LIBRARY

IN THE HIGH COURT FOR ZAMBIA **2008/HP/0588**
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

BACKLOADS ZAMBIA LIMITED **PLAINTIFF**

AND

FREIGHT AND LINERS LIMITED **DEFENDANT**

Before Hon. Mrs. Justice M.S. Mulenga on the 30th day of January 2015

FOR THE PLAINTIFF: MR. R. MAINZA OF MESSRS MAINZA AND COMPANY

FOR THE DEFENDANT: MAJOR C.A. LISITA (Rtd) OF MESSRS CENTRAL CHAMBERS

J U D G M E N T

Cases cited:

1. **Backloads (Zambia) Limited v Freight and Liners Zambia Limited (2010) ZR 53.**
2. **Fidelitas Shipping Co. Ltd v V/O Export Chileb [1966] IQB 630**
3. **ZCCM v Richard Kangwa and Others (2000) ZR 109**
4. **Paperex Limited v Deluk High School SCZ Appeal No. 141 of 1996**

Works referred to:

Halsbury's Laws of England, Fourth Edition Reissue Volume 1 (2) paragraph 29

This action was originally commenced by originating notice of motion pursuant to the Landlord and Tenant (Business Premises) Act Cap 193 on 16th June 2008. Upon application, it was ordered that the matter be treated as commenced by writ of summons on 7th September 2009

and orders for directions were issued. In the statement of claim filed on 13th September 2009, the Plaintiff seeks the following reliefs:

1. *An order that the warrant of distress issued herein be set aside for irregularity.*
2. *Damages for illegal distress.*
3. *Damages for trespass.*
4. *Interest.*
5. *Costs of the proceedings.*

The statement of claim avers that by a lease agreement dated 1st October, 2000 the Defendant agreed to let Stand No. 5286, Mungwe Road, Lusaka to the Plaintiff at a monthly rent of US$1,000.00. Pursuant to the said lease agreement the Plaintiff paid all rentals accruing on the property in question to the Defendant.

On or about the 9th day of June, 2008 Messrs Chaiwila and Chaiwila Advocates wrongfully caused to be issued on behalf of the Defendant a warrant of distress wherein it was purported that the Plaintiff is indebted to the Defendant in the sum of K113, 750,000.00 being rental arrears purported to be owed by the Plaintiff to the Defendant for the period 1st April, 2006 and 30th June, 2008. Pursuant to the said warrant of distress one Francis Mutabiko and Christopher Mazuko certified bailiffs wrongfully entered the demised premises and seized the Plaintiff's property on walking possession. The Plaintiff avers that the alleged distress was illegal in that at the time of the distress the Plaintiff was not indebted to the Defendant in the sum of K113,750,000.00 as alleged in the warrant of distress. That as at 9th June, 2008 when the Defendant wrongfully issued the warrant of distress all rentals due to the Defendant for the period 1st April, 2006

and 30th June, 2008 had been paid in full to the Defendant by the Plaintiff. Consequently, the Defendant trespassed upon the demised property and committed a breach of the implied covenant for quiet enjoyment.

The Defendant in its defence and counterclaim admits that it is the landlord of the premises in accordance with the lease agreement but states that the Plaintiff did not pay rentals since 1st April 2008. That all its dealings with the Plaintiff had been done through law firms including Messrs Chaiwila and Chaiwila Advocates to whom the Plaintiff was instructed to pay all rentals but did not do so. That the instruction was given as far back as 9th December 2005 and the Plaintiff even paid some rentals through the said advocates but stopped paying for unexplained reasons.

The Defendant further averred that the warrant of distress was legally issued for rental arrears for the period 1st April 2006 to 30th June 2008 amounting to K113,750.00 and that the Plaintiff had breached the tenancy agreement in failing to settle rentals.

The Defendant further counterclaimed that it suffered loss and damage by the Plaintiff's failure to settle rentals on time thereby keeping it out of its money for a considerable period and therefore claims:

1. *A declaratory Judgment that the Plaintiff pays the rent due with interest from 1st July, 2008 to date of payment.*
2. *Damages for breach of contract.*
3. *A declaratory order that the tenancy between the parties herein is at an end as a result of the Plaintiff's breach.*

4. Costs.

In the reply and defence to counterclaim, the Plaintiff denied the counterclaim and said it paid the rentals on time based on the invoices raised by the Defendant. That all rentals due from November 2008 were withheld as lien pending the Defendant's settlement of the sum of K1,407,469.90 owed to the Plaintiff for repair, renovations and upgrading of the demised premises with interest in line with the lease agreement of 1st October 2000. That the Plaintiff has since commenced proceedings against the Defendant under cause number 2008/HPC/261 for the recovery of the said sum.

There was a protracted trial which commenced on 26th March 2013 and ended on 13th August 2014. PW1 Sanderson Elliot Mweemba, testified that he was the Director of Finance and Administration in the Defendant Company and the only remaining director. That he held this position from 1985 to date. Pursuant to the lease agreement, the Plaintiff was to pay rentals of USD1,000.00 kwacha equivalent. DW1 issued invoices and collected rentals from the Defendant for the period 1st April 2006 to 31st December 2008 as reflected on pages 7 to 17 of the Plaintiff's bundle of documents. The Plaintiff was paying by cheque. That he never gave instructions and was never consulted by the Defendant's lawyers over the issuance of the warrant of distress for the period when he received the rentals. That Maninga Shimonde Lungu is a shareholder and not a director. She is the daughter of two deceased directors and her mother, as director, died in 1990 when Maninga Shimonde was below 20 years. He was seeing for the first time page 1 of the Defendant's bundle of documents being the copy of

register of directors which indicated that Maninga Shimonde was a director in place of A.R. Shimonde and said this was a misrepresentation. Regarding his letter at pages 17 to 18 of the Defendant's bundle, DW1 said there was a typing error as 1988 was supposed to read 1998 when he left the Defendant's regular employment but continued as director.

In cross and re-examination DW1 stated that he was a director through a letter of appointment by the board and was not listed as a director on the exhibited list. That after he left employment in 1998 he was told to report on a regular basis as and when required. He attended a meeting with Mr. Chaiwila, the Plaintiff's Managing Director, and Mr. Mainza, the Plaintiff's counsel, where Mr. Chaiwila introduced him as the local director and shareholder. That he was the only one generating invoices on behalf of the Defendant during the material period of 2006 to 2008. The Plaintiff was paying through open cheques which he was cashing over the counter as the Defendant had no bank accounts and one could not be opened as he was the only director and the company was in the process of constituting other directors from 2005.

PW2, Alan Graham McNab, the Managing Director of the Plaintiff company testified that he signed the tenancy agreement with the Defendant on 1st October 2000 which pegged the rentals at USD1,000.00 or kwacha equivalent. He was dealing with the then Managing Director David Shimonde who introduced him to PW1 in 2004 as the other director he had recalled to the company and that he was to deal with him. That even prior to this the Plaintiff was paying

rentals by cash or open cheques as requested. PW1 was also introduced to PW2 by Maninga Shimonde as her uncle who was looking after her affairs and by Mr. Chaiwila as the local director. The rentals for the period in issue, April 2006 to December 2008, were paid on invoices taken by PW1 through open cheques. These were the rentals for which the warrant of distress was issued and three (3) of the Plaintiff's trucks taken. The Plaintiff obtained a stay of execution and paid K10,000.00 (rebased) bailiffs fees, hence the claim for damages for illegal trespass.

PW2 further stated that in 2000 David Shimonde held 70% of the shares and Maninga Shimonde held 30% and had nothing to do with the running of the company. In January 2006 David Shimonde sent valuers to value the property which he had offered to sell to the Plaintiff. Maninga Shimonde heard of it and said the sell should not go ahead. David Shimonde then passed on shortly afterwards.

In cross-examination PW2 maintained that to his knowledge PW1 was authorized to receive the rentals. That he was aware that Chaiwila and Chaiwila Advocates were representing Ms Maninga Shimonde and had been authorized to collect rentals. That he heard of the letter to that effect on page 16 of the Defendant's bundle but never saw it. That the Defendant could only pay based on invoices and was consistently receiving invoices through PW1. That the Defendant did not indicate whether payment should be by open cheque or not and it was not a standard procedure to close the cheque. In his dealings with the Defendant over many years, he usually paid by open cheques or cash.

As far as he could recall, the cheques PW1 collected were in the Defendant's name. That at some point the Defendant tried to increase rentals but this was disputed and correspondence exchanged. There was no written record of the meetings the parties had although the lawyers, Mr. Chaiwila and Mr. Mainza, were taking notes and PW1 was present. That the letter at page 15 of the Defendant's bundle of documents confirms that the meeting took place. When shown page 1 of the Defendant's document, PW2 maintained that Maninga Shimonde was not a director although listed as such because she was 10 or 11 years in 1991 and one cannot inherit directorship. When referred to the Ruling under cause number 2008/HPC/0261, PW2 said that the finding of conspiracy was not conclusive as there was no trial where himself or PW1 gave evidence to explain.

The Defendant also called two witnesses. DW1, Maurice Mwango Chaiwila, testified that he was given instructions by Maninga Shimonde who was based in the United Kingdom to look into the tenancy and rent issues concerning the business premises leased by the Plaintiff. The instructions were to formalize the tenancy with the Plaintiff through signing of a new tenancy which he sent to the Plaintiff and included the increase of rentals to K12,000.00 from the K5,000.00 which was being paid. It was indicated in the letter of 9th December 2005 that rentals should forthwith be paid through his firm and not PW1. An invoice was issued for rent for January 2006 to March 2006 which was paid by the Defendant through a cheque. He never received any subsequent payment of rent despite sending reminder letters. The Plaintiff also never executed or respondent over the new tenancy and

new rental despite the several reminders produced in the Defendant's bundle of documents. The new rental was proposed after conducting a rental valuation early in 2006.

The other main issue related to the demand by the Plaintiff to be refunded for repairs carried out without informing them. This led to the meeting between himself, PW2 and PW2's counsel. DW1 demanded for receipts and proof of the repairs and renovations but after the agreed 10 days, the Plaintiff only sent a schedule without receipts. He then wrote the letter at page 15 of the Defendant's document which also demanded rental arrears.

In cross-examination DW1 stated that he received instructions from Maninga Shimonde as an administrator of her mother's estate and as a majority shareholder based on the shares from her late parents but that she was a director as indicated on the PACRA form. He did not have sight of any board resolution appointing her as director. He was retained verbally and at that time her uncle David Shimonde who was the Managing Director was in the diplomatic service. DW1 recalled going to the meeting in issue with PW1 who was introduced to him by Maninga Shimonde as an ex-employee who had useful information. He could not remember PW1's position in the Defendant company but maintained that he was not a director. PW1 was directed to stop collecting rentals on behalf of the Defendant and he responded by the letter on pages 17 to 18 of the Defendant's bundle. The invoices show PW1 signing but the company was practically not operating. DW1 acknowledged that PW1 was owed terminal benefits.

DW2, Maninga Chilanji Shimonde Lungu, testified that her late father started the Defendant company and she was a director as at 30th September 1991 as per register of directors and she was 18 years old at that time. The company was managed by her uncle David Shimonde from 1997 until 2006, by his son until November 2012 and herself since then. That PW1 was an accounts manager from 1985 to 1998 when he was relieved of his duties by David Shimonde after they fell out. In 2005 she got a call from PW2 who had a dispute with her uncle over rentals and sale of the property. She instructed Chaiwila and Chaiwila to look into the issues. She asked for 3 months rentals for the first quarter of 2006 and had the property valuation done which set the rentals at K12,000.00. PW2 was not happy with this figure and she agreed for the parties to negotiate as she made it clear that K5,000.00 was not acceptable. Due to PW2's strong language, she directed that he deals with her lawyers. An agreement was never reached and the new lease agreement never signed by the Plaintiff. For the period 1st April 2006 to 31st December 2008, the Plaintiff did not pay rentals and she instructed her lawyers to recover the same.

In cross-examination, DW2 said she was made a director in 1991 by her uncle who filed the form at PACRA but did not have a resolution to that effect. She filed company returns in 2013 when she visited Zambia. She inherited her mother's shares and position on the board. She was not aware how DW1 introduced PW1 at the meeting with the Plaintiff. That the company was not operating but only into rentals for which tax returns were being made through Messrs Central Chambers.

The email of 7th June 2006 said she would issue the invoice but she did not do so because she instructed Chaiwila and Chaiwila to do so.

At the close of the trial the parties were given opportunity to file submissions but only the Defendant did so. In its submissions filed on 23rd September 2014 it is argued that the warrant of distress was regularly issued as it satisfied the conditions outlined in Halsbury's laws of England 4th Edition re-issue Volume 13 paragraph 207, which states that:

> **"In order that the right to distrain for rent upon a demise may arise the relation of landlord and tenant must exist, both when the rent becomes due and when the distress is levied, and the rent must be in arrears."**

That the Plaintiff and Defendant were tenant and landlord when the distress was levied on rental arrears. That the purported payment of rent to PW1, who was neither a shareholder nor director and contrary to the specific instructions from DW2 as shareholder and director and Chaiwila and Chaiwila Advocates as lawyers representing DW2, was an act of conspiracy and at the Plaintiff's own peril. PW2's letter at pages 15 and 16 of the Defendant's bundle clearly states that he left the Defendant's employ in 1988 and was following up terminal benefits. That the fact that the Plaintiff and PW1 acted in conspiracy was found so in another case between the parties under cause number 2008/HPC/0261 which case is reported as **Backloads (Zambia) Limited v Freight and Liners Zambia Limited (2010) ZR 53**. That the finding in this case means that this instant case is caught up in issue estoppel as per words of Lord Denning MR. in the case of **Fidelitas Shipping Co. Ltd v V/O Export Chileb [1966] I QB 630** that:

> **"Within one cause of action, there may be several issues raised which are necessary for the determination of the whole case. The rule then is that, once an issue has been raised and distinctly determined between the parties, then, as a general rule, neither party can be allowed to fight that issue all over again."**

It has been further argued that the Plaintiff has not produced any evidence to show that it paid the rentals on cheques in the Defendant's name, both parties being limited companies, as provided in section 198 of the Companies Act Cap 388 which states as follows:

> **"198. A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority express or implied."**

That payments which do not satisfy these requirements of the law are not valid. That the Plaintiff has also not brought any deposit slips or bank statements to show that rent was paid in the account of the Defendant. That the Defendant could not be paid by open cheque as it is not a natural person. That the invoices at pages 7 to 17 of the Plaintiff's bundle of documents are questionable and do not even state which official issued them on behalf of the Defendant and were apparently made by PW1 in collusion with the Plaintiff. For example the invoice at page 7 shows it was issued on 1st April 2006 while PW1 signed for receipt of the purported cheque No. 492 on 31st March 2006 before invoice was issued. That there is also no evidence of withholding tax on the said rentals having been paid to Zambia Revenue Authority.

Regarding the position of DW2 in the company, counsel argued that the list of directors produced at page 1 showed that DW2 was a director. The further evidence was that she was also a shareholder

who could take steps to protect the interest of the Defendant as a beneficial owner in line with the Supreme Court's guidance in the case of **ZCCM v Richard Kangwa and Others (2000) ZR 109** as follows:

> **"in fact, the law accepted in this country and many others, is that the beneficial owners of a company – the shareholders – have and enjoy as of right overriding authority over the company's affairs and even over the wishes of mere nominees or directors."**

That based on this, DW2 had authority to appoint DW1 as a legal representative and the appointment cannot be questioned by strangers.

It was finally submitted that the other relief sought can only succeed or fail based on the determination of the first relief on whether the warrant of distress was irregular. That based on the submission, the Plaintiff's claim ought to be dismissed.

I have duly considered the evidence, pleadings and submissions. In a civil case such as this one the burden of proof lies on the one alleging to prove its claims to the required standard of the balance of probabilities. If the Plaintiff fails to prove its case, it cannot be entitled to Judgment whatever may be said of the Defendant's case or defence.

The Plaintiff's main claim is that the warrant of distress was irregular because the rent arrears it was purporting to destrain for were paid to PW1 based on invoices he provided in the Defendant's name. The Defendant on the other hand maintains that the said rentals are still due and outstanding because the Plaintiff did not pay them to the lawyers appointed by DW2 as per written instructions. Further that the collusion between the Plaintiff and PW1 is subject to issue

estoppels as it was determined to be so in the case of **Backloads (Z) Limited v Freight Liners Limited** cited above.

It is not in dispute that the Plaintiff and Defendant are and were tenant and landlord. The rentals being paid from 2000 when the lease was signed till the period in dispute is USD1,000.00 whose kwacha equivalent was K5,000.00. I also find that in 2004, the Plaintiff was paying the rentals through Dove Chambers, the then lawyers for the Defendant as shown on the cheques produced on pages 2 and 3 of the Defendant's bundle of documents. In December 2005, Chaiwila and Chaiwila Advocates acting on behalf of DW2 as Director and shareholder wrote to the Plaintiff directing that the rentals be forthwith paid to DW2 through their office. This is at pages 4 and 5 and the Plaintiff paid rentals for the first quarter of 2006 to Chaiwila by cheque based on the invoice at page 6 of the Defendant's bundle of documents. The Plaintiff was then given a new lease to sign in which the rentals were revised based on the valuation report. The new rental of K12,000.00 was to be effective 1st April 2006 and there were discussions between PW2 on one hand and DW1 and DW2, on the other hand. The Plaintiff was written several letters through its lawyers Mainza and Company to settle rentals from 1st April 2006 to which there was apparently no response. The letter of 12th October 2006 specifically stated that the Defendant had received information that the Plaintiff was paying rentals to PW1 and directed again that rentals be paid to Chaiwila and that payment to any other person would not be recognized. The Plaintiff ignored the directive and continued to pay to PW1 as per endorsed invoices produced at page 7

to 17 of its bundle of documents. Both PW1 and PW2 confirmed this status. PW1 was neither a shareholder nor a director in the Defendant Company as no documents have been produced to that effect. On the other hand DW2 has shown through a PACRA list that she was one of the directors of the company. In the letter produced at pages 17 and 18 of the Defendant's bundle dated 31st January 2007, PW1 categorically states he was an employee of the Defendant from 1985 to 1988 and had not been paid terminal benefits. His evidence and that of DW2 is that he left employment in 1998 and so the 1988 mentioned in the letter is an error. This is the summary of the facts as I have found them.

Plaintiff's claim

The main issue for determination is whether the Plaintiff's payment of rentals to PW1 is valid payment to the Defendant. Once this is determined, it will resolve the issue of whether the Defendant was owed arrears for which the warrant of distress was issued. And thus determine the regularity or validity of the same.

Based on the facts as found above, it is apparent that the rentals for the period 1st April 2006 to 31st December 2008 were paid to PW1 as shown by the invoices on pages 7 to 17 of the Plaintiff's bundle of documents. This was done by the Plaintiff contrary to the specific instructions of DW2 through Chaiwila and Chaiwila Advocates that rentals should be paid through the lawyers. The letter of 12th October 2006 specifically directed the Plaintiff to stop paying rentals to PW1 but this was deliberately or wantonly disregarded by the Plaintiff. It

appears to me that the Plaintiff was deliberately doing so in order to avoid the issue of the proposed rental increase.

The Plaintiff has sought to argue that it could not pay rentals to DW2 or Chaiwila because these never issued invoices but only PW1. This is not an entirely valid excuse because once the parties have entered into a lease agreement, the tenant has to pay the rentals whether or not invoices are issued because even for the purposes of meeting the requirements of the Zambia Revenue Authority the lease agreement is sufficient proof coupled with the payment trail. The Plaintiff can thus not argue that he had to disregard the instruction from DW2's lawyers and pay PW1 because PW1 was the one giving the invoices. The invoices indicated the premises as the registered office for the Defendant and the Plaintiff was well aware that the Defendant company was not operational in the normal sense with staff. Further, the invoices have no endorsement to show who, in the Defendant Company, issued them.

The Defendant's advocates have submitted that the Plaintiff has failed to exhibit the cheques it purportedly paid in the names of the Defendant or the Defendant's account. The evidence of PW1 which was not challenged is that the Defendant had no bank account which was in operation. The Defendant's argument cannot therefore be sustained. It is clear that the Plaintiff was paying through various methods including open cheques and cash depending on the preferred mode.

Therefore what is in issue is the status of PW1 as regards the Defendant on the collection of the rentals. My finding is that he was neither a shareholder nor director in the Defendant Company as the list of directors shows. In addition, the evidence of all the witnesses including PW1 himself is that he was not a shareholder.

The evidence of PW2 seems to suggest that PW1 had apparent authority to receive rentals based on the verbal statement of DW1 that he was a director in the Defendant Company, which statement DW1 denied. DW2 also denied ever holding out PW1 as her agent. Halsbury's Laws of England Fourth Edition Reissue Volume 1(2) at paragraph 29 deals with agency by estoppel and states in part that:

> **"Agency by estoppel arises where one person has so acted as to lead another to believe that he has authorized a third person to act on his behalf, and that other in such belief enters into transactions with the third person within the scope of such ostensible authority. In this case the first-mentioned person is stopped from denying the fact of the third persons' agency under the general law of estoppel, and it is immaterial whether the ostensible agent had no authority whatever in fact, or merely acted in excess of his actual authority...**
>
> **The onus lies upon the person dealing with the agent to prove either real or ostensible authority and it is a matter of fact in each case whether ostensible authority existed for the particular act for which it is sought to make the principal liable. Holding out is something more than estoppel by negligence; it is necessary to prove affirmatively conduct amounting to holding out. No representation made solely by the agent as to the extent of his authority can amount to a holding out by the principal.**

It is clear that the onus is on the Plaintiff to prove that PW1 had actual or ostensible authority to receive rentals on behalf of the Defendant. The fact that PW1 made representations as having authority does not amount to holding out by the principle or Defendant. The facts as found above show that the Plaintiff has failed to prove that PW1 had

actual or ostensible authority to receive rentals. It has been shown, at least from 2004, that the Plaintiff was paying rentals through the Defendant lawyers, Dove Chambers. In December 2005, the Plaintiff was advised to pay rentals through Chaiwila and Chaiwila Advocates and actually paid the first quarter rentals. This was a clear directive from the Defendant regarding the person authorized to receive rentals. The Plaintiff was reminded through several letters and told in no uncertain terms by the letter of 12th October 2006 not to pay rentals to PW1. This shows that the Defendant did not make representations to the Plaintiff authorizing PW1 to receive rentals from April 2006 to December 2008. The Plaintiff has clearly not proved that the PW1 had the apparent or ostensible authority. The Plaintiff's action in ignoring the Defendant's instructions to pay rent through the lawyers was thus done at its own peril and did not amount to receipt of rentals by the Defendant. This means that the Plaintiff is owing the Defendant the rentals for the stated period.

I have also considered the submission by the Defendant's counsel on the issue of issue estoppel based on the findings in the case of **Blackloads (Z) Limited v Freight Liners Limited** which is cited above in which this Court found that PW1 was not a director or shareholder of the Defendant company and therefore had no authority to act on its behalf. This Ruling has not been appealed against to date.

The action of the Plaintiff to pay rentals to PW1 amounts to collusion and as I have stated above, this was apparently done as a way of avoiding to pay the proposed increased rentals. The rentals for April 2006 to December 2008 are thus still outstanding. The Plaintiff being

in arrears, the Defendant had every right to issue a warrant of distress as stated in paragraph 207 of Halsbury's laws of England Volume 13 cited above.

In **Paperex Limited v Deluk High School SCZ Appeal No. 141 of 1996** it was held that the issuance of a warrant of distress under the Landlord and Tenant (Business Premises) Act Cap 193 does not require leave of Court unlike under the Rent Act. It follows that the warrant of distress in this case was validly and regularly issued. The gross rentals due for the period 1st April 2006 to 31st December 2008, that is 33 months, is K165,000.00. However, the warrant of distress is only for rentals due up to 30th June 2008 whose net amount translates to K114,750.00. This is slightly more than the amount endorsed on the warrant of distress being K113,750.00. There is hence nothing irregular with the warrant of distress.

The Plaintiff has failed to prove its claim that the warrant of distress herein is irregular. The other claims for damages for illegal distress and trespass accordingly also fail. The Plaintiff's action is dismissed as lacking merit with costs to the Defendant to be taxed in default of agreement.

Defendant's counterclaim

The first claim is for payment of rent due with interest. In light of my findings of fact above that the rentals for 1st April 2006 to 31st June 2008 are still due and owing to the Defendant, the Defendant has proved its claim. This finding is sufficient to enable the Defendant enforce its rights and there is no need for a declaration. I accordingly

order that the Plaintiff must forth with pay the rentals due for the period 1st April 2006 to 31st June 2008 at K5,000.00 per month. The same will attract simple interest of 10% per annum from the date of the defence and counterclaim being 1st October 2010 to date of judgment and thereafter at the average Bank of Zambia lending rate from the date of judgment to payment.

The second and third claims are for damages for breach of contract and a declaratory order that the tenancy between the parties herein is at an end as a result of the breach. I find that these claims lack merit as the Landlord and Tenant (Business Premises) Act has sufficient and strict provisions governing the landlord and tenant relationship and remedies for breach which any aggrieved party has to follow. The Defendant is therefore at liberty to seek the remedies it seeks under the appropriate legislation. These claims accordingly fail.

The last claim is for costs. Having already awarded the Defendant costs under the Plaintiff's claim, there is no need to duplicate the order.

The Defendant has succeeded in part in its counterclaim.

Summary

1. The Plaintiff's action is dismissed as lacking merit.
2. The Defendant's counterclaim has succeeded in part and I order that the Plaintiff pay the Defendant the rental arrears for the period 1st April 2006 to 31st June 2008 at K5,000.00 per month with simple interest of 10% per annum from 1st October 2010 to

date of Judgment and thereafter at the average Bank of Zambia lending rate from the date of Judgment to payment.

3. Costs of the action are for the Defendant to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 30th day January 2015

.....

M.S. MULENGA
HIGH COURT JUDGE