IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 20 OF 1993

HOLDEN AT LUSAKA

B E T W E E N:- GEORGOPOULOS CONSTANTINOS APPELLANT

Vs

DR. ABDUL RAHID AHMED RESPONDENT

CORAM: GARDNER, CHAILA AND MUSUMALI JJS.,
15th July, 1993 and 17th November, 1993
E.B. Mwansa of E.B.M. Chambers appeared for the appellant.
J. Naik of Jitesh Naik Advocates appeared for the respondent.

J U D G M E N T

Gardner J.S. delivered the judgment of the court.

This is an appeal from a judgment of the High Court granting a new tenancy to the respondent for a term of five years.

The appellant is the landlord of premises at shop NO. 5 on Stand NO. 3600 in Lusaka, and the respondent is the tenant of those premises. The respondent applied for a new tenancy setting out that the period should be five years at K40,000.00 per month. The appellant filed an affidavit in opposition referring to arrears of rent in the sum of K480,000.00, and asking for an order for possession of the premises, presumably on the ground of non-payment of rent. The appellant did not in his affidavit in opposition set out any objection or suggested alternative to the period of five years requested by the respondent. Details of this objection are required by Rule 6 (2) (b) of the Landlord and Tenant (Business Premises) Rules 1973. In his original notice to quit, which was invalid, the appellant had indicated that the premises were required by him because he had an intention to dispose of the premises as a whole within the terms of section 11 (1) (e) of the Landlord and Tenant (Business Premises) Act. At the hearing in the High Court the evidence concerned mainly the sum of rent that had been paid, the amount that had been obtained by the respondent by subletting part of the premises, and the suggestions by both parties as what should be the proper rent for the premises. The appellant gave no evidence to support any of the grounds under section 11(1) of the Act on which he could oppose the application for a new tenancy.

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In argument counsel for the appellant suggested that a period of two years would be a reasonable period if a new lease were granted.

The learned trial judge found that, as the appellant had not complied with section 6 (6) of the Act, namely that he had not within two months of the request for a new tenancy given notice of the grounds for his opposition to a grant of the new tenancy the application had not been validly opposed. He therefore, ordered that there should be a grant of a new tenancy. In fact in paragraph ten of his affidavit of opposition the appellant stated that the respondent had sublet the premises without authority. This would have entitled the appellant to oppose the application for a new tenancy under section 11 (1) (c) if it had been proved that there had been a letting without consent. However, although the appellant said in his evidence in chief that he did not allow the respondent to sublet the premises, he agreed in cross-examination that he knew that part of the premises was sublet and that he renewed the lease knowing that fact. The evidence indicated that the appellant could not have satisfied any of the provisions of section 11 (1) and that he had no valid ground for opposing the grant of a new tenancy.

On appeal Mr. Mwansa argued that the parties should have been given an opportunity to agree a term of the duration of the new tenancy, that the learned trial judge had erred in holding that the application was not validly opposed, and that the interest awarded by the learned trial judge was wrong. This latter ground was abandoned before this court.

With regard to the second ground we have indicated that the learned trial judge may have been wrong to say that the grant of a new tenancy was not opposed but he was certainly correct in saying that the proper procedure was not followed. Be that as it may, we have also indicated that there is no ground of objection to a new tenancy upon which the appellant could possibly have suceeded, whatever the procedure adopted, and the appellant cannot succeed now in appealing against the order that there should be some new tenancy. As to the period of five years granted by the learned trial judge, we note that he gave no reason for arriving at this term and, in view of the fact that the suggestion of two years had been put before him, it could not be said that there was no objection to the proposal of five years. Although the learned trial judge made an order that the rent over the period of five years should be reviewed every twelve months it does not appear to us to be appropriate, where the earlier

lettings have been for not more than two years, for this period to be exceeded. We say this because there may be circumstances giving rise to the landlord's acquiring some rights under section 11 (1) in the future, and he should not be debarred from obtaining possession because of a lease which will continue for a long time. In the absence of agreement between the parties there is no justification for the grant of a lease for more than a short term. The appeal succeeds to the extent that the period of five years for the new tenancy ordered by the learned trial judge is set aside. In view of the fact that nearly two years and eleven months have expired since the date of commencement of the new term we substitute an order for the grant of a new tenancy from the 1st January, 1991 for a period of three years. We would emphasise that our order does not automatically entitle the appellant to possession of the premises on the expiration of the new tenancy.

As the appellant had been partially successful in this appeal we order costs of this appeal to the appellant.

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B. T. GARDNER
SUPREME COURT JUDGE

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M. S. CHAILA
SUPREME COURT JUDGE

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C. M. MUSUMALI
SUPREME COURT JUDGE

IN THE SUPREME COURT OF ZAMBIA SCZ APPEAL NO. 20 OF 1993

HOLDEN AT NDOLA

(CIVIL JURISDICTION)

B E T W E E N:

ADULT EDUCATION ASSOCIATION OF ZAMBIA APPELLANT

and

THE ATTORNEY-GENERAL RESPONDENT

Coram: Bweupe, D.C.J., Chaila and Chirwa JJ.S at Ndola on 8th September and 8th December, 1993

For the Appellant : Mr. H. Chama, Messrs Mwanawasa and Co.
For the Respondent: Mr. R.O. Okafor, Principal State Advocate

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J U D G M E N T

Chirwa J.S delivered the Judgment of the court.

The common facts of the case are that the appellant is an educational association engaged in providing academic education at grade 7 and 9 levels, generally referred to as "drop-outs." The association has no premises of its own to carry out its activities. From about 1982 it was running its programmes at Masala and Chifubu Secondary schools. In about 1989 it extended its activities at Lubuto Secondary School, Kanini Basic Secondary School, Kamba Basic Secondary School and Ndola School for Continuing Education. In about the same year the Copperbelt Provincial Education Officer ordered the association to stop its activities at these various educational institutions giving the reason of over stretching the facilities at these institutions thereby posing a danger of out breaks of epidemics. However the association was saved by the Permanent Secretary in the Ministry of Education.

2...In 1992

In 1992 the Provincial Educational Officer wrote the Headmasters of the various schools advising them not to allow the association carry out its activities at the said schools. As a result of this the association brought an action by way of a writ seeking a declaration that the decision by the Provincial Education Officer and the Headmasters to bar the association from using the facilities at the various schools from January 1993 was unlawful and null and void. The matter proceeded to trial without pleadings and at the end of it the learned trial judge refused to grant the declarations sought and it is against this refusal that the association now appeals to this court.

In arguing the appeal Mr. Chama advanced two grounds of appeal. The first ground argued was that the learned trial judge misdirected himself when he found that the licence granted to the appellant was gratuitous and the same was not enforceable. He submitted that evidence clearly shows that the appellant had been spending a lot of money in the form of upkeep of the schools amounting to K475,000.00 and in some cases furniture and other school equipment were bought and they were responsible for paying cleaners. These, it was submitted, showed that there was consideration for this licence.

The second ground argued was that the notice given for the appellant to stop using the school premises was insufficient and unreasonable in that many pupils have been affected. A notice of at least three years should have been given to enable pupils to finish their grade 12.

In reply Mr. Okafor for the respondent supported the learned trial commissioner saying the licence was gratuitous and as such the appellant did not need any notice to terminate the licence.

3...On the question

On the question of reasonableness of the notice, it was argued that the notice was reasonable bearing in mind that the wrangle had been going on since 1989 and they were finally told to leave by January 1993 and this notice was given in October 1992 and the appellant has since then stopped operating from the schools and the appeal is merely an academic exercise.

We have seriously considered the evidence on record and also the arguements advanced before us. Although the point was not raised both in court below and before us, we wish to observe and question the competence of the Associate to sue in its name. However, be as it may, we will proceed to consider the appeal on its own merits.

The learned trial Commissioner considered the question of consideration to determine the precise terms of the contract if any between the Association and the Ministry of Education. He held that the claims by PW1 that the Association helped towards the upkeep of the school were not supported by any evidence. The cleaning up of the premises by the Association cannot be said to be consideration for the use of the premises. We agree with the law quoted by the learned Commissioner from the authors of Clerk and Lindsell on Tort, 14th Edition that a licence can be revoked at any time by notice. In the present case the Association was given notice in October 1992 to cease operating from the schools by 1st January 1993. It cannot be seriously argued that this licence could not be revoked any time as there was not fixed period given to the Association to use the school premises and we respectifully agree that the reasonableness or otherwise of the notice is the real issue in this appeal and we will now consider this point.

4...We have observed

We have observed from the exhibit evidence that the question of the Association using school premises first came up in 1989 when the Association was stopped from using the same. However, they were later allowed to continue using the facilities after the Permanent Secretary, Ministry of Education, Youth and Sport intervened. We have observed also that the same Permanent Secretary rescinded his authority and ordered the discontinuance of the Association's activities at the schools. The Association was given three months notice and bearing in mind that the Association was allowed to finish its academic year, we are unable to agree that the notice given was insufficient and or unreasonable. Considering the reasons given for discontinuing the use of the facilities, we are unable, even if we were persuaded that the notice was insufficient, to order the return of these activities at the schools concerned. We therefore see no misdirections on the part of the learned trial Commissioner in declining to declare the decision to stop the Association from operating from the schools as null and void. We dismiss this appeal with costs both in this court and in the court below.

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B.K. Bweupe
DEPUTY CHIEF JUSTICE

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M.S. Chaila
SUPREME COURT JUDGE

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D.K. Chirwa
SUPREME COURT JUDGE