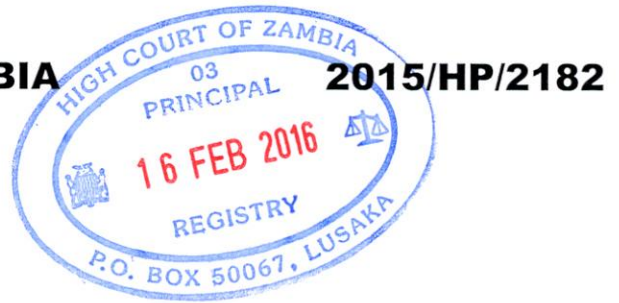


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(CIVIL JURISDICTION)**



IN THE MATTER OF: THE PREMISES KNOWN AS HOUSE NO. 728a
and B. KAFUE
AND

IN THE MATTER OF: AN APPLICATION FOR AN ORDER FOR THE
RECOVERY POSSESSION OF PREMISES
AND

IN THE MATTER OF: AN APPLICATION UNDER SECTION 4 (e)(i) OF
THE RENT ACT CHAPTER 206 VOLUME 12 OF
THE LAWS OF ZAMBIA TO ENTER UPON THE
PREMISES AFORESAID AND TAKE
POSSESSION

BETWEEN:

MUTUMBA WAKUMELO (SUIING AS BENEFICIARY **APPLICANT**
OF THE LATE JOSEPH WAKUMELO)

AND
SAMUEL BELINGTON **RESPONDENT**

Before Hon. Mrs. Justice M.S. Mulenga on the 16th day of February 2016

FOR THE PLAINTIFF : IN PERSON
FOR THE DEFENDANT : IN PERSON

J U D G M E N T

This action was commenced by originating notice of motion filed on 16th November, 2015. The Applicant claims the following reliefs:

1. *An order for eviction and possession of the property of plot 728 medium cost, Kafue town.*
2. *Costs of this action.*
3. *Any other relief as the Court shall deem fit.*

The Applicant in her affidavit in support states that she is the landlady for property known as house number 728 medium cost Kafue town as per copy of the distribution list of the estate by the administrator dated 11th March 2012. On 9th September, 2011 the Respondent entered into a tenancy agreement with Mildred Nkolola Wakumelo (then administrator of the estate) for the subject house for a period of one year. The tenancy agreement, exhibited as "MW2", was continued for another period of one year following the distribution of the estate in March 2012. The condition was that rentals were to be paid three (3) months in advance as provided in the tenancy agreement. On 1st December, 2013 the Respondent started becoming elusive in the payment of rentals and has accumulated rental arrears amounting to K19,600.00 for a period of fourteen (14) months and has not shown interest or commitment in settling the said arrears. That this is an abrogation of the tenancy agreement particularly clause (a) thereby depriving the Applicant of income intended to meet other pressing obligations. That there is no existing lease agreement between the parties and the Respondent's continued

occupation has hindered her from letting the house to other tenants and hence the claim for the sought reliefs.

The Respondent did not file an affidavit in opposition. At the hearing, the Respondent stated that he had been paying rentals but acknowledged that he was owing the Applicant K16,800.00 in rental arrears as at the date of hearing. That he has assured the Applicant that he would pay once he gets what he was owed by his former employers. The facts are therefore not in dispute that the Respondent has been renting the Applicant's property in issue from 9th September, 2011 when it was being administered by the administrator of the estate of the late Joseph Wakumelo. The Applicant has been the owner of the said property from March 2012 and the parties verbally agreed for the Respondent to continue renting the property on the same terms but did not execute a tenancy agreement.

It is also not in dispute that the Respondent is owing the Applicant rental arrears amounting to K16,800.00.

The fact that the Respondent is owing K16,800.00 shows that he had not been paying rentals for a considerable time and is therefore in breach of the term that rentals were to be paid three (3) months in advance. This application has

been brought under section 4 (e) of the Rent Act Cap 206 (the Act) which provides as follows:

- “4. The court shall have power to do all things which it is required or empowered to do by or under the provisions of this Act, and in particular shall have power-**
- (e) subject to the provisions of section thirteen, to make either or both of the following orders, that is to say:**
- (i) an order for the recovery of possession of premises, whether in the occupation of a tenant or any other person; and**
 - (ii) an order for the recovery of arrears of standard rent, mesne profits and a charge for services.**

Section 13 provides for circumstances upon which possession may be grounded as a matter of right. Section 13 (1) (a) is the one relevant in this case and it provides as follows:

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

Subsection 2 provides that the court will only order recovery of possession if it considers the same reasonable in the circumstances of the case.

I have considered the particular facts of this case that the Respondent is owing rentals amounting to K16,800.00 which are lawfully due from him to the Applicant. The Applicant has thus satisfied the requirements of the Act

and is entitled to the orders specified in section 4 (e) of the Act. I hereby grant the Applicant the orders as follows:

- (1) *An order of eviction and recovery of possession of house no. 728(a) and (b) Kafue or plot No. 728 Kafue from the Respondent.*
- (2) *I also grant an order for recovery of the rental arrears of K16,800.00 and leave for the Applicant to levy distress for the same pursuant to section 14 of the Act.*
- (3) *The rental arrears will attract simple interest at the average Bank of Zambia lending rate from the date of judgment to payment.*

Costs are for the Applicant to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 16th day of February, 2016



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M.S. MULENGA
HIGH COURT JUDGE