

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**

2012/HPC/0492

(Civil Jurisdiction)

**IN THE MATTER OF: SECTION 13 (1)(a) OF THE RENT ACT, CAP
206**

IN THE MATTER OF: SECTION 14 OF THE RENT ACT, CAP 206

BETWEEN:

KWACHA PENSION TRUST FUND

APPLICANT

AND

ALI NESR
RESPONDENT

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN
CHAMBERS ON THE 22ND DAY OF APRIL, 2014**

For the Applicant: K. Kaunda, Messrs Ellis & Co

For the Respondent: N/A

JUDGMENT

Legislation referred to:

1. The Rent Act, Chapter 206 of The Laws of Zambia

The **Applicant Kwacha Pension Trust Fund**, commenced proceedings herein by way of an **Originating Notice of Motion**

on the 20th day of August 2012 against **Ali Nesr**, the **Defendant** seeking the following reliefs:

- 1. That there be vacant possession of Stand No. 6764 Akanongo Road Olympia in Lusaka**
- 2. That leave be granted to distrain for the recovery of rent in the sum of K42,000,000.00**
- 3. Interest at the Commercial Bank lending rate from the date of Originating Notice of Motion to date of payment**
- 4. Costs incidental to these proceedings.**

The Originating Notice of Motion is supported by an Affidavit deposed to by David Ng'andu the Applicant's Chief Executive Officer. According to the said affidavit, the Applicant and the Respondent entered into a Lease Agreement relating to **Stand No. 6764 Akanongo Road, Olympia in Lusaka**. The Lease Agreement is exhibited as "**DN1**".

It is deposed that the agreed rental was at K6,000 payable quarterly on the 1st day of each quarter. That the Respondent has defaulted on remitting the rentals and there is an outstanding amount of K42,000 and all the efforts to have the rentals settled have failed.

At the hearing of the matter on the 16th day of April 2014, the Respondent was not present. From the affidavit of service filed on the 1st day of 22nd October 2012, I note that the Respondent was duly served with the Originating process in this Cause. I

further note that as per the affidavit of service filed on the 16th day of April 2014, they were notified of the date of hearing of the Application.

As such I am satisfied that they were aware of these proceedings. That despite, they have not filed any documentation to challenge the application, neither did they notify the Court as to the reason behind their absence. It is on that premise that I thought it fit to proceed and determine the matter.

At the hearing Counsel for the Applicant relied on the affidavit in support aforesaid and the Supplementary Affidavit in Support filed on the 1st day of March 2013 and complimented the same with brief oral submissions.

It was Counsel's submission that the application is made pursuant to **Section 13 (1)(a) and 14 of The Rent Act.**

Counsel further submitted that the current rental arrears now stands at K27,000 and prayed for the reliefs sought.

After carefully considering the affidavit evidence and the submissions by Counsel, I am satisfied that the Respondent is in breach of the lease agreement as some rent lawfully due to the Applicant has not been paid.

In the absence of any evidence to the Contrary, I am satisfied that this is a proper case for granting of the reliefs as sought. In that respect, the following Orders are hereby made:

1. *The Applicant is forthwith entitled and is at liberty to have vacant possession of **Stand No. 6764 Akanongo Road, Olympia, Lusaka***
2. *That leave is granted to the Applicant to distrain for the recovery of rent in the sum of K27,000 together with interest at the average deposit rate per annum as determined by Bank of Zambia from time to time from the 20th day of August 2012 being the date of commencement of this action to the date of this Judgment and thereafter at the current Commercial Bank lending rate as determined by Bank of Zambia till full satisfaction of the rentals due*
3. *Costs are to the Applicant. Same to be taxed in default of agreement.*

Dated at Lusaka this 22nd day of April 2014.

JUSTIN CHASHI
HIGH COURT JUDGE

