

IN THE HIGH COURT FOR ZAMBIA
2013/HP/0168
AT THE PRINCIPAL REGISTRY
AT LUSAKA

(Civil Jurisdiction)

IN THE MATTER OF : THE RENT ACT CAP 206 OF THE LAWS OF ZAMBIA

BETWEEN:

KASULE KABUYE SAMUEL
APPLICANT

AND

ESMIE CHRISSIE CHAPONDA (FEMALE)

1ST

RESPONDENT

LAMIE LIMITED
RESPONDENT

2nd

EDWARD MUKOSIKU

THIRD PARTY

Before the Hon. Mrs. Justice A. M. Sitali on the 17th day of September, 2014.

For the Applicant : Mr. E. B. Mwansa of Messrs EBM Chambers

For the 1st and 2nd Respondents : Mrs. C. Ngulube of Theotis Mataka and Sampa Legal Practitioners

For the Third Party : No Appearance

J U D G M E N T

Legislation referred to:

The Rent Act, Chapter 206 of the Laws of Zambia, section 4 and 13 (1) (a).

Other work referred to:

Halsbury's Laws of England, 4th edition, volume 13.

The applicant commenced this action against the 1st and 2nd respondents by originating notice of motion on 11th February, 2013, claiming for:

1. damages for distress of rent without leave of the court.
2. damages for wrongful and unlawful eviction from the flat No. 3, house No. 3, Kabwe Road, Lusaka.
3. damages for trespass to the said flat and to the applicant's household and personal property.
4. an order that the respondent returns the applicant's household and personal property which the respondent or her agents/employees wrongly and unlawfully seized from flat No. 3 Kabwe Road, Lusaka or in the alternative, pays the value of the said household and personal property in the sum of K177,600.00.
5. damages for embarrassing and dehumanizing the applicant in the eyes of the public for acts done by the respondent.
6. a refund of the sum of K2,400.00 being security deposit paid by the applicant to the respondent for the said house and a refund of the sum of K1,000.00 for burglar bars put up by the applicant on the windows of the said flat, together amounting to K3,400,00 and the return of the DSTV dish system and internet antenna system.
7. interest on all sums found due and costs.

In this judgment the money values stated are rebased.

The originating notice of motion is supported by an affidavit deposed to by Samuel Kabuye Kasule, the applicant. In that affidavit the applicant deposed that he was a tenant of the property known as Flat No. 3 Chaponda Flats, Emmasdale, Lusaka which is owned by the 2nd respondent, Lamie Limited, at a monthly rent of K2,400.00. The applicant further stated that the 2nd respondent company assigned the responsibility of managing Flat No. 3 Emmasdale Lusaka to the 1st respondent Esmie Chrissie Chaponda, who was for all purposes taken to be the landlord of the said property. The applicant further stated that the 1st and 2nd respondents were his landlords for ten years in respect of the said property. He went on to state that in November, 2011 he left Zambia for treatment in Uganda and whilst he was out of the country he delayed in paying rent for three months. He instructed the people he left to take care of the house to pay to the landlord the sum of United States \$1,000.00 while the balance was to be paid after one week. On 9th May, 2012, the 1st respondent accepted the payment of United States \$1,000.00 but proceeded to locked up the flat with all the applicant's personal and household goods inside the house.

The applicant further stated that when he returned to Zambia in November, 2012, he found the house locked up and could not access his household goods and personal property which he had left in the house because the 1st respondent refused to open the house or to give him the keys. As a result he reported the matter to the police who advised the 1st respondent to give him access to the house to remove his property but the 1st respondent refused to do so. The 1st respondent reported the matter to the Zambia Association of Landlords and Tenants Arbitration (ZALTA) who also advised her to release his property but she still refused to give him access to the house and to release the household property.

The applicant went on to state that on 10th November, 2012 when he went to plead with the 1st respondent to open the house, she referred him to Edward Mukosiku the third party in this action who was a bailiff from Livingstone and advised him (the applicant) to meet her and the bailiff on 12th November, 2012. However, on 12th November, 2012, the 1st respondent and the bailiff failed to meet him as agreed. He reported the matter to the Legal Aid Board but when the 1st respondent and the bailiff were summoned the 1st respondent said that she was sick and the bailiffs said they were busy and did show up.

The applicant went on to state that on 14th November, 2012, he was informed by a neighbour that the house was being cleaned for a new tenant to occupy and that the 1st respondent in the company of other people had collected all the household goods and personal property from his house on 13th November, 2012. On 21st November, 2012, he went to the flat in the company of one Daka Lungu of the Zambia Association of Landlords and Tenants Arbitration and found that the house was empty and that all his household goods and personal property had been removed to an unknown place except for the DSTV dish and Internet antenna which the new tenant was using. The applicant exhibited a list of household goods which he said the landlord locked up in the house and subsequently removed to an unknown place which is marked "KKS 1".

The applicant stated that he did not allow the 1st respondent as landlord to lock up the house or to remove his household goods from the house or to use his DSTV dish and Internet antenna. He contended that the 1st and 2nd respondents did not take him to any court of law over the outstanding rentals and that he lost property worth more than K177,000.00. He further contended that he was embarrassed and dehumanized by being denied access to his property and the flat due to the wrongful and unlawful actions of the 1st and 2nd respondents.

On 19th November, 2013, the 1st and 2nd respondents filed an affidavit in opposition to the originating notice of motion which was deposed to by the 1st respondent Esmie Mandiwa Chaponda. In that affidavit Esmie Mandiwa Chaponda deposed that she manages the property known as Flats 3, House No. 3 Emmasdale, Kabwe Road, Lusaka on behalf of the 2nd respondent and went on to state that the applicant was fully aware that it was a term of the tenancy agreement signed between the 2nd respondent and the applicant that the rentals for the premises in issue were K1,600.00 per month to be paid 3 months in advance along with one month security deposit. To that effect the 1st respondent produced a copy of the lease agreement marked "EMC1". The 1st respondent went on to state that after the initial tenancy agreement expired, the applicant's tenancy continued under an oral agreement on the same terms save for rentals which were increased from time to time and that at the time the applicant was evicted the rent was K2,400.00 per month payable 3 months in advance.

The 1st respondent went on to state that towards the end of 2011, the applicant continuously breached the terms of their agreement by making haphazard payments which situation he was cautioned about it on several occasions. She stated that after a while the applicant phoned her from Uganda and said he had gone to stand for president. The 1st respondent stated that sometime in February, 2012 on a date she could not remember a woman called Jane Nalungwe (whom she later learnt lived in the flat too) went and paid US \$1,000.00 towards the sum of K14,400.00 which was then due for the months commencing on 13th February to 13th August, 2012 leaving a balance of K9,100.00 which is still outstanding.

The 1st respondent contended that around July, 2012 Jane Nalungwe who lived at the flat and was assisting the Applicant to take care of it advised her (the 1st respondent) that she had not been paid for 9 months and was leaving

the flat and returning to her home in Nakonde. The 1st respondent further stated that she later discovered that the applicant was in fact subletting the flat to some women and that as care taker of the property, and in the interest of the 2nd respondent, she decided to secure the property in issue by locking it and so she advised Jane to lock up the inside while she locked the burglar bars as there was no one left in the flat.

The 1st respondent went on to state that at the end of November, 2012, the applicant returned and called to ask her to let him into the flat which she refused to do, as at that time, the rentals had accrued to an alarming K16,300.00 as there was an additional payment for the months of August, September, and October, 2012 and that the applicant had grossly breached the lease. The 1st respondent further stated that the list of items exhibited by the applicant was a gross exaggeration and could not be relied upon as the items which were removed from the flat in execution by the bailiffs are listed in their debit and advice note and the seizure inventory. The 1st respondent exhibited a copy of the said advice note and seizure inventory collectively marked "EMC2". The 1st respondent denied the applicant's assertion that the police advised her to let the applicant have access to the flat and stated that the police advised her to report the matter to the Zambia Association of Landlords and Tenants Arbitration.

The 1st respondent stated that the bailiffs she used were certified bailiffs as evidenced by the debit and advice note which she exhibited marked "ECM3" and that the said bailiffs were recommended to her by a Mr. Bwalya from the Magistrates Court after she attended a meeting with the applicant at ZALTA where he was told to pay the rentals in the presence of one Mr. Daka Lungu. The 1st respondent stated that the applicant was present at a meeting held on 18th November, 2012 where he was advised of the execution if he did not pay the outstanding rentals and that she was advised by the bailiffs that execution was done on 20th November and that the applicant was called but

decided not to show up. The applicant exhibited a copy of the warrant of distress on which she said the bailiffs acted marked "EM4".

The 1st respondent went on to state that a report of the goods executed upon dated the 13th March, 2012 was given and that the bailiffs advised her that the applicant's property was kept for very long time and so the proceeds of the sale were used to pay for storage. The 1st respondent contended that prior to the goods being sold, the bailiffs and she made several attempts to contact the applicant to come and pay his debt and collect his property but he neglected to do so knowing fully well that his property would be sold. A copy of the report relating to the said execution is exhibited marked "EM5". The 1st respondent contended that she never received any payment from the proceeds of the sell of the property sold by the bailiffs and that after she realized that the bailiffs had sold the goods and not paid the 2nd respondent and her, she reported the matter to Emmasdale police who went to the magistrate Court and interrogated Mr. Bwalya on the whereabouts of the bailiffs he had recommended to her. The 1st respondent denied that her new tenant uses the applicant's DSTV system and internet antenna and stated that she has kept them in her custody for fear of damage after she realised that the bailiffs had forgotten to take them down.

The 1st respondent conceded that the execution was irregular as there was no court order but stated that the applicant's claim is unreasonable due to the following reasons: (a) the applicant was at fault as he had breached the terms of the lease agreement and had accumulated an enormous debt in form of unpaid rentals to the detriment of the 1st and 3rd respondents; (b) that some of the goods were illegal and the respondent cannot be expected to pay for them as they are in police custody; (c) the applicant waited for the 2nd respondent to sale the goods then he decided to show up and take out an action; and (d) that she had been advised by their advocates and verily

believed that some of the applicant's claim were bad at law and should not be entertained.

The 1st respondent contended in conclusion that the applicant had not shown sufficient cause why the sum of K177,000.00 should be paid to him.

At the trial of the action, the applicant Samuel Kabuye Kasule essentially repeated what he stated in his affidavit. He testified that he was a tenant of flat No. 3, Emmasdale, Lusaka, which property was owned by Esmie Chrise Chaponda, the 1st respondent from 13th February, 2002 to 9th March, 2012, when he was evicted from the flat in his absence. He stated that the 1st respondent locked up his household goods and personal properties worth K177,000.00 which are listed in exhibit "KKS1" and that the property was later removed. The applicant stated that the respondent is a director in Lamie Limited the company which owns Flat No. 3, Emmasdale. On 16th November, 2012, the applicant was summoned to Emmasdale Police Station where the 1st respondent reported the matter and they went together to Emmasdale Police station. The 1st respondent was advised to release the applicant's household and personal property to him but she refused to do so. The applicant sought the assistance of Landlords and Tenants Association who advised her to release the property to the applicant but again she refused to do so saying she wanted the money for rent and yet he was not in rental arrears.

The applicant told the court that his friends whose names he could not remember remained in the flat to take care of it for him. The applicant referred to a receipt for the payment of rent dated 9th May, 2012 which is exhibited marked "KKS1" to his affidavit in reply. The applicant stated that he did not allow the 1st and 2nd respondents to lock up his flat and denied that he owes the respondents K16,000.00 in rent arrears. He further denied subletting the flat.

In cross examination the applicant stated that he left for Uganda in November, 2011 and returned in November, 2012. He denied informing the 1st respondent that he was standing for President in Uganda. He stated that whilst he was away in May 2012, he tried to call the 1st respondent to inquire why his flat was locked up but she did not answer the call. When he was referred to exhibit "KKS1" to the affidavit in reply, the applicant stated that although the receipt shows that the amount paid was a deposit towards the outstanding rentals, the amount shown was actually the full rental payable at that time. He admitted that he should have paid rent in advance for the period of May 2012 to August, 2012, and that he only paid One thousand United States Dollars (\$1,000.00). The applicant stated that Jane Silungwe whom he left to take care of the flat was locked out by the 1st respondent who refused to open the flat for him to remove his property.

In re-examination, he stated that he failed to open the door to the flat with his key because of a key blocker and when he asked the 1st respondent to unlock the door, she said her daughter had the key to the key blocker.

PW2 was Smart Daka Lungu, the Chairman of the Zambia Association for Landlords and Tenants Arbitration which is a nongovernmental organisation. He testified that he came to know the applicant in November, 2012, when the 1st respondent went with him to his office. He testified that the applicant and the 1st respondent had a dispute over non-payment of rent and that the 1st respondent demanded that the applicant should pay the money. He stated that the 1st respondent informed him that the rent arrears were for 3 months. The applicants disputed the allegation and said he was only owing the 1st respondent the sum of K1,400.00 which he said was a shortfall on rent for three months. PW2 said that the parties failed to agree and went their separate ways.

On 17th November, 2012, PW2 wrote a letter to the 1st respondent requesting her to release the applicant's property after he agreed to pay the sum of K1,400.00 in exchange for his properties. Later the applicant informed him that the flat was empty as the property was no longer in the flat. PW2 said he went to the flat and confirmed that the flat was empty and said he found workmen preparing the flat for the next tenant. According to this witness, the 1st respondent said that the bailiffs had taken the property away.

In cross examination, PW2 said he met the 1st respondent between May and June, 2012 when she reported to him that she had locked the flat in Emmasdale. He said he met the applicant in November, 2012 and that he was not present when the premises were locked up or when the bailiffs removed the property. He stated that the applicant admitted that there was a shortfall of K1,600.00 in rental arrears. He also said he did not know Edward Mukosiku and had never spoken to him.

That was the applicant's case.

The 1st respondent Esmie Chrise Chaponda was the only witness for the 1st and 2nd respondents. She testified that the applicant Mr. Kasule Samuel had defaulted in paying rentals so she complained to the police who referred her to the Zambia Landlords and Tenants Association in Garden Compound. In August, 2012 she saw Mr. Daka who is the Chairperson of the Association, who advised her to lock up the premises after she informed him that the applicant was in Uganda. She stated that at the time she locked up the premises, she was in the company of Mr. Daka and that Jane Silungwe who had been left in the flat by the applicant was present when the flat was locked. The 1st respondent stated that she kept the keys for the burglar bars while Jane Silungwe locked the door and kept the keys with her.

The 1st respondent said that the applicant went to her house in November, 2012, and asked her to unlock the flat but that by that time she had already engaged the bailiffs on the advice of Mr. Daka. She stated that the bailiff Edward Mukosiku told her that he needed a court order and that he later took a warrant of distress to her and asked her to sign it. The next morning he asked her to give him K1,600.00 to hire a truck and later in the afternoon he returned to ask for K1,800.00 to pay a deposit for storage of the property. The 1st respondent stated that after the property was removed, she called the applicant to inform him of the removal but he did not answer the phone. She stated that the bailiffs did not give her a list of the property they removed from the house and that they only gave a list to her lawyers much later. She stated that the rent for the flat was K2,400.00 per month and that the applicant owed her K14,400.00 for the period 13th February, 2012 to August, 2012.

She went on to state that Mr. Daka did not advise her to give back the property to the applicant but only told her to engage bailiffs because the applicant was difficult to deal with. She stated that she rented the flat out to another tenant within 2 weeks of removing the applicant's property in November, 2012.

In cross examination the 1st respondent stated that flat No. 3, Emmasdale is owned by her daughter Emma Chaponda and that the certificate of title for the property is in her name. She stated that Emma Chaponda is a Director in Lamie Limited. She stated that she manages the property on behalf of her daughter. The 1st respondent admitted that she did not get permission from the Court to lock up the house and that she did not pay PW2 any money except for the sum of K50.00 as consultation fee. She further stated that Jane was not present when the bailiffs removed the applicant's property from the flat. She stated that the bailiffs broke the locks and they collected the property and that she was not present at the time.

The 1st respondent further stated that Edward Mukosiku the bailiff came from Livingstone and that she did not know him prior to this incident and that she was not able to confirm what properties were removed from the flat because she was not present when the properties were removed from the flat. She further stated that the lease agreement signed by the applicant for the flat stipulated that the applicant would pay rent three months in advance and that she was not aware that asking for 3 months rent in advance was illegal. She further stated that the applicant did not sign a lease agreement after 2008. She went on to state that the applicant owed Lamie Limited K14,400.00 in rent arrears and that the \$1,000.00 which the applicant paid to her did not defray the full rental arrears.

That was the 1st and 2nd respondents' case.

Edward Mukosiku the third party did not appear at trial although he was served with the notices of hearing. He, therefore did not adduce any evidence in his defence.

The applicant and the 1st and 2nd respondents filed written submissions which are on record. I have considered the affidavit and oral evidence adduced by the respective parties. I have also considered the submissions and the authorities cited.

The applicant and the 1st and 2nd respondents filed written submissions which are on record. I have considered the affidavit and oral evidence adduced by the respective parties. I have also considered the submissions and the authorities cited.

On the evidence before me I find that the following facts are undisputed and have been proved: that the applicant was a tenant of House No. 3

Emmasdale Lusaka (which I will refer to from now on as the demised premises) initially under a written lease agreement which he signed with the 2nd respondent, Lamie Limited in 2008 for a period of one year. When that agreement expired on 12th August, 2009, the applicant continued to reside in the demised premises under an oral lease agreement on the same terms as agreed by the parties under the written lease agreement. In November, 2011, the applicant left for Uganda and whilst out of the country he defaulted in paying rent. As a result of the applicant's default, in May 2012, the 1st respondent locked up the flat with the applicant's household and personal property inside, in the absence of the applicant.

In November, 2012, the applicant returned to Zambia and requested the 1st respondent to grant him access to the flat but the 1st respondent refused to unlock the flat and demanded that the applicant should first pay all the outstanding rental arrears. The 1st respondent further refused to allow the applicant to have access to his household and other personal properties that were locked up in the flat. The 1st respondent subsequently signed a warrant of distress authorising the third party as certified bailiff to distrain for rent on the applicant's household and other personal property without leave of the court. The applicant's household and personal properties were seized and removed from the demised premises in execution of the warrant of distress. The applicant's demands that the 1st respondent should return his household and other personal property were not heeded by the 1st respondent, hence this action.

The applicant seeks damages for distress for rent without leave of the court, damages for wrongful and unlawful eviction, damages for trespass and an order for the return of the household property wrongfully and unlawfully seized from the demised premises or in the alternative, payment of the value of the household and personal property so seized. I will deal with these claims simultaneously as they are inter related.

The evidence on record in support of these claims is that the applicant who was a tenant of Flat No. 3 Chaponda Flats, Emmasdale Lusaka left for Uganda in November, 2011 and whilst he was away he delayed in paying rent for a period of three months. In May, 2012, the applicant requested Jane Nalungwe (the person taking care of the flat) to pay \$1000.00 to the 1st respondent on his behalf as part of the rent due for the three months with the balance to be paid within one week, which she did. The 1st respondent accepted the United States \$1000.00 part payment and issued a receipt to that effect but proceeded to lock up the flat with all the applicant's household goods inside on the ground that the applicant owed the 2nd respondent rent arrears for the months of February 2012 to August 2012. In November, 2012, the 1st respondent engaged Edward Mukosiku, a certified bailiff who levied distress on the applicant's household and personal goods after the 1st respondent signed a warrant of distress without leave of the court. The applicant contends that the locking up of the house and the subsequent distress for rent was illegal as it did not comply with section 14 of the Rent Act.

The 1st respondent admits that she locked up the applicant's flat and signed a warrant of distress authorising the third party Edward Mukosiku who is a certified bailiff to distrain upon the applicant's household goods for rent arrears without leave of the court.

The law regulating the landlord and tenant relationship between the applicant and the 1st and 2nd respondents is the Rent Act, Chapter 206 of the Laws of Zambia. The demised premises in this case are subject to the provisions of the Rent Act, Cap 206. In terms of section 14 of the Rent Act, Chapter 206 a landlord cannot levy distress for rent on any premises which are subject to the Rent Act without first obtaining the leave of the court. To that effect section 14 of the Rent Act, Chapter 206 provides that:

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

Further, the learned authors of Halsbury’s Laws of England, 4th edition, Volume 13 in paragraph 368 at page 183 state the circumstances in which a distress is illegal and the remedies thereof. To that effect the learned authors state the following:

“368. An illegal distress is one which is wrongful at the outset, that is to say either where there was no right to distrain or where a wrongful act was committed at the beginning of the levy invalidating all subsequent proceedings. In such a case the distrainor is a trespasser ab initio, and it is no defence that the goods have been applied in discharge of the rent. As he has in himself no right to seize the particular chattels, he can confer no title to them upon a person to whom, under colour of distress, they may purport to have been sold.”

The learned authors go on to state that instances of illegal distress include a distress levied or proceeded with contrary to the law. It is settled law that an action for illegal distress may be brought against the landlord if he distrained personally. Where distraint is by a bailiff, an action for illegal distress may be brought against the bailiff and against the landlord if he authorised the illegal act. The landlord is liable where he authorises a distress when he has no right to distrain: (See Halsbury’s Laws of England, 4th edition, volume 13 paragraph 384 pages 191 to 192).

In the present case, the 1st respondent has admitted that she did not obtain the leave of the court to issue a warrant of distress in respect of the rent she claimed was owed to the 2nd respondent by the applicant in respect of the demised premises. In the absence of a court order granting leave to distrain the applicant’s household goods for the rental arrears due and owing under

the oral lease agreement between the applicant and the 2nd respondent, I find that the distress for rent was illegal. The applicant is entitled to damages for the illegal distress carried out by the bailiff under the sanction of the 1st respondent against the applicant's household and personal goods on the demised premises.

Regarding the damages recoverable for illegal distress, the learned authors of Halsbury's Laws of England, 4th edition, volume 13 go on to state in paragraph 386 on page 193 that:

"386. In the case of an illegal distress the distrainor is a trespasser ab initio, and the full value of the goods which have been lost to the plaintiff, without any deduction for rent, is recoverable as damages."

The applicant seeks an order that the 1st and 2nd respondents return his household and personal property which the 1st respondent's agents or employees unlawfully removed from the demised premises or pay him the sum of K177,600.00 being the value of the seized household and personal property. The applicant produced a list of household and personal property which he claims were seized from the demised premises marked "KKS1".

The 1st respondent disputed that the household and personal goods seized by the bailiff from the demises premises was as stated by the applicant in his list marked "KKS1". She asserted that the bailiffs prepared a seizure inventory of the household and personal goods which were removed from the demised premises and produced a copy of the seizure inventory to that effect marked "EMC2". The 1st respondent stated in paragraph 14 of the affidavit in opposition to the originating notice of motion that the applicant's seized goods were sold and the proceeds of the sale were used to pay storage charges.

The applicant claims that the value of the household and personal property which were seized from the demised premises was K177,000.00. However, he has not adduced any evidence to support his claim that the household and personal goods were indeed valued at that amount. In the absence of evidence of the value of the goods seized from the demised premises, I cannot order the 1st and 2nd respondents to pay the applicant the sum of K177,000.00 as claimed. As the 1st respondent testified that the seized household and personal property was sold by the bailiff, I order the 1st respondent and 2nd respondent to pay the applicant the full value of the applicant's household and personal goods seized by the bailiff from the demised premises as damages for the illegal distress. The full value of the seized household and personal goods will be assessed by the Deputy Registrar.

The applicant also claims for damages for trespass to his household and personal goods seized under the illegal distress for rent by the 1st respondent without leave of the Court. According to paragraph 368 of Halsbury's Laws of England, 4th edition, volume 13 at page 183 which I have set out earlier in this judgment, where an illegal distress is carried out, the distrainor is a trespasser right from the beginning. The evidence on record in support of this claim in the present case is that the third party levied distress on the applicant's goods without leave of the Court. As the distress for rent in the present case was done in contravention of the provisions of section 14 of the Rent Act, Cap. 206, I find as a fact that the 1st respondent did trespass on the demised premises which were occupied by the applicant under a lease agreement when she locked up the premises and subsequently authorized the illegal seizure of the applicant's household and personal goods under the illegal distress. However, I will not award separate damages for trespass to the goods as this will be covered in the damages awarded for the full value of the goods seized.

The applicant further claims for damages for his unlawful eviction from the demised premises. The evidence on record shows that the applicant was locked out of the demises premises on 9th May 2012 by the 1st respondent for being in rental arrears of K14,400.00. The 1st respondent admitted that she locked up the demised premises and subsequently authorised the third party, a certified bailiff, to remove the applicant's household and personal property from the demised premises in November, 2012. She further admitted that she rented out the demised premises to another tenant two weeks after the applicant's household and personal goods were removed from the demised premises.

Section 13 (1) of the Rent Act clearly stipulates that no order for recovery of possession of any premises or for ejection of a tenant from the premises shall be made unless, *inter alia* there is some rent lawfully due and owing from the tenant. As the 1st respondent claimed that the applicant had defaulted in paying rentals she ought to have applied to the court for an order to recover possession of the house and should not have taken the law into her own hands by locking up the house and later evicting the applicant from the house in his absence.

As the 1st respondent contravened the provisions of section 13 (1) of the Rent Act, I find that the 1st respondent's action to evict the applicant without obtaining an order from the Court to recover possession of the premises from the applicant was unlawful. The applicant is entitled to damages for the unlawful eviction. The notice period under the oral lease agreement for the termination of the lease agreement was three months according to the lease agreement marked "EMC1" exhibited by the 1st respondent to the affidavit in opposition. I, therefore, award the applicant damages of K7,200.00 equivalent to three months' rent at K2,400.00 per month which was the rent payable at the time the applicant was unlawfully evicted.

The applicant also seeks damages for embarrassment and being dehumanised by the 1st respondent in the acts complained of. The evidence on record is that the applicant was not present both at the time the demised premises were locked up in May, 2012 and at the time the household and personal property were removed from the demised premises. The applicant has, thus, not adduced any evidence regarding his embarrassment and dehumanisation by the 1st respondent as he claims. This claim therefore fails and is dismissed.

The applicant further seeks a refund of K2,400.00 which he says is the security deposit he paid to the 1st respondent under the lease agreement of the demised premises. He also seeks a refund of K1,000.00 which he said he paid for burglar bars he erected on the respondent's windows on the demised premises which together totals K3,400.00. The undisputed evidence on record is that the applicant paid a security deposit of one month's rentals to the 1st respondent for the demised premises under the lease agreement. That being the case, I find that the applicant is entitled to a refund of the sum of K2,400.00 being security deposit paid by the applicant to the 1st respondent for the demised premises. I order that the said amount be refunded to him by the 1st respondent and the 2nd respondent.

The applicant also seeks a refund of K1,000.00 for burglar bars inserted on the windows of the demised premises. However, the applicant did not adduce any evidence to support his claim for K1,000.00. In the absence of supporting evidence to prove the claim, I am unable to order that he be refunded the sum of K1,000.00. The claim is dismissed.

In conclusion, for the avoidance of doubt, I award the applicant:

- a) damages for illegal distress being the full value of the household and personal goods which were seized and have been lost by the

applicant due to the illegal seizure, which damages are to be assessed by the Deputy Registrar with interest to be determined by the Deputy Registrar.

- b) damages for unlawful eviction in the sum of K7,200.00;
- c) a refund of K2,400.00 being the security deposit paid for the demised premises;
- d) I also order the 1st respondent and 2nd respondents to return the DSTV dish system and internet antenna system to the applicant.

The total sum of K9,600.00 awarded to the applicant under paragraphs (b) and (c) will attract simple interest at 8% per annum from the date of the originating notice of motion to the date of this judgment and thereafter, at the Bank of Zambia lending rate till full payment.

Before concluding my judgment, I wish to state that while the 1st respondent did not comply with the provisions of the Rent Act, Cap. 206 when she recovered possession of the demised premises from the applicant and when she proceeded to levy distress for rent arrears on the applicant's household and personal property without leave of the Court, there is undisputed evidence that the third party Edward Mukosiku, the bailiff is the person who took the warrant of distress to her to sign. As a certified bailiff the third party is expected to know the provisions of the law set out in the Rent Act, Cap. 206 and which ought to be complied with for distress for rent to be lawful. It is therefore my view that he took advantage of the 1st respondent's ignorance of the law to get her to sign the warrant of distress without leave of the Court permitting her to levy distress on the applicant's household goods. That being the case, I order that the third party Edward Mukosiku will indemnify the 1st and 2nd respondents 50% of the full value of goods lost by the applicant due to the illegal distress as assessed by the Deputy Registrar.

I award costs to the applicant to be agreed and taxed in default of agreement.

Leave to appeal is hereby granted.

Dated the 17th day of September, 2014.

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A. M. SITALI
JUDGE