

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

**2018/HP/0101**

*(Civil Jurisdiction)*

**IN THE MATTER OF: SECTION 4 OF THE LANDLORD AND TENANTS  
(BUSINESS PREMISES) ACT, CHAPTER 193 OF THE  
LAWS OF ZAMBIA**

**BETWEEN:**

ELEMLIAH TEMBO

**AND**

RUTH MUTALE



**APPLICANT**

**RESPONDENT**

**BEFORE THE HONOURABLE MADAM JUSTICE P. K. YANGAILO  
IN CHAMBERS ON 27<sup>TH</sup> DAY OF MARCH, 2018**

*For the Applicant: Mr. B. Mutakuta - Messrs. Robson Malipenga & Co.*

*For the Respondent: Ms. Ruth Mutale - In Person*

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**JUDGMENT**

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**CASE AUTHORITIES REFERRED TO:**

1. *Ellis vs. Allen* 1914 1 Ch. 904;
2. *Southern Cross Motors Limited vs. Nonc systems Technology Limited* (2012) ZR Volume 1;
3. *Zambia Export and Import Bank Limited vs. Mkuyu Farms Limited* (1993 - 1994) Z.R 36;  
and
4. *JZ Car Hire Limited vs. Malvin Chala and Scirocco Enterprises Limited* (2002) ZR 112.

**LEGISLATION REFERRED TO:**

1. *The Landlord and Tenants (Business Premises) Act, Chapter 193 of the Laws of Zambia;*
2. *The High Court Rules, Chapter 27 of the Laws of Zambia; and*
3. *The Rules of the Supreme Court (White Book) 1999 Edition.*

By way of Originating Notice of Motion dated 19<sup>th</sup> January 2018, brought pursuant to **Section 4** of **The Landlord and Tenants (Business Premises) Act<sup>1</sup>**, the Applicant claims against the Respondent the following reliefs: -

- a) *An Order that the Respondent pays the sum of K33,000.00 due to the Applicant for outstanding rentals;*
- b) *Interest;*
- c) *Damages;*
- d) *Costs; and*
- e) *Further or other relief.*

The Applicant filed herein an Affidavit in Support of the Originating Notice of Motion deposed to by one **Elemiah Tembo**, who is the Applicant herein. The Applicant deposed, *inter alia*, as follows: -

1. *That the Applicant is the legal owner of a shop situated in Kamanga compound;*
2. *That the Applicant entered into a verbal tenancy agreement with the Respondent, in which it was agreed that the Respondent will pay rent of K11,000.00 per month to the Applicant for the said shop effective from 1<sup>st</sup> December 2016 to 1<sup>st</sup> April, 2017;*
3. *That the Respondent started giving problems in terms of paying rentals and rentals accrued up to K33,000.00;*
4. *That without prior notice, the Respondent vacated the shop on 1<sup>st</sup> April 2017, leaving unpaid rental in the amount of K33,000.00;*
5. *That after numerous attempts to get the Respondent to settle the money owed, the Respondent on 17<sup>th</sup> October 2017, wrote to the Applicant acknowledging the debt and proposing to settle the debt in monthly*

*instalments of K1,000.00. A copy of the acknowledgment is exhibited as "EM1"; and*

6. *That the Applicant refused to accept the Respondent's proposal.*

The Respondent on 15<sup>th</sup> March 2018, filed herein an Affidavit in Opposition deposed to by Ruth Mutale, the Respondent herein, in which she averred, *inter alia*, as follows: -

1. *That she rented a shop from the Applicant at an agreed rental price of K11,000.00;*
2. *That on or around December 2016, thieves broke into the shop and stole all that the Respondent had invested in the shop for its business, which led to a halt of the business as she could no longer carry on trading. This in turn led to her failure to pay rentals;*
3. *That she in good faith made a proposal to settle the rental arrears in instalments commensurate to what she deemed to be able to afford despite not having any source of income; and*
4. *That even her proposal to settle the rental arrears in monthly instalments of K1,000.00 would be stretching her efforts as she has no source of income.*

I scheduled this matter for hearing on 27<sup>th</sup> March, 2018. At the hearing of this matter, Learned Counsel for the Applicant Mr. Mukatuka, relied on the Applicant's Affidavit in Support and submitted *viva voce*, that the Respondent in her Affidavit in Opposition admitted owing the Applicant rental arrears in the sum of K33,000.00. He drew the Court's attention to **Order XXI Rule 6** of **The High Court Act**<sup>2</sup> and implored the Court to enter Judgment on admission. He further submitted that the Respondent has proposed to settle the outstanding rentals arrears in monthly

instalments of K1,000.00, which the Applicant has rejected. He also submitted that the Respondent has not placed before this Court any proof of her income as required under the law where one wishes to pay the admitted sum in instalments. He prayed that the Applicant's application be granted as prayed.

In response, the Respondent admitted owing the Applicant rental arrears in the sum of K33,000.00 and proposed to pay the admitted sum by instalments.

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 Affidavit in Opposition and application for payment of the admitted sum by monthly instalments of K1,000.00. I have also considered the submissions orally advanced by both parties herein.

I wish to state from the outset that **Order XXI** of **The High Court Rules**<sup>2</sup> and **Order 27 Rule 3** of **The Rules of the Supreme Court**<sup>3</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."*

**Order XXI Rule 5** of **the High Court Rules**<sup>2</sup> states as follows: -

