

IN THE HIGH COURT FOR ZAMBIA
AT THE KITWE DISTRICT REGISTRY
HOLDEN AT KITWE
(Civil Jurisdiction)

2010/HK/495

IN THE MATTER OF : **SECTIONS 4(1) & 5(1) (2) (5) (6) OF THE LANDLORD
AND TENANT (BUSINESS PREMISES ACT CHAPTER
193 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **PREMISES SITUATED AT SHOP NO. 5 AFCOM HOUSE,
OBOTE AVENUE, KITWE**

BETWEEN:

FLIGHT CENTER AND STATIONERS LTD

APPLICANT

AND

WORKERS COMPENSATION FUND CONTROL BOARD RESPONDENT

Before the Honourable Mr. Justice I.C.T. Chali in Chambers on the 5th day of May, 2011

For the Applicant : Mr. T. Chabu – Messrs Ellis and Co.

For the Respondent : Ms. P.C. Bwembya - Legal Counsel

J U D G M E N T

Case referred to;

1. *Afro Butcheries Limited v. Evees Limited (1987) Z.R. 39*

Legislation referred to;

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

The applicant seeks, among other reliefs, a declaration that the notice of termination of business tenancy dated 4th March, 2010 is null and void.

The facts as disclosed in the affidavit of Dorothy Mutale, a Director in the Applicant's Company in support of the originating notice of motion, are briefly as follows:

The Applicant was offered the tenancy of shop No. 5 in Afcom House, Obote Avenue, Kitwe, the Respondent's property, for an initial term of one year with effect from 1st December, 2003 at an initial rental of K481,163,00 per annum. The said premises are on the ground floor of the building and were previously occupied by a travel agency since 1972;

On 5th October, 2009 the Respondent's Regional Property Manager wrote to the Applicant informing the latter of the Respondent's intention to relocate to shop No. 5 from the 1st Floor office it occupied and to offer the Applicant an alternative space in the same building. The Respondent said this was in order for it to serve the needs of its clients who were mostly retired, disabled and in ill health. The Applicant opposed the proposed change in its accommodation on the ground, inter alia, that it required shop No. 5 for its operations of a travel agency, bookshop and internet café. The Applicant's appeal to the Respondent's Commissioner was turned down.

Consequently on 4th March 2010 the Respondent issued a Landlord's notice to terminate tenancy of business premises with effect from 4th September, 2010 in terms of Section 5 of the Landlord and Tenant (Business Premises) Act Chapter 193 of the Laws of Zambia. The said notice read in part as follows:

"2. You are required within two months after the giving of this notice to notify us in writing whether or not you will be willing to give up possession of the premises on that date.

3. **We would oppose an application to the Court under the Act for the grant of a new tenancy on the ground that the premises have been earmarked for Kitwe Branch Office for Workers Compensation Control Board”.**

The opposing affidavit was sworn by HENSCHER CHABALA, the Respondent's Acting Estates Manager. He stated that the reason for the Respondent requiring Shop No. 5 was in accordance with the Respondent's new policy of ensuring that the Pensioners and injured persons it serves are able to access its services conveniently; that since Shop No. 5 is situated on the ground floor, as opposed to its current offices on the upper floor, it is the most convenient place for such persons. He also stated that the Applicant had not responded within the two months statutory period and ought not to be entertained for a new tenancy by the court. It is also the Respondent's evidence that there was no malice in its decision to get back Shop No. 5.

At the hearing of the Notice of Motion, Mr. Chabu, Counsel for the Applicant, argued that the purported statutory notice did not comply with the provisions of the Act. In particular, he submitted that Sections 5(6) and 11(1)(g) had not been complied with. He said the said notice did not set out the grounds of objection and that the reason given at Clause 3 of the notice does not qualify as a ground for such objection.

Mr. Chabu also submitted on the need for the Respondent to produce proof of its policy relating to the need for relocating, as well as the list of its clients who have difficulties in accessing its services on the upper floor. He further argued that there was bad faith on the part of the Respondent by only targeting the Applicant and not any of the other several tenants in the building. However, in my view, I find these three to be non-issues in the circumstances of this case. As Mrs. Bwembya, Counsel for the Respondent, rightly submitted the only issue the court ought to consider is whether the ground given in the notice is within the ambit of the provisions in the Act. She admitted that the Respondent is entitled to repossess its property or a portion thereof occupied by a tenant as long as it gives proper notice under the law. In this case the Respondent denies that it was driven by any malice in trying to relocate to Shop No. 5. The fact that the Respondent was ready to re-assign the Applicant to alternative premises goes to

show a lack of such malice or bad faith. Lastly, the Respondent did not require to get rid of all the tenants because I do not think they required the whole building. In the circumstances I am not prepared to inquire into the three questions posed by Mr. Chabu.

The relevant part of Section 5 of the Act provides as follows:

“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.

(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.”

The “prescribed form” referred to under Section 5(1) of the Act is found in the schedule to the Regulations or a form “substantially to the like effect” (Regulation 2) and is reproduced here under:

**“The Landlord and Tenant (Business Premises) Act
Landlord’s Notice To Terminate Tenancy of Business Premises
To:.....of.....tenant of business premises known as.....**

1. I.....ofLandlord of the above mentioned premises, hereby give you notice terminating your tenancy on theday of19.....
2. You are required within two months after the giving of this notice to notify me in writing whether or not you will be willing to give up possession of the premises on that date
3. I would oppose an application to the court under the Act for the grant of a new tenancy, or I would oppose an application to the court under the Act for the grant of a new tenancy on the ground that (here state ground or grounds)
4. This notice is given under the provisions of Section 5 of the Landlord and Tenants (Business Premises) Act

Dated thisday of19.....

Signed.....Landlord

.....Address”

I have had the benefit of examining the notice given by the Respondent and dated 4th March 2010 and I am satisfied that it is in accordance with the prescribed form or in substantial conformity therewith. I cannot, therefore, fault the respondent as to the form of notice. I find that Subsection (1)(2)(5) of Section 5 of the Act were complied with. The only issue I must consider and determine is as to compliance with the grounds required under subsection (6) of Sections 5 as read with Section II of the Act vis-A-Vis Clause 3 of the notice. I now reproduce the relevant parts of Section II thus:

“II(1) The grounds on which a Landlord may oppose an application (for the grant by a court of a view tenancy) are such of the following grounds as may be stated in the Landlord’s notice.....that is to say:

(g)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...”

As already indicated in this judgment, the Respondent carries on business in the said premises, albeit on the upper floor. The ground given by the Respondent that “the

premises have been earmarked for Kitwe Branch Office of Workers compensation Fund Control Board” in my view conveys the same message as envisaged under Section II (1)(g) of the Act cited above. In other words I am satisfied on the affidavit evidence before me that the Respondent intends to occupy the premises (shop No. 5) itself, thereby satisfying the directions in the Supreme Court’s decision in the case of *Afro Butcheries Limited v Evees Limited* (1).

In the circumstances I find the notice to be valid and I therefore refuse the grant of the declaration sought or the grant of a new tenancy as prayed for in the alternative. The action is hereby dismissed with costs to the Respondent, said costs to be taxed in default of agreement.

Delivered in Chambers at Kitwe this 5th day of May 2011

.....
I.C.T. Chali
JUDGE

Thereby satisfying the directions in the Supreme Court's decision in the case of **Afro Butcheries Limited v. Evees Limited (1)**.

In the circumstances I find the notice to be valid and I therefore refuse the grant of the declaration sought or the grant of a new tenancy as prayed for in the alternative. The action is hereby dismissed with costs to the Respondent, said costs to be taxed in default of agreement.

Delivered in Chambers at Kitwe this 21st day of October, 2011

.....

I.C.T. Chali
JUDGE