

**IN THE HIGH COURT FOR ZAMBIA** 2017/HP/2231  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*



**IN THE MATTER:** PLOT NO. E9 BLOCK 2, S/D/L/1/D FARM 397,  
MAKENI

**IN THE MATTER OF:** THE RENT ACT CHAPTER 206 OF THE LAWS OF  
ZAMBIA

**AND**

**IN THE MATTER OF:** SECTION 4 (e) (i), (h) AND 13 (1) (a) OF THE RENT  
ACT & RULE 3 OF THE RENT RULES

**BETWEEN:**

**MADISON PENSION TRUST FUND**

**APPLICANT**

**AND**

**MOHAMAD ABOU KHALIL**

**RESPONDENT**

*For the Petitioner:* Ms. M. Mayaka of Messrs Mulenga  
Mundashi Kasonde Legal Practitioners

*For the Respondent:* N/A

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## **R U L I N G**

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***Legislation referred to:***

- 1. Rent Act Chapter 206 of the Laws of Zambia*
- 2. Rent Act and Rules of the Rent Act Chapter 206 of the Laws of Zambia*

**Cases referred to:**

1. *Osward Omala Muyanga v. Simata Nalunawa 2014/HP/177*

This action was launched by mode of originating notice of motion pursuant to Section 4 (e) (i) (b) and 13 (1) of the Rent Act and Rule 3 of the Rent Rules.

The Applicant sought the following reliefs in respect of Plot No. E9 Block 2, S/D/L/1/D Farm 397 Makeni, Lusaka.

- (i) An order directing the Respondent to pay the Applicant outstanding rentals for the period of 15<sup>th</sup> January, 2017 in the total sum ZMW 110, 100.00;
- (ii) An Order that the Respondent pays interest on the in (i) at the maximum prime rate of the Landlords Bank from the date due of the payment as per tenancy;
- (iii) An order for leave to issue a warrant of distress against the Respondent in respect of rentals for the lease period of 15<sup>th</sup> January, 2017 to 14<sup>th</sup> July, 2017 in the total sum of ZMW 110,000.00 plus interest;
- (iv) An order for leave to serve process by substituted service;
- (v) Mesne profits;
- (vi) Costs of and incidental to this application, and
- (vii) Any other remedy the Court may deem fit.

The originating notice of motion was supported by one **Blessings Lupemba** the property officer of Madison Asset Management Company Limited the Property Manager of the Plaintiff.

The gravamen of the affidavit is that on or about the 15<sup>th</sup> July, 2016 the Applicant executed a Tenancy in respect of the property subject

to these proceedings with one **Mohamed Abou Khali** the Respondent for a period of 1 year commencing 15<sup>th</sup> July, 2016 to 14<sup>th</sup> July, 2017 or until the Applicant or Respondent gives notice of termination in accordance with the provisions of the agreement which was exhibited and marked "BL 1".

According to the agreement, the Respondent was bound to pay a monthly rental of ZMW10, 000 payable three (3) months in advance and not later than the last day of the previous rental expiring date.

It was deposed that on the 25<sup>th</sup> July, 2016 and 6<sup>th</sup> October, 2016, the Respondent made a payment of ZMW30, 000.00 effectively covering the rental arrears from 16<sup>th</sup> July, 2016 to 14<sup>th</sup> January, 2017 as evidenced by exhibits "**BL2**" and "**BL2**" respectively, effectively covering the rentals for six (6) months period of 16<sup>th</sup> July, 2016 to 14<sup>th</sup> January, 2017.

It was deposed that the Respondent has defaulted on meeting its contractual obligations in respect of the outstanding rent for a period of 13 months beginning October, 2016 to 14<sup>th</sup> November, 2017 in the sum of K130, 000 as evidenced by rent statements hereby marked as exhibit "**BL4**".

It was deposed that it has come to the knowledge of the Applicant that the Respondent might have fled the country leaving behind property believed to be his.

He concluded by inviting the Court to issue a warrant of distress against the property at the demised premises.

At the hearing of this application, the learned Ms. Mayaka informed the Court that the record will show that the process was duly

served by substituted service by advertisement as granted by the Court on 9<sup>th</sup> February, 2018. She pointed to the affidavit of service filed on 2<sup>nd</sup> March, 2018. She then invited the Court to grant the reliefs sought by the Applicant.

She concluded by referring the Court to the case of **Oswald Muyanda v. Simata Nalunawa**<sup>1</sup> as authority for the Court to grant the sought reliefs.

There is no affidavit in opposition. It is trite that where an opponent omits to file an affidavit in opposition, the facts supporting the application are deemed to be admitted. I am therefore satisfied that the following facts are established.

This action is brought under Section 4 (e) of the Rent Act<sup>1</sup> 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 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 recovery of possession of premises whether in the occupation of a tenant or any other person; and*

*(ii) an order for recovery of arrears of standard mesne profits and charge of service.*

Section 13 (a) of the Act provides for the Court to grant possession of the premises to the Landlord where it is proved that the Tenant owes outstanding rental arrears.

I have already in one of the preceding paragraphs found that in the absence of an opposing affidavit I make the following findings:

*(1) The defendant is truly and justly indebted to the plaintiff in the sum of ZMW130, 000.00 for period of 15<sup>th</sup> January, 2016 to 14<sup>th</sup> July, 2017 in respect of rent arrears.*

*(2) That the Respondent has decamped from the demised premises and his whereabouts are unknown.*

I follow the path taken by my sister M.S Mulenga (as she then was) in the case of **Oswald Omala Muyanga and Simata Nalunawa<sup>1</sup>** and order as follows:-

1. An order that the Respondent pays the outstanding arrears of ZMK130, 000.00 for period of 15<sup>th</sup> January, 2016 to 14<sup>th</sup> July, 2017.

(i) The amount of ZMK130, 000 is the principal sum due which will attract interest at short term deposit rate of the Applicants Bank from the 15<sup>th</sup> July, 2017 to the date of this Judgment.

(ii) The principal plus interest earned on the ZMK130, 000 will form the Judgment debt upon which interest shall be charged at a rate of Bank lending rate but not exceeding

*the Bank of Zambia lending rate until the Judgment debt is extinguished.*

- 2. A warrant of distress is to issue against the Respondents in respect of the demised property Plot no. E9 Block 2 S/D/L/1/D Farm 397 Makeni, Lusaka.*
- 3. I order that the Applicant is granted leave to take possession of the demised premises.*
- 4. A warrant of distress to issue against the Respondents of the demised premises.*
- 5. I order recovery of Mesne profits from the 15<sup>th</sup> of July, 2017 to date of the Judgment prorata based on the monthly rental of ZMK 10, 000 per month.*

The costs are for the Applicant 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 7<sup>th</sup> day of March, 2018**

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