



**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*

**IN THE MATTER OF:** SECTION 4(e) (i) AND (ii) OF THE RENT ACT,  
CHAPTER 206 OF THE LAWS OF ZAMBIA

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

**IN THE MATTER OF:** SECTION 14 OF THE RENT ACT, CHAPTER 206 OF  
THE LAWS OF ZAMBIA

**IN THE MATTER OF:** RULE 3 OF THE RENT RULES, CHAPTER 206 OF THE  
LAWS OF ZAMBIA

**IN THE MATTER OF:** STAND NO. 3488 NKANA EAST, 99 GEDDES STREET,  
KITWE

**BETWEEN:**

**TOMBOZI LISA CHOLA NACHIZYA  
MERCY NACHIZYA**

**1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT**

**AND**

**TEOFILO LACUNA  
TML LOGISTICS LIMITED**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

**Before the Honourable Mrs. Justice R. Chibbabbuka on the 18<sup>th</sup> day of  
November, 2024**

For the Applicants : Mr. K. Ngulube, Messrs Equitas Legal Practitioners  
For the Respondents : No appearance

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**JUDGMENT**

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**Cases referred to:**

1. Judge Prisca Matimba Nyambe SC (rtd) Vs Cephas Salimbushi 2018/HP/1103

2. *CF construction (1976) v Rudmap (Zambia) Limited and Unitech Limited (1999) ZR 134*

**Legislation referred to:**

*The Rent Rules Chapter 206 of the Laws of Zambia*

**Other works referred to:**

*Halsbury's Laws of England 4<sup>th</sup> Edition Volume 27 (1) at page 236*

*Halsbury's Laws of England, Volume 13 at paragraph 202*

*Halsbury's Laws of England Volume 27 (1) at paragraph 258*

**1.0 Introduction**

The applicants issued an Originating Notice of Motion on the 11<sup>th</sup> April, 2024 claiming the following reliefs:

1. An order for eviction and recovery of possession of residential unit being Stand No. 3488 Nkana East Kitwe;
2. An order for leave to issue Warrant of Distress to recover the sum of fifty two thousand kwacha (K52,000.00) rental arrears for the months of January, 2024 to April 2024;
3. Mesne profits at the rate of K1,500.00 per month from date of service of Originating Notice of Motion until date of possession;
4. Interest on the said rental arrears and mesne profits due and payable to the applicant;
5. Costs of and incidental to this action; and
6. Any other relief as the Court may deem fit.

**2.0 The applicant's affidavit evidence**

In an affidavit in support of the Originating Notice of Motion, sworn by the 1<sup>st</sup> applicant, she avers as follows: She let Stand No. 3488 Nkana East, 99 Geddes Street, Kitwe, as residential housing on a monthly basis to the respondent. The respondent is in occupation of the residential house on her aforesaid property

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by way of a Tenancy Agreement and paying monthly rentals in the sum of Thirteen Thousand Kwacha (ZMW13,000.00).

It was an agreement between the parties that the respondent would remit the agreed monthly rentals directly via electronic bank transfer into her designated bank account, on or before the first of each and every month of the term of the agreement. Despite their tenancy agreement, the respondent failed to settle the agreed monthly rentals from January, 2024 to date and continues to occupy the property despite having failed to remit the monthly rentals as agreed. Further, despite several promises and requests for extensions, the respondent failed to pay the balance of the rental arrears and monthly rentals as they became due, which amounts have not been paid to date and as at April, 2024 have accumulated to a colossal sum of Fifty two Thousand Kwacha (ZMW52,000.00).

She requested and demanded settlement of the outstanding amount from the respondent, to which requests and demands the respondent has failed to respond or make a reasonable proposal to settle. She verily believes that the respondent is able to make payment of the monthly rentals and outstanding arrears, but appears to have deliberately failed and /or neglected to do so.

By reason of the above and the respondent's failure to settle the monthly arrears and monthly rentals she continues to suffer financial loss and damage. She believes that the respondent has declined, refused and/or neglected to settle the accumulated rental arrears and monthly rentals as they fall due despite several demands and requests to do so, such that unless compelled by this Court, the respondent will continue to occupy the property without making payment of the monthly rentals and settlement of outstanding arrears. As such she has instructed her advocates to commence action herein, seeking this Court's indulgence in granting the reliefs as prayed, for an Order for recovery of rentals arrears and leave to issue Warrant of Distress for the sum

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of Fifty Two Thousand Kwacha (ZMW52,000.00) and an order for vacant possession of the property, mesne profits and costs.

## **2.1 The applicant's skeleton arguments**

The applicant filed skeleton arguments in support on even date. For the mode of commencement of the action reference was made to the provision of *Rule 3 of the Rent Rules Chapter 206 of the Laws of Zambia*, which provides as follows;

*“3. A complaint or application to the court under the Act shall be commenced by an originating notice of motion. Evidence in support thereof may be an affidavit or viva voce”.*

Reliance was also placed on *Section 4 (e) (i) and (ii)* of the *Rent Act Chapter 206* of the *Laws of Zambia* which provide for the orders that this Court may grant as they state;

*“4. The Court shall have power to do all things which it is required or empowered to do by or under the provisions of this Act and in particular shall have power.*

*(e) subject to the provisions of section thirteen to make either or both of the following orders that is to say;*

*(i) an order for the recovery of possession of premises, whether in the occupation of a tenant or of any other persons, and*

*(ii) an order for the recovery of arrears of standard rent, mesne profits and a charge for service,”*

Counsel also referred this Court to *section 13(1) (a)* of the *Rent Act Chapter 206* of the *Laws of Zambia* which states as follows;

*“13 1) No order for the recovery of possession of any premises or for the ejectment of a tenant therefrom shall be made unless*

*(a) some rent lawfully due from the tenant has not been paid, or some other obligation of the tenancy (whether under a contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed;”*

In the first limb of their argument, counsel submitted that the applicant herein seeks an order for possession of Stand No. 3488 Nkana East, 99, Geddes Street, Kitwe and rental arrears after the respondent defaulted on the payment of rent arrears for the period January 2024 to April 2024. That it is evident from the applicant’s affidavit in support of this application that the respondent failed/neglected to settle the aforesaid rent as they fell due despite making several commitments to pay.

It was counsel’s further argument that the respondent having failed to settle the rent arrears due to the applicant, the applicant is entitled to possession of the premises let to the respondent being Stand No. 3488 Nkana East, 99 Geddes Street, Kitwe and to recover rent arrears from the Respondent by way of distress. For this argument, reference was made to *Section 14 of the Rent Act Chapter 206 of the Laws of Zambia* which provides as follows;

*“14 No. distress for the recovery of rent in respect of any premises shall be levied except with the leave of the court.”*

The Court was also referred to the learned authors of **Halsbury’s Laws of England 4<sup>th</sup> Edition Volume 27 (1) at page 236** in relation to the remedy of distress by the Landlord as they enunciate as follows;

*“Distress- a landlord has a right to distrain for arrears of rent upon all goods found upon the premises and in certain cases the landlord may distrain on goods which are not the demised premises. No distress for rent of any dwelling house let on a protected tenancy or an assumed*

*tenancy or subject to a statutory tenancy may be levied except with the leave for the county court.”*

Counsel went on to argue that the learned authors of **Halsbury’s Laws of England, Volume 13 at paragraph 202** had the following to say regarding the remedy of distress:

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

Further, that at **paragraph 207**, the learned authors state: -

*“In order that the right to distrain for rent upon a demise may arise the relation of landlord and tenant must exist, both when the rent becomes due and when the distress is levied and the rent must be in arrears”*

The Court was also referred to the case of **Judge Prisca Matimba Nyambe SC (rtd) Vs Cephass Salimbushi<sup>1</sup>** where it was stated as follows;

*“The law is very clear that where a relation of landlord and tenant exists, when rent becomes due and is in arrears, the landlord applies for leave to issue a warrant of Distress.”*

In the second limb of their argument, counsel contended that the applicant also seeks a relief for mesne profits at One Thousand Five Hundred Kwacha (K1,500.00) per month from the date of the Originating Notice of Motion to delivery of possession. To buttress this argument reference was made to the case of **CF construction (1976) v Rudmap (Zambia) Limited and Unitech Limited<sup>2</sup>** where the Supreme Court enunciated that:

*“On mesne Profits, these are damages awarded to a landlord for holding over a tenancy by a tenant”*

Reference was also made to the learned authors of **Halsbury’s Laws of England Volume 27 (1) at paragraph 258** on mesne profits, where the learned authors state as follows;

*“The landlord may recover in an action for mesne profits the damages which he has suffered through being out of possession of the land or, if he can prove no actual damages caused to him by the defendant’s trespass, the landlord may recover as mesne profits the value of the premises to the defendant for the period of the defendant’s wrongful occupation. In most cases rent paid under an expired tenancy is strong evidence as to the open market value. Mesne profits, being a type of damages for trespass, may be recovered in respect of the defendant’s continued occupation only after the expiry of his legal right to occupy the premises, The Landlord is not limited to a claim for the profits which the defendant has received from the land or those which he himself has lost.”*

It was counsel’s submission that the applicant herein has suffered loss by not being in possession of the premises and has continued to suffer loss thereof. That in the light of the foregoing, this is a case befitting the applicants to pursue all their remedies concurrently against the respondent following the respondent’s failure in settling the rental areas.

### **3.0 The decision of the Court**

The applicants in this cause of action have claimed for the following reliefs:

1. An order for eviction and recovery of possession of residential unit being Stand No. 3488 Nkana East Kitwe;

2. An order for leave to issue Warrant of Distress to recover the sum of fifty two thousand kwacha (K52,000.00) rental arrears for the months of January, 2024 to April 2024;
3. Mesne profits at the rate of K1,500.00 per month from date of service of Originating Notice of Motion until date of possession;
4. Interest on the said rental arrears and mesne profits due and payable to the applicant;
5. Costs of and incidental to this action; and
6. Any other relief as the Court may deem fit.

In support of this application the applicants filed an affidavit in support deposed to by the 1<sup>st</sup> applicant. The respondents have not responded to this action by way of filing an affidavit in opposition and their skeleton arguments in support of the same inspite of being served with the originating process and notice of hearing of this cause of action. At the hearing of the main matter counsel for the applicants placed reliance on the documents before court.

A perusal of the affidavit in support of this application shows a Tenancy Agreement attached as exhibit "TN1". The said Tenancy Agreement indicates Tombozi Lisa Chola Nachizya the 1<sup>st</sup> applicant in this matter as landlord while the provision for the tenant is blank. The entire document is not signed by either the landlord or any supposed tenants or other person for that matter. Counsel for the applicants in their skeleton arguments, cited the High Court case of **Judge Prisca Matimba Nyambe SC (rtd) Vs Cephas Salimbushi** where it was stated as follows;

*"The law is very clear that where a relation of landlord and tenant exists, when rent becomes due and is in arrears, the landlord applies for leave to issue a warrant of Distress."*

Additionally, **Halsbury's Laws of England, Volume 13 at paragraph 207** states that;

*"In order that the right to distrain for rent upon a demise may arise the relation of Landlord and tenant must exist, both when the becomes due and when the distress is levied and the rent be in arrears."*

From the above authorities whose position I agree with, it is evident that in matters such as the one before this court there needs to be proof of a relationship between the landlord and the tenant. The proof of such a relationship in this case would be the tenancy agreement. As already stated above, the exhibit in the affidavit in support lacks the details to show that there is a tenancy relationship between the applicants and the respondents. The applicants also did not bother to appear before the Court to give viva voce evidence to support this application. As such I am not satisfied that the applicants have proved that a tenancy relationship exists between them and the respondents. The consequence of this, is that the applicants claims equally have not be proved.

On the basis of the foregoing findings, this Court cannot award the reliefs claimed by the applicants for lack of evidence to prove that a tenancy relationship between the applicants and the respondents exists. The cause of action is dismissed in its entirety.

Leave to appeal is hereby granted.

Dated the..... day of ..... 2024.

18<sup>th</sup>  
REPUBLIC OF ZAMBIA  
HIGH COURT OF ZAMBIA  
18 NOV 2024  
R. CHIBBABBUKA, J  
50067, LUSAKA

**R. Chibbabbuka**  
**HIGH COURT JUDGE**