**IN THE HIGH COURT FOR ZAMBIA** **2015/HP/1971**
**AT THE PRINCIPAL REGISTRY**
**HOLDEN AT LUSAKA**
*(Civil Jurisdiction)*



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| **IN THE MATTER OF:** | **THE LANDLORD AND TENANT (BUSINESS PREMISES ACT) CAP 193** |
| **IN THE MATTER OF:** | **THE MARKETS AND BUS STATIONS ACT NO. 7 OF 2007** |
| **IN THE MATTER OF:** | **DETERMINATION OF RENTALS** |
| **IN THE MATTER OF:** | **SECTIONS 28 OF THE LANDLORD AND TENANT ACT** |
| **IN THE MATTER OF:** | **SECTION 2 OF THE MARKETS AND BUS STATION ACT NO. 7 OF 2007** |

**BETWEEN:**

**THERESA KAZEMBE AND 55 OTHERS** **APPLICANTS**

**AND**

**CHINA HAINAN ZAMBIA LIMITED** **RESPONDENT**

***BEFORE HONOURABLE JUSTICE MR. MWILA CHITABO, SC***

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| *For the Applicants:* | *Mr. P.G Katupisha of Messrs Milner and Paul Legal Practitioners* |
| *For the Respondent:* | *Mr. F.S Kachamba of Messrs EBM Chambers* |

## RULING

***Cases referred to***

1. *The Attorney General and Registrar of National Assembly v. The People (1999) ZR 186*
2. *Twampane Mining Co-operative Limited v. A.M Storti Mining Limited (2011) 3 ZR 67*
3. *Michael Chilufya Sata v. Chanda Chimba III and 3 others (2011) 3 ZR 444*
4. *M'poyou and Kane Mounourou (1979) ZR 280 (reprint)*
5. *Access Bank Zambia Limited and Group Five/Zcon Business Park Venture (suing as a firm)*
6. *Henry M. Kapoko and the People; 2016/CC 0023 (unreported)*

***Legislation referred to***

1. *Rules of the Supreme Court of England (1999 edition) White Book*
2. *High Court Rules Chapter 27 of the Laws of Zambia*

This is an application by the Respondent to set aside, strike out or expunge the Applicants amended summons dated 14th of June, 2017 to set aside the warrants of distress issued herein dated 9th May, 2017 and 26th May, 2017.

The genesis of this matter in so far is relevant to the present application is as follows;

On 30th June, 2016 my brother Siavwapa, J delivered a Judgment wherein his Lordship pronounced himself at page J20 in the following terms:-

> *"The sum total of this Judgment is that the agreed upon rentals in the lease agreements entered into prior to the issuance of the notice by the Bank of Zambia shall be paid on the same terms as before the notice was issued. This is to say that if the agreement then was to align the rentals to the Dollar, the Plaintiffs are at liberty to do so at a rate applicable during the period the rentals fell due"*

Riding and enjoying on the said Judgment, the Respondent now the Applicant without the parties reconciling the rents due if any from the various Defendants launched warrants of distress on the 9th May, 2017 and 26th May, 2017 against the affected tenants and defendants respectively.

It is these warrants of distress that provoked the application for an order to stay execution and subsequently set aside the said warrants.

Accosted with the stay and setting aside application, the Respondents reacted by launching their own preliminary application to set torpedo the Respondents application.

For purposes of orderliness and clear reference to the parties, the Landlord who is the Respondent in the substantive action and warrant of distress will continue to be referred to herein as such

while the Tenants who are the applicants in the substantive application will maintain the same title Applicants.

The summons by the Applicants filed on 14th June, 2017 to set aside the warrant of distress was supported by an affidavit deposed to by one **Theresa kazembe** on behalf of the others. The essence of which is that the warrants of distress have been issued for wrong amounts as the Judgment did not specify the amount of rents due.

It was deposed that the Respondent had aligned the rentals to a dollar at K10 in total disregard of the Judgment of the Court which clearly stated that upon the issuance of Bank of Zambia notice dated 15th September, 2015 the Respondent was prohibited from aligning the rent to the dollar.

It was further deposed that the dispute as regard the legitimately owed rent is well documented and is common cause to the Advocates for both parties. It is for those reasons that they sought the Court's intervention to set aside the warrants of distress.

That on the advise of the Applicants Advocates the purported warrant of distress was irregular as a Judgment of the Court cannot be enforced by a warrant of distress commonly used by certified bailiffs as self help measure where there is no Judgment for recovery of rent in a business premise.

The application was not countered by an affidavit in opposition. Instead the Respondent launched its own application to set aside the application for irregularity anchored on *Order 2 Rule 2 of the*

*White Book*[1] *and Order 3 Rule 2 of the High Court*[2]. The summons was styled as

> *"summons for an order to set aside, strike out or expunge the amended summons for an order to set aside the warrant of distress, its amended affidavit in support and to set aside, strike out or expunge the exparte summons for an order to stay the sale or further execution; its amended affidavit in support of exparte order from the proceedings /record of the Court for irregularities and lack of authority (Order 2 Rule 2 of the White Book (1999) edition and 1991 Edition) order 3 Rule 2 of the High Court Rules Act, Cap 27 of the Laws of Zambia and the inherent jurisdiction of the action"*

I will summarily deal with the style adopted by the Respondent in couching of the heading of their application. In my view it suffered from unnecessary detail and verbosity. The essence of the application was to:-

> *"Set aside the warrant of distress for irregularity pursuant to Order 2 Rule 2 of the White Book, 1999 Edition and Order 3 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia"*

Reference to setting aside the supporting affidavits in support of the challenged application is superfluous because once for example the Respondents application succeeds then automatically the supporting affidavits collapse. The style adopted loads the heading

of the Respondents application. Reference to 2 different volumes of the White Book 1991 and 1999 edition on the same point of law is wasteful. This approach is disapproved.

I now turn back to Respondents application. It was supported by an affidavit deposed to by one **State Counsel Emmanuel Bupe Mwansa**.

The gravamen of which was that

(i) All the documents which supported the Applicants application to set aside the Judgment do not have a headline of title of Republic of Zambia on the top of the first page and yet the High Court Rules Chapter 27 requires to have such a title.

(ii) That the amended ex-parte summons which cites Order 36 Rule 10 of the High Court Rules deals with stay of Judgments and not warrant of distress.

(iii) That paragraph 3 in both amended affidavits for ex-parte summons for stay and to set aside the warrant of distress refers to shop S4 and then 54 for the Order to set aside the warrant. That the Applicants Advocates have no authority to act in respect of tenant in occupation of shop No. Q4 as demonstrated by exhibit EBM1 being a copy of a letter written to by the affected tenant to the Applicants Advocates.

The application was countered by an affidavit in opposition deposed to by one **Paul Gladson Katupisha** the Applicants Attorney. The essence of which was that

(i) The omission of the words "Republic of Zambia" on the documents filed into Court was not fatal to necessitate expunging or dismissal of the application.

(ii) That the words "Republic of Zambia" is not usually included as documents are drawn *mutatis mutandis*

(iii) That the Respondent had proceeded to issue a warrant of distress on the basis of a Judgment which was not provided for under the High Court Rules and as such the Respondent cannot benefit from their irregularity.

(iv) It was admitted that reference to shops 54 and S4 was a typographical error which can be remedied and cannot give rise to striking out the process.

(v) That the Respondents have no defence to the substantive application to set aside the warrant of distress and their present application was intended to delay the process and prejudice the Applicants.

At the hearing of the application, the Learned Senior Counsel Mr. Kachamba relied on the summons to set aside the summons to set

aside the warrant of distress and supporting affidavit deposed to by State Counsel Emmanuel Bupe Mwansa.

He augumented the affidavit evidence with brief oral submissions that their application was anchored under *Order 2 Rule 2 of the Supreme Court Rules*[1] and *Order 3 Rule 2 of the High Court Rules*[2].

In response, Learned Senior Counsel Mr. Katupisha sought to rely on the affidavit in opposition deposed to by himself.

He augumented his affidavit evidence by oral submissions to the essence of which was that breach of Rules of the Court if they are merely regulatory and not mandatory are not fatal to the proceedings.

In support of that proposition, he called in aid the case of ***Zambia Revenue Authority v. Jayesh Shah (2001) ZR 60***.

As regards the argument that the Applicants had wrongly anchored their application on *Order 36/10 of the High Court Rules*, it was his submission that their application was premised under *Order 45/1* and *Order 45/11 of the Supreme Court Rules of England*, as read together with *Order 36 Rule 10 of the High Court Rules* as such their application was well anchored.

In his brief reply, Learned Senior Counsel Mr. Kachamba submitted that Order 36 Rule 10 of the High Court Rules applies in respect of stays of Judgments and not warrants of distress.

I will now deal with the complaints raised by the Respondent item by item.

1a **Failure to include the words "Republic of Zambia" on documents**

My brother Siavwapa J, adequately dealt with this matter in his Ruling of 10th November, 2015. He put it this way at page R4:

> *"I have considered the submissions by both Counsel and note that it is indeed a breach of the rules for the applicant to have left out the word "Republic of Zambia" in the affidavit in support of the originating Notice of Motion. This is for the reason that the first schedule to the High Court Rules provides model forms of the various writs and documents to be filed into Court in civil process.*
>
> *There is no exception as to the requirement for the Title to include the words "Republic of Zambia" as a trade mark of identity of the jurisdiction. To leave out the said words, therefore, constitutes serious breach of the requirements for filing into Court....."*

His lordship continued at page R8

> *"It is therefore my firm view that the irregularities herein are not fatal to the case and that the right thing to do is not to set aside the originating process but to allow for amendments to be effected in the originating notice of motion, the affidavit in*

*support and other documents filed to include "Republic of Zambia" in the title the words ("Business premise") in the citation of the Act.*

*It is accordingly ordered that the Applicant effects the said amendments and files into Court amended process by the 20th November, 2015"*

Notwithstanding the very clear order, the Applicant in contumelious disregard herein in the application to stay the warrant of distress elected to ignore the order of the Court: Litigants and Advocates who choose to ignore Court orders do so at their own peril.

My brother Siavwapa J, having pronounced himself on the subject means that I am functus officio and cannot re-pronounce myself on the subject as the earlier courts edit is my very own. This is premised on the doctrine and legal status that there is only one High Court.

The court of final resort had occasion to pronounce itself on the subject matter in the case of Attorney General and Registrar of the National Assembly v. The People[1], it was held in ruling No. 1:-

*"There is only one High Court. A decision of one Judge of the High Court becomes a Judgment of the High Court. A Judge of the Court cannot overrule or otherwise interfere with a Judgment of another Court"*

In my view, a Judgment in this context includes a Ruling of the High Court at any stage of the proceedings.

Before I leave the issue of the effect of non compliance with procedural impositions, I wish to state that litigants should heed the pronouncement by the Court of final resort (the Supreme Court) in the case of ***Access Bank Zambia Limited and Group Five / Zcon Business Park Ventures (suing as a firm)***[5] where Malila, JS (as he then was) put it this way:-

> *"In conclusion we are mindful that the issue regarding Article 118 (2) (e) of the Constitution of Zambia was raised by Mr. Silwamba, SC and was not part of his written arguments before us. We do not intend to engage in anything resembling interpretation of the Constitution in the Judgment. All we can say is that the Constitution never means to oust the obligations of litigants to comply with procedural imperatives as justice from the courts"*

The Constitutional Court which is the Court of final resort in interpretation of Constitutional provisions put to rest and terminated all debate on the meaning and application of *Article 118 (2) (e)* that was in the case ***Henry M. Kapoko and the People***[6] Munalula, JC delivering the Judgment of the Court put it this way at pages J38 – J39:-

> *"To be absolutely clear, we wish to point out that even if we had come to the conclusion that sections 207 and 208 (of the CPC)*

*are technicalities, the applicant would still have had to convince the Court that the provisions are not only technicalities that hinder due process to the extent that they ought to be disregarded in the interest of justice. Although the Applicant did not this point in any significant way this is the full and correct meaning of Article118 (2) (3) does not direct courts to disregard technicalities. It enjoins courts not to pay undue regard to technicalities that obstruct the course of justice. It is this courts' decision that sections 207 and 208 of the Criminal Procedure Code are not technicalities and do not offend Article 118 (2) (e). They are rules of procedure which are necessary for the just disposition of criminal matters before the courts. The trial courts adherence to them is therefore correct and does not in any way constitute undue regard. In enacting Article 118 (2) (e) the framers of the Constitution did not intend to throw out rules of procedure or indeed technicalities in a situation where such undue regard prevents gratuitously the just disposition of cases before the courts. Sections 207 and 208 are still good law.*

*A final word on costs. Since the case has raised important matters of interpretation necessary for the development of our procedural law, each party shall bear their own cost"*

1(b) **<u>There is only one High Court</u>**

As alluded to in the immediate preceding paragraph, I am bound to follow the path taken by my brother on the subject matter.

1(c) **Non compliance with Order and Rules of the Court**

It is trite law that Rules and orders of the Court decisions are to be complied with. The Court of final resort had occasion to pronounce itself on the matter in the case of ***Twampane Mining Co-operative Limited v. A.M Storti Mining Limited***[2] where it was held as follows:-

> *"It is important to adhere to Rules of the Court in order to ensure that matters are heard in an orderly and expeditious manner and that those who choose to ignore Rules of the Court do so at their own peril"*

The objection by the Respondent that the documents in respect of the applicants application and the other documents that they do not contain the title "Republic of Zambia" is richly anchored.

2(a) **Respondents application to challenge the Applicants application premises on Order 3 Rules 2 of the High Court Rules**

Order 3 Rule 2 of the said Rules provide as follows:-

> *"Subject to any particular rules, the Court or Judge may in all cases and manners make an interlocutory order which it considers necessary for doing justice whether such order has expressly asked by the person entitled to the benefit of the order or not"*

My understanding of this Rule in the manner it is crafted is that this Rules cannot be resorted if there is or there are specific rules dealing with the subject matter.

The Respondent's preliminary application is anchored on points of law in challenging the Applicants application to set aside the warrant of distress.

There appears to be no specific Rule under the High Court Rules that provides for challenging applications like the one in casu on points of law as has been done.

This however does not end the matter. Faced with the application, I visited the case of ***Michael Chilufya Sata v. Chanda Chimba III and 3 others***[3], where Dr. Matibini, JS (as he then was)had occasion to pronounce himself on the subject he put it this way:-

> *"The current obtaining position is that the Rules of the Court of England no longer enjoy the force of law in themselves in Zambia. The Rules are to be resorted only when it is necessary to fill a lacuna"*

Factoring his Lordships correct pronouncement of law and practice on the matter, I then consulted *Order 14A of the Supreme Court Rules of England*[1], it provides as follows:-

> *"414 A (1) The Court may upon the application of a party or of its own motion determine any question of law or construction of*

*any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that*

*(a) Such question is suitable for determination without a full trial of the action; and*

*(b) Such determination will finally determine (subject only to any possible appeal) the entire cause or any claim or issue therein*

*(2) .....*

*(3) The Court shall not determine any question under this order unless the parties have either:-*

*(a) had an opportunity of being heard*

Order 33 Rule 3 of the Supreme Court Rules of England1 provides as follows:-

*"The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of law and whether raised by the pleadings or otherwise to be tried before, at or after trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated".*

The notes under this Rule reads in part at page 641:-

*"This rule should be read with Order 14A (disposal of case on points of law)"*

Thus in the absence of any specific Rule to deal with the Respondents application *Order 14A* and *Order 33 Rule 3 of the Supreme Court Rules of England*[1], automatically kicks in to fill the lacuna. *Order 3 Rule 2 of the High Court Rules*[2], in the case in casu and circumstances of the case is inapplicable.

I will therefore proceed on the basis that the preliminary issue is anchored under orders 14A and 33 Rule 3 of the Rules of the Supreme Court Rules of England and as such I have jurisdiction to entertain the Respondents application.

2 (b) **Failure to include the term and words of Republic of Zambia**

I have already exhaustively discussed this limb in some preceding paragraphs and found that this was serious breach of procedural rules.

3 **That the Applicants Advocates had no authority to act on behalf of tenants for shops S4 ad 54**

It was deposed that the Advocates for the Applicants had no authority to act for the tenants of shops S4 and 54 and on that score the application was flawed and ought to be floored.

Learned Counsel Mr. Katupisha quickly conceded that indeed they no longer acted for the indentified tenants. His explanation was that their inclusion was typographical. A similar explanation was made in respect of the omission of the term and words "Republic of

Zambia" that the precedence templates at the law office had not changed.

What clearly comes out is that the Learned Senior Counsel did not meticulously check the court documents before authorizing them to be filed into court.

Moodley, J, (as he then was) had occasion to pronounce himself on the subject matter in the case of ***Kalenga M'poyou and Kane Mounourou***[4], he put it this way at page 283, lines 12 – 23:-

> *"Finally I come to the affidavits themselves, I find that there are numerous spelling errors some omissions and alterations in the two supporting affidavits. The omissions and errors have not been corrected and the alterations have not been initiated by the persons swearing the affidavit. Both these affidavits in their present scale are disgraceful and appear and indicate a considerable degree of carelessness on the part of the Advocates who drew up these affidavits. Judges have neither the time nor the disposition to act as school masters to correct each and every word in every document drafted by Counsel. It is the duty of Counsel that all their paper work is in meticulous order before filing and that all documents for purposes of court proceedings conform with legal requirements" (underlining mine for emphasis)*

I respectfully agree with his Lordship and I adopt those observations as my very own.

The Respondents under this limb was well anchored and it is sustained, but only to the extent that the Applicants Advocates had no authority to act in respect of tenants of shops **S4** and **54**.

5 **Application by Respondent as strategy to delay in hearing of stay of the warrant of distress application**

The applicants' argument is that it is common cause that the rents due and owing to the Respondent by various affected tenants have not been reconciled and parties have been interrogating this issue. It was therefore, they argued completely unjustifiable to launch warrant/s of distress on amounts which have not been ascertained. In their view, the Respondent has no defence to justify issue of such process of execution.

There is a lot of force in this powerful submission and I uphold it.

On the foregoing reasons and analysis, it is my very firm considered view that the Respondents application to torpedo the Applicants warrant of distress stay application is destitute of merit.

The matter however, does not end here. The affidavit evidence reveals that there is a serious disagreement on the rents due on the various business premises. If that be the position, then indeed the Respondents application is merely an ingenious stratagem contrived to delay the determination of Applicants application to set aside the warrant of distress which was issued for too much.

If not set aside, the inescapable position is that the doctrine of unjust enrichment and the Court's disapproval of unjust enrichment will be transgressed.

Allowing the warrant/s of distress to subsist and be argued will only serve the purpose of squandering the rare valuable commodity of the Courts time. To this effect, I visited the case of ***Ashmore v. Corporation of Lloyds***[7] in the foreign jurisdiction. Lord Roskill had this to say at page 483:-

> *"In the Commercial Court and indeed in any trial Court, it is the trial Judge who has control of the proceedings. it is part of his duty to identify the crucial issues and to see they are tried as expeditiously and as inexpensively as possible. It is the duty of advisors of the parties to assist the trial judge in carrying out his duty. Litigants are not entitled to uncontrolled use of a trial Judge's time. Other litigants await their turn. Litigants are only entitled to so much of the trial Judges' time as is necessary for the proper determination of the relevant issue"*

Back in our very own jurisdiction, the superior Court of last resort had occasion to take time for consideration of the subject matter and instructively authoritatively gave a well measured decree on courts duty to take charge of the proceeds. This was in the case of ***Winnie Zaloumis (suing in her capacity as the Acting National Secretary for MMD) v. Felix Mutati and 3 others***[8], Wood, JS delivering the Judgment of the court opined at page J3:-

*"The facts leading up to this appeal makes very sad reading because they revealed a failure by a Judge to properly take charge of the proceedings before him"*

His Lordship continued at page J19:-

*"....he proceeded to table another application, exparte, to stay the exparte order discharging the injunction. The problem as we see it is threefold. Firstly, it demonstrates that the Judge did not take charge of the record before him and steer it properly to its logical conclusion directing and guiding the parties. He instead allowed himself to be driven by the whims of the parties, notwithstanding that the rules of court require that when matters are filed and allocated to a Judge, they should be court driven by way of a Judge giving appropriate directions in relation to applications before him. The rule that a court should take charge of proceedings is not unique in Zambia. This is the case in England as well as the former House of Lords (now Supreme Court) observed as follows in the case of* ***Ashmore v. Corp of Lloyds***

> *'The control of proceedings was always a matter for trial Judge and the parties were entitled as of right to have their case tried to a conclusion in such a manner as they thought fit'*

*The Learned trial Judges failure to take charge of the record, as we explained in the preceding paragraph resulted in the second*

*aspect of the problem of allowing multiplicity of applications. The Learned High Court Judge encouraged this situation which can best be described as classic failure in case of management."*

His Lordship continued at page J21:-

*In our considered view, when a court is confronted as it was in this case, with an exparte application, it is encumbent upon it to firstly thoroughly study and understand the record. Thereafter, the court must ask itself questions; firstly, is the application urgent? And secondly, if I do not hear it now and exparte will it be rendered nugatory by the time I hear it interpartes?....."*

Further down the Judgment his Lordship went on to observe as follows:-

*"Although the above passage addresses applications for injunctions, it applies similarly to other exparte applications such as those relating to discharge of injunctions, stay of execution, etc....."*

The pronouncements in the cited case aptly apply to the case in casu. As alluded to in some of the preceding paragraphs, it is common cause that the amounts of rent due have not been ascertained. There was therefore no substratum upon which to anchor the warrant of distress and as such the said warrants of distress were null and void.

Lord Denning had occasion to pronounce himself on null and void situations. This was in the case of ***Mcfoy v. United Africa Company Limited***[9]. He craftily put it this way:-

> *"If an act is void, then it is a nullity. It is not only bad, it is incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient for the court to declare it so. And any proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stand, it will collapse"*

I respectfully agree that the above pronouncement as the correct edit of the law. I adopt the same as my very own and I have nothing useful to add.

## 6. Application of Order 36 Rule 10 of the High Court Rules to stay of warrants of distress

It was argued that *Order 36 Rule 10 of the High Court Rules* does not specifically provide for stays of warrants of distress but only stays of Judgments and on that score the Applicants application ought to be terminated.

Seductive as the argument might be, I do not agree that should be the position for the following reasons.

6. 1 Firstly there is an equitable legal maxim which states that "*he who goes to equity must do so with clean hands*"

The Court of final resort had occasion to pronounce itself on the subject. This was in the case of ***Davies Chisopa and Stanley Chisanga***[9], Muyovwe, JS, at page J9 put it this way:-

> *"But before we conclude on this segment, we are compelled to react to Counsel for the Respondents response to the allegations relating to donations of money by the Respondent. It was pointed out that the Appellant had come to Court with heavily soiled hands on account of the fact he equally made various donations such as 30 bags of cement to a health centre, donations of iron sheets to churches and mono pumps to the community during the campaign period. That the Appellant admitted making these donations. The Learned trial judge in his Judgment found that these donations could not be termed philanthropic activities since the same were made during the campaign period. Clearly the Appellant had not come to Court with clean hands. As the Holy Bible (New International Version Book of Luke chapter 6:41 says:*
>
> > *"Why do you look at the spec of sawdust in your brothers eye and pay no attention to the plank in your own eye? How can you say to your brother, brother, let me take the spec out of your eye' when look, you yourself fail to see the plank in your own eye"*

*In agreeing with the trial Judge, we have found that the Appellant was equally guilty of illegal practices contrary to section 93 (2) (c) of the Act"*

This case relates to a Parliamentary Election Petition. The principle however aptly applies to this case. In the case in casu, the Respondent did not indicate under which provision it had issued the warrant of distress on unquantified and unassessed or reconciled due rents. The Respondent had not clearly come to equity with clean hands, but has come to equity with heavily soiled hands.

6.2 Secondly, the Applicants have submitted that their application was anchored under order Rule 10 of the High Court Rules as read together with *Order 54 Rule 1 and Rule 11 of the Supreme Court Rules of England*.

I have gleaned the said orders upon which capital reliance has been placed on by the Applicants. The first relate to stays of execution of Judgments and later *Order 45 Rule 1 and 11* enforcement of Judgments by

*(a) Writ of fieri facias*
*(b) Garnishee proceedings*
*(c) A charging order*
*(d) The appointment of a receiver*
*(e) ..... an order for committal*
*(f) .....writ of sequestration*

Nowhere is reference made to application for stay of warrants of distress issued in error or otherwise.

I therefore have to agree and I agree with the submissions of the Learned Senior Counsel for the Respondent that the Applicants application was not well anchored.

This however does not rest the matter. I have already disclosed my mind to the provisions of *Order 3 Rule 2 of the High Court Rules* which clothes the court with authority to grant any interlocutory relief even that not asked for by a party in the interest of justice.

Thus in the absence of any specific provisions both in our Rules and in the Supreme Court Rules of England I will deem the Applicants application to challenge the warrant of distress as having been premised under Order 3 Rule 2 of the High Court Rules and as such I have jurisdiction to adjudicate on the application.

7. In any event section 13 of the High Court Act Chapter 27of the Laws of Zambia mandates the Court to apply both law and equity concurrently in adjudication.

In conclusion, having navigated interrogated and traversed all issues that arose in these applications, I hold as I do that

(1)The Respondents application to strike out the Applicants application to set aside the Judgment has failed for want of merit.

(2) The warrant/s of distress which were issued herein for too much and purportedly executed by certified bailiffs is hereby set aside.

(3) It is further ordered that the rightly and justly due and owing by the Applicants be determined by Learned Deputy Registrar upon application by either party within 14 days from the date hereof in default of agreement.

(4) The costs are for the Applicants which costs are to be taxed in default of agreement.

Leave to appeal to the Superior Court of Appeal is granted.

**Delivered under my hand and seal this 29th day of September, 2017**

**Mwila Chitabo, SC**
**Judge**