

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)**

**2015/HP/0325**

**BETWEEN:**

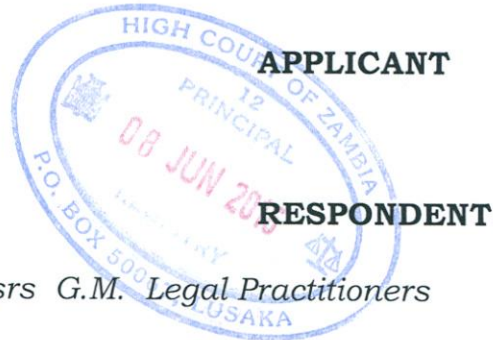
**CLOTHILDA MAIKABO MULELE**

**AND**

**VICTORIA MWANZA**

*For the Applicant: M. Mulele, Messrs G.M. Legal Practitioners*

*For the Respondent: In person*



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**JUDGMENT**

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This is an application for an order for possession of stand no. 10153, Lusaka and an order for recovery of rental arrears, interest and costs. The application is supported by an affidavit sworn by the applicant, Clothilda Maikabo Mulele.

The applicant has deposed that she is the owner of stand number 10153 Lusaka. She entered into a lease agreement with the respondent, pursuant to which she leased stand number 10153 Lusaka to the respondent at a monthly rental of K2 500 00. However, the Respondent has failed to pay full rentals on time, from April 2014. The applicant as a result terminated the lease by letter written by her advocates.

The respondent has not given vacant possession of the property, and continued to resist vacating the property. As at 4<sup>th</sup> March, 2015 the respondent owed the applicant the sum of K16,000, covering the period from September 2014 to March 2015.

The applicant is as a result no longer willing to let the respondent occupy the premises in question, as she clearly has no capacity to abide by the terms of the lease agreement. The applicant has suffered extreme inconvenience as a result of the respondent's breach of the lease agreement, especially that the said property is her only source of income.

That is what has prompted this application.

Despite being served with process, the respondent has not filed an affidavit in opposition. At the hearing, learned counsel for the applicant, Mr. Mulele placed reliance on the affidavit in support of the affidavit in support, application. He emphasized that as stated in paragraph 8 of the affidavit in support, respondent has no capacity to continue as a tenant. He thus urged that the reliefs sought by the applicant be granted.

On her part, the respondent agreed with what learned counsel had said, conceding that she was required to clear the outstanding rentals. I have considered the affidavit evidence led by the applicant. Clearly the respondent has had a long history of defaulting in paying rentals that have become lawfully due.

The lease agreement provides in paragraph 2 thereof the following, quoting only the relevant portion:

*The landlord hereby demises unto the tenant all that piece of land in extent of 308 square meters more or less being stand no 10153 situated in the Lusaka province of the Republic of Zambia which piece of land is more particularly delineated and described on diagram no 916 of 1984 EXCEPT and RESERVED all minerals, oils and precious stones whatsoever upon or under the said land TO HOLD onto the tenant from the 1<sup>st</sup> day of June Two Thousand and Thirteen for a term of 1 year paying therefore the calendar monthly rent of Two Thousand Five Hundred Kwacha Rebased (KR2,500.00) net of tax payable one month in advance.*

The respondent was required to pay rentals one month in advance. Therefore rentals became lawfully due a month in advance. The landlord has stated in paragraph 8 of the affidavit in support that rentals due from September 2014 to March 2015 have not been paid. The respondent confirmed that position. Therefore, the applicant has proved that rentals lawfully due have not been paid in terms of section 13 (1) (a) of the Rent Act, CAP 206 of the Laws of Zambia which stipulates as follows:

*13 (1) (a) No order for recovery of possession of any premises or for the ejectment of a tenant therefrom shall be made unless-*

*“Some rent lawfully due from the tenant has not been paid, or some other obligation of the tenancy (whether under a contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act, has been broken or not performed;”*

Premised on that section therefore, the applicant is entitled to an order for possession. I therefore order the respondent to deliver vacant possession of stand number 10153 Lusaka, within 14 days from date hereof, failure which the applicant shall be at liberty to enforce the order for possession. I also enter judgment for all rentals due to the applicant as a result of the respondent's default. The same shall bear interest at short term deposit rate from date of action to date of judgment and thereafter at current bank rate until payment in full. The applicant will have the costs of this action to be agreed and in default taxed. Leave to appeal refused.

Dated the .....<sup>8<sup>th</sup></sup> day of .....<sup>June</sup>..... 2016



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**F. M. CHISANGA**  
**HIGH COURT JUDGE**