law Commission working papers or the reports to which they had referred. Further note was made, that the Court had not been referred to any reported case which mentioned that possibility.

9.25 The Court stated that on the other hand, it had always been clear that there were some limitations on the scope of the attorney's authority, under even a general power. The Court concluded that whatever uncertainties there were in the past, the position had now clearly been regulated by S28 of the 1990 Act. It was the Court's finding in relation to rights to conduct litigation, under para (d), that the Section followed the same form, as its' equivalent in S27 (rights of audience), and had to be construed in the same way.

9.26 The Court stated that the Section authorised conduct of litigation by the party, but not by an agent, other than one who was properly authorised under one of the other categories.

9.27 What can be noted from the above, is that the pieces of legislation which formed the basis of the decision in that

case, do not apply to this case, as they have not been extended to apply in this jurisdiction. Thus, to that extent, the case is not applicable to this matter.

- 9.28 **Halsbury Laws of England, 5th Edition, Vol 1** at page 36 discusses the exercise of authority under a deed. It states that;

“An agent acting under a power of attorney should, as a general rule, act in the name of the principal. If he is authorised to sue on the principal's behalf, the claim should be brought in the principal's name. A deed executed in pursuance of such a power is properly executed in the name of the principal or with words to show that the agent is signing for him, but if the donee of the power is an individual he may, if he thinks fit and where so authorised by the donor of the power, execute any instrument with his own signature, and act in his own name.”

- 9.29 The Court of Appeal in the case of **James Chungu v Gerald Makungu** ⁽⁷⁾, with regard to persons holding powers of attorney, suing on behalf of the principal held that:

“The legal maxim ‘Qui facit per alium, facit per se’ is the substance of the law relating to the power of attorney. It literally translates to ‘He who acts through another does the act himself’.
In Blacks’ Law Dictionary, ‘power of attorney’ is described as the ‘instrument by which a person is

authorized to act as an agent of the person granting it.

The donee of a power of attorney may appear or act in a court. The High Court Rules of procedure appear to endorse this position. Order XXIV rule 1 of the High Court Rules Cap 27 of the Laws of Zambia provides that "...the Court or a Judge may, in its or his discretion, permit any other person who shall satisfy the Court or a Judge that he has authority in that behalf to appear for such plaintiff or defendant."

9.30 They went on to further note that:

"Section 3(3) (a) of the Legal Practitioner's Act Chapter 30 of the Laws of Zambia is of similar import as Order XXIV Rule 1 of the High Court Rule. It provides as follows:

"Nothing in this Act shall be construed or deemed to prevent –

- a) An unqualified person from appearing for and representing in court any party to any civil cause or matter, if duly authorized thereto by any rule of the court or of subordinate courts.*

The extent of the authority that may be conferred on another by power of attorney is stated by the learned authors of Halsbury's Laws of England, Fourth Edition, Volume 1 (2) at paragraph 43:

“Where an instrument is expressed to confer general authority on the attorney, it confers authority to do on the donor’s behalf anything which the donor can lawfully do by any attorney, subject to certain statutory restrictions and to any restrictions contained in the instrument.” (Emphasis ours)

9.31 The Court of Appeal further in that matter, noted that although there are no statutory provisions in the Zambian legislation that restrict the extent of authority under a power of attorney, it is settled that an unqualified person is competent to represent a party to an action, if such person is acting pursuant to a power of attorney.

9.32 They stated that the question that remained to be determined, was whether it is lawful for a person acting on behalf of a litigant, by virtue of a power of attorney, to depose as a witness on behalf of his principal, regarding a transaction to which he was not privy to, or of which he has no knowledge.

9.33 In that regard, they stated that:

“We have considered the Indian case of Janki Vashdeo Bhojwani vs. Industrial Bank Ltd which is of persuasive value. In that case, the Supreme Court of India held that a power of attorney holder cannot depose for a principal in respect of matters of which only the principal could have personal

knowledge and in respect of which the principal is entitled to be cross-examined.

The Supreme Court of India in the case of Man Kaur vs. Kartar Singh Sangha) summarized the position as to who should give evidence in regard to matters involving personal knowledge. It held inter alia as follows:

“(a) An attorney holder, who has signed the complaint (charge/writ) and instituted the suit, but has no knowledge of the transaction can only give evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney shall be examined, if those acts and transactions have to be proved.

(c) the attorney holder cannot depose to or give evidence in place of his principal or dealings of his principal of which his principal alone has personal knowledge.”

- 9.34 The above decision, which the Court of Appeal used in guiding on whether persons can sue in Zambia on behalf of the principal, is clear that while one may sue under a power of attorney on behalf of the principal, if they are authorized to do so under the said power of attorney, the donee can only adduce evidence in respect of facts which are within their personal knowledge, and not on facts which are within the principal's peculiar knowledge.
- 9.35 A perusal of the power of attorney which is exhibited as 'NR1' to the affidavit in opposition, shows that it was executed by Dobrivoje Rankovic granting authority to Nikola Rankovic on 13th August, 2019 to be Dobrivoje Rankovic's Attorney as follows for:

“All proceedings relating to the matter between Dobrivoje Rankovic and Shonga Steel Limited under cause number 2018/HP/2009;

Any related proceedings including those at the Ministry of Lands; and

The sale of the property known as Stand No 5258 Lusaka and to do all things and execute all documents of sale for me, in my name and on my behalf in relation to the said sale of Stand No 5258 Lusaka in my absence from Zambia.

AND GENERALLY to do all such acts, deeds, or things that my said Attorney may deem fit and proper as the nature and circumstances may deem necessary from time to time in respect of anything

connected with the aforesaid and I undertake to ratify and confirm all such acts, deeds that my attorney may do by virtue of these presents.”

- 9.36 From the above, Nikola Rankovic had authority to represent Dobrivoje Rankovic as Attorney in cause number 2018/HP/2009, which cause of action was between him and Shonga Steel Limited and any other related proceedings, including those at the Ministry of Lands, in relation to the sale of the property known as Stand No 5258 Lusaka, and to do all acts, deeds or things as he may think proper as the nature and circumstances deemed necessary from time to time, in connection with the said powers.
- 9.37 Nikola Rankovic having had power to act for Dobrivoje Rankovic under cause number 2018/HP/2009, he assumed knowledge of the matter. Therefore, he is competent to depose to facts in relation to that matter.
- 9.38 It will further be seen that Nikola Rankovic pursuant to the Power of Attorney, defended the action in cause number 2023/HPC/0001 which Robust Trailers and Bodies Limited commenced to stop its' eviction from the property.
- 9.39 The objection which was raised with regard to Nikola Rankovic having deposed to matters relating to the said cause, therefore lacks merit.
- 9.40 This also extends to the argument, that the provisions of ***Order 16 of the High Court Rules*** which provides for alteration of a party, should have been invoked in order for Nikola Rankovic to represent Dobrivoje Rankovic in these

proceedings, as while Dobrivoje Rankovic is the Respondent in these proceedings, Nikola Rankovic is the person with personal knowledge of the facts in relation to the matter, which he is competent to depose to.

9.41 Coming to the merits of the matter, the question is whether Robust Trailers and Bodies Limited should be granted a new tenancy, Dobrivoje Rankovic having opposed the application?

9.42 The application came about, as Nikola Rankovic as Attorney for Dobrivoje Rankovic, as shown by exhibit 'JDN2' to the affidavit which was filed in support of the Originating Notice of Motion, issued a notice to terminate the tenancy for the property known as Stand No 5258 Lusaka on 12th April, 2024.

9.43 **Section 4 of the Landlord and Tenant (Business Premises) Act** in empowering a tenant to apply for a new tenancy, states that:

“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.”

9.44 **Section 5 (1) of the said Landlord and Tenant (Business Premises) Act** empowers a landlord to give notice to terminate a tenancy under the Act by providing that;

“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"):

(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.”

9.45 In response to the said notice, Robust Trailers and Bodies Limited through its' lawyers, Messrs Shepande and Company, wrote the letter which is exhibited as 'JDN3' to AMW & Co Legal Practitioners, the lawyers for Nikola Rankovic on 10th June, 2024, in which it indicated that it

would not be willing to give up possession of premises on 12th October, 2024.

9.46 Then thereafter, as already seen from the record, on 25th September, 2024, Robust Trailers and Bodies Limited applied for extension of time within which to apply for a tenancy. That Order was granted on 7th October, 2024. The Originating Notice of Motion was filed on 11th October, 2024.

9.47 **Section 10 of the Landlord and Tenant (Business Premises) Act**, states the following:

“10. (1) Subject to the provisions of this Act, on an application under subsection (1) of section four for a new tenancy, the court shall make an order for the grant of a tenancy comprising such property, at such rent and on such other terms as are hereinafter provided.

(2) Where such an application is made in consequence of a notice given by the landlord under section five, it shall not be entertained unless the tenant has duly notified the landlord that he will not be willing at the date of termination to give up possession of the property comprised in the tenancy.

(3) Subject to the provisions of subsection (4), no application under subsection (1) of section four shall be entertained unless it is made not less than two nor more than four months after the giving of the landlord's notice under section five or, as the

case may be, after the making of the tenant's request for a new tenancy.

(4) The court may, for sufficient reason and on such terms as it thinks fit, permit a tenant to apply to the court for a new tenancy under subsection (1) of section four, notwithstanding that the application is not made within the period specified in subsection (3)."

9.48 As to the grounds on which a tenancy may be opposed, **Section 11 of the Act** provides that:

"11. (1) The grounds on which a landlord may oppose an application under subsection (1) of section four are such of the following grounds as may be stated in the landlord's notice under section five or, as the case may be, under subsection (6) of section six, that is to say:

- (a) where under the current tenancy the tenant has any obligations as respects the repairs and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations;*
- (b) that the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due;*

(c) that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;

(d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable, having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding;

(e) where the current tenancy was created by the subletting of part only of the property comprised in a superior tenancy and the landlord is the owner on the termination of the superior tenancy, that the aggregate of the rents reasonably obtainable on separate

lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy;

(f) that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding;

(g) save as otherwise provided in subsection (2), that on termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business carried on by him therein, or as his residence.

(2) The landlord shall not be entitled to oppose an application on the ground specified in paragraph (g) of subsection (1), if the interest of the landlord,

or an interest which has merged in that interest and but for the merger would be the interest of the landlord, was purchased or created after the beginning of the period of five years which ends with the termination of the current tenancy, and at all times since the purchase or creation thereof the holding comprised in a tenancy or successive tenancies has been occupied wholly or mainly for the purposes of carrying on business thereon.”

- 9.49 In opposing the application, Dobrivoje Rankovic stated that the opposition to the grant of a new tenancy was premised on the ground that the previous landlord had disposed of the property as a whole.
- 9.50 Robust Trailers and Bodies Limited argued that sale of the property was not one of the grounds that is stipulated in **Section 11 of the Act** pursuant to which opposition for the grant of a new tenancy can be made.
- 9.51 In the further affidavit in opposition, and the further List of Authorities and Skeleton Arguments in opposition, Dobrivoje Rankovic contended that the opposition to the grant of a new tenancy was premised on **Section 11 (1) (e) of the Act**. Argument was also made, that Robust Trailers and Bodies Limited in applying for a new tenancy, had not complied with **Rule 6 of the Landlord and Tenant (Business Premises) Rules**, by stating the terms of the new tenancy, the rent payable, and the duration, as well as any notices that were issued under the tenancy.

9.52 I have already highlighted the reason that Dobrivoje Rankovic advanced in the notice to terminate the tenancy. It was that the previous landlord had sold the premises as a whole. That reason is provided for in **Section 11 (1) (e) of the Act.**

9.53 Robust Trailers and Bodies Limited applied for a new tenancy under **Section 4 of the Act.**

9.54 **Rule 5 of the Landlord and Tenant (Business Premises) Rules** provides that:

“5. (1) The originating notice of motion by which an application under section four of the Act for a new tenancy is made must state-

(a) the premises to which the application relates and the business carried on there;

(b) particulars of the applicant's current tenancy of the premises and of every notice or request given or made in respect of that tenancy under section five or six of the Act; and

(c) the applicant's proposals as to the terms of the new tenancy applied for including, in particular, terms as to the duration thereof and as to the rent payable thereunder.”

9.55 Robust Trailers and Bodies Limited did not, in the Originating Notice of Motion, set out the particulars of the current tenancy, any notices that were issued thereunder, or give proposals as to the terms of the new tenancy, its'

duration as well as the rent proposed to be payable thereunder.

10. CONCLUSION

- 10.1 Robust Trailers and Bodies Limited has therefore not satisfied the requirements as set out in **Rule 5 of the Landlord and Tenant (Business Premises) Rules** in applying for a new tenancy. Further, the landlord, Dobrivoje Rankovic sold the premises to African Building Supplies Limited as a whole. Therefore, the application fails on that basis.
- 10.2 The application for compensation under **Section 19 (1) of the Act** equally fails, as there has been no demonstration as to existence of the factors that are stipulated under that provision, by way of evidence, that would inform the Court to make an Order for compensation as provided in the Section.
- 10.3 Accordingly, the application is dismissed with costs to Dobrivoje Rankovic, which shall be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THE 8th DAY OF SEPTEMBER, 2025


S. KAUNDA NEWA
HIGH COURT JUDGE

