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



2014/HP/1777

BETWEEN:

IN THE MATTER OF:

PLOT 21315/21316 CHAMBA VALLEY – LUSAKA

IN THE MATTER OF:

AN APPLICATION FOR AN ORDER FOR RECOVERY OF
POSSESSION OF PREMISES, ARREARS OF STANDARD RENT,
AND OUTSTANDING BILLS

AND

IN THE MATTER OF :

SECTION 4 (e) (i) AND (ii) OF THE RENT ACT CHAPTER 206 OF
THE LAWS OF ZAMBIA

BETWEEN:

OSWARD OMALA MUYANGA

APPLICANT

AND

SIMATA NALUNAWA

RESPONDENT

BEFORE HON. MRS. JUSTICE M. S. MULENGA ON THE 12TH DECEMBER 2014

FOR THE APPLICANT : IN PERSON

FOR THE RESPONDENT : IN PERSON

J U D G M E N T

This action was commenced by way of originating notice of motion pursuant to the Rent Act Chapter 206 claiming for:

- i) *An order for eviction directed at the Respondent from Plot No. 21315/21316 Chamba Valley, Lusaka.*
- ii) *An order that the Respondent pays all the outstanding rentals to the Applicant which stand unpaid from May 2013 to November 2014 amounting to the sum of ZMK 24,700.00.*
- iii) *Further or in the alternative, issuance of Warrant of Distress against the Respondent in respect of property and assets of the Respondent at the premises.*
- iv) *Mesme profit*
- v) *Any other relief the court may deem fit.*
- vi) *Costs.*

In the affidavit in support the Applicant deposed that he is the landlord of the property known as Plot no. 21315/21316 Chamba Valley, Lusaka this being a 3 bedroomed house. That around April, 2013 he offered the Respondent a verbal lease agreement for the occupation and use of the premises for rent at K1,300.00 per month. That the said lease agreement also included a provision that the Respondent would cover the costs for the electricity bills for the duration of the tenancy while the Applicant would be responsible for the wear and tear. That the Respondent rent payment has been highly irregular and has to date grossly defaulted in meeting rental obligations from May 2013 to November 2014 resulting in the Respondent accruing rent arrears amounting to K24,700.00. He exhibited "OOM/1" a letter of demand on which the Respondent acknowledged part of debt as at November 2013. That the Respondent who was initially remorseful has become of unreasonable conduct which is a nuisance, intolerable and annoying. That as agreed in the lease and due to the reason that the Respondent has defaulted in payment of rentals, the Applicant

asked him to vacate the demised premises but the Respondent had willfully without any lawful justification kept depriving him of the rental income intended to meet other pressing obligations. That it is clear that the Respondent no longer has means to continue meeting the recurrent monthly rentals hence this application to re-possess the property and for the Respondent to settle the outstanding arrears.

At the hearing the Applicant relied on his affidavit in support and further stated that in November 2013 he attempted to evict the Respondent but who refused stating that he needed a court order to that effect. That he made some applications to the Small Claims Court and Subordinate Court but which could not proceed because of lack of jurisdiction. That the Respondent in November 2013 committed to settling the outstanding rentals for June to December 2013 in installments as shown on exhibit "OOM1." The same document indicates the monthly rentals as K1,300.00. That the Respondent is now owing rentals for 19 months as at the end of November 2014. He denied ever having discussed or agreed for the Respondent's occupation to be transformed from that of a tenant to a caretaker. The Applicant further stated that the Respondent has vandalized the house, plumbing, doors and windows.

The Applicant called his sister, Felicia Muyanga, as his witness. Her evidence was basically that she has been unsuccessfully following up on payment of rentals from the Respondent on behalf of the Applicant since she is resident in Lusaka. She denied ever

hearing or knowing about the agreement to have the Respondent remain as a caretaker.

The Respondent did not file any affidavit in opposition. In his defence he did not deny owing rentals but stated that in June 2013, he further agreed with the Applicant to be paying K1,200.00 instead of K1,300.00 as rentals and that in June he explained that he had financial problems. Further that in November 2013 when the Applicant took the letter of demand he explained that water supply had been cut off for eight months and the Applicant then through his sister, Felicia Muyanga, told him that he should remain in the house as a caretaker and look after the building materials he bought. That in November 2013, the Applicant refused to let him leave without paying the arrears and therefore said he should continue occupying the house as a caretaker. That in November 2014 he offered to give the Applicant K800.00 but he refused demanding the whole amount.

The Respondent called his wife, Mwangala Simata, as a witness whose evidence was that after they entered into the house, there was one occasion when the Respondent paid K1,300.00 as rentals and thereafter had financial difficulties. That the Applicant attempted to evict them at one point but the respondent refused that it was not lawful. That the Respondent told her he offered to vacate the premises in October 2014 after Lusaka Water and Sewerage Company inspected the sewer burst at the premises but the Applicant refused saying they could not vacate until they settled

the outstanding rentals. That the Respondent explained that if they continued in occupation, the bill will continue increasing and the Applicant later advised that he should remain in the house as a caretaker.

This is the summary of the evidence and in civil matters the burden of proof is on the one who alleges to prove on the balance of probability. This action has been brought under section 4 (e) of the Rent Act which provides as follows:

- 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 person; and**
 - ii) an order for the recovery of arrears of standard rent, mesne profits and charge for services;**

Section 13 (a) of the Act provides for the court to grant possession of the premises to the landlord where it is proved that the tenant owes outstanding rentals arrears.

The facts not in dispute is that the Respondent is a tenant of the Applicant following a verbal tenancy agreement made in March or April 2013 regarding plot 21315/21316 Chamba Valley. That the Respondent only paid full rentals of K1,300.00 for the house for one month and from then on kept making promises or commitments to both the Applicant and his sister but without fulfilling them. It is also not disputed that the Applicant at one point in 2013 attempted to evict the Respondent but who refused and said he needed a court

order. The Applicant made attempts to get orders from the Small Claims Court and Subordinate Court before instituting this action. The Respondent signed the agreement of 30th November 2013 committing to pay in installments the outstanding rental arrears of K9,100.00 which were accumulating at the rate of K1,300.00 per month. This effectively contradicts and disproves the Respondent's assertion that the parties finally agreed on K1,200.00 as rentals in June 2013. I thus find that the agreed rentals were for K1,300.00 per month. The arrears are from June 2013 transacting into 18 months as at 30th November 2014 giving the amount owing as K23,400.00.

The Respondent acknowledges owing rentals from June 2013 but his defence is that from December 2013 he ceased to be a tenant and was transformed into a caretaker based on an agreement with the Applicant after the Respondent made representations that he was not able to pay anymore rentals and that the rental arrears of eight (8) months were too much for him to settle. However, this assertion was vehemently denied by the Applicant. The Applicant's sister also denied ever having heard of or informed the Respondent to that effect and that she was only following up the rental arrears. The Respondent has thus not proved to the required standard that he was transformed into a caretaker in December 2013 by the express authority of the Applicant or that he was informed to that effect by the Applicant's sister.

The Applicant having proved his case that he is owed K23,400.00 as rental arrears as at 30th November 2014, I hereby grant the sought orders as follows:

1. *An order for eviction of the Respondent from plot no. 21315/21316 Chamba Valley, Lusaka.*
2. *An order that the Respondent pays all the outstanding arrears of K23,400.00 due to the Respondent for the period June 2013 to November 2014.*
3. *A warrant of distress to issue against the Respondent in respect of the property and assets of the Respondent at the premises.*
4. *Mesne profits for the period 1st December 2014 to the date of eviction pro rata based on the monthly rental of K1,300.00 per month.*

The costs for this action are for the Applicant to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 12th day of December 2014



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M.S. MULENGA
HIGH COURT JUDGE