

**WOODHAM AGENCIES (PVT) LTD  
T/a CARFILL**

**Versus**

**AMTEC**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 6, 7 AND 13 JULY 2006

*Mcijo* for applicant  
*H Shenje* for respondent

Chamber Application

**NDOU J:** The applicant seeks a provisional order in the following terms:

“Terms of final order sought

It is ordered that:

That you should show cause to this honourable court why a final order should not be made on the following terms:

1. That the respondent be and is hereby interdicted from evicting the applicant without a lawful court order.
2. That the respondent shall pay the costs of this suit on an attorney client scale.
3. That applicant institutes an action against respondent within 30 days of this order.

Interim Relief granted

Pending the return date of this order applicant be and is hereby granted the following interim relief.

1. That respondent be and is hereby ordered to give applicant vacant and undisturbed occupation of the property known as 112 Amtec Building, 12<sup>th</sup> Avenue and Robert Mugabe Way, Bulawayo.
2. That respondent should not in any way interfere with applicant's occupation rights until the expiry of the lease on 31 October 2006.
3. That the respondent shall pay the costs of this suit on an attorney client scale.”

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The brief facts of the case are the following. The applicant was a tenant of the respondent's above-mentioned premises in terms of a written lease agreement. The lease was due to expire on 31 October 2005 subject to renewal. In that agreement the respondent was represented by its agent, Rodor Properties (Pvt) Ltd. On 20 September 2005, a month before the expiry of the lease, respondent, through its agent made an offer to the applicant to renew the lease subject to new terms. The offer forming the basis of this application was communicated through a letter which provided:-

"... We therefore advise that as your present lease expires on 1<sup>st</sup> October 2005 your rental for the period 1<sup>st</sup> November 2005 to 30<sup>th</sup> April 2006 shall be increased as follows:

\$8 000 000,00 per month for the period 1 November 2005 to 31 January 2006 and  
\$12 000 000,00 per month for the period 1 February 2006 to 30 April 2006 ...

Kindly advise in writing, whether you wish to renew your lease for a further six or twelve months based on the above, in order that we may proceed with the preparation of an Addendum to the lease Agreement. (Please be advised that should you opt for a 12 month lease, a clause will be inserted into the Addendum to provide for further increases in rental for the periods 1 May 2006 to 31 July 2006 and 1 August 2006 to 31 October 2006.) (emphasis added)

The respondent contacted the applicant's secretary, one Maud, but no response was forthcoming until 19 January 2006. On this date, respondent's agent gave the applicant a notice to vacate.

The notice was faxed to the applicant the same date. On the same date the applicant wrote to the respondent's agents in the following terms:

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"We are in receipt of yours dated 30 September 2005 and quite happy to take the offer of a 12 month lease arrangement."

It was dated 10 October 2005. There was no explanation given why a letter written on 10 October 2005 did not find its way to the respondent's agent until applicant was given written notice to vacate almost three months later. The parties did not sign the agreement of extension although both seem to accept that the lease was extended, although they differ on whether it was extended for six or twelve months. Because the applicant did not top up the rent the only inference is that the extension was for six months. If applicant wanted a twelve months extension it would have topped up the rental as suggested above. That being the case, the respondent was within its rights to terminate the lease on the expiry of six months.

Further, clause 21.1 of the lease applies to the facts of this case. This sub-clause reads:

"21.1 Should the Lessee fail to pay the monthly rental on due date, or commit a breach of any of the other terms and conditions contained herein, then the lessor shall have the right forthwith to cancel this lease and retake

possession of the leased premises and eject the lessees therefrom, without prejudice to any claim which the lessor may have against the lessee ..." (emphasis added)

The applicant did not pay the May 2006 in advance on the first day of each and every month ... to the lessor at Rodor Properties (Pvt) Ltd ... or at such other place at Bulawayo as the lessor may from time to time, in writing, nominate."

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The lessor made such nomination other than Rodor Properties. Still, the applicant did not pay even after being given a written 48 hour demand to do so. That being the case, the provisions of sub clause 21.1 apply

rendering the respondent's action legal in terms of the lease - *Jackson v Unit Insurance Co Ltd* 1999(1) ZLR (S).

Further, clause 23 provided for arbitration if the dispute not resolved within seven days. The applicant did not exhaust this route first. From the above, the applicant cannot succeed.

Accordingly, the application is dismissed with costs.

*Lazarus & Sarif*, applicant's legal practitioners  
*Shenje & Co*, respondent's legal practitioners