

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

2017/HP/1133



BETWEEN:

**BISHOP PETER MULENGA
REV. MIRRIAM MULENGA**

**1ST APPLICANT
2ND APPLICANT**

AND

**VICTORIA MUSOLE
JEFF UWAKWE**

**1ST RESPONDENT
2ND RESPONDENT**

**Before the Hon. Mr. Justice M.L. ZULU
in Chambers on the 4th October, 2017**

For the Applicants:

In Person

For the Respondent:

No Appearance

J U D G M E N T

This is an application brought by the Applicants on 13th July, 2017 by way of Originating Summons pursuant to Order 30 Rule 1 of the High Court Act, Cap 27, of the laws of Zambia. The Applicants sought the following reliefs:

- 1. Vacant Possession of Property (Shop) No. D130, Mtendere, Lusaka;**

- 2. An Order for eviction directed at the Respondents from the said dwelling Shop No. D130, Mtendere, Lusaka;**
- 3. Damages for the inconvenience the Applicants have suffered due to Respondents action;**
- 4. Any other relief the court may deem appropriate; and**
- 5. Costs and incidental to these proceedings.**

The Application is supported by an Affidavit in support deposed by Peter Mulenga, the 1st Applicant and also the Landlord of the property, D130 no. 416, Mtendere, Lusaka.

The 1st Applicant in his Affidavit evidence states that on 1st March, 2016, he offered the Respondents in a written agreement, marked '**BPM1**' to rent the Shop D130 for a period of one year, but was extended by a further two months after its expiry on 28th February, 2017. It was the Applicants further evidence that the contract was not renewed because of various misunderstandings between the parties but the Respondents have refused to vacate the shop.

It was also the Applicants affidavit evidence that the Council ordered them not to trade in the Shop because it was not registered.

On 10th August, 2017, the Respondents filed a joint Affidavit in opposition to the Originating Summons asking the Court not to

grant the reliefs the Applicants are seeking because they were not given six months notice to terminate the lease agreement as per agreement.

The Respondent's affidavit evidence also states that they carried out renovations to the Shop D130, amounting to K15,256.00 as per exhibit 'VM1'. It was also the Respondents evidence that because of the above, this court should not grant the Applicants the reliefs they seek.

Despite various notices made to the Respondents to appear, they did not appear and the Applicants sought to rely on their Affidavit in Support of the Originating Summons.

At the hearing on 4th October, 2017, there was no appearance for and on behalf of the Respondent. The Applicants relied on his Affidavit filed into Court and prayed that the Court grants them the reliefs, and Order the Respondent to pay the six months' rentals that are outstanding to date.

I have noted the Applicants Affidavit in support of the Originating Summons and his own submission. I have also considered the Affidavit in Opposition filed

by the Respondents on record.

On the evidence on record, I note **clause 11** of the agreement, "**PBM1**" which was not dated but signed between the parties that a notice of three months was required before termination by either party. While the other supporting documents filed into court are not helpful, I accept the Applicants position that the lease agreement between the parties expired on 31 April, 2017. Further I accept the Applicants evidence that they notified the Respondents of their intention not to renew the lease. I, accordingly find that the Respondents were not entitled to continued occupying Shop D130 after 31st April, 2017 after the expiration of the lease agreement. There is also no evidence produced by the Respondents that they paid rentals from 31st April, 2017 today. What the Respondent has exhibited is a tabulation of the said renovations done on shop D130, but not proof of money spent. Therefore, the Applicants are entitled to be paid for the illegal stay thereafter to date.

On the Respondents claim that they spent K15, 256.00 on renovations they carried out, therefore, the Applicants are not entitled to the reliefs sought. I find that some form of renovations were carried out by the Respondents and acknowledged by the 2nd

Applicant in the documents attached marked, “**VM/2**”. However, the quantum is questionable because the documents, “**VM/1**” filed into court are not in the name of the Respondents and do not confirm that the Respondent paid for all the goods listed on the **quotations/invoice** attached except for the receipts no. **0739** and **0284**. I, accordingly, dismiss the Respondents claim that they spent K15,256.00 for want of supporting receipts.

In the circumstances of the case I grant the Applicants the following reliefs:

1. An Order for eviction directed at the Respondent from the said Shop D130, Mtendere;
2. Enter Judgment in favour of the Applicants for the accrued rentals from 31st April, 2017 to date;
3. Order the Respondents pay for Costs of and incidental for this action.

Delivered at Lusaka this 16th day of November, 2017.



M.L. ZULU
HIGH COURT JUDGE