

**EVALUATING THE EFFICACY OF RENT CONTROL IN ZAMBIA (WITH
PARTICULAR REFERENCE TO DWELLING HOUSES)**

BY

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A Directed Research Essay Submitted to The University of Zambia Law Faculty in Partial Fulfilment of the Requirements for the Award of the Bachelor of Laws (LLB) Degree.

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SCHOOL OF LAW

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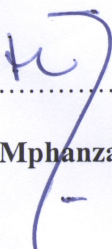
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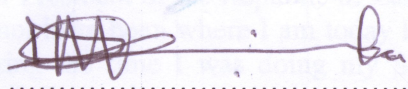
BEING A DIRECTED RESEARCH ESSAY SUBMITTED TO THE UNIVERSITY OF ZAMBIA LAW FACULTY IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE.

Approved by the Coordinator- Ms Misozi Lwatula.

Supervised by Professor Mphanza Patrick Mvunga

Declaration

I, **Chakoleka, David Moses**, do hereby declare that this Directed Research Essay is my authentic work and that to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other institution for the award of a Bachelor of Laws Degree. All other works in this essay have been duly acknowledged. No part of this work may be reproduced or copied in any manner without the prior authorisation in writing of the author.



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January, 2009.
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DEDICATION

This work is firstly and most importantly dedicated to my Family which comprises, my mum and Dad; Mrs. Florence Chiyombwe Chakoleka and Mr. John Chakoleka, my brother and my sisters; Philemon, Agness, Georgina, Elizabeth and Ruth. This work is for all of you for your love and support to me. Even when things have been bad, you have always been there for me, prayed for me and always believed in me. To my family, this work is also dedicated to you because it reminds all of us of how difficulty the path has been but we stuck together as a family and have managed to survive by the grace of the Almighty God. To Mum and Dad, this is for you for all the sacrifices you made just for purposes of ensuring that I got an education, those times when you chose to pay my school fees instead of buying clothing for yourselves, those days when you chose to sleep on empty stomachs just for purposes of ensuring that I had transport to go to school. I love you all.

This work is also dedicated to my late sister, Esther Chakoleka, who passed on when I was just in my first year at UNZA. I promised to bring you fruits the next weekend i was to come home but before I could fulfil my promise to you, I heard that you were no more. You answered the Lord's call too soon, before we could even get to know each other better and i have never understood why. You may have died but I have never forgotten you and wherever you are sister, I miss your smile and look forward to seeing you again, this work is for you. Rest in Peace Sister.

This work is also dedicated to the queen of my heart, Mable Tai Tembo. Just by loving me the way you do, you contributed in a very special way to the successes of this work. Some people die without ever meeting a special person like you but by the grace of the Almighty God, you came into my life and so many things have changed in my life. I look forward to the day I will walk the isle with you and say 'I do'. This work is also dedicated to you Mable.

This work is also dedicated to the following friends of mine; Mwaka Sinkala-I thank you for believing in me, you really were a source of encouragement throughtout the time I was working on this dissertation; Bwalya Mubanga, Fanaaka, Wallace (Gucharan), Jay (system), Changa (kruzoo), James (Machine), Pumulo (Mosanto), Mpange (Spraggy), Gabriel, Clement (Supie), Abraham (Mendez), David (UEFA) the two Josephs, Evans, Ian, Claudia, Zeddy and all my other friends who are too numerous to mention.

Further, this work is dedicated to the following teachers who really had a serious impact in making me who i am today; Mrs. Mwansa, Mrs. Banda, Mr. Sakala, all of Muchinga Basic School where i did my Junior Secondary Education. It's sad that Mr. Sakala and Mrs. Banda are not alive to see the fruits of their labour in me. I am grateful to these teachers of mine for the contributions they made in shaping my life in the right course. This work is dedicated to you for the belief you had in me.

Last but not the least; i dedicate this work to the former President of the Republic of Zambia, the Late Dr. Levy Patrick Mwanawasa (SC). I would not have been where I am today had it not been for all those books you bought for me during the time I was doing my Senior Secondary Education. I dedicate this work to you. Rest in Peace Counsel.

Abstract

Rent control emerged in the period of the First World War as a measure to ameliorate against the then acute shortage of housing. The idea behind rent control was to prevent people from profiting from the shortage of housing. However, even after the war, rent control continued because it was realised that in view of the fundamental nature of housing to human livelihood, there was a need to regulate the relationship of landlord and tenant. The common law concept of freedom of contract was done away with, in favour of rent legislation. This was a result of the inescapable inequality of bargaining between the landlord and tenant, which saw the tenant being in a weaker position. Zambia is one of the countries that embraced rent legislation for purposes of protecting tenants. Rent legislation protects tenants by ensuring that they do not pay rent in excess of the standard rent, and also guaranteeing them security from unlawful evictions. However, rent control in Zambia has not been effective because of both institutional and legislative weaknesses. Most of the people intended to be protected; especially those in Housing (Statutory and Improvement) Areas are actually not protected by rent legislation.

This Essay thus sets out to evaluate the efficacy of rent control in Zambia. The essay will explain the history and rationale behind rent control. Further, the Essay will look at the Rent Act, especially the protective provisions thereunder, with a view of evaluating their effectiveness in so far as protecting the tenants is concerned. The Essay will also show why the Rent Act does not apply to Housing (Statutory and Improvement) Areas and assess whether those reasons still hold true today in view of the current situation. In this regard, the essay will not only suggest some of the ways of improving rent control in Zambia but will also go further to justify why the Rent Act should be extended to Housing (Statutory and Improvement) Areas. The last Chapter of the Essay will give the conclusions and recommendation

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My special and utmost gratitude goes to the Almighty God for having given me strength, health and the intellect that I needed to start and complete this research successfully. I also extend my gratitude to my Supervisor, Prof. Patrick Mvunga, for all his unwavering support, guidance and patience he gave me through out the time I was doing this research. I also extend my gratitude to the Coordinator, Ms Lwatula for her patience with me up to the completion of this work. To the graduating class of 2009, I am grateful to you all for the support that you continually offered to me in my pursuit of an LL.B Degree.

Legislation

Housing (Statutory and Improvement) Areas Act, Cap 444 of the Laws of Zambia

The Increase of Rent and Mortgage Interest (war restrictions) Act of 23rd December, 1915

The Penal Code Act, Cap 87 of the Laws of Zambia

The Rent Act, Cap 206 of the Laws of Zambia.

The Rent Control (Temporary Provisions) Act No.55 of 196

CASES

Chancellor v Webster [1893] 9 TLR 568

Drake v Mahtani and Another [1985] ZR 236

Dunk v Hunter [1822] 5 B & Ald 322

NIP V Zambia State Insurance Company [1993/1994] ZR 144

Potter v Bradley [1894] 10 TLR 445

Property Holdings v Clark [1948] 1 K.B. 630

Prout v Hunter [1924] 2 K.B. 736

R v Paddington and St Marylebone Rent Tribunal Ex parte Bedrock Investments Ltd [1948] 2

All ER 528

Solle v Butcher [1950] 1 KB 671

Welch v Nagy [1950] 1 KB 455

Wright v Howell [1947] 204 LT 299

Williams v Perry [1924] 1 KB 936

Winchester Court Ltd v Miller [1944] 2 All ER 106

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Chapter One

1.0 GENERAL INTRODUCTION

The main object of this research is to evaluate the efficacy of rent control in Zambia, with particular reference to dwelling houses. This Chapter outlines the basic aspects of the research, these being, the introduction, statement of the problem, objectives of study, rationale and justification, research questions, methodology and limitations of the study.

1.0.1 Introduction

The protection of tenants by way of legislation is a practice which dates back to the First World War as a measure to combat the then existing acute shortage of housing. Since then however, it has become common for countries to enact legislation for purposes of protecting tenants, and Zambia is no exception to this practice. The Zambian legislature enacted the Rent Acts for purposes of protecting tenants in the country. The rationale for such legislation is the realisation that there is no equality of bargaining between the landlord and the tenant, arising from the fact that the landlord is in a stronger bargaining position as compared to the tenant. In order to redress this imbalance, legislation is thus enacted for purposes of protecting the tenant, and in Zambia, the Rent Act¹ was enacted for this purpose.

¹ Cap 206 of the Laws of Zambia.

Rent legislation also takes into account the importance of housing and the inescapable fact that not everyone is likely to own a house of their own. It is therefore, the objective of this study to evaluate the adequacy of laws protecting tenants in residential areas in Zambia. This research will try to investigate whether the current rent legislation is comprehensive in its application to dwelling houses, and whether there is any justification for excluding the application of the Rent Act to Housing (Statutory and Improvement) Areas such as Matero, Chawama, Kaunda square, Ngombe, Kalingalinga, Mtendere, Misisi, John Laing, Lilanda, to mention but a few. It is rather paradoxical that the Rent Act does not apply to such areas where most disadvantaged people are but instead applies to areas like Kalundu, Ibex Hill, Woodlands and others where most of the privileged and well to do people live.

1.1 Statement of the Problem

Considerable literature has been written on both the Rent Act and the legal aspects of Housing (Statutory and Improvement) Areas. Notwithstanding the above fact, there has been no literature written to investigate on how comprehensive, in terms of application, rent regulation is, particularly in respect of the non applicability of the Rent Act to Housing (Statutory and Improvement) Areas. The Rent Act in its application covers dwelling houses. In **Wright v Howell**², the Court pointed out that a dwelling house refers to premises suitable for all the major activities of residential life. Furthermore, in **Williams v Perry**³, the Court stated that the mere fact that premises are suitable for dwelling will not make them a dwelling house if they are used for some other purpose.

² [1947] 204 LT 299

³ [1924] 1 KB 936

One is therefore left to wonder why the Rent Act should continue being excluded from applying to these Areas. Further, one wonders why the tenants in these areas should be left to the common law protection, which protection has been realised to be inadequate, hence the introduction of rent legislation. For example, a landlord is at common law, allowed to distrain for unpaid rent⁴. To this effect, this research will adopt an exploratory approach to the problems caused by the non application of the Rent Act to these areas and whether it is still justified that the Rent Act should continue being excluded from applying to these Areas. The research will attempt to show whether the common law is adequate for purposes of protecting the tenants in these areas. Furthermore, being alive to the inadequacies of the Rent Act, the research will try to identify possible ways of trying to strengthen the protection of tenants of dwelling houses.

In addition to the above, the Rent Act does not apply to Housing (Statutory and Improvement) Areas. The justification for excluding the Act from applying to the foregoing areas seems to lie in the history behind the establishment of these areas. It must be mentioned that these areas started up as illegal settlements before the government decided to legalise them as a result of the then acute shortage of urban housing. These areas are thus meant for dwelling by the person to whom the parcel of land is granted and it was never the intention of the legislature that the owners of land should start leasing out their land. This fact can be further augmented by the fact that a person is not allowed to own two parcels of land in these areas⁵.

⁴ Dunk v Hunter [1822] 5 B & Ald 322, Chancellor v Webster [1893] 9 TLR 568 and Potter v Bradley [1894] 10 TLR 445

⁵ Section 39 (2) of the Housing (Statutory and Improvement) Areas Act, Cap 194 of the Laws of Zambia

It was therefore imperative that the Rent Act was excluded from applying to these areas. However, the legislature did not foresee a situation whereby a person could buy land in these areas, with the effect that the land they possess in the Housing (statutory and Improvement) Area could then be put on rent. It must be mentioned that the Housing (Statutory and Improvement) Areas Act does not contain any provision as to what is supposed to happen if a person who has land in a Housing (Statutory and Improvement) Area buys land in another area outside the Housing (Statutory and Improvement) Area.

As a result of this default, there has been a proliferation of residential tenancies in these areas. These tenancies have led to many disputes between landlords and tenants, which brings into question which law one will use in order to adjudicate upon the said disputes, in view of the fact the Rent Act does not apply to these areas. The problem is aggravated by the fact that reliance can not be placed on the common law because it is not protective of the tenants, hence its modification by statute in order to ensure that tenants are adequately protected. The question that therefore begs the consideration of this paper is whether the Rent Act should continue to be excluded from applying to these areas, especially in view of the many disputes which are coming from these areas.

In **Drake v Mahtani and Another**⁶, the Court stated succinctly that the purpose of the Rent Acts is to protect tenants. One is therefore left to wonder why tenants in Housing (Statutory and Improvement) Areas should be precluded from enjoying this protection.

⁶ [1985] Z.R. 236 (S.C.)

Furthermore, the Rent Act makes provision for application for standard rent before the High Court. This research will investigate whether such a provision is in itself sufficient to protect tenants of dwelling houses against exploitation. The Act also makes provision for the resolution of disputes arising from the act by the court. The adequacy of the above provisions will be the subject of investigation in this research, especially as regards whether the application for standard rent ever happens in practice.

1.2 Objective of the Research

The main objective of this research is to evaluate the efficacy of residential Rent regulation in Zambia. The specific objective of the study will be to:

- Consider the history and rationale of rent legislation, and the scope of protection offered by the Rent Act.
- Give a brief synopsis of the growth of Housing (Statutory and Improvement) Areas in Zambia and the justification for excluding the Rent Act from applying to these Areas.
- Evaluate whether it is still justifiable that the Rent Act should continue not to apply to these Areas.
- Suggest some of the ways of reforming the Act in order to ensure that it accords with the rationale for rent legislation. In order to achieve this

purpose, lessons will be drawn from the Landlord and Tenant (Business Premises) Act in order to assess the extent to which the latter Act guarantees security of tenure to the tenants.

1.3 Rationale of the Research

Considering the history behind the development of Housing (Statutory and Improvement) Areas, it is necessary to examine whether the reasons for not extending the application of the Rent Act to these areas are still true and valid today in view of the realities on the ground. It is necessary to consider the plight of residential tenants in the face of rent legislation not applying to these areas and whether the law should be amended in order to put it in tandem with the realities on the ground. Furthermore, having in mind the current ineffectiveness of the Act, the research will try to suggest some proposals for review of the Act.

1.4 Specific Research Questions

The research will specifically address the following questions:

- Is the Rent Act comprehensive in terms of its application to dwelling houses in Zambia?
- Is it justifiable that the Rent Act should continue being excluded from applying to Housing (Statutory and Improvement) Areas?
- Does the Rent Act in its current form, offer adequate protection to tenants of dwelling houses in Zambia?

1.5 Research Methodology

This study will be based on both primary and secondary information. The primary information will include interviews with legal aid service providers in Housing (Statutory and Improvement) Areas as regards the number of complaints they handle regarding the tenancies in these areas and the law on which they base their advice. Furthermore, interviews will be conducted with local authorities in these areas for purposes of checking whether local authorities are enforcing the law as provided in the Housing (Statutory and Improvement) Areas Act.

The purpose of the primary information will be to show that the continued non application of the Rent Act to these Areas is not justified. The secondary information will include cases, articles, paper presentations, student obligatory essays, and reports, were necessary, by mandated bodies.

CHAPTER TWO

THE HISTORY AND RATIONALE OF RENT REGULATION

2.0 Introduction

The main objective of this chapter is to trace the history of rent regulation in Zambia, as well as to give a rationale underlying rent regulation. In order to achieve this objective, the chapter will give a brief insight into the history of rent regulation in England. This is because of the fact that Zambia, as a former colony of Britain, derives its rent legislation from the period of colonisation. Attention will then be focused on the history of rent regulation in Zambia.

2.1 History of Rent Regulation in England

Most of the laws that apply in Zambia today owe their origin to the period of colonisation, and the legislation regulating rent is no exception to this fact. In order to understand the history of rent regulation in Zambia, it will be prudent to firstly keep abreast with the history of rent regulation in England, and to this effect, a synopsis of the history of rent regulation in England will be given. As was stated earlier, rent regulation is an offshoot of some measures which had been undertaken during the First World War. During the First World War, there was an acute shortage of housing thus there was an escalation of the price at which housing was available. In this vain, the legislature saw it prudent, as part of the social function of government, to regulate the price at which rent was being charged and also to ensure security of tenure for tenants. This led to the enactment of the Increase of Rent and Mortgage Interest (War Restrictions) Act of 23rd

December, 1915⁷. This was the first comprehensive European enactment controlling rent, and since then, many Acts have been passed. This Act was an emergency measure intended to deal with the problems caused by the wartime housing shortages, which in turn led to soaring rents⁸. Security of tenure was guaranteed by provision to the effect that the tenant could not be evicted from the demised premises except in certain circumscribed circumstances. It was out of this temporary measure that the modern rent regulation sprung.

Rent regulation operates in such a way that it is impossible to contract out of the Acts, whether by a provision in a lease or tenancy agreement or otherwise, nor can the doctrine of estoppel exclude the Acts. The authorities for the above principle of law are the cases of **Welch v Nagy**⁹ and also that of **Solle v Butcher**¹⁰.

By the end of the First World War, a common view shared was that rent regulation was to be continued in order to safeguard the interest of the tenants as weaker parties to the contract. To this effect many countries had enacted provisions controlling rent, and by the 1950, some 150 countries had adopted such laws¹¹. This appears to have been because of two reasons: firstly, it was realised that there was no equality of bargaining power between the landlord and the tenant, with the effect that the tenant was at the prerogative of the landlord in so far as the charge of rent was concerned. This is because as the owner

⁷ Megarry, R. *The Rent Acts*, 10th ed.
(London: Stevens & Sons. 1967). P. 7

⁸ Mudenda, F. *Land Law in Zambia, Cases and Materials*.
(Lusaka: UNZA Press. 2007). P. 521

⁹ [1950] 1 KB 455

¹⁰ [1950] 1 KB 671

¹¹ Megarry, R. *The Rent Acts*, 10th ed.
(London: Stevens & Sons. 1967). P. 7

of the premises, the landlord is in a stronger bargaining position as compared to the landlord. This state of affairs rendered the tenant liable to exploitation at the hands of the landlord. It was therefore not prudent to leave the relationship of landlord and tenant to contract between the parties because it was highly unlikely that a fair contract would be reached. In this vain, it was thought that there was need to introduce legislation which would redress the imbalance which is between the landlord and the tenant.

The second reason why rent regulation was continued even after the war was because of the realisation that housing was an essential basic necessity of life, if not a human right. In view of this importance of housing, it was therefore incumbent upon the legislature to ensure that this basic necessity of life was readily available to everyone without being exploited. Housing is so important to everyone that people are willing to pay almost any amount just to have somewhere to sleep. The legislature therefore was trying to remove this desperation by introducing fair and reasonable conditions on which both parties could contract.

It must be mentioned that before the introduction of legislation to regulate the relationship of landlord and tenant, the relationship was regulated only by the contractual terms entered into between the parties. Megarry explains this state of affairs in the following words:

The modern tendency is to enact legislation designed to protect tenants against their landlords. At common law, the matter was in general one of contract: provided a landlord did not contravene the terms of his bargain, he

might at will evict his tenant, or under the threat of eviction secure his agreement to pay an increased rent of whatever amount he could exact¹².

In view of the above state of affairs, the legislature saw it necessary to enact legislation to regulate the relationship of landlord and tenant in the field of residential and business lettings, for purposes of protecting the party in a weaker bargaining position.

2.2 History of Rent Regulation in Zambia

Rent regulation in Zambia dates back to 1968 when the legislature enacted the Rent Control (Temporary Provisions) Act¹³, which, as its name suggests, was a temporary measure for regulating rent pending the formulation of comprehensive legislation on the matter. This Act was necessitated by the soaring prices of rent in Kitwe, Lusaka, Ndola and other adjacent urban areas. The Act provided protection to tenants by prohibiting rent increases except in certain circumscribed circumstances, and also by providing security of tenure to tenants. The protection which was provided by the Act was implicit in the preamble which provided that the Rent Control (Temporary Provisions) was:

An Act to make temporary provision for the restriction of eviction from dwellings and commercial premises; for the control of rents and restriction of premiums and for purposes connected therewith.

The then Minister of Local Government, Mr. Skota Wina justified the necessity of rent regulation in the following words;

Mr. Speaker, the subject of rent control is inevitably contentious and especially so in a newly independent country where it is important

¹² Hayton, D. Megarry's Manual of the Law of Real Property, 6th ed. (London: Stevens & Sons. 1982). P. 566.

¹³ No.55 of 1968

both to maintain the rate of capital development and also to provide residential and business accommodation at reasonable rentals to the tenant.

It is often Mr. Speaker argued that the in introduction of rent control leads to loss of confidence by commercial, industrial and building interests and indeed this might well be so if the form of rent control envisaged is unduly restrictive.

This is not, however, the approach of the government which is concerned that there should be a fair deal for both the landlord and the tenant in the light of the current economic conditions in the country. This need to have a fair level of rents, and a fair and reasonable but not excessive return on development, I believe will be established when the comprehensive rent control legislation is introduced¹⁴.

Similarly, in Presenting the Rent Bill to Parliament, the then Minister of local Government and Housing, Mr. Peter Matoka had the following to say concerning the relevance of rent control legislation:

Mr. Speaker, this Bill, the Rent Bill, 1972 is the promised Bill relating to residential premises...for the first time since independence, firm foundations will have been established for lasting, mutually satisfactory relationships between the landlords and the tenants of all type of rented properties throughout the republic of Zambia.

¹⁴ Zambia, Hansard No.16g, Daily Hansard, Wednesday, 16th October, 1968, at P. 294.

Sir, when I say 'mutually satisfactory relationships', I mean conditions which are fair both to tenants and to landlords, conditions Sir, which will provide all tenants of unfurnished and furnished accommodation with security from arbitrary eviction, and freedom from any risk of being required to pay excessive rent...Mr. Speaker, Sir, the right of every person to continue to live in his or her home without fear of eviction is a basic human right but it is also a right which, unless someone is an owner of his or her home, carries with it an obligation to continue to pay a proper rent to the landlord and to care for the rented property in a proper manner. What this Bill seeks to do, therefore, is to confer this right and obligation on every tenant of residential property...but at the same time to a landlord not to charge in excess of a specified amount; and not to evict or distrain without an order of the court¹⁵.

In this vain, the Rent Act¹⁶ was enacted in 1971 and came into force in 1972. The enactment of the Rent Act meant that the Rent Control (Temporary Provisions) Act was repealed in toto and thus ceased to have effect. As has been seen throughout this chapter, rent legislation was introduced in order to protect the tenant who is a party in a weaker bargaining position when compared to the landlord. The Rent Act redresses this imbalance by giving the tenant fair rent and a status of irremovability¹⁷. This is achieved by;

¹⁵ Official verbatim reports of Parliamentary Debates of the Fourth Session of the Second National Assembly, 12th January, 9th March 1972, Lusaka: Government Printer.

¹⁶ Cap 206 of the Laws of Zambia.

¹⁷ Megarry, R. The Rent Acts, 10th ed.
(London: Stevens & Sons. 1967). P. 13

- Preventing landlords from increasing rents above the maximum rent permitted by the Act.
- Giving tenants security of tenure by preventing landlords from evicting without an order of the court, and also forbidding the court from making an order for possession of the premises except on certain specified grounds.

The authority for the above cases is to be found in the cases of **Property Holdings v Clark**¹⁸ and also that of **Prout v Hunter**¹⁹. Having given the historical background to rent legislation in Zambia and the rationale thereof, it is perhaps now prudent to look at the scope of protection offered by the Rent Act and the effectiveness thereof.

¹⁸ [1948] 1 K.B. 630 at 638

¹⁹ [1924] 2 K.B. 736 at 742.

CHAPTER THREE

PROTECTIVE PROVISIONS OF THE RENT ACT AND ANALYSIS OF THE ADEQUACY OF RENT CONTROL IN ZAMBIA

3.0 Introduction

This chapter will seek to analyse the protective provisions contained in the Rent Act (herein referred to as ‘the Act’), with a view of establishing their adequacy in protecting tenants of residential areas in Zambia. In order to achieve this objective, the essay has been structured in such a way that it will begin by looking at the protective provisions contained in the Rent Act²⁰, after which attention will be focused on showing some of the fundamental weaknesses that characterise residential rent regulation in Zambia. The aid of decided cases will be sought where necessary.

As was mentioned in the preceding chapter, the purpose of the Rent Act in general is for the protection of tenants of dwelling houses. The Act achieves this protection by limiting the amount of rent payable for dwelling houses. From the above, it therefore follows that the Rent Act only applies to dwelling houses. The Rent Act²¹ defines a dwelling house to mean any building or part of a building or room let or used as a separate dwelling or place of residence, whether or not such building, part of a building or room is occupied by one or more tenants, and includes the site of the building and the garden and other lands and buildings let therewith. In **Wright v Howell**²², the court pointed out that a dwelling house refers to premises suitable for all the major activities of residential life. Furthermore, in **Williams v Perry**²³, the court stated that the mere fact that premises are

²⁰ Cap 206 of the Laws of Zambia.

²¹ Section 2 of Cap 206 of the Laws of Zambia.

²² [1947] 204 LT 299

²³ [1924] 1 KB 936

suitable for dwelling will not make them a dwelling house if they are used for some other purpose.

It must be mentioned that the Act applies to all the dwelling houses in Zambia. The authority for this position is found in section 3 of the Rent Act²⁴ which provides to the effect that the Act shall apply to all dwelling-houses in Zambia, whether or not the terms of the letting of such dwelling-houses include the use in common with the landlord or other persons authorised by him of other rooms in or amenities of or portions of the building of which the said dwelling-house forms a part or the grounds or gardens immediately adjacent thereto, and whether or not the terms of the letting include a provision for services or the use of furniture.

Furthermore, protection of the tenants is achieved by provision of a substantial measure of security of tenure for tenants. The security of tenure is usually achieved by circumscribing the instances under which a landlord can claim possession of the demised premises.

3.1 Protective provisions of the Rent Act

It must be mentioned from the onset that the scope of protection under the Rent Act can be discerned from the preamble which provides thus:

An Act to make provision for restricting the increase of rents, determining the standard rents, prohibiting the payment of premiums and restricting the right to possession of dwelling-houses, and for other purposes incidental to and connected with the relationship of landlord and tenant of a dwelling-house.

²⁴ Cap 206 of the Laws of Zambia.

From the above, it can thus be seen that the Rent Act²⁵ protects tenants in the following ways; through the determination of standard Rent, prohibiting the payment of premiums and restricting the right of the landlord to possession of the demised premises. Each of the aforementioned protective mechanisms will now be looked at in turn.

3.1.1 Fixation of Standard Rent

As was mentioned earlier, one of the ways the Rent Act protects tenants is by limiting the amount of rent payable for dwelling houses. This is done by the determination of standard rent in relation to the demised premises. Section 4 of the Rent Act provides for the determination of standard rent in the following terms:

The court shall have power to do all things which it is required or empowered to do by the Act, and in particular shall have power to;

- determine the standard rent of any premises, either on the application of any person interested or of its own motion;
- fix, in the case of any premises, at its discretion and in accordance with the requirements of justice, the date from which the standard rent is payable;
- apportion payment of the standard rent of premises among tenants sharing the occupation thereof;

It can thus be seen from the above that the court on its on motion or on the application of an interested party can determine the standard rent to be charged on the demised premises. The court in this instance can be the Subordinate Court or the High Court, depending on the value of the demised premises. It must be mentioned further that the Rent Act tries to safeguard the interests of the tenant by imposing the duty to apply for

²⁵ Cap 206 of the Laws of Zambia.

standard rent on the landlord and not the tenant. The Act further provides that a landlord who fails to discharge this duty of applying for standard rent commits a punishable offence. The application for standard rent must be made before the letting of the premises or within three months of the letting.

As was mentioned in the preceding chapter, rent regulation operates in such a way that it is impossible to contract out of the Acts, whether by a provision in a lease or tenancy agreement or otherwise. This means that once the standard rent has been determined by the court, the parties can not contract in excess of such standard rent. In **Winchester Court Ltd v Miller**²⁶ the court stated that

the standard rent becomes under the legislation a permanent attribute of the house, one which (apart from “permitted increases”) cannot be changed by the free contract of its present or future landlords or tenants; secondly, that to that extent the house acquires a defined status, so that a decision of the courts fixing its standard rent is a judgment in rem binding on all the world within the jurisdiction of the court.

Similarly, in **R v Paddington and St Marylebone Rent Tribunal Ex parte Bedrock Investments Ltd**²⁷, the court stated that the determination of standard rent deprives the landlord of his common law right to contract effectively for anything more than the standard rent. This also entails that the landlord is prohibited from increasing rent in excess of the standard rent. This can be seen from the fact that the act of demanding rent in excess of standard rent is criminalised. Section 9 of the Rent Act provides thus: ‘*the*

²⁶ [1944] 2 All ER 106

²⁷ [1948] 2 All ER 528

landlord of premises shall not be entitled to recover any rent in respect thereof in excess of the standard rent'. Furthermore, section 10 provides that:

Where, after the commencement of this Act, the landlord of any premises, or any agent, clerk or other person employed by him, demands or accepts any rent in respect of such premises which exceeds the standard rent thereof by more than any amount permitted under this Act, or demands or accepts an advance of rent exceeding two months' standard rent, then, without prejudice to any other remedy under this Act, such landlord, agent, clerk or other person shall be guilty of an offence and liable to a fine not exceeding four thousand penalty units or to imprisonment for a term not exceeding twelve months, or to both; and the court by which he is convicted may order that any rent or advance so accepted, in so far as it exceeds the amount permitted under this Act, shall be repaid by the landlord to the tenant.

It therefore follows from the above that the Act criminalises the demanding of rent in excess of the standard rent. In order to ensure that the tenant does not suffer sporadic increases of rent, the Act circumscribes the instances when a landlord can increase rent. Some of the instances in which a landlord is allowed to increase rent include; when the rates payable by the landlord increase, when the landlord incurs expenditure on the improvement or structural alterations of the demised premises. In the case where the landlord incurs expenditure, the increase should be a maximum of fifteen per cent of the total expenditure incurred. Furthermore, the Act provides to the effect that the permitted increase of the standard rent of any premises shall attach to the premises and the landlord

shall not be required to serve a fresh notice on any subsequent tenant to claim such increase²⁸.

In addition to the above safeguards on the payment of rent, the Act also provides that any transfer to the tenant of any burden or liability previously borne by the landlord shall be treated as an alteration of the standard rent, and where, as a result of any such transfer, the terms on which any premises are held are on the whole less favourable to the tenant than the previous terms, the standard rent shall be deemed to be increased, whether or not the sum periodically payable by way of standard rent is increased²⁹. The rationale for this position of the law is to ensure that the standard rent shall retain its quality of fairness in relation to the agreed distribution of the other burdens of the tenancy agreement, as was stated by the court in **Winchester Court Ltd v Miller**³⁰. This entails that the landlord is prohibited from engaging in any conduct which may constructively have the effect of his having to demand rent in excess of standard rent. In the event that the payment of rates is transferred to the tenant, it shall not be deemed that the standard rent has been increased if a corresponding reduction is made on the rent payable.

3.1.2. Security of tenure

Rent regulation also protects tenants by giving them a certain degree of security of tenure. This ensures that the landlord does not have power to evict the tenant at will. Section 13 of the Act provides that no order for the recovery of possession of any premises or for the eviction of a tenant shall be made unless in the following circumstances:

²⁸ Section 11 (2)

²⁹ Section 11(3)

³⁰ [1944] 2 All ER 106

- some rent lawfully due from the tenant has not been paid, or some other obligation of the tenancy, so far as the same is consistent with the provisions of the Act, has been broken or not performed; or
- the tenant, or any person residing with him, has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for a criminal or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person; or
- the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or
- the court is satisfied that the tenant has sublet the whole or any part of the premises for a rent in excess of standard rent; or
- the dwelling-house is reasonably required by the landlord for occupation as a residence for himself or for his wife or minor children or for any person bona fide residing or intending to reside with him, or for some person in his whole-time employment or for the occupation of the person who is entitled to the enjoyment of such dwelling-house under a will or settlement, and the landlord has given to the tenant not less than twelve months' notice to quit; and in such case the court shall include in any order for possession a requirement that the landlord shall not without its prior approval let the premises or any part thereof within three years after the date on which the possession is to be given; or

- the premises are reasonably required by the landlord for the purpose of the execution of the duties imposed upon him by any written law, or for any purpose which, in the opinion of the court, is in the public interest; or
- the tenant has, without the consent in writing of the landlord assigned, sublet or parted with the possession of the premises or any part thereof:

It can therefore be seen that there are two ways in which the Act guarantees security of tenure to the tenant. To begin with, the Act requires that the landlord shall not have possession of the demised premises without an order of the court. This ensures that the landlord does not act arbitrarily towards the tenant. Secondly, the Act prohibits the court from ordering the grant of possession to the landlord unless in certain specified circumstances as outlined above. The Act also provides that no order for recovery of possession of premises shall be made unless the court considers it reasonable to make such an order³¹. This means that the court has to be satisfied with the ground for the intended eviction by ensuring that the ground advanced firstly, falls within one of the grounds in which possession can be granted and secondly, that there is no ill will on the part of the landlord. In addition to the above, nothing shall permit a landlord to recover possession of a dwelling-house from a tenant if by such recovery he or his wife or minor children would be in occupation of, or would acquire the right to occupy, more than one place of residence at the same time³². From the foregoing, it can be seen that the Act protects tenants of dwelling houses by guarantying them some form of security of tenure.

³¹ Section 13(2)

³² Section 13 (3)

Furthermore, if within twelve months next after the date upon which the landlord was entitled to vacant possession of such dwelling-house, he wishes again to let such house, he shall give to the tenant who was required to give up possession of such house, the first option to take a tenancy and possession thereof. Any landlord who fails or neglects to give a first option to the tenant to let and take possession of the dwelling-house, or fails or neglects to give up possession of the dwelling-house to the tenant within a reasonable time after the tenant has exercised the option commits a criminal offence. The importance of the security of tenure guaranteed to the tenant can be seen from the fact that where a landlord has obtained an order for possession or eviction of the tenant and it is subsequently proved before the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the tenant against whom such order was made such sum as may seem just to the court as and by way of compensation for the damage or loss that may have been sustained by the tenant as a result of the order³³.

3.1.3 Distress for Rent

Another important protection of the tenants is found in section 14 of the Act which provides that no distress for the recovery of rent in respect of any premises shall be levied except with the leave of the court.

3.1.4 Restriction against the charging of premiums

Section 15 of the Rent Act³⁴ provides that no person shall, as a condition of the grant, assignment, renewal or continuance of a tenancy, lease, sublease, subletting or occupation of any premises, require the payment of or take any fine or premium or other

³³ Section 13 (6)

³⁴ Cap 206 of the Laws of Zambia.

like sum, or any pecuniary consideration, in addition to the standard rent; and where any such payment or consideration has been made or given in respect of any premises under an agreement made, the amount or value thereof shall be recoverable by the person who made such payment or gave such consideration. The Act goes further to criminalise the act of demanding any premiums from the tenant.

3.2. Analysis of the Adequacy of Residential Rent Regulation in Zambia

After having discussed the protective provisions contained in the Rent Act³⁵, it is now prudent to look at the effectiveness of rent regulation in Zambia in relation to the protective provisions discussed above. In this vein, the effectiveness of rent regulation will be looked at in terms of the comprehensiveness and the determination of standard rent.

3.2.1 Comprehensiveness

In terms of scope of application of the Act, it must be mentioned that the Rent Act applies to all dwelling houses in Zambia, whether or not the terms of the letting of such dwelling houses include the use in common with the landlord or other persons authorised by him of other rooms in or amenities of or portions of the building of which the said dwelling-house forms a part or the grounds or gardens immediately adjacent thereto, and whether or not the terms of the letting include a provision for services or the use of furniture. However, it must be noted that the Act does not apply to the following dwelling houses³⁶:

- A dwelling-house let to or occupied by an employee by virtue and as an incident of his employment.

³⁵ Cap 206 of the Laws of Zambia.

³⁶ Section 3 of cap 206 of the Laws of Zambia

- Premises let by the Government save as to the rent charged in respect of any authorised subletting of the whole or part thereof.
- Premises for which an inclusive charge is made for board and lodging and in respect of which a permit in that behalf has been issued under any written law for the time being in force.
- Premises held by the tenant under a lease for a term certain exceeding twenty-one years.

It therefore follows that with the exception of the above premises, residential rent regulation applies to all the dwelling houses in Zambia. However, this is not the case as the Act does not apply to certain dwelling houses as will be shown below.

Section 40 of the Housing (Statutory and Improvement Areas) Act³⁷ provides that the Rent Act³⁸ shall not apply to Housing (Statutory and Improvement) Areas. This therefore augments the argument that the Rent Act does not apply to all dwelling houses after all. For purposes of clarity, Housing (Statutory and Improvement) Areas include such areas as Lilanda, Matero, George Compound, Kalingalinga, Mtendere, Ngombe, Libala, Chilenje, Misisi, John Laing, Chawama, Kaunda Square, to mention but a few. At this point, it must be noted that at the time the Housing (Statutory and Improvement Areas) Act³⁹ was passed, it was justifiable to exclude the Rent Act from applying to these areas. This is because these areas were meant for dwelling only and were never meant to be

³⁷ Cap 194 of the Laws of Zambia.

³⁸ Cap 206 of the Laws of Zambia

³⁹ Cap 194 of the Laws of Zambia.

used for purposes of letting out. This can be seen from the fact that a person is not allowed to hold two licences in these areas.

What this also means is that the Rent Act applies to such residential areas as Ibex Hill, Kalundu, Kabulonga, Rhodes Park, to mention but a few. It must be remembered that the purpose of rent regulation is to redress the imbalance of bargaining power between the landlord and the tenant. When one considers the areas to which the Rent Act applies, it is without dispute that the people who are tenants in these areas are able to negotiate at arms length with the landlord.

On the other hand, since the Rent Act⁴⁰ does not apply to Housing (Statutory and Improvement) Areas, one wonders as to the sort of rent regulation which takes place in these areas. The nature of these areas speaks volumes as to the kind of tenants that are found in these areas. Most often times, if not all the times, bargaining power between the landlord and the tenant is not balanced. It must be mentioned further that there is no Act which regulates the relationship of tenant and landlord in these areas. This raises the question as to what law will be applied in the event of a dispute between the landlord and the tenant. One would perhaps argue that the common law is what regulates the relationship of landlord and tenant in these areas. However, if this is the case, then it becomes clear that the tenants in these areas are not in any way protected from exploitation by the landlords. This is because at common law, the relationship of landlord and tenant is one of contract, with the effect that the landlord as a stronger party, is free to insert any term in the contract and it is up to the tenant to either take it or leave it. Furthermore, at common law, there is no security of tenure guaranteed to the tenant. Megarry puts the state of affairs at common law in the following words:

⁴⁰ Cap 206 of the Laws of Zambia

The modern tendency is to enact legislation designed to protect tenants against their landlords. At common law, the matter was in general one of contract: provided a landlord did not contravene the terms of his bargain, he might at will evict his tenant, or under the threat of eviction secure his agreement to pay an increased rent of whatever amount he could exact⁴¹.

It can thus be seen from the above position that the common law is not in any way protective of the tenant. To this effect, one wonders to what extent rent regulation in Zambia can be said to be efficacious. This is against the background that the majority of the tenants are found in Housing (Statutory and Improvement) Areas. Granted that this is the position, it therefore follows that the majority of the tenants in Zambia are not protected by the law, which is a sad state of affairs in view of the fact that these are the tenants who mostly need the protection of the law, yet are denied such protection. To this effect, in terms of comprehensiveness, it can be seen that the Rent Act is not extensive in its application as most of the tenants are left out of rent regulation. This state of affairs makes it very doubtful as to whether rent regulation in Zambia can be described as effective, especially when the majority of the people who are supposed to be protected by the law are not actually protected.

3.2.2 Determination of Standard Rent

One of the ways that the rent regulation works is by ensuring that the tenants do not pay rent in excess of standard rent. This is made possible by reposing power in the Court to determine the standard rent, which determination must be fair to all the parties concerned. As was mentioned earlier, the duty to apply for standard rent is on the landlord.

⁴¹ Hayton, D. Megarry's Manual of the Law of Real Property, 6th ed. (London: Stevens & sons. 1982). P. 566.

Furthermore, it has been seen that the landlord is prohibited from increasing rent unless in certain circumscribed circumstances. The determination of standard rent as a protective measure is marred with a number of weaknesses, as will be shown below.

To begin with the application for standard rent must be made either in the Subordinate or High Court depending on the value of the premises. This in itself is a weakness because firstly, the courts are burdened with a lot of cases which they must deal with thus applications for standard rent may not be dealt with the relevance expediency. Secondly, court proceedings, especially in the High Court are very costly thus applications for standard rent are not likely to be made. This does not make economic sense because at the end of the day, the cost of the application will not necessarily be included in the rent payable. Furthermore, the many procedures which surround the making of applications do not make them easier for the common man thus the services of a lawyer might be necessary, which services are expensive.

Furthermore, the requirement for the application for standard rent before the court does not make sense as one wonders what expertise the court will be using to determine the standard rent, especially in view of the fact that the country does not have any rent controllers to conduct assessments. The determination of standard rent requires expertise, which most if not all the judges, do not have. This therefore raises the question of the fairness of the standard rent which will be determined by the court. It is to this effect that the Supreme Court in **NIP V Zambia State Insurance Company**⁴² had the following to say concerning the determination of standard rent:

⁴² [1993/1994] ZR 144

We would also mention that the present provisions for increasing the standard rent completely ignore the present rate of inflation and the learned law officers of the court may consider that alterations in the law are appropriate.

It can thus be seen that much as the provision for the determination of standard rent is well meant, its effectiveness is still marred with weaknesses, which weaknesses greatly undermine its effectiveness in protecting tenants in line with the objective of rent regulation.

The above factors greatly undermine the effectiveness of rent regulation in Zambia. In analyzing the efficacy of the Rent Act, Mulimbwa had the following to say:

A short evaluation of this Act reveals that it has had the least impact. An attempt was made in the early seventies to appoint rent controllers, but the exercise failed. The sheer enormity of the court's task, in the absence of rent controllers, made it impossible for the court to exercise supervision in the absence of any specific legal action by an interested party and shortly, there other reasons, that the Act fell into oblivion. It is due to the failure of this Act, among other reasons, that UNIP introduced its reforms under the Lands (Conversion of Titles) Act of 1975. It has only been discussed here because the repeal of the 1975 Act under which the President could determine the rent as between private landlords and tenants, and the absence of such power under the current Lands Act leaves a gap which could be filled by the Rent Act. It would be safe to conclude that to all intents and purposes, the Act has fallen into desuetude⁴³.

⁴³ Mulimbwa, A.C. 'Land Policy and Economic Development in Zambia'. Zambia Law Journal (1998). P. 98

It is no doubt that the ineffectiveness of the Rent Act is attributed to the heavy duty which is placed on the court to supervise the enforcement of the Rent Act. This task has proved to be impossible for the court to discharge in view of the fact that there are no rent controllers to conduct assessments. Furthermore, the fact that the court relies on an interested party bringing a complaint before the court means that the role of the court has been reduced to largely that of solving problems instead of preventing them. The ineffectiveness of residential rent regulation can be seen from the scanty judicial decisions available on the subject, especially when compared to the case law available from the Landlord and Tenant (Business Premises) Act⁴⁴.

3.3 Conclusion

This chapter set out to look at the protective provisions of the Rent Act, as well as analysing the extent to which residential rent regulation in Zambia can be designated as being effective. The chapter has shown that the purpose of the Rent Act is to protect the plight of tenants on view of the fact that they are the party in a weaker position as compared to the landlord. It has been seen that the Act protects tenants by ensuring that they do not pay rent in excess of the standard rent determined by the court. Secondly, the Act also tries to protect tenants by giving them security of tenure in the sense that the landlord can only have possession of the premises through an order of the court, which order can only be made in certain circumscribed circumstances. Furthermore, this chapter has shown that the Act also prohibits the demanding of premiums from tenants, which act is rendered criminal.

In terms of effectiveness, this chapter has shown that the Rent Act is not comprehensive in its scope of application. This is because much as it applies to all dwelling houses in

⁴⁴ Cap of the Laws of Zambia.

Zambia, it does not apply to Housing (Statutory and Improvement) Areas, which areas have the majority of the tenants. This has in turn meant that the majority of the tenants in Zambia are not protected by rent regulation in Zambia. Furthermore, it has been shown in this chapter that the Act depends for its enforcement on the court, which fact has made it have less impact, if any, in view of the fact that the country does not have rent controllers. The combined ultimate effect of this has been that the Rent Act has had very little impact in addressing the plight of the people it is supposed to protect.

CHAPTER FOUR

The Justification for Excluding Housing (Statutory and Improvement) Areas From Rent Control and the Need For Change to the Status Quo

4.0 Introduction

The main objective of this Chapter is to discuss the justification for the need to extend application of the Rent Act to Housing (Statutory and Improvement) Areas as a way of enhancing the protection of tenants. In order to achieve this objective, the Chapter will begin by giving reasons why the Rent Act is excluded from applying to Housing (Statutory and Improvement) Areas, after which the essay will try and assess whether these reasons are still valid today. The chapter will then give reasons why the Rent Act should be extended to apply to Housing (Statutory and Improvement) Areas. The chapter will then finally look at some of the ways of improving rent regulation in Zambia.

4.1 Why the Rent Act does not apply to Housing (Statutory and Improvement) Areas

As was shown in the preceding chapter, the Rent Act does not apply to Housing (Statutory and Improvement) Areas. Furthermore, it was shown that in terms of scope, the Rent Act applies only to dwelling houses. Despite the houses which are let in Housing (Statutory and Improvement) Areas being dwelling houses used for residential purposes, the Rent Act is excluded from applying to these areas by section 40 of the Housing (Statutory and Improvement Areas) Act⁴⁵. One is therefore left to wonder as to why this is the case.

⁴⁵ Cap 194 of the Laws of Zambia.

However, it must be mentioned that the reason for excluding the Rent Act can best be understood by appreciating the history of these areas.

At the time of independence, Zambia was the most urbanised country in Sub Sahara Africa with about 20 per cent of the population living in urban areas⁴⁶. This was mainly due to restrictions on migrations to towns. Immediately after independence however, all such restrictions were lifted, resulting in the urban growth rate increasing while the building programme could not keep pace with the demand for housing⁴⁷. This influx of people in urban areas led to the problem of human settlement. To this effect, people started settling on privately owned land which evolved into permanent communities and attempts to demolish them failed. The manner in which the land was occupied was such that it contravened land, health and planning legislation. A good example can be seen from the fact that the area where Misisi Compound is situated is zoned as a commercial and industrial area, and not an area for human settlement. In trying to address the problem of these illegal or unplanned settlements, President Kaunda stated thus:

As you know, townships have sprung up from virtually nowhere many cities and towns as well as in the country side. In future, these will create immense social problems of which we already have enough. Therefore, from now onwards, local authorities must see to it that no unauthorised buildings are erected within their areas of jurisdiction. You have powers, use them⁴⁸.

⁴⁶ Knauder, S. 'Shacks and Mansions', An Analysis of the Integrated Housing Policy in Zambia. 1982.p.14

⁴⁷ *ibid*

⁴⁸ Mudenda, F. Land Law in Zambia, Cases and Materials.
(Lusaka: UNZA press. 2007). p. 724

To this effect, the initial response to the problem of squatters was the demolition of these illegal structures in line with the provisions of planning legislation. However, the government's approach to the squatter problem changed during the second republic. In the second National Development Plan of 1972-1976, the government's approach to the squatter problem changed from that of the demolition campaign to co-operation with the squatters⁴⁹. The government came up with the programme of squatter upgrading. It was recognised under the plan that although squatters are unplanned settlements, they represented assets both in social and financial terms⁵⁰. It was further recognised that the wholesome demolition of good and bad houses alike was not a practical solution. To this effect, there followed a regularising and upgrading of unplanned settlements. The system of legalising and upgrading settlements is regulated by the Housing (Statutory and Improvement areas) Act of 1974⁵¹. The Act was enacted to confer security of tenure on squatters who lived under constant fear of forcible removal.

To this effect, the Act empowers the Minister with the mandate to declare land under the jurisdiction of local authorities as either an improvement area or a statutory housing area. Examples of unplanned settlements legalised under the Act include the following; in Lusaka Province; Chawama, George compound, Kaunda Square, Hellen Kaunda Suburb, Chaisa, Kabanana, Ngombe, Kaunda Square, Libala, Garden, Chunga and Kalingalinga, while those on the Copperbelt Province include the following; Kamuchanga, Bulangililo, Mushili, Kamirenda, Lubuto, Lukanga, Chikola Mutende, Buchi and Kalulushi

⁴⁹ Government of the Republic of Zambia, Ministry of Development Planning and National Guidance, Second National Development Plan, 1972-76, at p. 148

⁵⁰ Ibid

⁵¹ Cap 194 of the laws of Zambia

Township. To this effect, it can thus be seen that most of the initially illegal settlements have now been legalised as either improvement areas or housing areas.

In view of the above history of the Housing (Statutory and Improvement) areas, it was therefore decided that these areas would only be used for dwelling purposes and never at any time where the proprietors of houses in these areas envisaged as possessing the right to let out these houses. This fact can be seen also from the provision to the effect that no person could own two pieces of land in Housing (Statutory and Improvement) areas⁵². This means that a person could only be allowed to own one piece of land which was sufficient for dwelling purposes only.

4.2 The Need to Extend the Rent Act to (Statutory and Improvement) areas

It must be mentioned that in view of the history of the Housing (Statutory and Improvement) areas, provision to the effect that a person could only own one piece of land in such areas was progressive. The rationale behind this provision was to ensure that people in these areas only owned land sufficient for their housing and not to engage in owning multiple houses to be used for business purposes. In this regard, tenancies were not envisaged in these areas. However, the Housing (Statutory and Improvement) Areas Act⁵³ overlooked two very important possibilities.

Firstly, the Act did not prohibit a person who owned land in a Housing (Statutory and Improvement) area from acquiring land in other residential areas, neither did the Act provide for what would happen in the event of a person acquiring land in other residential areas. This therefore left open the possibility of a person acquiring land in other

⁵² Section 5 of the Housing (Statutory and Improvement) areas Act

⁵³ Cap 194 of the Laws of Zambia.

residential areas, with the effect that the house they own in the Housing (Statutory and Improvement) area will then be put on rent. In view of the standard of life and such issues as the crime rate and education standards, most people, after acquiring land in other residential areas are more inclined to move to the other residential area opting to put their houses in the Housing (Statutory and Improvement) area on rent. This fundamental fact which was overlooked, has actually led to the proliferation of tenancies in Housing (Statutory and Improvement) areas, which tenancies are not regulated by the Rent Act⁵⁴.

Secondly, the Housing (Statutory and Improvement Areas) Act overlooked the fact that a restriction on the number of houses a person could own in the Housing (Statutory and Improvement) areas requires a good record system, which is not the case with the local authorities in this country. This is because of the meagre resources that local authorities have⁵⁵. This therefore left open the possibility of a person acquiring land in other Housing (Statutory and Improvement) areas because of the lack of coordination in the records of the local authority. Furthermore, the Act did not set any criteria of determining who was entitled to buy land in Housing (Statutory and Improvement) areas, with the effect that even comfortable people from other residential areas are eligible to buy land in these areas, which land they put on rent instead of occupying the house. In simple terms, Housing (Statutory and Improvement) areas are seen as potential areas of investment in real property. This in itself has had a fair share of contributing to the proliferation of tenancies in Housing (Statutory and Improvement) areas. The situation prevailing in these areas nowadays is that some people own more than one piece of land in these areas.

⁵⁴ Cap 206 of the Laws of Zambia

⁵⁵ Mudenda, F. Land law in Zambia, Cases and Materials.
(Lusaka: UNZA press. 2007). P.742

In view of the above state of affairs, there has been a proliferation of tenancies in Housing (Statutory and Improvement) areas. This can be seen from the numerous disputes that have been recorded by the Legal Resources Foundation (LRF). The Legal Resources Foundation is a civil society organisation specialised in the provision of free legal services to indigent members of society. In this vein, LRF has legal clinics in most Housing (Statutory and Improvement) areas. This research however only focused on the legal clinics in Lusaka because records as regards the cases reported in other provinces were not available at the Lusaka office. The table below shows some of the landlord and tenant disputes recorded by the LRF in designated legal clinics;

4.2.1 Landlord and Tenant Disputes Recorded by LRF in the year 2008

	Legal Clinic	Matero	Kaunda Square	Mtendere	Kabanana	Kanyama	Chawama	Chilenje
Month								
January		5	6	9	-	2	15	8
February		8	17	-	1	3	6	6
March		8	9	-	-	1	9	7
April		12	19	19	-	4	8	13
May		10	9	24	-	5	19	5
June		12	9	14	-	3	12	8
July		29	6	15	-	1	13	11
August		15	16	10	-	2	13	8
September		5	6	12	-	4	6	11

October		10	8	15	-	7	4	11
November		-	-	11	-	2	-	-
	Total	104	105	129	1	35	105	88

The above figures do not only show that there are a lot of landlord and tenant disputes in (Statutory and Improvement) areas, but also that there is a proliferation of tenancies in these areas. It must be mentioned that the number of disputes as shown in the table above is not a reflection of the situation on the ground because there are many landlord and tenant disputes which are not reported, and as such, the situation is actually worse than is reflected in the numbers. This is due to the fact that there are many people who are not aware of the existence of the LRF, while some who may know about its existence may not be aware that it actually handles such cases. In addition to this is the fact that there are a lot of areas where the LRF does not have offices. Examples of such areas include Kalingalinga, Ngombe, Hellen Kaunda, to mention but a few. It must be noted that the above figures are only for the period from January to November, 2008. This therefore, means that there are a lot more of such disputes, both recorded and unrecorded by the end of the year.

In view of the number of tenancy disputes arising from these areas, one wonders as to what law is used in solving these disputes. Some of the paralegal officers spoken to from LRF stated that they usually solve such disputes by applying the Rent Act⁵⁶. This in itself is a misdirection, because the Rent Act does not apply to Housing (Statutory and

⁵⁶ Interview with Raphael Kumwenda on 19th September 2008 at the Matero Advice Centre.

Improvement) areas as has been shown above. Other paralegal officers spoken to contended that they usually refer such cases to the Victim Support Unit (VSU)⁵⁷. One wonders as to what law the VSU uses to solve such disputes, or perhaps they just use their authority to make decrees concerning the dispute. This is especially so in view of the fear that police officers impart on the ordinary citizens.

Furthermore, it must be mentioned that some of the cases recorded at the Legal Resources Foundation show that there are instances when a landlord will even give two days notice to vacate the demised premises. Furthermore, in most instances, rent is usually increased at will and without giving adequate notice. Another common phenomenon in these areas is the aspect where landlords distrain for rent at will. In most instances, the items which are taken in distress for rent will be far more expensive than the rent due.

With respect to what has been explained above, one is left to wonder as to whether it is still justifiable for the Rent Act to continue being excluded from applying to Housing (Statutory and Improvement) areas. It can be seen that the realities on the ground lean in favour of extending the application of the Act to Housing (Statutory and Improvement) areas. If the objective of rent control is to prevent landlords from taking advantage of the scarcity of housing, then it follows that the Housing (Statutory and Improvement) areas are such areas where control is very much needed and necessary. This is so for the following reasons:

Rent control works to redress the inequality of bargaining power between the landlord and the tenant in so far as the terms of the tenancy are concerned. In this respect, rent

⁵⁷ Interview with Lillian Mutambalilo, a former LRF Paralegal, on 26th September, 2008 at UNZA.

control will be most appropriate for these areas. This arises from the fact that the majority of the tenants in Housing (Statutory and Improvement) Areas are usually illiterate and low income persons. These two factors alone mean that such tenants are not able to efficiently bargain for better and favourable terms in a tenancy, with the result that they are left at the whim of the landlord, whose interest is to make as much profit as possible from their real property. A research conducted by the Legal Resources Foundation revealed that that the majority of the tenants in Housing (Statutory and Improvement) Areas are usually illiterate persons and with low income, no wonder they offer free legal services to these areas; one just has to observe the standard of living in these areas in order to understand this point. In order to verify this fact, one just has to tour of the following areas: Misisi, John Laing, Kalingalinga, Mandevu, George Compound, Chazanga, chawama, Kaunda Square, Lubuto, Lukanga, Chikola, Hellen Kaunda Suburb, Mushili, Kamirenda, Chaisa, Kabanana, Kamuchanga, Bulangililo, Mutende, Ngombe, Kaunda Square, Libala, Garden, Buchi, Chunga, Kalulushi Township, to mention but a few.

Thirdly, the Rent Act in terms of scope applies to dwelling houses. The Rent Act⁵⁸ defines a dwelling house to mean any building or part of a building or room let or used as a separate dwelling or place of residence. Furthermore, the Penal Code⁵⁹ defines a dwelling house to mean any building or structure or part of a building or structure or any tent, or caravan or vessel which is for the time being kept by the owner or occupier for the residence therein of himself, his family or servants or any of them. Furthermore, in

⁵⁸ Section 2 of Cap 206 of the Laws of Zambia.

⁵⁹ Section 4 of Cap 897 of the Laws of Zambia

Wright v Howell⁶⁰, the Court pointed out that a dwelling house refers to premises suitable for all the major activities of residential life. Furthermore, in **Williams v Perry**⁶¹, the court stated that the mere fact that premises are suitable for dwelling will not make them a dwelling house if they are used for some other purpose. To this effect, since the houses let in Housing (Statutory and Improvement) Areas are dwelling houses within the contemplation of the law, then it follows that there is no reason why the Rent Act should not apply to these areas.

The extension of the Rent Act to Housing (Statutory and Improvement) Areas makes sense in view of the large number of tenants inhabiting in these areas.

4.3 Ways of Improving Rent Control in Zambia.

In view of the flaws that characterise residential rent control in Zambia, this essay will suggest some possible ways of improving rent control. To begin with, it was shown in the preceding chapter that rent regulation operates by restricting the amount of rent payable by the tenant and also by guaranteeing security of tenure to the tenant.

The restriction as to the rent payable is achieved by giving powers to the court to be able to determine the standard rent payable in respect of the demised premises. Although the intention behind such a provision is good, it has a lot of flaws for a society like ours, as has been shown in the preceding Chapter. In this regard, it is proposed that the administration of the Rent Act be vested in a Rent Tribunal, as is the case with other social legislation. Replacing the court with the tribunal will ensure that rent matters are dealt with more expediently and by experts in the field, as opposed to a position where

⁶⁰ [1947] 204 LT 299

⁶¹ [1924] 1 KB 936

the Court is entrusted with the responsibility of administering the Act. The establishment of a tribunal would do justice to the current state of residential rent control in the country. This will even have the effect of lessening the burden of the courts in so far as the case load is concerned. In addition to the above, the establishment of rent tribunals will also entail that the whole process of applying for standard rent and the settlement of rent disputes will ultimately be cheaper as compared to the status quo.

Furthermore, rent control can not be successful if rent controllers are not appointed for purposes of ensuring that valuation of demised premises is conducted. Such rent controllers should be specially trained for purposes of helping the tribunal in determining the standard rent in respect of the demised premises.

4.4 Conclusion

This Chapter set out to show the justification for excluding the Rent Act from applying to (Statutory and Improvement) areas and also to justify the need to extend the application of the Act to these areas. It has been shown that the Rent Act is excluded from applying to Housing (Statutory and Improvement) Areas largely because of the history surrounding these areas. However, the above fact notwithstanding, this chapter has shown that there is no longer any justification, legal or otherwise for continuing to exclude the Rent Act from applying to these areas. This is because it has been shown that there is a serious proliferation of tenancies in these areas, as has been shown by the numerous landlord and tenant disputes that have been recorded by the Legal Resources Foundation (LRF).

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

This essay set out to evaluate the efficacy of rent control in Zambia, with particular reference to dwelling houses. The Essay has shown that rent control has its origins in the period of the First World War when it was introduced as a measure to ameliorate against the acute shortage of housing. This measure was meant to prevent land owners from profiting against the acute shortage of housing. Rent control was exercised by limiting the amount of rent payable in respect of the demised premises and also guaranteeing to the tenant a degree of security of tenure.

However, this Essay has shown that even after the First World War, rent control continued in some European Countries, of which Britain is one of them. Further, it has been seen that prior to the enactment of rent legislation, the relationship of landlord and tenant was governed by the common law. This meant that the landlord was at liberty to increase the rent at will and could evict the tenant at any time, provided he was not acting in breach of a tenancy agreement entered into with the tenant. This state of affairs was realised to be inadequate as it was not proper to leave the doctrine of freedom of contract to govern the relationship of landlord and tenant. This is because it was realised that there is no equality of bargaining between the landlord and the tenant, with the tenant undoubtedly being in a weaker position. There was thus need to compensate for the weaker bargaining position of the tenant, and the introduction of rent legislation was seen as the best option. This therefore, means rent legislation was introduced purely for

purposes of protecting tenants against unfair treatment at the hands of the landlord. It is to this effect that the court in **Drake v Mahtani and Another**⁶² stated that the purpose of the Rent Acts is to protect the tenant.

In view of the above, this Essay has shown that rent legislation was introduced in Zambia in 1969 when the Rent Control (Temporary Provisions) Act was passed to regulate tenancies in Lusaka, Ndola and Kitwe. As the name suggests, this Act was merely a temporary measure pending the enactment of more comprehensive rent legislation. To this effect, the Rent Control (Temporary Provisions) Act was succeeded and repealed by the Rent Act⁶³, which was passed in 1970. As this dissertation has shown, the Rent Act is now the Act which governs the relationship of landlord and Tenant in Zambia.

As has been shown in the preceding chapters, the Rent Act in its regulation of rent in Zambia applies to all dwelling houses in the country. A dwelling house is defined to mean any building or part of a building or room let or used as a separate dwelling or place of residence, whether or not such building, part of a building or room is occupied by one or more tenants, and includes the site of the building and the garden and other lands and buildings let therewith. In simple terms therefore, it can be said that any building which is suitable for, and is used for purposes of residential life qualifies as a dwelling house for purposes of the Rent Act.

As this Essay has endeavoured to show, the Rent Act provides several mechanisms meant to protect tenants of dwelling houses. To begin with, it has been shown that rent control is

⁶² [1985] Z.R. 236 (S.C.)

⁶³ Cap 206 of the Laws of Zambia.

sought to be achieved by restricting the amount of money that the tenant pays in rentals. This is done by ensuring through provision to the effect that a tenant shall not pay rent in excess of the standard rent, which is to be determined by the Court. The Court is therefore vested with the power to determine the standard rent, with the help of rent controllers. Furthermore, the landlord is prohibited from increasing rent payable in respect of the demised premises except in certain prescribed circumstances. Secondly, rent control is achieved by giving the tenant some degree of security of tenure to ensure there is no eviction at will at the hands of the landlord. Further safeguards which are provided under the Rent Act include a prohibition on the charging of premiums, prohibition against levying distress for rent without leave of court.

However, notwithstanding the above safeguards which are meant to safeguard the plight of tenants as against the landlord, this Essay has shown that rent control has not served the interests of the people it was meant to protect. In this regard, it has been seen that the Rent Act is wrought with a lot of inadequacies which have consequently compromised rent control regulation in Zambia. To begin with, it has been seen that rent control in Zambia is not comprehensive in its coverage of dwelling houses. This is because the Rent Act does not apply to Housing (Statutory and Improvement) Areas, which areas, as has been shown in this Essay, have a lot of tenants. This has ultimately led to a situation where a lot of tenants can not rely on the protection or safeguards provided in the Rent Act. This raises questions as to what law is used or can be relied on in solving landlord and tenant disputes that arise in these areas. The situation is compounded by the inadequacy of the common law in so far as the protection of tenants is concerned.

Secondly, this Essay has also shown that rent control in Zambia is not effective because there is literary no mechanism for ensuring that the provisions as to standard rent are adhered to for the benefit of the tenant. It must be noted that the Act places the obligation of applying for standard rent on the landlord. However, there is no way of ensuring that landlords who do not comply with this obligation are brought to book. This state of affairs is further compounded by the fact that there are no rent controllers who have been appointed for purposes of valuation of the demised premises. This, therefore, raises questions as to what criteria the court is expected to use in determining the standard rent in the absence of rent controllers. It is because of such flaws that the Rent Act is usually considered to have fallen in desuetude. It is the concern of some sectors of society that the current provisions as to the determination of standard rent have lost touch with reality and do not take into account such factors as inflation.

In view of the above flaws, rent control in Zambia can not be considered as effective. This can be seen from the scanty litigation on the subject of residential rent control as compared to rent control of business premises. This is because there is little knowledge of the Rent Act among the people. Since most people are illiterate, they still live under the old notions that since the landlord owns the demised premises, then he has the right to treat the tenant as he deems fit. This is a sad state of affairs, especially when one considers the fact that shelter is a human right which every human being is entitled to.

5.1 Recommendations

In view of the above, this Essay has shown that there is need for serious reform on the subject of rent control in Zambia. The subject of rent control is one of those which have been denied the attention it deserves in so far as reform is concerned. It must be mentioned that the subject should not be allowed to turn into dead law because this is one of those vital social legislation which a country like Zambia where most of the people can not afford to build or buy their own houses. To this effect, if developed countries have effective rent control mechanisms, what more for a developing country like Zambia? In this vein, this Essay has proposed the following recommendations for purposes of reform in the area of rent control in Zambia;

- Firstly, it is being proposed that rent control should be expanded so as to include those tenants in Housing (Statutory and Improvement) Areas. As this Essay has shown, there is no basis, legal or otherwise, upon which rent control should be excluded from applying to these areas. This recommendation comes against the background of the numerous disputes, reported and unreported, between landlords and tenants in these areas.
- Secondly, it is proposed that rent control especially in relation to disputes and the application for standard rent should be tasked in the hands of a tribunal, as opposed to the current situation where such issues are dealt with by courts. The tribunal should be given exclusive original jurisdiction over rent issues. This will ensure not only that rent issues are given specialised treatment, but also that rent disputes and other issues are dealt with in an expeditious manner.
- Thirdly, it is recommended that the provision as to standard rent be given full rigour in terms of practicality. This can be done by appointing rent controllers,

which controllers will help in ensuring that the determination of standard rent takes into account all the circumstances and is in consonance with the realities on the ground. This perhaps, will even encourage landlords to make sure that they discharge the duty of applying for standard of rent.

- It is also recommended that there be a sensitization among the general citizenry as regards the subject of rent control. This will help in ameliorating against the fact that the majority of the population is illiterate. This will in turn encourage most tenants to bring forth disputes and other issues before the relevant authorities.

It is hoped that if the above recommendations are put in place in the course of reforming rent control in Zambia, then the words of the court in **Drake v Mahtani and Another**⁶⁴ to the effect that the purpose of the Rent Acts is to protect the plight of tenants may then be brought into fruition.

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