

**IN THE HIGH COURT FOR ZAMBIA**

**2018/HP/0191**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**IN THE MATTER OF: SECTION 4 (E) OF THE RENT ACT,  
CHAPTER 206 OF THE LAWS OF  
ZAMBIA**

**AND**

**IN THE MATTER OF: THE PREMISES KNOWN AS HOUSE NO.  
150, SILVEREST GARDENS, GREAT  
EAST ROAD, CHONGWE**

**BETWEEN:**

ZDA-HENAN GUOJI DEVELOPMENT  
COMPANY LIMITED

**APPLICANT**

**AND**

DR. ALIDOR LONGWA

**RESPONDENT**

**BEFORE THE HONOURABLE MADAM JUSTICE P. K. YANGAILO  
IN CHAMBERS ON 11<sup>TH</sup> DAY OF APRIL, 2018**

*For the Applicant: Mrs. K. M. Chileshe - Messrs. Mweemba Chashi &  
Partners*

*For the Respondent: Dr. Alidor Longwa - In Person*

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## **JUDGMENT**

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**LEGISLATION REFERRED TO:**

1. *The Rent Act, Chapter 206 of the Laws of Zambia; and*
2. *The High Court Act, Chapter 27 of the Laws of Zambia.*

By way of Originating Notice of Motion dated 30<sup>th</sup> January 2018, brought pursuant to **Section 4** of **The Rent Act**<sup>1</sup>, the Applicant claims against the Respondent the following reliefs: -

- a) *An Order for the recovery of possession of the premises;*
- b) *Payment of rental arrears; and*
- c) *Costs.*

The Applicant filed herein an Affidavit in Support of the Originating Notice of Motion deposed to by one **Cathryn Mwenda**, who is the Deputy Managing Director in the Applicant company. It was deposed, *inter alia*, as follows: -

1. *That the Applicant and Respondent entered into an agreement for the lease of House No. 150, Silverest Gardens, in November 2016 at a monthly rental of K3,200.00;*
2. *That the Respondent fell in arrears in June 2017, at which time the amount outstanding stood at K2,800.00;*
3. *That the Respondent failed to pay rentals from June to October 2017 and a letter of demand for the outstanding rentals in the amount of K15,600.00, was sent to him;*
4. *That despite the Applicant's demands, the Respondent has failed to settle the rental arrears;*
5. *That to date the Respondent has failed or neglected to settle the outstanding rentals in the amount of K25,200.00; and*
6. *That the Applicant continues to suffer loss.*

The Respondent was served with the originating process but did not file any Affidavit in Opposition. I scheduled this matter for hearing on 10<sup>th</sup> April, 2018. At the hearing of this matter, Learned Counsel for the Applicant Ms. Chileshe, relied entirely on the Applicant's

Affidavit in Support and prayed that the reliefs being sought be granted.

In response, the Respondent, who appeared in person, admitted owing the Applicant rental arrears and requested to be given a bit of time to clear the rentals, as he had just started receiving money that he is owed by farmers. The facts are therefore not in dispute that the Respondent has been renting the Applicant's property in issue. It is also not in dispute that the Respondent is owing the Applicant rental arrears amounting to K25,200.00.

I have considered the claims by the Applicant in the Originating Notice of Motion and the averments deposed to in the Affidavit in Support filed herein. I have further considered the Respondent's oral submissions.

This application has been brought pursuant to **Section 4 (e)** of **The Rent Act**<sup>1</sup>, which provides as follows: -

*"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."*

I wish to state from the outset that an admission of the sum claimed by the Applicant was made by the Respondent at the hearing and **Order XXI** of **The High Court Rules**<sup>2</sup> empowers the Court to enter Judgment in favour of a party based on admissions of facts made by the other party on its claims.

**Order XXI Rule 1** of **The High Court Rules**<sup>2</sup> states as follows: -

*"Notice of admissions*

*Any party to a suit may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the writ of summons, statement of claim, defence or other statement of any other party."*

In my humble view, **Order XXI Rule 5** of **The High Court Rules**<sup>2</sup> empowers the Court to exercise its discretion to enter Judgment on Admission of the amount claimed by the Respondent.

*In casu*, at the scheduled hearing, the Respondent in his *viva voce* submissions admitted owing the sum claimed by the Applicant and applied to be given time to settle the claim. Quite clearly, an admission of the total sum claimed by the Applicant was made by the Respondent. Since this fact has been admitted, in my considered view, it ceases to be an issue. The fact that the Respondent admitted owing K25,200.00 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 monthly.

Accordingly, being satisfied that the Respondent admits the total amount claimed by the Applicant and not seeing any good reason to

the contrary, I hold that this is a proper case for me to exercise my discretion to enter Judgment on admissions in respect of the admitted sum. I accordingly, enter Judgment in favour of the Applicant, for the admitted amount, in the sum of K25,200.00.

I will now consider the application by the Respondent to be given some time to pay the admitted claim. In his *viva voce* submissions, the Respondent submitted that he has just started receiving money owed to him by some farmers and needs a bit of time to be given to him to settle the claim herein. The Respondent has not placed before this Court satisfactory proof to show that he is owed money by farmers, as alleged. He has not demonstrated sufficient cause or any special circumstances to entitle him to be given some time to settle the amount claimed. Accordingly, I find no justification for me to grant his application and I hereby dismiss it.

With regard to the Applicant's claim for an Order for the recovery of possession of the premises, there was no opposition from the Respondent. **Section 13 (1) (a)** of **The Rent Act**<sup>1</sup> provides for circumstances upon which possession may be granted. It provides as follows: -

***"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;..."***

**Section 13 (2)** of **The Rent Act**<sup>1</sup> provides that the Court will only order recovery of possession if it considers the same reasonable, in the circumstances of the case. It is couched in the following manner: -

*"... no order for recovery of possession of premises shall be made unless the court considers it reasonable to make such order."*

I have considered the particular facts of this case, that the Respondent is owing rentals amounting to K25,200.00, which is lawfully due from him to the Applicant. The Applicant has thus satisfied the requirements of **The Rent Act**<sup>1</sup> and is entitled to the orders specified in **The Rent Act**<sup>1</sup>.

Accordingly, I hereby grant the Applicant the orders as follows: -

1. An order of eviction and recovery of possession of House No. 150, Silverest Gardens, Great East Road, Chongwe, from the Respondent;
2. An order for recovery of the rental arrears of K25,200.00 and leave for the Applicant to levy distress for the same pursuant to **Section 14** of **The Rent Act**<sup>1</sup>; and
3. The rental arrears will carry interest at the average short term bank deposit rate from the date of the originating process to the date of this Judgment and thereafter, interest will accrue at current Bank of Zambia lending rate up to the date of payment.

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

**Delivered at Lusaka on the 11<sup>th</sup> day of April, 2018.**



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**P. K. YANGAILO  
HIGH COURT JUDGE**