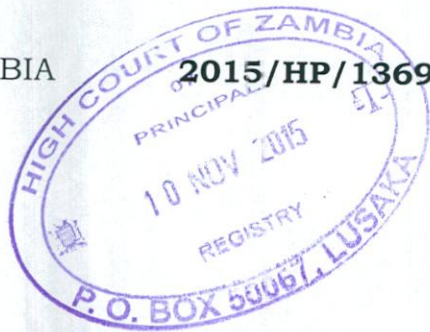


IN THE HIGH COURT FOR ZAMBIA
 AT THE PRINCIPAL REGISTRY
 HOLDEN AT LUSAKA



(CIVIL JURISDICTION)

IN THE MATTER OF: SECTION 13(1)(a) of the Rent Act Cap 206
 IN THE MATTER CF: SECTION 14 of the Rent Act, Cap 206

BETWEEN:

KWACHA PENSION TRUST FUND APPLICANT

AND

P & R LINTINI (PETER B.S. LINTINI) RESPONDENT

Before The Honourable Mrs. Justice P.C.M. Ngulube in Chambers

For the Applicant: Mr Kaunda Messrs Ellis and Company

For the Respondent: No appearance

JUDGMENT

By Originating Notice of Motion Pursuant to Rule 3 of the Rent Rules, Cap 206 of the Laws of Zambia, the Applicant seeks the following reliefs:

- (i) That there be vacant possession of Flat Number G-08 of Kwacha Flats Nasser Road, Lusaka.
- (ii) That leave be granted to distrain for the recovery of rent and service charges in the sum of K46,920,000=00 as at June, 2015.

- (iii) Interest at the Commercial Bank lending rate from the date of Originating Notice of Motion to date of payment
- (iv) Costs of and incidental to these proceedings.

The application is accompanied by an affidavit in support of Originating Notice of Motion sworn by one David Ng'andu, the Applicant's Chief Executive Officer who averred that on or about 15th December, 2010, the Applicant and the Respondent entered into a Lease Agreement relating to Flat G-08, Stand Number 5397, Nasser Road Lusaka. The Applicant averred that the Respondent has defaulted in remitting rentals and service charges and that there is an outstanding amount of K49,641-36, which includes VAT at 16% as well as 5% collection fee, respectively.

The Applicant avers that all efforts to have the said rentals settled have failed. The Applicant therefore prays that the outstanding amount be settled with cost to the Applicant.

On the 16th of October, 2015, the Respondent filed an affidavit in opposition stating that the Applicant is under an obligation to repair the demised premises. The Respondent stated that the Applicant has failed and neglected to carry out any repairs or maintenance on the demised premises. He further averred that the Applicant has automatically increased rentals without a court order, while failing to perform its obligation to repair and maintain the property. The Respondent avers that he has been a tenant at Flat Number 08 for over 19 years, and that he has paid his rentals regularly. The Respondent states that the Applicant needs to perform his part of the Agreement by repairing the

house. The Respondent states that the Applicant's hands are not clean and that it would be contrary to equity to give the Applicants the relief sought for that reason. The Respondent prays that the court orders that the Applicant carries out repairs and maintenance, and that the Applicant desists from increasing rent as proposed. The Applicant states that he would be willing to liquidate the rentals in 24 months.

On the 29th of October, 2015, the Applicant's Chief Executive Officer filed an affidavit in reply in which he averred that it is not that the Applicant has neglected to carry out repairs for the convenient use and occupation of the demised premises. The Applicant's Chief Executive Officer stated that the Applicant has been in the flat for over 10 years because the flat has been in a state of convenient use and occupation. He further stated that there is no clause that prevents the Applicant from increasing the rentals and that by signing the Lease Agreement, the Applicant voluntarily agreed to the increase of rentals as well. He further averred that it not true that the external parts of the premises are not in tenantable condition.

At the hearing of the matter, the Learned Counsel for the Applicant, Mr Kaunda submitted that the Respondent was served with the notice of hearing on the 30th of October, 2015 and that an affidavit of service was filed by one Shadrek Tembo, an employee in the firm of Messrs Ellis and Company. Being satisfied that the Respondent was duly served with the notice of hearing, leave to proceed was granted to the Applicant. Mr Kaunda submitted that the application was pursuant to Sections

13(1) and 14 of the Rent Act. He submitted that he would rely on the affidavits were filed in support of the application. He stated that the Applicant's obligation is to make the demised premises convenient for use and occupation. This is in line with section 24 of the Rent Act. Repairs by the Landlord are for making the premises fit for human habitation. He stated that is the Respondent who has put the flat in such a state. The exhibits are not helpful to the court and could be photographs of another property Mr Kaunda submitted that this is not the first time the Respondent has defaulted, stating that in the cause 2012/HP/958 the Applicant commenced a similar action against the Respondent, for the recovery of rentals. Mr Kaunda prayed for the reliefs in the notice of motion, which include vacant possession and costs.

I have considered the submissions by the Learned Counsel for the Applicant as well as the affidavits in support of the application. I have further considered the Respondent's affidavit in opposition. I note that most of the issues raised by both parties are of fact and there are no disputes regarding the same. Although the Respondent filed an affidavit in opposition, he did not attend court for the hearing of the application.

From the affidavit evidence, it is not in dispute that the Respondent owes the Applicant the sum of K49,641-36 for outstanding rentals for the said flat. However, the Respondent raised the issue of the flat not being well maintained as a reason for not paying rentals. I have difficulties accepting this position. The Respondent, by virtue of the Lease Agreement is under an

obligation to pay rentals for the flat in issue quarterly in advance on the first day of each quarter. Clearly, the Respondent has breached this condition of the Lease. The Respondent stated that the property had not been well maintained. If that is the case, the Respondent has the option of finding alternative accommodation which will suit his status and station as opposed to living in the Applicant's property which he states is in a bad condition of disrepair. By withholding the rentals amounting to K49,641-36, the Respondent has put the Applicant under prejudice and forced it to commence this action to recover rentals owed by the Respondent. I find this situation rather unfortunate. The argument that the Applicant be compelled to maintain and repair the property are neither here nor there. The Respondent can and should find alternative accommodation as opposed to living in a poorly maintained flat. However, the Respondent is under an obligation to pay all the outstanding rental arrears.

I therefore enter Judgment for the recovery of rental arrears as prayed. I further order that the Respondent yields vacant possession of Flat Number Go8, Kwacha Flats within three months of this Judgment. The Respondent shall pay rentals for the said flat, up to the time he yields vacant possession of the flat, with costs to the Applicant. This is with interest from the

date of commencement of the action to the date of payment.

Leave to appeal is granted.

Dated this 10th day of November, 2015.



P.C.M. NGULUBE

HIGH COURT JUDGE