



2025/HP/0781

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

**IN THE MATTER OF:**

**SECTION 3 OF THE LANDLORD AND TENANT  
(BUSINESS PREMISES) ACT CHAPTER 193 OF  
THE LAWS OF ZAMBIA**

AND

**IN THE MATTER OF:**

**AN APPLICATION FOR AN ORDER FOR THE  
RECOVERY OF POSSESSION OF THE  
PREMISES IN RESPECT OF STAND NO 8080  
SITUATED IN CHINIKA INDUSTRIAL AREA  
LUSAKA IN THE LUSAKA PROVINCE OF THE  
REPUBLIC OF ZAMBIA**

AND

**IN THE MATTER OF:**

**AN APPLICATION FOR AN ORDER FOR  
RECOVERY OF ARREARS OF STANDARD  
RENT**

BETWEEN:

**DR MARIA O. WISNIEWSKI**

**APPLICANT**

AND

**IFISUMA TAFISA BWANGU MINING CO LIMITED  
OTHER OCCUPIERS UNKNOWN**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT**

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

*For the Applicant : Mr A. Kalikiti, Messrs MSK Advocates  
For the 1<sup>st</sup> Respondent : No appearance  
For the 2<sup>nd</sup> Respondent : No appearance*

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## **J U D G M E N T**

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CASES REFERRED TO:

- 1. Wilson Masauso Zulu v Avondale Housing Project 1982 ZR 172**
- 2. Apollo Refrigeration Services Co. Ltd v Farmers House Ltd 1985 ZR 182**

3. *Attorney General and another v Lewanika and others 1993-1994 ZR 164*
4. *Roadmix Limited and Kearney Company Limited v Furncraft Enterprises Limited SCZ No 41/2015*
5. *Hakainde Hichilema and another v Edgar Chagwa Lungu and three others 2016/CC/0031*

LEGISLATION REFERRED TO:

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

**1. INTRODUCTION**

1.1 As landlord of the business premises known as Stand No 8080 Chinika Industrial Area in Lusaka, Dr Maria O. Wisniewski commenced this matter by Originating Notice of Motion on 5<sup>th</sup> June, 2025 in which she claims:

- i. *An Order that Ifisuma Tafisa Bwangu Mining Co Limited and other unknown occupiers, hand back possession of the premises known as Stand No 8080 Chinika Area Lusaka to Dr Maria O. Wisniewski;*
- ii. *An Order that Ifisuma Tafisa Bwangu Mining Co Limited and other unknown occupiers pay all the outstanding rental arrears due to Dr Maria O. Wisniewski;*
- iii. *Interest on all sums found due;*
- iv. *Further or other relief that the Court shall deem fit;*
- v. *Costs.*

**2. AFFIDAVIT IN SUPPORT OF THE ORIGINATING NOTICE OF MOTION**

2.1 In the affidavit which was filed in support of the Originating Notice of Motion, James Daka, an Accountant who is employed by Dr Maria O. Wisniewski, deposed that Ifisuma

Tafisa Bwangu Mining Company Limited entered into a lease agreement to rent the premises situated at Stand No 8080 Chinika Area in Lusaka for a period of five years from 1<sup>st</sup> September, 2016.

- 2.2 Averment was made, that it was a condition of the lease agreement, that Ifisuma Tafisa Bwangu Mining Company Limited would pay standard rent for the premises at US\$4000.00 a month, payable three (3) months in advance. A copy of the lease agreement was exhibited as 'JD1'.
- 2.3 He stated that Ifisuma Tafisa Bwangu Mining Company Limited failed or neglected to pay rent which had accumulated to the sum of US\$707, 000.00 from August 2016 to June, 2024, which was in breach of the lease agreement.
- 2.4 James Daka further deposed that Ifisuma Tafisa Bwangu Mining Company Limited had been subletting the premises to other tenants and collecting the rentals without the consent or knowledge of Dr Maria O. Wisniewski.
- 2.5 Thus, as evidenced by the Notice to terminate the lease, which was exhibited as 'JD2', the lease had been terminated. However, Ifisuma Tafisa Bwangu Mining Company Limited and the other unknown occupants, had refused to vacate the premises, even after being served a formal notice to vacate the premises.
- 2.6 It was deposed that the demised premises had continued to deteriorate owing to non-inspection and maintenance of the premises.

### 3. LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN SUPPORT

- 3.1 It was argued in the List of Authorities and Skeleton Arguments which were filed in support of the Originating Notice of Motion, that an application under the ***Landlord and Tenant (Business Premises) Act Chapter 193 of the Laws of Zambia*** shall be made by Originating Notice of Motion, and that evidence in support thereof, shall be by affidavit or viva voce if an affidavit is not required by the Rules.
- 3.2 Relying on the cases of ***Attorney General and another v Lewanika and others*** <sup>(3)</sup> and ***Hakainde Hichilema and another v Edgar Chagwa Lungu and three others*** <sup>(5)</sup>, it was argued that where the words in a statute are clear and unambiguous, they must be given their ordinary meaning.
- 3.3 Thus, the prayer citing the case of ***Wilson Masauso Zulu v Avondale Housing Project*** <sup>(1)</sup> was that Dr Maria O. Wisniewski had proved her case, and she should be granted the reliefs as sought.

### 4. AFFIDAVIT IN OPPOSITION AND LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN OPPOSITION

- 4.1 No affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition were filed by Ifisuma Tafisa Bwangu Mining Company Limited and the other unknown occupiers, despite service having been effected on them, as evidenced by the affidavit of service which was dated 21<sup>st</sup> July, 2025.

## **5. SUBMISSIONS AT THE HEARING**

- 5.1 At the hearing, only Counsel for Dr Maria O. Wisniewski was before Court. He was allowed to proceed as there was proof of service.
- 5.2 It was his submission, that he relied on the affidavit which was filed in support of the Originating Notice of Motion together with the List of Authorities and Skeleton Arguments in support. Counsel prayed that the reliefs as prayed for, be granted.

## **6. DECISION OF THIS COURT**

- 6.1 I have considered the matter.
- 6.2 **Section 3 of the Landlord and Tenant (Business Premises) Act** pursuant to which the matter was brought provides that:

***“3. (1) Subject to the provisions of subsection (2), this Act shall apply to all tenancies in Zambia.***

***(2) This Act shall not apply to-***

***(a) agricultural holdings;***

***(b) premises let or used exclusively for residential purposes;***

***(c) premises let by Government or a local authority;***

***(d) premises held by a tenant under a tenancy for a term of years certain exceeding twenty-one years;***

***(e) premises or part of the premises comprised in a tenancy, in which a tenant is carrying***

*on a business in breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of those premises, unless the immediate landlord or his predecessor in title has consented to the breach or the immediate landlord has acquiesced therein.*

*In this paragraph the reference to a prohibition of use for business purposes does not include a prohibition of use for the purposes of a specified business, or of use for purposes of any but a specified business;*

*(f) premises comprised in a tenancy granted by reason that the tenant was the holder of an office, appointment or employment from the grantor of the tenancy and continuing only so long as the tenant holds such office, appointment or employment, or terminable by the grantor on the tenant's ceasing to hold it, or coming to an end at a time fixed by reference to the time at which the tenant ceases to hold it;*

*(g) premises comprised in a tenancy granted for a term certain not exceeding three months, unless-*

- i. the tenancy contains provisions for renewing the term or for extending it beyond three months from its beginning; or*
- ii. the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the business carried on by the tenant was in occupation, exceeds six months.”*

6.3 **Rule 3 of the Landlord and Tenant (Business Premises)**

**Rules** provides that:

**“3. An application made to the court under the Act shall be commenced by an originating notice of motion. Evidence in support thereof may be on affidavit or, where an affidavit is not required by these Rules, viva voce.”**

6.4 The case of **Appollo Refrigeration Services Co. Ltd v Farmers House Ltd** <sup>(2)</sup> in considering a matter where the landlord of business premises, commenced an action to recover possession by Originating Notice of Motion, held that:

**“An originating notice of motion was not the proper process for a landlord's claim for possession of business premises since all the applications which can be made by an originating notice of motion under the Landlord and Tenant**

***(Business Premises) Act are specified in the various sections. A Landlord's action for possession was not so specified and should therefore be commenced by writ in accordance with Order 6 of the High Court Rules;***

- 6.5 A perusal of the ***Landlord and Tenant (Business Premises) Act*** reveals that among the provisions in that Act which allow for applications to be made by Originating Notice of Motion include ***Sections 4 and 6 of the Act*** and ***Rule 5 of the Landlord and Tenant (Business Premises) Rules***, which relate to applications for new tenancies.
- 6.6 In the case of ***Roadmix Limited and Kearney Company Limited v Furncraft Enterprises Limited*** <sup>(4)</sup>, the action was commenced in the High Court by an Originating Notice of Motion, and it was for a raft of declarations and orders. These included a declaration that the respondent was not a tenant of the 2nd appellant, an order to set aside a warrant of distress, a declaration that a tenancy relating to shed 2 at Farm 397A/D/C/3 Kafue Road was renewed on 1st March, 2010 at a monthly rent of US\$1,750.00, an order for a new tenancy, a declaration that the removal of the respondent from and locking up its' business premises was wrongful, null and void, and a claim for damages of K2,500.00 per day from 9th April, 2010 until possession was given back.
- 6.7 A preliminary issue was raised in the High Court, that the procedure that the respondent had used to commence the

action was wrong, and the action was, therefore, not properly before the High Court.

- 6.8 The learned trial Judge disagreed with Mr. Mutemwa and took the view that ***Rule 3 of the Landlord and Tenant (Business Premises) Rules, Chapter 193 of the Laws of Zambia***, allows for the commencement of an action under the Act by way of Originating Notice of Motion.
- 6.9 The learned trial Judge also held the view that if a Writ of Summons was issued in respect of some of the claims in the Originating Notice of Motion, there would be a multiplicity of actions over the same subject matter.
- 6.10 On appeal, the Supreme Court held that:

***“We, therefore, agree with Mr. Mutemwa that the learned trial Judge erred in law and fact when she held that this matter could be commenced by Originating Notice of Motion.....***

***With the exception of the claim for a new tenancy, this matter was not properly before court and the learned trial Judge had no jurisdiction to determine the matter on its merit. The appeal is allowed and the ruling of the High Court is set aside with costs to the appellants, to be agreed or taxed in default of agreement.”***

## **7. CONCLUSION**

- 7.1 In this matter, Dr Maria O. Wisniewski claims for an Order for the possession of the premises known as Stand No 8080

Chinika Industrial Area, and an Order for the payment of rental arrears from August, 2016 to June 2024.

- 7.2 These claims cannot be pursued by Originating Notice of Motion in light of the decisions in the cases of ***Apollo Refrigeration Services Co. Ltd v Farmers House Ltd*** <sup>(2)</sup> and ***Roadmix Limited and Kearney Company Limited v Furncraft Enterprises Limited*** <sup>(4)</sup> which have been seen above.
- 7.3 The matter is therefore dismissed for want of jurisdiction, as a wrong mode of commencement was employed. I make no order as to costs and grant leave to appeal.

**DATED AT LUSAKA THE 8<sup>th</sup> DAY OF SEPTEMBER, 2025**

*S. Kaunda*  
**S. KAUNDA NEWA  
HIGH COURT JUDGE**

