

IN THE HIGH COURT FOR ZAMBIA

2014/HP/1808

AT PRINCIPAL REGISTRY

LUSAKA

(Civil Jurisdiction)



JULIAN MWANGALA SINYANGWE

APPLICANT

AND

SAMUWIKA KAPENDA LUKA

RESPONDENT

Before the Honorable Mr. Justice CFR Mchenga SC

For the Applicant: K. Simbao, Mulungishi Chambers

For the Respondent: In person

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## JUDGMENT

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Legislation referred to:

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

The applicant was pursuant to Section 14 of the Rent Act, granted leave to issue a warrant of distress against the respondent for unpaid



rentals in the sum of K23,000 on 26<sup>th</sup> November 2014. The respondent is the applicant's tenant on Farm No. 873 Lusaka West, Lusaka.

On 1<sup>st</sup> December 2014, the respondent applied to have the warrant of distress set aside. The application was supported by an affidavit; he also gave *viva voce* evidence and called a witness. The relevant part of his evidence was that on 1<sup>st</sup> November 2013, he moved onto the applicant's farm. They agreed on a monthly rental of K2,000, payable 3 months in advance, but in the event that the applicant carried out renovations to the property, the rentals would be at K3,000 per month.

By agreement and following an undertaking that renovations would be carried out, he paid K6,000 as rentals for the months of November and December 2013 but no renovations were carried out. In January 2014, he paid K9,000 for the months of January, February and March. No renovations were carried out but the applicant gave him K2,000 to do so. In addition to that amount, he used his own money to carry out the renovations which are tabulated in "JMS4b" of the applicant's affidavit in support of the application for a warrant of distress.

It was also the applicant's evidence that as he prepared to pay the April, May and June rentals, the applicant gave him three months notice to vacate. The applicant also allowed him to stay rent free



until he was refunded the money he had spent on the renovations. He put the amount at between K21,000 and K20,000. He said he is ready to vacate the farm immediately he is paid the cost of the renovations.

Finally, the respondent said when the applicant disputed the cost of the renovations he had carried out, he provided an inventory, he also advised her to get an independent assessment but she has not done so. The respondent's witness, Felix Tembatemba, confirmed being informed of the disputed renovations. He said he advised that an independent person be appointed and volunteered to be present when such person assessed the work. He said the assessment has not been done.

The applicant's evidence was that when the respondent took possession of the farm, the rentals were agreed at K3,000 per month. She said though the house was in a state of disrepair, the respondent agreed to take possession in that condition. She confirmed the K6,000 payment for November and December 2013, rentals. She also confirmed the K9,000 rentals for January, February and March 2014. She said out of the K9,000, she gave the respondent K2,000 to build a wall and said he has not done so.

It was also her evidence that the respondent was given 3 months notice to vacate in March 2014. At the expiry of the 3 months, in June 2014,



he asked for a further 2 months and she allowed him to stay on. With the extension, he was supposed to vacate in August 2014. She denied allowing him to leave on the farm rent free after she gave notice that he vacates. She said when she went to check on the property, in August, she found that he had not vacated. In September 2014, he produced a bill for renovations he said he had carried out that came to about K20,000.

Sundano Sitali gave evidence on behalf of the applicant. He said he acted as the applicant's agent and he is the one who used to deal with the respondent. He said the rent was pegged at K3,000 per month. He admitted that the respondent carried out renovations but said the bill was exaggerated. It was also his evidence that the respondent was only allowed to stay rent free for 3 months after being given the notice to vacate.

At the end of the hearing, the parties were invited to file in written submissions. On behalf of the respondent, it was submitted that the respondent was given an extension of up to the end of July 2014 and he is ready to vacate after his K20,000 bill is considered. No submissions were received from the applicant.



I am indebted to counsel appearing on behalf of the applicant and I have taken his submissions into account in arriving at my decision.

On the evidence before me, I find that it is not in dispute that the respondent took up the tenancy on Farm No. 873 Lusaka West, Lusaka, in November 2013. It is also not in dispute that in March 2014, he was given notice to vacate and it was extended to August 2014. What is in dispute is what the monthly rental was; the terms on which the respondent was supposed to stay on the farm after the notice to vacate; and the cost of the renovations the respondent carried out.

The applicant and her witness said the rentals were pegged at K3,000 a month while the respondent says it was agreed that the rent was only going to be K3,000 if the applicant renovated the house. Where there were no renovations, the monthly rental would be K2,000. He testified that since the house was not renovated, the monthly rental was K2,000. If the claim that the rent was K2,000 because the house was not renovated is true, one wonders why the respondent paid K9,000 for the months January, February and March and not K6,000? That payment does not support the proposition that the monthly rental was K2,000. I therefore accept the applicant's evidence and find that the rent was K3,000 per month and that is why the respondent paid K6,000 for months



of November and December 2013 and K9,000 for the first 3 months of 2014.

Coming to the terms on which he was supposed to stay after the notice to vacate, the respondent said it was rent free while the applicant said he was supposed to pay the full rent. If it was rent free, it is odd that the applicant, in "JMS2", a letter she wrote to the respondent, indicated that *"we should be able to agree on some form of rentals for the last three (3) months"*. It is my assessment that if they had agreed that his stay was going to be rent free, the applicant would not have talked about agreeing on the rent for the same period. The applicant's witness provides the answer to what the terms of the respondent's stay were. His evidence, which I accept, is that he informed the respondent that he was going to stay rent free for the three months after he was given the notice. It is clear that it was not envisaged that the respondent was going to stay beyond the 3 months he was initially given. It follows, that in the absence of express agreement, at the expiry of the 3 months, the respondent was supposed to pay the K3,000 per month that he ordinarily paid up to the date of vacation and I find that it was the case.

Coming to the renovations, I accept the evidence of Sundano Sitali that renovations were carried out but the bill is exaggerated.



Scrutiny of "JMS4b" in the applicant's affidavit in support, the inventory of renovations the respondent says he carried out, shows that it includes extraneous claims. Head H is a claim for K5,000 he paid as a salary for a person who was clearing the yard for 10 months. It also includes K430 he paid someone for piece work done clearing the yard. In head J, he is claiming K1,500 as fuel to transport 8 vehicles and K2,000 for what he terms "disappointment"! Clearly there is no basis for these claims and I reject them.

Coming to what is left on the list, when added together they come to K8,780 and I find it to be the cost of the renovations that respondent carried out and not the K21,000 or K20,000 he is claiming.

Finally, I will deal with the issue of how much the respondent owes the plaintiff as of December 2014. I have found that the rentals were K3,000 per month, this brings the rentals from November 2013 to December 2104 (14 months) to a total of K42,000. This is less:

1. K6,000- rentals for the months November and December 2013;
2. K7,000- ( which is K9,000 less K2,000 given back to the respondent) rentals for the months January, February and March 2014;



3. K9,000- for the rent free stay for the months of April, May and June 2014; and

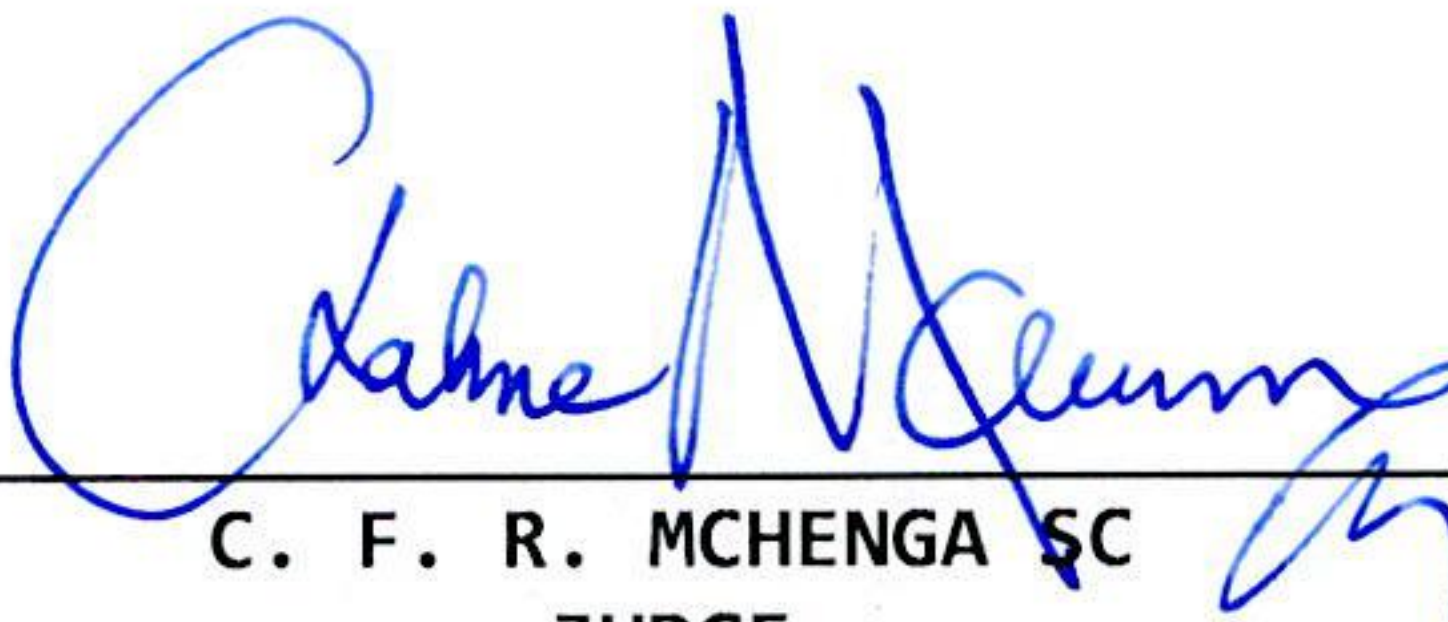
4. K8,780 for the renovations.

This leaves an outstanding balance of K11,220 as of December 2014.

I direct that respondent pay the K11,220 be paid forthwith. In addition, he must vacate the farm by the 31<sup>st</sup> January 2015 and pay the full monthly rental of K3,000 for the month of January 2015.

The parties will bear their own costs.

Delivered in open court at Lusaka this 16<sup>th</sup> day of January, 2015

  
C. F. R. MCHENGA SC  
JUDGE