IN THE HIGH COURT FOR ZAMBIA **2009/HP/0379**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

JONES SIASAMBA AND 16 OTHERS **APPLICANTS**
(stated in the schedule attached hereto)

and

ROBINSON KALEB ZULU **RESPONDENT**

Before the Hon. Mr. Justice Justin Chashi in Chambers on the 12th day of September, 2012.

For the Appellants: *C. Sikazwe, Messrs Chanza Sikazwe Advocates*
For the Respondent: *JB Malama, Messrs Kalokoni & Co*

J U D G M E N T

Cases referred to:

1. **Lily Drake v MBL Mahtani and Professional Services Limited (1985) ZR 365**
2. **Admark Limited v Zambia Revenue Authority (2006) ZR 43**
3. ***Development Bank of Zambia and KPMG Peat Marwick v Sunset Limited and Sun Pharmaceuticals Limited (1995/1997) ZR 187***
4. ***Matilda Mutale v Emmanuel Munaile (2007) ZR 118***
5. ***JZ Car Hire Limited v Malvin Chala and Scirocco Enterprises Limited (2002) ZR 112***

Legislation referred to:

6. **The Rent Act, Chapter 206 of the Laws of Zambia**
7. **The Landlord and Tenant (Business premises) Act, Chapter 440 of the Laws of Zambia.**
8. **The High Court Act, Chapter 27 of the Laws of Zambia.**

The Applicants commenced the proceedings herein by way of Originating Notice of Motion on the 11th day of April, 2012. They subsequently filed an Amended Originating Notice of Motion on the 16th day of May 2012.

The Applicants are seeking the following reliefs:

1. An Order to determine the legality of the Respondent giving Notice to terminate the tenancy of the Applicants in view of these proceedings.
2. An Order determining the proper period of such Notice to terminate tenancy.
3. An Order to determine the Standard Rent of the premises namely Stand No. S/D 1 of S/D C of Farm 397a Lusaka (hereinafter called Makeni Villas).
4. An Order to fix the date from which the Standard Rent is to be payable.
5. An Order that the Respondent carries out repairs to the Makeni Villas for which he is liable under the Rent Act.
6. An Order compelling the Respondent not to increase the Standard Rent in contravention of the Rent Act.
7. An Order restraining the Respondent from evicting the Applicants or recovering possession from the Applicants or levying distress against the Applicants pending determination of this matter by this Honourable Court.
8. An Order that the Respondent should comply with all the provisions of **Section 11(1) of the Rent Act**[6] prior to effecting any increase to the Standard Rent at Makeni Villa.

9. An Order that the Respondent pays compensation for any loss or damage suffered by any one of the Applicants in consequence of having been required to give up possession.
10. Any other relief the Court may deem fit.
11. Costs to be borne by the Respondent.

The Applicants Originating Notice of Motion was accompanied by a combined affidavit in support thereof deposed to by Jones Siasamba one of the Seventeen (17) Applicants. In the said affidavit the Applicants averred that they are all Tenants at the Makeni Villa.

That previously, on the 8th day of May 2008, the Applicants had entered into a Lease Agreement with the previous Landlord, Workcom Pension Registered Trustees. That on the 11th day of August 2011, the Applicants received an introductory letter stating that the Respondent as the new Landlord having purchased Makeni Villas with effect from the 1st day of August 2011 and that all rental payments were with effect from the 11th day of August 2011 to be made to the Respondent.

The Respondent's Agent, the Senior Legal Officer, Mr. Max Chilinda vide letter dated 4th day of November 2011 wrote to all the Applicants giving notice of the improvements to be undertaken on the property and notice of new tenancy agreements reflecting a 90% rental increment effective 14th day of February 2012. That subsequently on the 15th day of February 2012, the Respondent sent new tenancy agreements reflecting a 90% increment to the rentals, which led to the Applicants requesting the Landlord and Tenant Information and Referral Centre (LTIRC) to write to the Respondent requesting for a meeting in Order to address the issues of the rental increment and general maintenance of Makeni Villas.

According to the Applicants, they refused to sign the new leases and opted to meet the Respondent to discuss the way forward. However, the Respondent was adamant and made it clear that failure to sign the new lease agreements would lead to evictions.

Further, according to the Applicants, the Respondent has not carried out any of the promised structural improvements and therefore the purported rental increments are unreasonable, un warranted and illegal. That the Respondent has consistently threatened the Applicants with eviction for refusing to sign the new tenancy agreements which the Applicants are contesting as they feel the rental increment is unconscionable and unreasonable as it is without any corresponding improvement to the property.

In opposing the Applicants Notice of Motion, the Respondent filed a combined affidavit in opposition on the 11th day of May 2012 deposed to by himself.

The salient points in the said affidavit being the averments by the Respondent that the last tenancy agreements signed by the Applicants and their previous Landlord expired in July 2011 and that thereafter, what has been there is a monthly tenancy determinable at the end of each month. That from the date he purchased Makeni Villa in August 2011, he has never signed any tenancy agreement with the Applicants. That his proposal to enter into tenancy agreements were rejected by most of the Applicants.

According to the Respondent he has since given the Applicants three months notice to vacate the premises as he has decided to change use of the property and intends to re-plan and restructure the property and will to that effect undertake necessary construction works on the site.

To that effect, the Respondent urged the Court to grant him vacant possession of the property after the expiry of three months notice and that in the interim, the Applicants should continue to pay the old rentals.

According to the Respondent, having given the Applicants Notice of Change of use of the property and allowing them to continue paying the old rentals for the duration of the notice period, he believes there is no dispute or merit in this action. The Applicants thereafter filed an affidavit in Reply on the 24th day of May, 2012 which I will refer to in due course.

At the hearing of the motion on the 1st day of August 2012 both the Applicants and the Respondents Advocates relied on the aforestated affidavit evidence and did not call any witnesses. They also equally filed written submissions.

Counsel for the Applicants filed written submissions on the 15th day of August 2012. He submitted that he was relying on the Amended Originating Notice of Motion filed on the 16th day of May 2012 and the combined affidavit in support filed on the 11th day of April 2012 and the affidavit in Reply filed on the 24th day of May 2012.

As most of the reliefs being sought by the Applicants are inter related, Counsel divided and presented the claims as follows:

A. ***Relief number (1) and (2) Determination of the legality of Notice to terminate Tenancy of the Applicants by the Respondent while these proceedings are still active before this Court and determination of the proper period of such notice of termination.***

Counsel submitted that the Respondent gave the Applicants Notice to terminate the tenancy by letter dated 20th day of April 2012 which letter appears as **exhibit "JS2"** in the Applicants Affidavit in Reply.

It is Counsels submission that the Notice to terminate having been made as a response to the Motion by the Applicants, it should be treated as "**void abinitio**" as it would prejudice the position of the Applicants as their case is still before the Honourable Court.

Furthermore, that the act of issuing the Notice to terminate at that stage of the Court proceedings should be deemed as lacking respect for the Court process and borders on Contempt of Court. That it would be absurd and against the interest of Justice to sustain such a Notice.

Counsel referred the Court to the provisions of **Section 13 (1)(i) of the Rent Act**[6] which provides for not less than six months notice in writing with the sanction of the Court.

Counsel for the Applicants relied on the case of **LILY DRAKE V MBL MAHTANI AND PROFESSIONAL SERVICES LIMITED**[1] where the Supreme Court stated that:

> ***"The true purpose of the Rent Act is to protect and even when the Landlord provides proof that his case comes within the provisions of Section 13(i)(e) it is still incumbent upon him that the premises are reasonably so required."***

According to Counsel, the Respondent has not provided sufficient proof that the premises are reasonably so required, but has merely opted to terminate the Tenancy of the Applicants due to the dispute between the parties and should therefore not be allowed to terminate the tenancy in this fashion.

B. ***Clauses 3 and 4 of the Amended Originating Notice: Determination of Standard Rent of the Makeni Villa and fixing of the date from which it is payable.***

Counsel submitted that Standard Rent is defined under **Section 2 of the Rent Act[6].** Under that Section, the Court may determine the Standard Rent to be such amount as it considers fair and reasonable.

According to Counsel, the evidence before the Court may not be sufficient to ascertain the cost of construction and the market value of the land in question and that therefore the Court is empowered to determine the Standard Rent to be such amount as is fair and reasonable taking into consideration the state of the premises as indicated in exhibit "**JS 5"** in the combined affidavit in support of the Originating Notice of Motion. That the Respondent having admitted that the state of the premises is deplorable and dilapidated there is therefore no reasonable ground upon which the Standard Rent should exceed the amounts that the Applicants are currently paying.

C. ***Under Clause 5,6 and 8 of the Amended Notice of Motion: Order for repairs, non increment of rent until all the provisions of the Rent Act are complied with.***

Counsel under this limb submitted that the Respondent decided to increase the rentals as a means of raising resources to rehabilitate the premises. That this is in total breach of **Section 11 (1) of the Rent Act[6]** which ties any lawful increment in rent to the corresponding increment of rates that the Landlord ought to pay. According to Counsel, there is no such evidence of an increment in the rates. That neither has the Respondent carried out any improvements or structural alterations of the premises as envisaged under **Section 11(1)(b) of the Rent Act[6]**.

Counsel went on to submit that the Landlord is under an obligation to maintain and keep the premises in a state of good repair and in a condition suitable for human habitation .

Counsel urged the Court to Order the Respondent to repair the premises to a good state of repair and condition suitable for human habitation before effecting any form of increment.

D. ***Under Clause 9,10 and 11 of the Amended Originating Notice of Motion:***

Counsel prayed that Applicant number 10 who was unlawfully evicted be compensated and that the **status quo** in terms of rentals continue and that the Applicants be awarded costs.

Counsel for the Respondent filed his written submissions on the 29th day of August, 2012. Counsel starts his submissions by raising an issue on a point of law.

According to Counsel, some of the Applicants are currently occupying the premises as an incidence of their employment. One such tenant being Jones Siasamba in whose name the action was commenced who is an employee of Drug Enforcement Commission, who entered into a tenancy agreement with the previous Landlord.

According to Counsel **Section 3 of the Rent Act**[6] provides for the application of the Act and under Section 3(2)(a) provides as follows:

“This Act shall not apply to-

(a) A dwelling house let to or occupied by an employee by virtue and as an incident of his employment.”

Counsel submitted that Jones Siasamba's case on this point should be treated on its own merits as the correct Applicant should have been the Drug Enforcement Commission and not Jones Siasamba.

As for the other Applicants they have not exhibited their tenancy agreements and it is therefore not known the circumstances under which they occupy the premises.

Counsel in raising the aforestated point of law at this stage relied on the case of **ADMARK LIMITED V ZAMBIA REVENUE AUTHORITY[2]**

On the issue of determination of the legality of the Notice to terminate the tenancy of the Applicants while these proceedings are still active before this Court and the determination of the proper period of such notice, Counsel submitted that the proposition by the Applicants that the Notice to terminate should be treated as **void abinitio** should not be accepted as it does not look at this case from a holistic view point as there is no law which precludes a Landlord from coming up with plans to improve or change the use of his property under the Rent Act, during subsistence of Court proceedings. Further that neither does the giving of such notice prejudice the Applicants in any way.

Further, according to Counsel, under Section **13(1)(i) of the Rent Act[6]**, the Landlord is supposed to give the Tenant not less than six months notice in the event of him requiring the premises for purposes of reconstructing or rebuilding the same. That this notice can be given at any time, even where there are **"Court proceedings."**

Counsel in view of the Notice to terminate and the fact that the Respondent has other plans for the property he urged the Court in exercising its powers under the **Rent Act[6]** to take the Respondents arguments into account as it will be unfair to ask him to start repairing premises which he plans to take down. That this would also preclude the multiplicity of actions

which the Courts frown upon as was stated in the case of **DEVELOPMENT BANK OF ZAMBIA AND KPMG PEAT MARWICK V SUNSET LIMITED AND SUN PHARMACEUTICALS LIMITED[3]**

Counsel also brought to the attention of the Court the provisions of **Section 13 of the High Court Act[8]** and urged the Court to administer law and equity concurrently.

In response to the issue that the Respondent has failed to show that the premises are reasonably required, Counsel submitted that the case of **LILY DRAKE V MBL MAHTANI AND PROFESSIONAL SERVICES LIMITED[1]** which was relied on is not applicable as it dealt with an application for possession under **Section 13 (1)(e) of the Rent Act[6]** under which Section the issue of the dwelling house being reasonably required is a prerequisite. That the appropriate Section in this case is Section 1(1)(i) and that it is not a prerequisite under this Section to show that the premises are reasonably required.

In responding to the issue of determination of Standard Rent of the Makeni Villa and the date from which it is payable, Counsel submitted that the Applicants in justifying payment of the same rentals, their evidence is that the evidence before this Court may not be sufficient to ascertain the cost of construction and the market value of the land in question. However the current rentals which were inherited from the previous owners of the property are uneconomical.

It is Counsel's contention that under **Section 29 of the Rent Act[6]**, the Court is allowed whether by itself or through an appointed agent to enter any dwelling house for purposes of carrying out its duties such as the determination of Standard Rent. Counsel also referred to **Section 2 (2) of the Rent Act[6]** which Counsel for the Appellants earlier referred to. Counsel further contends that in determining the Standard Rent based on what it considers fair and reasonable, the Court is mandated to take into account

the Standard Rent of comparable premises in the neighbourhood. That no evidence has been adduced by the Applicants to show that, as it is their duty to provide such evidence.

In that respect Counsel drew the attention of the Court to Rule 6 of the Rent Rules and submitted that it is not possible for the Court to uphold the current rentals as fair and reasonable based on the meager evidence adduced by the Applicants.

On the Applicants claim for an order for repairs and non increment of rent, until all the provisions of the **Rent Act[6]** are complied with Counsel submitted that whilst it is appreciated that **Section 11 (1) (a) of the Rent Act[6]** deals with permitted increases in rent, the same should not be interpreted literally as to do so would lead to absurdity and an unjust situation for the Respondent.

Counsel invited the Court to take Judicial Notice of the following:

(i) The Rent Act[6] is a 1972 Act with a few amendments having been made in 1994.

(ii) That the provisions of Section 11 have never been amended since 1972.

(iii) Inflation in Zambia has been steadily increasing and the cost of living now is much higher than it was in 1972.

(iv) The cost of building materials is now much higher than it was in 1972.

(v) The minimum wage has been revised upwards for different categories of workers.

Counsel for the Respondent submitted that it is not un reasonable for the Respondent to want to increase rentals to raise funds to improve the Tenants living conditions. Further that Section 11 (1)(a) of the Rent Act

does not expressly state that rentals may only be increased in the given instances. That to hold as such would lead to an unjust situation for the Landlord.

Counsel on the interpretation of Section 11 of the Rent Act relied on the holding in the case of **MATILDA MUTALE V EMMANUEL MUNAILE[4]**

In response to the claims under Clause 9,10 and 11 of the Amended Originating Notice of Motion for compensation of Applicant number 10 pursuant to **Section 28 of the Rent Act[6]**, Counsel submitted that the provision only comes into play where the Court proceedings have been dismissed for being frivolous or vexatious. That in any case the Applicant has not indicated what damage he has suffered. Counsel relied on the case of **JZ CAR HIRE LIMITED V MALVIN CHALA AND SCIROCCO ENTERPRISES LIMITED[5]** where the Supreme Court stated that:

"It is for the party claiming damages to prove the damages.

I have carefully analysed the affidavit evidence before this Court and the insightful submissions by both Counsel together with the authorities cited.

In order to avoid being repetitive over most of the issues, it is of utmost importance that I do revisit the Ruling of the 14th day of June 2012 and re assert some of the findings of fact and law I made in the aforestated Ruling which culminated in the granting of the Interim Injunction.

In the aforestated Ruling I made a finding that the Respondent carried over the tenancy agreements the Applicants had with the previous Landlord and therefore the Applicants fell under **Section 23(1) of the Rent Act[6]** as Statutory Tenants.

I further made a finding of fact that it was the intention of the Respondent as could be deduced from the letter dated 14th day of

November 2011 and exhibited as **"JS 5"** in the Applicants combined Affidavit in Support of the Originating Notice of Motion to carry out major structural improvements with effect from December 2011 and thereafter enter into new tenancy agreements with the Applicants with revised rentals.

Because of the importance and relevance of this letter, I now reproduce the same verbatim

TO ALL TENANTS
FARM 397 a/c/1
Makeni Complex,
Off Kafue Road
LUSAKA

2011 November, 14

Dear Tenants,

RENTALS, PROPERTY MAINTENANCE, TENANCY AGREEMENTS.

Kindly note as follows:-

Rental Payments

It has come to the notice of the Landlord that some of the Tenants have willfully neglected to adhere to the provisions of the Tenancy Agreements. Tenants are further advised to remedy this anomaly.

It is the intention of the new Landlord to ensure that all Tenants are current on rentals, where there is default on the regularization of the rental arrears or any future rentals, the Landlord shall have no option but to engage bailiffs, armed with Warrants of distress to recover the same at the defaulting tenants cost without any further dialogue.

This breach has to be regularized immediately with effect from 1st August, 2011.

Contact Persons

Rental arrears and future rentals should be paid to:

1. Mrs. Lilian Siwale (0966-845466)

   Or Mrs. Beatrice Lwando (0977-800447) both of Meanwood Head Office 4th floor, Mukuba Pension House, Dedani Kimathi Road, opposite Intercity Bus Station, Lusaka.

2. Only cash or Bank Certified Cheques shall be accepted.

3. The Landlord shall not be held responsible for any payments made to any other person other than its named agents herein.

4. It is the responsibility of the tenant to ensure that a receipt is issued for all payments.

5. Further it shall be the Tenants responsibility to pay withholding Tax to ZRA and the Landlord shall demand evidence of such payments to ZRA at certain interests.

IMPROVEMENTS TO RENTED PREMISES

It is inevitable that a substantial investment has to be made to the property in view of the deplorable condition in which the property is at the moment.

In this regard, it is envisaged that refurbishment of the premises shall commence during the month of December, 2011. The improvements to be undertaken shall involve:

(a) Rehabilitation of the Water and Sewer System
(b) Electricals
(c) Painting

(d) Replacement of some fixtures and fittings

(e) Works on roofing

(f) Construction of additional bedrooms to some units and

(g) General external works on drive ways, parking gardens etc.

The Landlord wishes to upgrade the dilapidated property to a prime property particularly that it is in a prime location.

NEW TENANCY AGREEMENTS

The Landlord wishes to formally inform the Tenants that all existing leases shall terminate on 14th February, 2012 representing a notice period of ninety (90) days from the date of this notice. The new tenancy agreements will reflect a revised rental adjustment of ninety per cent (90%) above the current rentals. Tenants have up to 20th December 2011 to indicate in writing whether or not they wish to enter new leases effective 12th February, 2012.

Be advised.

Yours faithfully

Signed

MAX M CHILINDA
SENIOR LEGAL OFFICER
For and on behalf of the Landlord.

In my Ruling, aforestated, I also noted that the Applicants apprehension that the Respondent was about to evict them can be justified and in fact can be inferred from the tone of the letter of 20th April, 2012 which appears as exhibit “RKZ 3” in the Respondents combined Affidavit in Opposition to the Originating Notice of Motion in which the Respondent unilaterally wanted to have possession of the Makeni Villas without leave of

the Court and in fact in total disregard of these Court proceedings which action was in fact Contemptuous.

I reiterated in the aforestated Ruling that the Applicants were Statutory Tenants, who were seeking the Courts determination of a Standard Rent after structural improvements and/or repairs are carried out on the Makeni Villas.

In granting the Injunction I ordered that all the Applicants in arrears should by the 30th day of June 2012 pay rentals in arrears and in advance up to the end of July 2012 in line with the Original Tenancy Agreement. I then made it clear that in the event of any of the Applicants being in default as ordered they shall fall away from the Interim Injunction granted and the Respondent shall be at liberty to apply for leave for distress and possession to this Court upon production of the Rent Book as provided under **Section 19(i) of the Rent Act[6]**, showing such default.

In the same Ruling, I also made an observation that the **Rent Act[6]** is a regulation for the good and protection of the Tenants.

It is as can be seen in the preamble, an Act which makes provisions **inter alia** for restricting the increase of rents, determining the Standard rents, restricting the rights to possession of dwelling houses and for other purposes incidental to and connected with the relationship of Landlord and Tenant of a dwelling house.

Reverting to the Applicants claims, before I deal with the same, it is necessary to first dispose of the issue which has been raised by the Respondent on a point of law as regards some of the Applicants such as Jones Siasamba occupying the premises as an incident of their employment. Counsel for the Respondent referred to **Section 3 (2)(a) of the Rent Act[6]**, the application clause, which states as follows:

“This Act shall not apply to-

(a) a dwelling house let to or occupied by an employee by virtue and as an incident of his employment."

As earlier alluded to, I had earlier declared the Applicants vide my Ruling of the 14th day of June, 2012 as Statutory Tenants and on that basis, I decline to revisit that declaration, suffice to add that Counsel for the Respondent seems to have mis comprehended the meaning of **Section 3 (2)(a) of the Rent Act[6]**. The simple meaning to be attended to that Section is that the Landlord ought to be the employer. In the instant case, none of the Applicants is an employee of the Respondent and therefore none of them can be said to be occupying the premises as an incident of their employment.

The issue therefore of preclusion of some of the Applicants from the provisions of the Act does not arise.

Let me now turn to the Applicants claims. The first one has to do with the determination of the legality of the Notice to terminate the tenancy while Court proceedings were active before this Court and the determination of the proper period of such notice to terminate.

I will start with the second segment as regards the appropriate Notice. A careful perusal of the **Rent Act[6]**, reveals three types of Notices. Under **Section 13 (1)(e), 13 (1)(i), 13(1)(2),** the requisite notice is not less than twelve months and this is restricted to when the Landlord reasonably requires the residence for occupation for himself or his wife or minor children or for any person bonafide residing or intending to reside with him, or for some person in his whole time employment or for the occupation of the person who is entitled to the enjoyment of such dwelling house under a will or settlement. It is important to note that the Landlord in this respect needs to apply to Court for possession. This also applies to **Section 13(1) (f)** where the premises are reasonably required for the purpose of the

execution of the duties imposed on the Landlord by any written law or for any purpose which in the opinion of the Court is of public interest or under **Section 13(1)(g) where the Tenant** has without consent in writing of the Landlord assigned, sublet or parted with possession of the premises or any part thereof.

The second category falls under **Section 13(1)(h)** is restricted to where the Landlord is the owner of a dwelling house which he has previously occupied as a residence and reasonably requires the same for occupation as a residence for himself or for his wife or minor children. In which case, he must comply with the terms relating to the giving of notice contained in any lease into which he has entered with the tenant in respect of such house. In the absence of any such lease, the Landlord shall give the Tenant three months notice to quit.

The third category is six months under **Section 13(1)(i)** which is restricted to where the Landlord requires possession of the premises to enable the reconstruction or rebuilding to be carried out.

Again an Order for possession under this provision has to be made to the Court which shall include in the Order a condition that the reconstruction or rebuilding shall be completed within such specified time as the Court may consider reasonable.

This is so as to safeguard the rights of the tenant as to exercise their right of first option to take possession of the house in issue after the reconstruction or rebuilding.

Although I have gone to great lengths in elaborating the categories in terms of Notices under the **Rent Act**[6], I note from the Respondents letter of 20th April 2012 aforestated under which he purported to give Notice to

terminate the tenancy agreement that the reason advanced for the notice was that he was effecting change of use of the premises.

This is what the letter states in paragraph 4:

"However as a matter of courtesy, which courtesy and consideration your clients have themselves failed to extend to me, I have resolved to give each one of your clients three rather than one months notice to vacate the various premises they occupy. The notice period is to run commencing Monday 23rd April until Monday 23rd July 2012, beyond which date the property shall not be available as I have decided upon and will be effecting a change of use of the same."

This brings to the surface many wrongs in the Respondents approach to the matter and shows a complete and total disregard to the provisions of the **Rent Act**[6]. Despite being the Landlord, he can only whilst the tenancy agreements are in subsistence only have possession of the premises under a Court Order and not unilaterally.

Secondly, the **Rent Act**[6], unlike the **Landlord and Tenant (Business Premises) Act**[7] does not provide for change of use of the premises. Section 13 of the Rent Act provides conclusively circumstances under which a Landlord can be granted possession and change of use of the premises is not such a circumstance.

Further, although I have endeavored to deal with the issue of the requisite notice at this stage, the issue of the requisite notice is purely academic suffice to condemn the Respondent for his ungracious approach to the matter.

On the legality of the notice to terminate, as earlier alluded to, I did indicate in my Ruling of 14th of June, 2012 that the purported Notice to

terminate the tenancy agreement which has the effect of the Respondent unilaterally wanting to get possession of the Makeni Villas without leave of the Court and in contumelious disregard of the Court proceedings is in fact contemptuous. That coupled with the fact that there is no provision for having possession of the premises on the ground of change of use under the **Rent Act[6]**, the purported Notice to terminate is therefore **void abinitio.**

As regards the claim for determination of the Standard Rent and fixing of the date when it is payable. This I will deal concurrently with the fourth claim for an Order for repairs, non increment of rentals until all provisions of the **Rent Act[6]** are complied with.

It is clear from the Respondents letter of 14th of November 2011 which I have reproduced verbatim that the Respondent had the following intentions:

1. **That the Tenants would continue under the tenancy agreements they had with the previous owner and would continue paying the subsisting rentals.**
2. **That in view of the deplorable state the premises were in, the Respondent would make substantial investment in the property and in that regard refurbishment of the premises was to commence during the months of December, 2011.**
3. **That after 90 days, the Landlord and the Tenants would then enter into new tenancy agreements with a revised rental of Ninety (90) per centum above the current rentals.**

It can therefore and logically so, be inferred from the same letter that at the time of writing the letter the Respondent had the necessary finances to carry out the intended improvements to the premises. I therefore do not agree with both Counsel that the Landlord’s intention was to raise the monies from the increased rentals as the works were to commence in

December, 2011 and the intended increase was only to be effected in February, 2012.

It can also further be inferred that the improvements where to be carried out and completed within ninety (90) days and therefore the increments would only be effected after the improvements and the ninety (90) per centum would therefore be a reflection of the said improvements.

The intentions of the Respondent to make improvements to the premises were well founded and in conformity with **Section 24 of the Rent Act**[6], as they realized they were under an obligation to do so under the Act.

As regards the determination of the Standard Rent, the Rent Act defines Standard Rent in relation to unfurnished premises under **Section 2 (b)(a)(ii) of the Rent Act**[6] as:

> ***"……..rent to be determined by the Court at a monthly rate of one and one quarter per centum of the cost of construction plus market value of the land, the Landlord paying all outgoings."***

I further note that **Section 8(1) of the Rent Act**[6] obligates the Landlord of any premises to which the Act applies to apply to the Court for determination of the Standard Rent and not to unilaterally fix the rent.

In the case before this Court, the Landlord did not do so, but chose to unilaterally effect a ninety (90) per centum increment which action has no backing of the law. I also note that both Counsel made reference to **Section 11 (1)(a)(i) and Section 11(1)(b)** which Sections permit the Landlord to increase Standard rent. These two Sections have nothing to do with the determination of Standard Rent, but deals with alteration of Standard Rent under specific prescribed instances. **Section 11 (1)(a)(i) of the Rent Act**[6] permits the Landlord to increase Standard Rent by Notice in writing where

the rates payable by the Landlord have increased since the prescribed date by the amount of such increase.

Section 11 (1)(b) of the Rent Act[6] permits the Landlord to increase rent by an amount calculated at a rate per annum not exceeding fifteen per centum of the expenditure so incurred on the improvement or structural alteration of premises (excluding expenditure on redecoration or repair, whether structural or not) or in connection with the installation or improvement of a drainage or sewerage system or the construction or making good of a street or road **executed by or at the instance of a local authority.**

It is therefore evidently clear that although both Counsel submitted on the provisions of **Section 11 of the Rent Act[6]** extensively, the same is not relevant to the issues for determination by this Court.

Both Counsel for the Applicants and the Respondent concede that there is insufficient evidence before this Court to enable it determine the Standard Rent, which observation is accurate. Although the Respondent seems to suggest that the necessary evidence, should have been provided by the Applicants, the Respondents also need to bear the blunt for not doing so, for in the first instance it was their obligation under **Section 8 (1) of the Rent Act[6]** to have made the application to the Court for determination of the Standard Rent.

However the court will not shy away or abandon its duty to determine the Standard Rent on the basis of insufficient supporting evidence to assist the Court given the numerous provisions and wide powers it enjoys in the exercise of its duties under **Section 4 of the Rent Act[6]**. And in doing so, I of course have to take into consideration the fact that a lot has transpired since the enactment of the **Rent Act[6]** in 1972, and in terms of the economic transformation, inflation and the cost of living since then.

I however, hasten to state that the mere fact that an Act was enacted way back in 1972 does not make it bad law. The Rent Act is still good law until it is repealed by Parliament. Neither does that give rise to an absurdity and unjust situation. In my view the wording of the **Rent Act**[6] is precise and unambiguous. It is not in dispute that inflation, demand and supply and the current market values of the premises in their location play a major role in the determination of rentals. Equally deterioration of the premises as in its state of disrepair also plays a major role as it reduces the value of the premises rented out and also needs to be taken into consideration.

Furthermore, as the obligation for repairs is statutory under the **Rent Act**[6], it is also a ground for restricting the increase of rent under the Act.

Having said this far **I hereby make the following Orders:**

1. **The Applicants shall continue occupation of the premises known as Makeni Villas and shall continue paying the current rentals as per the original tenancy agreement. However, as per my Ruling of the 14th day of June, 2012 should any of the Applicants be in default in terms of rental arrears they shall fall away from the Courts protection and the Respondent shall be at liberty to apply for leave for distress and possession to this Court under this Cause.**
2. **That the Respondent pursuant to Section 4(g) of the Rent Act, shall within six (6) months with effect from the 1st day of October 2012 carry out repairs to the premises as outlined and envisaged in the Respondents letter of 14th day of November 2012 which shall include:**
   - **(a) Rehabilitation of the water and sewer system**
   - **(b) Electricals**
   - **(c) Painting**
   - **(d) Replacement of some fixtures and fittings**

(e) Works on roofing

(f) Construction of additional bedrooms to some units (if necessary) and

(g) General external works on drive way, parking and gardens.

3. **That the landlord, shall not within the aforestated period of six (6) months increase the rent.**
4. **That at the expiry of the six (6) months, the repairs having been attended to, the premises shall be evaluated by a Registered Valuation Surveyor to be agreed by both parties and to be paid for by the Respondent, which Surveyor shall for purposes of determining the Standard Rent apply the formula under Section 2(1)(b) of the Rent Act[6] under the meaning of Standard Rent.**
5. **That in the event of the parties failing to agree on the Registered Valuation Surveyor, the matter shall be referred to the Valuation Surveyors Registration Board for appointment of the Surveyor.**
6. **That the rent which shall be determined by the duly appointed Surveyor shall be the Standard Rent and shall be binding on both the Applicants and the Respondents and shall accordingly be filed into Court under this Cause as the Standard Rent.**
7. **That the Standard Rent shall come into effect thirty (30) days after the filing into Court of the Notification of the Standard Rent[6].**

Lastly there is a claim for compensation of Applicant number 10. Under the legal axiom of he who alleges must prove, I agree with the submission by Counsel for the Respondent that there is no evidence

before me on which I can base a determination of the claim and I therefore dismiss the same.

Due to the unprecedented nature of the claim, **I ORDER** that each party bears its own costs of these proceedings.

Leave to appeal is hereby granted.

Delivered at Lusaka on the 12th day of September, 2012.

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JUSTIN CHASHI
HIGH COURT JUDGE