

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Civil Jurisdiction)



2017/HP/0873

IN THE MATTER OF:

**THE LANDLORD AND TENANT
(BUSINESS PREMISES) ACT CHAPTER
193 OF THE LAWS OF ZAMBIA**

IN THE MATTER OF:

**THE LEASE AGREEMENT IN RESPECT
OF PLOT NO. 6083/CL 2 (STREET NO.
9A) CHITULI ROAD, NORTHMEAD,
LUSAKA**

IN THE MATTER OF:

**THE LAW OF DISTRESS AMENDMENT
ACT 1888**

B E T W E E N :

BEN NGONGA FUMBELO
(T/A Big Ben's Auto Link Services)

APPLICANT

AND

BEAUTY NDOVI PHIRI

1ST RESPONDENT

REMMY LEMEKANI PHIRI

2ND RESPONDENT

**Before Honourable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
4th day of December, 2017**

For the Applicant : *Mr. W. Mwenya, Messrs Lukona Chambers*
For the Defendant : *Ms. N. Nambao, Messrs Mulungushi Chambers*

J U D G M E N T



Cases Referred To:

1. *Zarold Limited v Leasing Finance Company Limited and Rasford Kunda* (2010) ZR Volume 2 71
2. *Paperex v Deluk High Scholl Limited* SCZ Appeal No. 141 of 1996
3. *In the matter of the Law of Distress Amendment Act 1888 and In the matter of an application for General Certificate as a Certified Bailiff and In the matter of Patrick Kamanga (Re Kamaya)* (1987) ZR 7 (H.C.) 1

Legislation Referred To:

1. *The Landlord and Tenant (Business Premises) Act, Chapter 193*
2. *Sheriff's Act, Chapter 37*
3. *The Law of Distress Amendment Act 1888*

Other Works Referred To:

1. *Halsbury's Laws of England, 4th Edition, Reissne Volume 13*
2. *Fredrick S. Mudenda, Land Law in Zambia: Cases and Materials, UNZA Press School of Law, 2007*

By Originating Notice of Motion, the Applicant seeks the following reliefs:

- (i) *An order that the seizure of his goods by the Sheriff of Zambia under a purported Warrant of Distress issued by the Respondents herein is irregular and defective at law and should be declared null and void by the Court.*
- (ii) *The Sheriff of Zambia must immediately release motor vehicle registration number ABX 4661 belonging to Ms. Muleya Machaili which was seized together with the goods of the Applicant as this is third party property not subject to seizure if any.*
- (iii) *An account by the Sheriff of Zambia and the Respondents on the seized goods as the value of goods seized far exceed the amount being claimed by the Respondents on outstanding rent. The said account to be rendered before the High Court for Zambia.*

