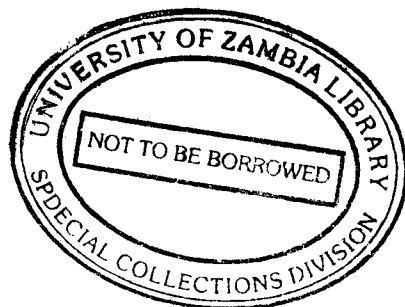


**A CRITICAL DISCUSSION AND ANALYSIS OF THE RELEVANCE
AND EFFICACY OF THE RENT ACT VIS-À-VIS THE IMPACT OF
OTHER HOUSING LAWS GOVERNING LAND TENURE IN
ZAMBIA.**

By



MARCUS TAURAI NZONZO.

Obligatory essay submitted in partial fulfillment of the requirements for an award of a
Bachelor of Laws degree (LL.B.)

The University of Zambia

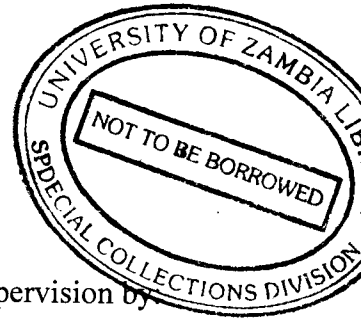
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November 2005.

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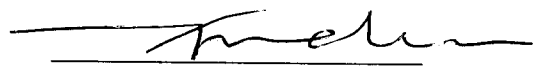
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MR. FREDRICK MUDENDA.
SUPERVISOR.

DEDICATION.

This paper is a heartfelt dedication to especially my dear MUM for her love and trust in me over the years she has continued to groom and support me. To my brothers and sister, RUDO, you are always dear to me. I dedicate this work also to all that supported and encouraged me in this work.

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I thank God for the gift of life.

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My family has always been a backbone and source of comfort in all my trials and for that confidence and love for me I say thank you.

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NZONZO MARCUS TAURAI,

University Of Zambia,

November 2005.

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INTRODUCTION.

The need for laws to regulate and control various avenues of human life and endeavour enjoys a considerable measure of immemorial antiquity. In any modern or mature legal system, it is or ought to be the aim of every law to ensure that citizens are law abiding through legal mechanisms that are not only relevant but, perhaps more importantly, effective. As human populations have continued to escalate world over, so has the attendant need for shelter or housing. Housing policies differ from country to country. In Zambia, for instance, the approach taken by the post independence government was that of providing adequate housing facilities to satisfy the growing demand for accommodation as more people sought jobs and places to stay in urban areas. But this task was huge and would not be achieved within a short period of time. Therefore, it was inevitable to have a law that would regulate the relations between landlord and tenant as regards rent, whilst the housing problem was being attended to. From as far back as 1940, the first rent control law was enacted to address the issue of prohibitive rents. However, the problem of arbitrary rent increments continued quite unabated. Coupled with the liberalisation of the economy in the early 1990s, the landlord seems to have carte blanche in rent determination. The majority of landlords and tenants do not adhere to the rent control law. Moreover, the scope of housing units that it applies to appear to be very limited. Therefore, of major concern in this research paper is to assess the extent to which the Rent Act in Zambia is relevant, and its efficacy as such, with the change in political and economic environment in mind, and in light of other housing laws that govern land tenure in Zambia.

This paper is divided into five chapters. The **First Chapter** will devote itself towards giving some relevant background of the Rent Act and as such identify the reasons for its enactment. The **Second Chapter** will attempt to make an estimate of how many potential dwelling houses are subject to the Act. It will also assess the extent to which the Rent Act is limited in application and use by other Acts of parliament. The **Third Chapter** will critically analyse some important salient provisions of the Act especially as regards enforcement. In this regard, it will also concentrate on the level and extent of public awareness and compliance of such provisions. The **Fourth Chapter** focuses on the impact of liberalisation on rent control. The discussion will reflect the current government housing and rent policy in Zambia. The **Fifth and last Chapter** will give an epilogue of the entire discussion by way of summary of what will have been discussed as well as offer some recommendations or proposals for reform in order to make the Act reflect the current political and economic objectives.

CHAPTER ONE (1)

HISTORICAL BACKGROUND TO THE RENT ACT AND THE RATIONAL FOR ITS ENACTMENT.

INTRODUCTION.

The need for laws to regulate and control the various avenues of human conduct has indeed enjoyed a long-lived existence in the history of mankind. Undoubtedly, each legal mechanism is made out to meet a specific objective or purpose, or is meant to curb a certain problem that may not be too desirable for the concerned society. One such area where the lawmakers felt that a legal regime would be necessary to govern a piece of the broad spectrum of human relations is that of rent control. Therefore, the main reason behind this first chapter is to highlight in some brief detail the history of the Rent Act. It will suffice to hastily state that such background information has been deliberately included only in so far as it will aid in meeting the objective(s) of this essay, viz, that of assessing the relevance and efficacy of the Rent Act amidst other housing laws in Zambia.

In Zambia, which then was Northern Rhodesia, the control of housing instituted by the initial rent legislation shared a common heritage with the reasons behind enactments of similar Acts in the United Kingdom (U.K.) In the U.K, for instance, legislation that limited the rights of landlords to increase rents and obtain re-possession was first enacted during the 1914-1918 first world war to meet the situation arising from shortage of accommodation at the time, and the myriad increases of rent levels.¹ In Zambia also, at about the period marking the end of the Second World War, the colonial leadership was

faced with chronic shortages of housing accommodation and it was not too long when the incidental problems of over-crowding and rent profiteering manifested themselves.² This chronic shortage of proper housing accommodation from the pre-independence era has remained an unhappy legacy that every successive government has had to contend with.

The first piece of law that the then colonial government passed was the Rent Restriction Ordinance of 1940. Its major objective was to make provision for the restriction of rent increase and the restriction of recovery of possession of property in certain prescribed cases. However, it is noteworthy to indicate that the only objects to which the sections applied were those expressed to be “immovable property,” building or any part thereof let separately.³ Immovable property excluded dwelling houses, which were let at a rent that included payments in respect of boarding and attendance or fully furnished premises. The Ordinance also empowered a director of supplies and transport to permit an increase above standard rent where the landlord could show some justifiable reason as to why he sought the rent greater than the prescribed standard rent.⁴

Barely 3 years later, the Rent Control Ordinance (1943) was enacted principally to repeal or revoke the 1940 Ordinance. The 1943 Ordinance replaced “immovable property” with the expression “dwelling house” for the purposes of fixation of standard rent. The Ordinance only had 13 sections, the first 12 of which applied to dwelling houses. Section 13 related to business premises. Clearly, this section had application then because at that time there was no legislation such as the Landlord and Tenant (Business Premises) Act, which currently governs business premises. Following the 1943 Ordinance were a series of amendments, which, though not too important to this discussion, were effected in the years 1948, 1950, 1952, and 1953 respectively.

Thereafter, in 1957, the Rent Control (Transitional Provision Ordinance) was passed. The objective aim of this Ordinance was to abolish rent control over dwelling houses let after 30th September 1957. It also made proviso for the retention of control over dwelling houses let at or before that date for about a maximum period of 2 years. The net effect of this Act therefore can be seen to have been to severely reduce rent controls over private dwelling houses. The corollary of this was to give the private owner some augmented powers to hike rentals with minimal control.

At the time Northern Rhodesia attained its independence, and was sooner called Zambia, the new indigenous government had great ambitions and challenges that lay ahead of it. The just elected Kaunda regime was primarily motivated by the need to empower its people both economically and socially. No doubt, within the first and second national development plans, the need to provide adequate housing for the fast growing population was reflected especially in the more urban areas where rural-urban drifts were rife.⁵ It suffices to note that the colonial masters had only built nearly 30,000 housing units, most of which were occupied by the whites themselves.⁶ In Lusaka alone, the scheme that was used to plan the town only catered for around 5,000 people who would occupy the high and middle income cost houses.⁷ At the material time, there was no provision for low-income cost housing units and this eventually led to the proliferation of the illegal shanty compounds, which the authorities have declined to provide sanitation and basic utilities such as clinics and water on account of such illegality. Because of these and many other such problems, accommodation became a scarce commodity and thereby raised serious concerns upon government in the light of the rampant rent profiteering by those that had accommodation to offer. In 1968, Mr. Sikota Wina (then in his capacity as minister of

Local Government and Housing) observed that because of the rapid influx of people seeking jobs in towns and urban areas, it would be extremely difficult to promise houses for everybody who obtained a job in Lusaka alone.⁸ Indubitably, the demand for housing far outweighed the capacity to supply housing for all that needed it. Again, the natural result of this was heightened rentals and only those few that could afford to pay more obtained suitable accommodation. The remaining majorities were thus forced to occupy or build cheap and undesirable houses in undesignated areas.

Governments concerns over the arbitrary increases of rents especially in Lusaka, Ndola and Kitwe were brought before parliament in 1968. Its objectives were to ensure that there was legislation that not only introduced some standards in the imposition of rents, but also that, which ensured that the tenant enjoyed some considerable measure of security of tenure. The Local Government Minister reflected this prime objective in a statement when he said that the bill was only of temporary nature pending a comprehensive rent control law. He further stated that in the meanwhile, "because of the high rent levels which obtain in our three main urban centers there is an urgent need to prevent rent rising still further and to provide security of tenure to the tenants to which rent control will apply."⁹ Therefore, the Rent Control (Temporary Provisions) Act was enacted and it made temporal provision for the control of rents and the restriction of eviction from dwelling houses and commercial premises. The Act actually introduced a security of tenure provision thereby making it mandatory for the landlords to seek the courts permission as a condition precedent to determination and increase of rent. Furthermore, the 1968 Act prohibited and criminalised the reception of premiums as a condition for the granting, renewing, continuing, or assigning of any tenancy. However,

as the name may have suggested for itself, the 1968 Act had a short-lived existence as was originally intended by the government. The Act of 1968 was replaced by the 1971 Rent Control (Temporary Provisions), which bore a semblance with the Act of 1968. This Act basically extended the life of the 1968 Act therefore the same obligations and rights of the landlords and tenants continued to exist under the new Act. In the same year, however, the government sought to fulfill its commitment to have a comprehensive rent control mechanism and thus enacted the Landlord and Tenant (Business Premises) Act, which was intended to supersede the Rent Control (Temporary Provisions) Act. This was especially with regard to the provisions that applied to business property lettings. The objective of the Act was to provide some tenure to tenants who rented premises for business purposes. It further prevented landlords from charging very high rents by enabling tenants to seek leave of the courts to review their rents.¹⁰

Clearly, the Landlord and Tenant (Business Premises) legislation was intended to alleviate or cushion problems attendant to business premises. It was meant to ensure that there was a firm foundation for lasting mutually satisfactory relations between landlords and tenants vis-à-vis business premises. Despite all these efforts, the government still faced daunting problems as regards premises let for residential purposes. By 1972, the housing dilemma had swelled to unimaginable levels and there was need for revision of the rent controls.¹¹ The rent bill of 1972 was proposed for consideration in parliament and would deal with residential premises alone. When the bill was finally passed into law in the same year, it made provision for restricting the increase of rents, determining standard rent, prohibiting the payment of premiums and restricting the right to possession of the dwelling houses. An examination of this Act obviates the fact that it was pro-tenant and

was meant to strengthen the tenants position. Therefore, the landlord couldn't capriciously or whimsically dream up a rent figure nor could he evict a tenant unless under the instances prescribed by the Act and with the leave of the court. From the foregoing and in the light of the acute housing problem that put tenants in an awkwardly weak position, the security of tenure provisions gave the tenant some protection. Prima facie, it can be argued that the Rent Act of 1972 was enacted with the interests of the tenant in perspective. However, the Act also ensured that the Landlord also had some interests secured. Therefore, the Act provided that even though the tenant had security of tenure, he too had an obligation of paying his rent duly to the landlord. Also, under the Act, the tenant is neither entitled to sublet the premises nor do any act that would annoy or cause a nuisance to the owners or occupiers of any adjoining site. Moreover, as a means of ensuring that the landlords' financial interests are not too prejudiced, it was suggested, before passing of the Act, that the rent which the landlord would be able to charge should be such as to provide him/her a fair investment return on his/her capital and also to encourage continued construction of residential properties for rents.¹² However, it suffices to state at this juncture that these rental controls were made at a time when the government had an under-pinning hand on the activities of the general public. The humanist and socialist attitudes of the second republic motivated government into directly involving itself in what would now be termed the private sector. Therefore, due to that economic situation existing then, rent control, just like any other controlled sector of the economy, was not only feasible, but desirable too.

From the time of ushering in the third republic, Zambia has gradually grown into being a more pro-liberal or capitalist society whose emphasis is on leaving things in the private

hands. The Rent Act has its latest revision or amendment having been made by Act number 13 of 1994. The Act makes 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. It further makes additional provisions as regards offences related to breach of the sections of the Act. From the foregoing outline, it can be observed that the Rent Act came into existence amid serious housing problems faced by successive governments and the need to control rent profiteering by those who could offer accommodation and those who were willing to pay for it.

CONCLUSION:

Having given some background or prelude information into what brought about the enactment of the Rent Act, what remains is to assess its relevance and effectiveness in the current pro-liberal based type of society that Zambia has become, and in the light of other housing laws. These will be dealt with in the successive chapters.

ENDNOTES.

¹ Fieldfisher, T.G, et al. Rent Regulation and Control. (1967) London: Butterworths

² Mulikita, M. "Rent Control In Zambia." Obligatory Essay, 1982 at pg. 1

³ Ibid.

⁴ Northern Rhodesia Legislative Council Debates No. 37; 7th Sept – 16th Sept 1940

⁵ N.C.D.P, First National Development Plan for the years 1966-1970, Lusaka. 1966 pg. 23

⁶ Republic of Zambia, National Assembly Hansard No. 25 (10th March, 1971)
Column No. 2000

⁷ The Adshead Plan, 1931-1933

⁸ Supra, note 6

⁹ Republic of Zambia National Assembly Hansard Number 13
(23rd January – 4th April, 1968) Column No. 817

¹⁰ Landlord and Tenants (Business Premises) Act (1971) Cap 440, Section 28

¹¹ Hansard Parliamentary Debates Tuesday, 7th march 1972

¹² Republic of Zambia National Assembly Hansard Number 25 (10th March, 1971)
Column Number 1997

CHAPTER TWO (2)

ASSESSMENT OF THE SCOPE AND FULL EXTENT OF APPLICATION OF THE RENT ACT IN LIGHT OF OTHER HOUSING LAWS.

INTRODUCTION:

From the foregoing chapter, it has been noted that the Rent Act was enacted to curb the effects of the habitual housing problem, which led to periodic and arbitrary increases of rent by some unscrupulous landlords. This chapter principally will make an attempt to assess the full extent of application of this Act. It will begin by briefly looking into the application of the Landlord and Tenants (Business Premises) Act, which also deals with landlord and tenant relations. This will be necessary to show that the Rent control law is piecemeal or fragmentary and thus the need for its consolidation to effectively include both business and residential premises. At the moment, there seems to be no justification for this separation between residential and business premises. The essay will then give a synopsis of what specific areas the Rent Act expressly provides that it applies to. Thereafter, it will be necessary to determine whether or not its scope of application makes this Act any relevant.

Before getting into the full gist of the discussion, it can be forthrightly stated that the success of any legal regime will and is usually measured by how effective it has been or is in curing the mischief that it was intended to suppress, so as to advance the remedy. Critical to such an observation is the need to assess how relevant such regime has been

especially in terms of its area of application. For instance, it would be helpful to give an example of a hypothetical situation where a law is created that criminalises certain human conduct in a particular multi-coloured society. However, this penal law provides that only the criminal conduct of dark skinned people will be regulated and sanctioned. That of the white skinned people would not be checked for one reason or another. Clearly this piece of law would have an inherent problem vis-à-vis its application, because by not covering a certain and equally crucial section of that society, the relevance and inevitably the effectiveness of such law would be put into serious query. This kind of inadequacy of the law would certainly breed contempt in the section of society that is extensively covered by that law. Clearly, there would be stringent need to unify the law so as to cover each and every section of the society so that there's not only equality but also equity in the administration of justice for all. Equally, a standard rent control law that covers all concerned sections of society would be most desirable, relevant and indeed effective.

To make this discussion more worthwhile and exhaustive, it would be expedient to make reference to the use and application of the Landlord and Tenants (Business Premises) Act,¹ (hereinafter referred to as the Business Premises Act) which was enacted specifically to provide security of tenure for tenants occupying property for business, professional and other related purposes and also to enable such (relatively weaker) tenants obtain new tenancies from their (often more powerful) landlords. Prima facie, it can be concluded that there are principally two pieces of legislation that govern rent and provide security of tenure for the tenant in Zambia, viz, the Rent Act and the Business Premises Act. The Rent Act, as was earlier stated, applies strictly to residential premises whereas the Business Premises Act is only applicable to those premises rented out

especially for business or professional (trade) purposes. However, despite this obvious difference between the two Acts, one other important difference lies in the fact that the Rent Act protects the tenant not only as regards securing his tenure, but also from the arbitrary rent increments of the landlord, by giving the court the immediate mandate of determining rent. On the other hand, the primary objective of the Business Premises Act is that of security of tenure only², and the amount of rent payable by the tenant is not initially to be determined by the court but is a matter of contractual agreement between the landlord and tenant.³ Therefore, so long as the tenant and landlord of business premises agree on what rent will be paid, that is what will be enforced in the courts in the event of dispute between the parties. This simply means that the landlord can determine rent on his own without leave of the court. However, the Act tacitly protects the tenant from unreasonable pegging of rent by the landlord by virtue of section 28(1).⁴ The effect of this is to severely proscribe the landlords rights of increasing rent *carte blanche* by enabling the tenant to apply to the court, which has power to review such rent and order for a substitute; and if the previously imposed rent is higher than the substitute, the tenant is entitled to recover all monies paid in excess of the courts determination. With regard to its application, the Business Premises Act applies to all business tenancies in Zambia with exception to premises let by government or any local authority.⁵ The effect of this provision is to restrict the Act only to private landlords and/or businessmen. This appears to be a peculiarity that has no apparent justification. The Act further restricts its application by not including premises held by a tenant under a tenancy for a term of years certain exceeding twenty-one years.⁶ A proposed justification for the above provision has been that in a tenancy that has lasted more than 21 years, the parties would have

developed a personal relationship such that they are able to regulate their contract on an equal or fairer basis.⁷ But the problem with such a proposition is not too difficult to fathom because this long -standing relationship may not always breed into equitable terms between parties. There is need to have legal provision that will ensure that the tenant will not be exploited either because of ignorance or because he has no other alternative. Moreover, the provision that excludes government or any local authority is also not too desirable. These two institutions have resources and have much larger potential to own estates. There is need to have uniform laws that apply to all concerned individuals and institutions whether private or public. This reduces potential conflicts that may arise as a result of applying different standards over premises that are similar.

Coming to the application of the Rent Act, recourse is to be had to section (3)(1), which stipulates that the Act is applicable to all dwelling houses in Zambia. However, the Act shall not apply to-⁸

- a) a dwelling house let or occupied by an employee by virtue and as an incident of his employment;
- b) premises let by the government save as the rent charged in respect of any authorised subletting or the whole or part thereof;
- c) premises for which an exclusive 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; and
- d) premises held by the tenant under a lease for a term certain exceeding twenty-one years.

From the above provision, the Act does not apply to houses where the lease or occupation of the house by the tenant is an incident of employment whereby at the end of the employment, the tenant would have to leave the house. Therefore, even though an employee was required under his employment status to pay some amount towards the institutional (or company) house, this would not be a tenancy under the Rent Act. In fact, before its amendment, section 41 of the Employment Act⁹ put the employer under an obligation to cause every employee in his service to be adequately housed at all times and at his own expense. However, the amendment¹⁰ to the Act altered quite a number of provisions including section 41 by giving the employer discretion to provide either housing, a loan or advance towards the purchase of a house. In many instances, the employer has done none of these thus further compounding the rent problem because very few employed people have proper and adequate shelter.

Businesses such as hotels, lodges and other related institutions are not governed by the Act in the charge of boarding and/ lodging in their premises since such arrangements are not strictly leases where the tenant will enjoy exclusive use and possession of the premises for an ascertainable period of time. Just as in the Business Premises Act, the Rent Act will not govern leases exceeding twenty-one years.

Government as well as all its agencies are not amenable to the Act. Before the local authorities sold off most of their housing units, they applied their own standard rents towards sitting tenants.¹¹ This was one major way in which the local authorities raised funds. After the housing empowerment scheme, however, many government pool houses and council housing units were sold off to sitting tenants. Other institutions that are directly charged with housing issues include the National Housing Authority (NHA) and

the Zambia National Building Society (ZNBS). The NHA for instance is established under the National Housing Authority Act,¹² and has various mandates under the Act including building, leasing out, and selling of housing estates.¹³ The Authority is under the Ministry of Local Government and Housing and mainly builds for commercial purposes.¹⁴ However, the Authority does not apply the Rent Act in the determination of rent over all housing units leased out by it.¹⁵ The reason for this stems from the fact that the Authority is a government institution, which makes the Rent Act inapplicable by virtue of sections 3(2)(a) and (b.) Like the Authority, ZNBS is a parastatal established under the Building Societies Act.¹⁶ ZNBS also does not subscribe to the provisions of the Rent Act and has its own standard of determining rent for the property that it administers. However, as regards residential purposes, the Society currently has only premises occupied by its employees. The majority of its property is used for commercial business purposes and its current role is in Mortgage Financing of real estate.¹⁷ The above discussion aims to show that essentially all parastatal and government units do not apply the provisions of the Rent Act and this to an extent proscribes or limits the extent of the Acts scope.

The Rent Act applies to state land alone. A check with the Ministry of Lands indicates that state land in Zambia is less than 10%, the rest falling under customary tenure.¹⁸ With such a small area, which the state administers, it is worth noting forthrightly that the Rent Act is inherently limited in its scope of application. Furthermore, the Rent Act in its current application applies only to the high cost and medium cost housing units alone. For instance, in the initial Adshead scheme of about 1931-1933, which was used to plan Lusaka, provision only was made for high cost and medium cost houses. There was

no provision for low cost houses to cater for the poorer indigenous Zambians. Instead, they were catered for under the land carved as native reserves and trustlands.¹⁹ However, in due course, and especially after independence, the native Zambians started ‘encroaching’ into state land and built squatter settlements near properly established housing units and buildings. Examples of such squatter settlements in Lusaka include Chibolya and Misisi compounds. In fact, the problem of rural urban migration became rampant such that it attracted comment from the then Republican President when he said:

“...In my country, and indeed in many others, we have a very serious problem of our rural people drifting in large numbers to big towns and cities especially in the Copperbelt. Today, the sudden mushrooming of large unplanned shanty towns on the edge of our established urban area has become one of our most pressing social and economic problems...”²⁰

Because of this informal housing and squatter problem, the Kaunda government in 1974 enacted the Housing (Statutory and Improvement Areas) Act²¹, which provides for the control and improvement of housing in certain areas. Housing areas are meant for low cost housing development in a bid to lessen bureaucracy that is frequently experienced at such departments as Lands.²² The ministry of Local Government and Housing is responsible for administering the Housing Act and by virtue of sections 4 and 37, the minister may declare any area of land within the jurisdiction of a council to be a statutory and /or improvement area respectively. Although there is currently no exact percentage of how much of state land is governed under the Housing Act, a check with the valuation department suggests that a larger section of land especially in Lusaka is either a housing or improvement area, and several other areas are still deemed as squatter settlements, i.e.

Chibolya and Misisi compounds.²³ In fact, as of 1996, informal housing constitutes at least 69 per cent of the nation's housing stock of now over 1.3 million dwelling units.²⁴ Informal housing includes houses built without formal guidelines and outside the context of comprehensively conceived layout plans, comprising three categories of houses, viz, squatter, upgraded squatter and traditional houses. Housing units under the Housing Act fall in this category and in fact, the Housing Act expressly prohibits application of certain enactments, such as the Rent Act, in statutory and improvement areas. In its subsidiary legislation, the Act by virtue of Statutory Instrument number 141 of 1997 provides for over 70 statutory and improvement areas in Zambia, which are not subject to the provisions of the Rent Act. Furthermore, even those with houses in customary areas, which are placed on rent, are not subject to the Rent Act thereby seriously limiting its application and use. The government valuation department indicates that it does value houses on behalf of government and also any individual from the public including those in customary and housing areas. Obviously, the department does not ascribe to the Rent Act, which in any event is not applicable. Further research also revealed that the valuation department under the ministry of local government, and the ministry of lands did not have adequate data, nor could they confirm on the number of dwelling houses owned by private landlords. Therefore, even without a proper per cent age estimation of how many private landlords the Rent Act governs, aggregating all the areas where the Act does not apply, viz, institutional houses, the informal housing units including houses under the Housing Act, customary areas, as well as business premises, it is submitted that the Rent Act is very limited in use in terms of the potential maximum number of dwellings that are on rent and could or should be subject to rent control. Moreover, it has

come to the attention of the author that many landlords with houses in residential (dwelling) areas, which should ordinarily be subject to the rent control provisions under chapter 206, have instead decided to rent them out as business premises thus escaping the jurisdiction of Chapter 206.²⁵ This trend has also come to the attention of the ministry of local government and the local authorities but nothing yet has been done about it.²⁶ With these kinds of problems above, it is submitted that the Rent Act has not taken into account the interests of the common man. It is apparent that the Act is only intended to govern rent determination and increments of those individuals in the high and middle income cost areas that are generally more financially advanced. However, the ordinary man occupying a low cost house in a housing area like Libala or Bulangililo is subject to explosive rents without the governance of the pro-tenant Rent Act. Such a limited extent of application is not desirable.

CONCLUSION:

From the above exposition, it is clear that the Rent Act, Chapter 206, has an inherent proscription in terms of its application and attendant use. This limitation surely begs the question of its relevance. Surely, an Act or law which has very minimal application may not be too relevant because, for purposes of the Rent Act, the very problem that it was intended to curb, viz, rent profiteering has continued unabated in areas where the Rent Act has no application. However, within its limited use and application, the next question for consideration is whether the Act is any effective and how many of its strict provisions are enforced by the authorities charged with its implementation. The following chapter tackles this issue.

ENDNOTES.

-
- ¹ Chapter 193 of the Laws of Zambia.
- ² As provided for in the Long Title
- ³ Section(s) 16 and 17 of Chapter 193
- ⁴ The section provides that: 'Notwithstanding anything to the contrary contained in this Act or any other written law or in any lease, a tenant whose tenancy commences on or after the 1st January, 1972, and to which tenancy this Act applies, may, within three months from the commencement thereof (if he is aggrieved by the rent payable thereunder), apply to the court for determination of rent; and, subject to the provisions of subsection (2), the court shall determine the rent which shall be substituted for the rent to be paid under the tenancy.'
- ⁵ Section 3(2)(c)
- ⁶ Section 3(2)(d)
- ⁷ Locha, G.L. "The Efficacy of Rent Control Legislation Under The Housing Policy in Zambia." Obligatory Essay submitted to the University of Zambia Law School, 1996. P 8
- ⁸ Section 3(2)
- ⁹ Chapter 268 of The Laws of Zambia
- ¹⁰ Employment (Amendment) Act, No. 15 of 1997
- ¹¹ This was disclosed in an interview with Mr. Wina, Principal Housing and Planning Officer at the ministry of local government and housing. 26/09/05.
- ¹² Chapter 195 of The Laws of Zambia.
- ¹³ Sections 19(2)(o) and 21(1)(a)(b)
- ¹⁴ Supra, note 9
- ¹⁵ Mr. Lungu, the Chief Personnel Officer of the Authority, disclosed this.
- ¹⁶ Chapter 412 of the Laws of Zambia.
- ¹⁷ Disclosed in an interview with Mr. Logan Nyansulu. Property Manager, ZNBS. 23/09/05

¹⁸ Mr. Sangulube, senior Estates and Valuation officer, in an interview on 16/09/05. He stated that currently, state land is estimated at about 6%.

¹⁹ Mulimbwa, A.C. "Land Policy and Economic Development." ZLJ, Special Edition, 1998. Pg 80

²⁰ Kenneth Kaunda in the Foreword to "Economic Aspects of The Humanist Revolution." Written by Papworth, J. 1973. Lusaka Printers.

²¹ Chapter 194 of The Laws of Zambia.

²² Supra, note 9

²³ Mr. Charles Kabuka disclosed this from the valuation department.

²⁴ National Housing Policy, 1996. Pg 12. Ministry of Local Government and Housing, Lusaka.

²⁵ This was discovered in a survey of residential premises in Lusaka where a large section of residential premises are being used as business premises.

²⁶ Supra, note 11

CHAPTER THREE (3)

ANALYSIS OF THE PRACTICAL USES (PUBLIC AWARENESS) OF THE RENT ACT AND ITS ENFORCEMENT MECHANISMS.

The previous chapter attempted to address the full extent of application of the Rent Act and concluded by emphasizing the fact that the scope of its application is very limited and thus begs the question of what relevance it has. The emphasis of this chapter will be to look into how effective the Rent Act is as regards the level of public knowledge of its existence and how far its provisions have been followed. This chapter will also look critically into how effective the enforcement mechanisms of the Rent Act are or have been. The objectives of this chapter will be achieved in part by looking into some statistics of how much people know of the existence of this law on rent.

Generally speaking, once all the necessary conditions are fulfilled as regards a lease agreement between landlord and tenant, and the area in which the housing unit is falls under the jurisdiction of the Rent Act, the provisions of the Rent Act apply and are binding to both landlord and tenant. The Rent Act was specially enacted to ameliorate the problems and hardships faced by tenants amid the shortage of housing units. Therefore, landlords are not allowed to increase their rent above a prescribed amount. Moreover, not only is the tenant protected from eviction without leave of the court, but the Act also criminalises the common tendency among landlords of requiring premiums or other such like sums, in addition to, or quite separate from, the usual standard rent as a means of granting, continuing, or renewing a lease agreement.¹ Because this subject is solely based

on rent, it may be necessary to consider the proper understanding of the word rent. In general, and by the common understanding of all those that enter lease agreements subject to the Rent Act, rent is the entire monetary amount that tenants pay in order to have quiet possession and exclusive enjoyment of the premises let to them. However, the Rent Act itself in its interpretation section² does define rent in what it terms “standard rent.” “Standard rent” means-

a) in relation to unfurnished premises-

- i) if on the prescribed date they were let, the rent at which they were so let;
- ii) if on the prescribed date they were not so let, the rent to be determined by the court at a monthly rate of one and one-quarter per centum of the cost of construction plus market value of the land, the landlord paying all the outgoings;

b) in relation to furnished premises, the standard rent which would be applicable if they were unfurnished, plus a sum at a monthly rate not exceeding one per centum of the value (as determined by the court) of the furniture, excluding any soft furnishings, linen, cutlery, kitchen utensils, glassware and crockery, and a sum not exceeding two per centum of the value (as determined by the court) of any soft furnishings, linen, cutlery, kitchen utensils, glassware and crockery, and any determination made for the purposes of this definition shall, within the limits imposed by this definition, be at the absolute discretion of the courts.

The provision above works out a formula for the determination of rent and vests absolute power into the courts to come up with such figure of rent which is to be applied by a landlord. This provision thus gives the courts an evaluative mandate to assess rents on a

landlord's behalf and though the procedure seems technical and better placed in the hands of expert valuers, it presents a workable formula that is calculable. However, the practicality of this determination is almost impossible because of the current fluctuating economic conditions that the country is facing which affect pricing of commodities including building materials. The fact that each housing unit would have a different standard rent applicable to it makes the courts job even more tedious.

The Rent Act also stipulates that notwithstanding anything contained in the definition of "standard rent"-

- a) in any case in which the court is satisfied, having regard to the temporary nature of the construction of the premises or to the short duration of the lease or license under which land on which the premises are situate is held, that the standard rent as defined in subsection (1) would yield an uneconomic return to the landlord, the court may determine the standard rent to be such amount as the court shall, in all circumstances of the case, consider fair and reasonable; and
- b) in any case where the court is satisfied that it is reasonably practicable to obtain sufficient evidence to enable it to ascertain-

- i) the rent at which the premises were let on the prescribed date;
- ii) the cost of construction and the market value of the land;

the court may determine the standard rent of comparable premises in the neighbourhood.³

From the foregoing section, it is noted that the courts have power also to determine rent under what they may in their discretion deem to be reasonable and fair to the landlord in

circumstances where determination of rent based on the provision of subsection (1) would bring about an uneconomic return to the landlord.

The Rent Act under section 4(k) gives the courts extensive powers to exercise jurisdiction in all civil matters and questions arising under the Act. This gives the courts wide powers to deal with all cases pertaining to landlord and tenant in the event of a dispute. The interpretation section provides that “court” shall mean either the High Court or the Subordinate Court of the first class depending on the amount of rent demanded per annum. The difficulty of this kind of scenario has to do with the fact that landlords may not readily know which particular court to seek recourse to as regards rent demanded. Amongst other powers, the court also has power, as indicated earlier, to determine the standard rent of any premises, either on the application of an interested party or of its own motion.⁴ The duty of applying to the court for standard rent is actually on the landlord and not on the tenant.⁵ Such application ought to be done either before the premises are let or within three months of the letting. If the landlord to whom this duty applies fails to comply with the provision, s/he shall be guilty of an offence that invites a penalty of a fine or imprisonment up to 6 months.⁶ Under section 5 the court has powers to investigate any complaint relating to the premises of the tenancy made by either party to the tenancy. Moreover, the court is not itself precluded from conducting investigations on its own volition over any dispute or matters likely to lead to a dispute between the landlord and tenant.

As was indicated earlier, the Rent Act was enacted to address the popular problem of rent profiteering. It is essentially pro-tenant and was meant to protect the tenant with little bargaining power from massive exploitation by the landlord. Because of this apparent

bias toward the tenant, the provisions of the Rent Act that provide security of tenure for the tenant become all the more important and need close and adequate consideration. Just prior to the enactment of the Act, Mr. Peter Matoka in his capacity as the minister of Local Government and Housing stated that: "...The right of every person to continue living in his or her home without fear of eviction is a basic human right which, unless a person is an owner of the home carries with it an obligation to continue paying proper rent to the landlord and to care for the rented property in a proper manner..."⁷ Clearly, it was the intention of government then to ensure that there was a direct policy that protected the tenant. This is seen in the preamble of the Act. From the statement by the former minister above, it can also be noted that this protection of the tenant was only so far as the tenant continued in his obligation of paying rent duly. In fact, the Act itself does stipulate that an order for the recovery of possession of any premises or for the ejectment (or eviction) of the tenant may be made where 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 not been performed.⁸ This provision together with section 14 is an important security of tenure provision. Section 14 states that no distress for the recovery of rent in respect of any premises shall be levied except with the leave of the court. Essentially, this means that without permission from the court, any such act by the landlord that is bent towards removing the tenant from his tenancy would in actual sense be a trespass by him and actionable at the instance of the tenant, even though the tenant may himself have a case to answer for breach of his own obligations. Therefore, once a landlord under section 8 applies for standard rent, he can thereby not arbitrarily increase rent. Thus, section 9 provides that the landlord of

premises shall not be entitled to recover any rent, which is in excess of the standard rent. As some exception to this general rule however, the Act does expressly give permitted instances where a landlord may increase standard rent upon giving the tenant written notice. These instances include cases where the premises upon which the rates payable by the landlord have increased, or where the landlord has incurred expenditure on the improvement or structural alteration of premises or in connection with the installation or improvement of a drainage or sewer system.⁹ Section 13 that provides for the restriction on the right of possession by the landlord places on him a heavy burden to show to the courts conviction why he requires possession of the premises, in line with the instances provided by the Act. This of course is not meant to completely oust the landlord from ever retaining possession of his premises, but the rationale may be that since the tenant is in a more susceptible situation, there is need for him to be closely guarded. In this way, by ensuring that the landlord does not come up with flimsy or unwarranted reasons as to why he wants to regain possession of the premises, the major purpose of the Act is achieved, viz, that of securing tenure. Under section 13, it is apparent that the courts are again given wide discretion to put all factors into consideration and ensure that in granting or refusing an order for repossession of any premises, the interests of both parties to the tenancy are assessed and given due consideration. It is a very common tendency by landlords to put clauses in their lease agreements for the payment of an amount, which is additional to the standard rent that tenants pay. Most landlords justify collection of such additional payments to be a means of security in the event where the tenant does not fulfil his obligations of paying rent in due course.¹⁰ Clearly, such actions are tantamount to requiring a premium as a condition for the granting or renewing of a

tenancy and thus a breach of section 15. This system is so widespread and goes to show that there is a problem with knowledge and enforcement of this law. In fact section 10 of the Act restricts and criminalises the obtaining by any landlord of rent that exceeds standard rent. In practice today, it was observed by the author that *landlords are* demanding not only high rents, but also payments in advance of up to 6 months. In Northmead for example, which has attracted many people due to location convenience, a survey established that many landlords still quote their rents in foreign currency and in instances have obtained rents up to as much as 12 months in advance. Many landlords have expressed the view that payments in advance are necessary and protect the landlord from potentially defaulting tenants. By demanding 6 months rent for instance, the landlord is not only able to invest the money as a whole in more worthwhile activities, but also ensures that the tenant is given adequate time to prepare for the next payment thus less likely to default as would be the case where the rent due is paid monthly.¹¹ On the other hand also, some tenants are actually comfortable with the arrangement of paying rent in advance. Many of them feel that this helps push off their immediate monthly obligations, as money may not always be readily available on a monthly basis. However, this is clearly a serious violation of section 10, which prohibits a landlord or agent from demanding or accepting rents exceeding two months standard rent. Moreover, as a means further of protecting the tenant, once a landlord is convicted under section 10, the court may order that the extra rent or advance accepted by the landlord be repaid to the tenant.

Section 19 makes it mandatory for landlords to keep a rent book, which ought to comprise the parties' names, the premises, standard rent and the signature of the landlord,

in addition to other relevant requirements. However, in the authors findings, there were very few landlords that kept a record of the rents that there tenants paid and of these few none had furnished their tenants with a copy of the record or rent book. Another important provision under the Act is that which, if fully utilized and enforced, would secure the tenant from any hidden violation from the landlord is that which provides for rent controllers.¹² This provision is very important indeed. By giving rent controllers powers to enter rented premises at reasonable times and serve written notices to landlords and tenants ensures that any information that is furnished and suggests that the Act is being contravened will be acted upon and those in breach will face the proper sanctioning of the law. Before enactment of the Rent Bill in 1972, it was extensively argued by one of the members of parliament that on experience the provisions of the Act were not being followed because of lack of a proper enforcement mechanism. Therefore, introducing clause 30 to provide for rent controllers would be one sure way of ensuring that the Act would be complied with as the rent controllers would act as “watch dogs” for the government and the courts.¹³ Whether or not these rent controllers have really gone out in the field to assess if landlords comply with the provisions of the Act leaves much more to *be desired. A robust and efficient force of rent controllers would be one definite way of enforcing the provisions of the Act.*

By and large, the Rent Act criminalises lots of activities that are perpetrated by many landlords and tenants alike. This indubitably raises the concern of whether or not this law is effective, vis-à-vis public awareness. The author conducted various interviews and drafted questionnaires which were distributed in five principle areas in Lusaka, viz, Kabwata, Makeni, Olympia, Rhodespark, and Woodlands. The research was intentionally

done in Lusaka because it is Lusaka city that has faced the highest problem of housing accommodation due to its ever-growing population. Naturally, it is Lusaka that has the highest rent figures countrywide. It was thus hoped that the statistics and information obtained in these areas would be highly representative of all areas possibly facing the same predicament, which has chronically existed in Lusaka. The questions centred on the respondents' knowledge of the security of tenure provisions outlined above. Among the questions asked were whether the respondents knew that landlords can neither arbitrarily increase standard rent as determined by the court nor evict a tenant from the premises unless with leave of the court. The respondents were also asked, *inter alia*, if they knew that payment or demanding of rent in excess of two (2) months was prohibited under section 10 and whether they knew of or ever had an encounter with rent controllers. 35 of these questionnaires were distributed in the 5 sample areas. About 30% of the respondents* had some idea about the existence of some rent controls. However, most of these knew little about what was contained in the Act. Therefore, approximately 85% ** of the respondents were in the dark about the rent control provisions. In fact, since the enactment of the Rent Act of 1972, there have been a very minimal number of cases that involve a direct matter between the landlord and tenant as regards enforcement of the security of tenure provisions. By 1987 for instance, the concern over high rentals was talk of the public and this was expressed in an article of the Times of Zambia:

‘...It is this hike-a-rent game sweeping the cities, particularly Lusaka.

House rents have become so unreasonably high that one wonders whether the landlords want their houses to be occupied at all. Agreements between tenants and landlords have been ignored because rents are revised every

month contrary to original contracts, and the tenant is scared to protest because he will be told "Get out and I will rent it in foreign exchange." If the tenant accepts the increase quietly, the landlord will find a way to fix him, "I want rent paid 12 months in advance." When the tenant grumbles, he is reminded of the foreign exchange threat. If the tenant can't pay the rent in advance for 12 months, the house is advertised and the terms are: "Embassies preferred, rent paid in foreign exchange six months in advance."

The embassies of course apply and they outbid each other by offering a longer advance payment period and an extra dollar. This will be called normal business in other areas. But misery is increasing daily among the people who cant rent or buy houses because of the rent increase mania...

We appeal to the party and its government not to ignore this cancer by streamlining or standardising rents...'¹⁴

This concern was expressed 15 years ago. The position has however not changed for the better and the tenant is put to a serious disadvantage of paying more, or the inconvenience of being ousted from the premises prematurely. Clearly, the provisions of the Rent Act are not followed, neither are they fully enforced by the relevant or concerned authorities. A search conducted at the High Court registry with the assistance of the Assistant Registrar of the Court revealed that there was no recorded instance where the court has on its own initiative enforced the provisions of the Act (i.e. conducting its own investigations), despite being given such a mandate.¹⁵ Moreover, the very few cases of landlord and tenant brought before the court mainly hinge on the security of tenure provision under section 13 simply because staying in a house is more of a concern to the

tenant as opposed to other incidental matters of increased rents or duties of the landlord such as those of repairing the premises or keeping rent books. Therefore, despite all the protection that the Act offers to the tenant, not many tenants utilise this protection. In a few cases however some tenants have endeavoured to enforce their rights under the Act by seeking the intervention of the courts. In the case of **NIP v. ZSIC Ltd**,¹⁶ the Supreme Court protected the interests of the appellant tenant when it held that there was never an intention by the appellant to sublet the rented premises, other than grant a licence to a third party to occupy the premises for a short period. Therefore, the arrangement did not fall under section 13(1)(d) of the Rent Act which applies to subletting. The appellant thus was entitled to a declaration that the purported termination of the tenancy was null and void, and obtained an order for damages and repossession. This authority shows that the courts have to an extent shown some willingness in upholding the tenants interests under the Act, though this is still quite less than the ideal situation as portrayed in the provisions that give the court unlimited power to deal with tenancy disputes, even on its own volition. As far as the landlords interests are concerned, a review of the few cases brought by them suggest that the courts seem to be inflexible and strict on them. Cases in point include **Drake Mahtani & Professional Services**¹⁷ and **Barclays Bank (Z) Ltd v. Walisko Co. & Mansoor**¹⁸ where the courts held that a landlord's claim for possession of the residential premises under the Act must be commenced by an originating notice of motion in accordance with the rent rules. In both cases, the actions for possession under writ were frustrated and delayed by these procedural difficulties. Also in **Mukadam v. DP Services Ltd**,¹⁹ the applicant applied for the recovery of possession and it was the applicants' case that section 13(10) of the Rent Act was complied with. Counsel for the

respondent submitted that under paragraph (h), the landlord was required to have “complied with the terms relating to the giving of notice contained in any lease which he has entered with the tenant in respect of such house or in the absence of any such lease, has given the tenant 3 months ‘notice to quit’ and that there being no provision as to notice in the lease it was proper to give 3 months notice.” The court stated that there was no doubt that the provisions of section 13 (1)(h) of the Act require the landlord to have complied with the terms of the particular lease covering the giving of notice. It further stated that it is only where there is no lease in existence at all that the landlord may, under the latter part of paragraph (h) give the tenant 3 months notice to quit. In this case above, no notice was provided for in the lease and thus the landlord had to give the 3 months notice period provided for under the Act, despite the fact that he wanted immediate occupation. Due to these and many other difficulties that the landlord has to put up with, especially where the landlord needs the premises for immediate occupation by him and his family, yet cannot get quick assistance through the courts, the landlord is often forced to take up the matter in his own hands by evicting the tenant himself. The landlord is put to strictness in proving or justifying why s/he needs to increase rent or regain possession of the premises provided under sections 11 and 13. The corollary of this situation is to make the Rent Act unfavourable in the landlords view thus forcing the landlord to shun the provisions of the Act that seem draconian and more favourable to the tenant. Connected to this also is the fact that though many landlords do not follow the provisions of the Act, the courts have not to the authors knowledge convicted any defaulting landlords to the extent of fining them or sending them to prison respectively.²⁰ This apparent reluctance by the court not to strictly adhere to its mandate of punishing

offending landlords further exacerbates the problem of enforcing the Act. Therefore, many parties to tenancy agreements, especially landlords, have continued ignoring the provisions of the Act on such issues as keeping of rent books and the restriction on demanding rents over 2 months standard rent as advance payment.

The above indications show how unpopular the rent control law has been and the attitudes of the courts, authorities, and the parties themselves to the tenancy agreement. In the earlier indicated survey by the author, the respondents who expressed some knowledge of the existence of the Rent Act highlighted the fact that landlords exploit many people especially due to the fact that they were ignorant. Rents in the low-density areas like Lusaka are viewed to be too high and thus the need to create awareness to landlords and tenants of this law. Many of the respondents who were absolutely ignorant of the Act lamented on whether this law really exists and were of the view that perhaps government should come up with a deliberate sensitisation program and issue licences to landlords to ensure that landlords are made to follow the Act. But the problem of issuing licences for purposes of rent regulation is immediately envisaged: Many landlords would secretly enter into private tenancies with desperate tenants who, even if informed, would simply keep quiet since alternative accommodation may be difficult to find in the event where they decide to complain against the landlord and eventually have to vacate the premises. Though the tenants argued that rents are exorbitant and that the landlord assumes too much unmatched power, the landlords themselves, or those who responded under such capacity, had a different contention. A good number of them justified their rent figures on account of the fact that plots are now very expensive and so are materials and labour for building. Moreover, because the cost of living is high and the country's

economic levels are fluctuating, landlords justify their frequent pegging of rents higher than earlier agreed or demanded. Others lamented about the fact that the landlord ought to, but is not, protected from careless use of the premises by the tenant who generally does not care about looking after things that do not belong to them. However, the author did not subscribe to the reasoning of many landlords who charged excessive rents on account of building costs because not all landlords built those houses. In fact, the majority of landlords were those that benefited from the government housing empowerment scheme of 1996. Since they did not spend on building, the main justification that they have for hiking rent seems to be only where they have made substantial improvements or adjustments to the houses in accordance with section 11 of the Rent Act.

CONCLUSION:

From the discussion above, it can be deduced that though the Rent Act offers an elaborate and impressive theoretical framework for protecting the 'weaker' interests of the tenant, it does not necessarily prejudice those interests of the landlord. But in practice this is far from being realised or achieved due to such age old problems as the critical shortage of housing accommodation, ignorance of the law by the parties to the tenancy or a mere ignoring of it, and perhaps lack of commitment by the concerned bodies that are mandated to ensure that the provisions of the Rent Act are followed strictly. The challenge of course is to come up with workable solutions that will address these inherent and self-induced problems. These will be considered in the fifth and last chapter. Before these considerations are brought into perspective, the next chapter will look into Zambia's current housing policy and how workable rent law is in Zambia's liberal state.

ENDNOTES.

¹ Section 15(1) and (2)

² Section 2(1)

³ Section 2(2)

⁴ Section 4(a)

⁵ Section 8(1)

⁶ Section 8(2)

⁷ Republic of Zambia. National Assembly Hansard No. 15. March 7th, 1972. Column No. 1671

⁸ Section 13(1)(a)

⁹ Section 11(1)(a) and (b)

¹⁰ Survey conducted by the author in Rhodespark, Olympia, and Kabwata.

¹¹ This was disclosed in interviews with two neighbouring landlords who declined to be identified.

¹² Section 30(1)

¹³ Republic of Zambia. The National Assembly Hansard. No. 15. March 7th, 1972 at Column No. 1668.

* who were either landlords or tenants respectively.

** 70% of the respondents who knew completely nothing of the Act plus half (15%) of the 30% that expressed ignorance of the major security of tenure of tenure provisions.

¹⁴ The Times of Zambia, 30th June 1987. Excerpt obtained from the National Archives Library, Lusaka.

¹⁵ This was conducted on Thursday 8th September 2005

¹⁶ (1993-1994) ZR 144 (SC)

¹⁷ (1985) ZR 236 (SC)

¹⁸ (1980) ZR 7 (HC)

¹⁹ (1975) ZR 284 (HC)

²⁰ This strong assumption is derived from the fact that none of the reported cases that the author came across have any instance where the court criminally sanctioned a landlord who was in breach of the Rent Act.

CHAPTER FOUR (4)

DISCUSSION ON THE IMPACT OF LIBERALISATION ON RENT CONTROL

IN ZAMBIA: THE CURRENT HOUSING POLICY OF GOVERNMENT.

The previous chapters have essentially highlighted the inherent and extrinsic perennial problems or shortcomings that have attended the existence of the Rent Act since 1972. Indeed for any rent control law to be successful, it must ensure that it not only covers all concerned areas and individuals, who must be fairly knowledgeable of its provisions, but must also have enforcement provisions that are utilised effectively by those offices charged with the mandate of implementation of the provisions. This particular chapter is of great importance because it will attempt to ascertain how workable rent controls are in a pro-liberal type of society and in that regard will reflect government's current policy on housing vis-à-vis rent control in Zambia. To achieve the aims of this chapter even better, it will suffice to give a summary of the pre-1991 government policy on housing.

From the very first instance, it can be stated that providing adequate housing for all the citizenry is one way of curbing the widespread problem of arbitrary rent hiking. This problem of providing adequate housing is not peculiar to Zambia alone. Reports in the media reflect housing challenges faced by many African countries such as Zimbabwe, Malawi, Angola, Congo as well as the war hit areas like Sudan.¹ Even developed countries are not without their housing challenges. In the U.S, Singapore and China, for instance, the cost of dwelling can often be 2.5 to 6 times the annual salary of an average citizen.² This obviously has considerable implications for the desire of home ownership.

Because not too many can afford to build housing of their own, resort is had to renting *apartments*, as they are commonly called. Indubitably, housing accommodation is largely based on the availability of the land resource. Unlike some developed countries like Japan, which is not only small but hilly too, Zambia is endowed with plenty of land. In fact, it has been suggested, and rightly so, that in Zambia, 'land has never been a matter of burning importance.'³ The challenge has thus been on the relevant authorities that are or ought to be responsible for ensuring that housing units are made available. In the first and second republics, the government was faced with this serious social and economic issue of prohibitive rents. Echoing this problem, the then Minister of Provincial and Local Government and Culture, Mr. Simon Kapwepwe indicated that, "...the amount of rent for a house always depends entirely on the number of houses available, so that the only real answer to excessive rents is the provision of sufficient houses."⁴ In that light, the then head of state Dr. Kenneth Kaunda also made expression to the effect that some action had to be taken in order to curb the problem of tenant exploitation. It will be recalled that at the material time, the regime had adopted the social philosophy of humanism where everything was done in the common good and thus private ownership of things was discouraged. Nationalism took its toll and almost every avenue of human activity was controlled by the state. Indeed as a means of consolidating the just enacted Rent Act in 1972, Dr Kaunda re-iterated his government's position when he arduously stated, in what came to be known as the **Kabwe Declaration**, that:

"...In future no individual will be allowed to build houses for rent. The question of accommodation, therefore, must henceforth be left to the state, with its institutions like the party, Central Government, Local

Government, parastatal organisations and co-operatives. For individuals owning properties for rent, they should start fazing themselves out of this business in such a way that, by the end of five years from 1973, they will have sold their properties at reasonable prices to the state. This is a field in which there is extensive exploitation of the common man. We will not allow it...”⁵

Government’s objective of preventing this perceived exploitation of man by fellow man was further re-enforced by the Land (Conversion of Titles) Act of 1975 whose primary effect was to make undeveloped land valueless. Moreover, section 13 of the Act made provision for the state to intervene in the private dealing of individuals by requiring state consent for any transaction on the land including such issues as rents. Clearly, in the particular type of political arrangement that existed in the second republic, rent control seemed not only possible, but was perhaps desirable too. Mr. Justice Ngulube echoed this in January 1987 when he said:

“When a nations political fathers notice widespread mischief and unfairness, they will pass legislation such as to curb rampant exploitation by land sharks for the protection of the disadvantaged and the weaker section of the populace...”⁶

Despite enacting the Rent Acts, the state still realised the importance of pragmatic establishment of housing units as a real and final solution towards curbing the rent problem. Because the demand for it was exceedingly high, the government was determined to supply adequate housing stock for its people. For instance, in the First National Development Plan the government made an estimated budget of 4.2m per year

for a four-year period on low cost housing.⁷ Under this plan, two housing programmes were set up, one for the civil service, and many more low cost houses mainly for the very underprivileged populace.⁸ By 1974, under the Second National Development Plan, the first government policy on housing was introduced in a bid to encourage home ownership programmes countrywide.⁹ This policy essentially incorporated giving allowances to especially the civil servants to purchase themselves houses. But the then UNIP government had long realised that to achieve these objectives, there ought to have been appropriate institutions that would be specifically mandated to deal with issues of housing development. In fact, during the period of the second and third National Development Plans between 1971 and 1983, the government pursued a policy of developing residential and commercial property through parastatal firms.¹⁰ In that regard, the Building Societies (Amendment) Act number 67 of 1970 was enacted to provide for the establishment of the Zambia National Building Society.¹¹ The Building Society was essentially established to provide loans to those individuals that wanted to build houses as well as build on its own so as to place their buildings on rent.¹² In fact, the Society offers three types of property financing, viz: credit for outright purchases of already developed property; management of a construction scheme on behalf of clients and; offering small loans for renovations, improvements and extension of already owned property.¹³ With the ZSIC, the Society undertook real estate management (residential and commercial) and rented out to the public from its own stock or on behalf of customers. The following year, the government felt the need to establish yet another institution that would assist in housing development and thus created the National Housing Authority (NHA.)¹⁴ Before

the National Housing Authority Bill was passed, the government in parliament argued that:

“The duty of the authority is to devise home purchase schemes in which every Zambian citizen can participate irrespective of whether the house is owned by the government, by a local authority, by a parastatal body or by any other body or person.”¹⁵

At inception the Authority’s core function was property development for the purposes of selling and renting to the general public, with selling being its biggest option. It also sought to provide minimum housing standards within the resources of the country. At the same time, it conducted research to lower the costs of low-income housing.¹⁶ This government objective of providing shelter for all continued up to the Third National Development Plan, through its deliberate policy of ensuring that all employees in the civil service, parastatals, and also those in the small private sector had adequate and affordable accommodation.¹⁷ Under this plan, for instance, the responsibility of the NHA was that of ‘vetting all housing programmes’ prepared by all organisations, including government. Other parastatals like the Zambia National Provident Fund were mandated also to build institutional houses for their employees.¹⁸

By 1990, the challenges faced by the UNIP government were too numerous for it to regain the waning confidence of the people thus this saw increasing calls on government to subscribe to multi-partism in the wake of internal and external pressure. It had become apparent to the Zambian populace, and indeed the international community at large, that the ‘*muyayaya*’ UNIP regime had failed to live up to the people’s political, social, and economic expectations. In the housing sector, for instance, it was observed that the

demand for housing was even greater than ever especially in the midst of the continued rural-urban migration.¹⁹ Sooner the calls by the Zambian people and the international community came to fruition when finally the government bowed down to calls for multi-party democracy in the 1991 elections, which saw the ushering in of a new MMD leadership under Fredrick Chiluba. The MMD government came in with its own vision and policies quite different from those of the UNIP government. In the housing sector for instance, the new government was convinced that no sound policy existed since Zambia attained its independence and it was high time such policy was drafted and implemented in order to secure proper housing development and, inevitably, curb the rent dilemma that continued unabated.²⁰ Because most parastatals were limping in their economic undertakings and actually running at a loss, the newly ushered MMD government saw the urgent need to privatise most of such companies in a bid to cut down on its costs of sustaining these entities, as well as a reduction in budget deficits.²¹ By 1993, government had already begun the process of liberalising the economy and in that regard ensured that the legal framework and political environment supported a liberal based economy.²² No doubt, exchange controls, investor restrictions, and all other state controls on the activities of the private sector were extensively abolished. The capitalist attitude of leaving things in the private hands was returned. Invariably, there were calls to let the market forces of supply and demand take over the market place of negotiation. At the same time, the new government promised to enable Zambians get empowered to build for their own either individually, or through subscribing to relevant organisations which government would create.²³ The resurgence of the capitalist philosophy of liberalisation saw drastic change in many activities of the economy. By January 1996, the government

in line with its liberal objectives introduced the national housing policy. Essentially, the main objective of the housing policy was to provide adequate affordable housing for all income groups in Zambia.²⁴ This policy was launched on the 24th of April 1996 and officiated by the then President of the Republic, Mr. FTJ. Chiluba. In his speech at the launch, he was quoted to have said that:

“Every Zambian regardless of income should have access to adequate shelter and all services that go with it. Government will encourage the sale of housing in both quantitative and qualitative terms. It will not restrict the sale of houses to certain individuals.”²⁵

In the same year (1996), the government introduced the policy of selling government-housing units to sitting tenants. Through the Ministry of Local Government and Housing, cabinet Circular No. 2 of 1996 was issued to all local authorities countrywide to sell off all their housing units. Former president Chiluba defended his house empowerment policy in Zambia and maintained that poor people were the most beneficiaries.²⁶ He said that shelter was a fundamental right to any human being as people were guaranteed of accommodation. “Even when someone loses a job today he is still going to live in a house because he bought it from the good policies of the Government.”²⁷ The major problem with this was that there was no proper valuation of the true cost of the houses and so not much was realised by the local authorities to be able to build other houses for purposes of rent. The Chiluba government also introduced the Presidential Housing Initiative (PHI) in 1999 to spearhead the implementation of the National Housing Policy. Among other things, the PHI was expected to rejuvenate the construction of new houses.²⁸ Whether or not this would have been a viable and sustainable scheme in a bid to

empower the ordinary Zambian is not the subject of this work. The 1996 housing policy re-iterates the government's strong support for home ownership as a means of providing security, stability and economic power to the family unit and as a basis for the development of economically strong and motivated communities. However, the policy also realises that the rate of population growth and proper housing development are not commensurate, as only about 30% of the housing stock are approved, with a backlog of over 846,000 units which need building.²⁹ The policy encourages financial institutions, as well as investors in general to engage in housing development for sale or rent. Therefore, in terms of rent control, the policy expressly indicates that the Rent Act in its present form and content discourages investors to invest in housing due to the over protection of tenants against evictions for any breach of the covenants.³⁰ It further observes that investors in housing are strongly motivated by profit considerations. The development of rental housing may be stifled if it is not an economic proposition for entrepreneurs. Thus, although the non-availability of rental housing may increase the demand for the development of housing for both owner occupation and for rent, the net effect of rent control is to significantly slow down the rate of housing development.³¹ *Removal of rent control stimulates investment in housing. Rent control is not necessary in a free market economy.*³² It is noted that as of 1996 to date, the government policy has been to adhere to the laissez faire attitude of letting landlords deal privately with tenants. Rent control has been completely done away with because a liberal economy cannot support existence of such restrictive laws especially on the landlord.³³ It may be recalled that in the case of **Herefold Investment Ltd v. Lamber**,³⁴ Lord Scarman stated succinctly that:

“The policy of the Rent Act was and is to protect the tenant in his name whether the threat be to extort a premium for the grant or removal of his tenancy, to increase his rent or to evict him. It is not a policy for the protection of an entrepreneur whose interest is exclusively commercial.”

As was noted in the third chapter of this dissertation, even though this be the policy of the Rent Act above, it is often difficult to monitor because both landlord and tenant are either ignorant or simply ignore the Act because market forces are preferred as determinants of any standard rent rate between a particular landlord and tenant. In fact, even government institutions like ZNBS use the market for the determination of rent over their commercial properties.³⁵ On the other hand, the NHA relies on the Valuation Department, which is under the Ministry of Local Government and Housing.³⁶ The valuation department is mainly involved in valuing most government owned or connected buildings for purposes of sale or rent. However, it also values property owned by private individuals who wish to sell or place their buildings on rent. In coming up with such figures, the department looks to the market and uses a *comparative approach* of similar buildings on sale or rent.³⁷ No doubt, the market forces of supply and demand largely influence what rent will be determined. Moreover, such factors as cost of building or improvements to the house, location and convenience of the house are all taken into account in determining rent figure estimates for private landlords. Hardly is the Rent Act resorted to. The housing policy notes that institutions like the NHA (and ZNBS) were established to play an active role in the housing industry, but owing to lack or inadequate funding from the central government these institutions have failed to perform their core functions properly.³⁸ The policy also emphasises the need to have legislative changes or reviews in

various pieces of legislation including the National Housing Authority Act, the Rent Act, the Building Societies Act, the Housing Act, and the Rating Act, in order to facilitate the realisation of the goals of the policy. This policy up to date is the current government housing policy but the legislative changes to the necessary Acts have not been made in order to catalyse the achievement of goals of the policy. Whether or not the goals have been partly or fully realised would require a full and separate discussion. However, it suffices to state that to date, the problem of housing accommodation and its attendant rent problem are still rife and the challenge is greater as the population growth rates swell.

CONCLUSION.

This chapter has attempted to show the current attitude of the government over rent control in Zambia by reflecting on the current national housing policy. It begun by showing governments attitude in the humanist Kaunda era where rent control was in line with governments concern of regulating most economic activities. On the coming of the third republic it has been shown that sticking to strict rent controls and introducing liberalism at the same time would be like attempting to mix water and oil. Inevitably, one would have to suppress the other since they cannot co-exist. What's left now is to look into what can be done about rent control: whether to reinforce it; completely do away with it; or perhaps amend it in such a way that the developer or investor in housing will not be discouraged. This is the gist of the proceeding and final chapter.

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¹ Southern African News Features: “The Need For More Urban Housing In Southern Africa.” By Sarudzayi Zindoga. (15th October 1999.)

² Van Order, 2001, pp19-20. Source: www.unhabitat.org

³ Palmer, R. ‘Land In Zambia. Land and Labour Studies. (1973) Vol 1. Pg. 56. (Lusaka National Archives.)

⁴ Republic of Zambia. National Assembly Hansard No. 25. Col. No. 2000. (10th March 1971)

⁵ ‘The Kabwe Declaration’ of December 1972 by Dr. K.D Kaunda. Quoted in “Rent Control: Critique of The Law in Zambia.” By Nayar, A. 1987.

⁶ “The Rent Acts Reviewed”: Paper presented to The Law Association of Zambia (LAZ) at a seminar held on 29th January 1987.

⁷ N.C.D.P. The First National Development Plan of 1966-1970. Pg. 47. Government Printers: Lusaka.

⁸ Ibid. The emphasis was not to concentrate on building few high cost standard houses, but spend more on low cost houses, which were obviously cheaper and thus could be built more abundantly.

⁹ N.C.D.P. Second National Development Plan of 1972-1976. Pg. 27. Government Printers: Lusaka.

¹⁰ www.unhabitat.org. UN-HABITAT Feature. “Zambia: Brief History Of State Involvement In Housing Finance.”

¹¹ The new section 3A (1) provided that: “As from the date of the commencement of the Building Societies (Amendment) Act, 1970, there is hereby established a building society under the name of the Zambia National Building Society (hereinafter in this section referred to as “the Society”) which shall be deemed to be a building society registered under this Act and the Registrar shall issue a certificate of registration dated the same day as that on which the Building Societies (Amendment) Act, 1970, came into force, and from that day it shall, subject to subsection (6), be subject to the provisions of this Act.”

¹² Disclosed by Mr. Logan Nyansulu, Estates and Property Manager at the Building Society. 23/09/05.

¹³ Ibid.

¹⁴ The Authority was established pursuant to the National Housing Authority Act No. 16 of 1971 which, by virtue of section 3, provided that: "There is established the National Housing Authority (hereinafter referred to as 'the authority') which shall by that name be a body corporate with perpetual succession and a common seal and shall be capable of suing and being sued and, subject to the provisions of this Act, of performing all such acts as a body corporate may by law perform."

¹⁵ Republic of Zambia. National Assembly, Hansard No. 25 (March 10th 1971) at Col. No. 2001.

¹⁶ Supra, note 9

¹⁷ The Third National Development Plan of 1980-1984. Lusaka: Government Printers. Pg. 32-34

¹⁸ Supra, note 9

¹⁹ Movement for Multi Party Democracy Manifesto (1991) at pg. 7-8. Quoted in "Efficacy of Rent Control Legislation Under the Housing Policy in Zambia." By Godfrey Lwabanya Locha (1996)

²⁰ Dr. G.C. Khonje, Commissioner of Town and Country Planning stated this in the foreword to the National Housing Policy, 1996: "Since independence, several attempts have been made to draw up a comprehensive Housing Policy but, until now, no such policy has ever been formulated. The housing policy...provides a comprehensive assessment of the housing situation in the country. It also provides a vision for the development of adequate affordable housing for all income groups in the country."

²¹ Fabiao C. Lukashi. "Efficacy of privatisation as a tool for economic growth." Article contained in Poverty Eradication: The Zambian Experience. Edited by Sakala, R. & Chanda, D. Pg.179

²² For instance, the Exchange Control Act was repealed and replaced by such Acts as The Investment and Privatisation Acts. Furthermore, the changing nature of the political economy was influenced by such factors as the IMF's Structural Adjustment programme on Zambia (K.K. Mwenda. A Critical Review of Foreign Investment Policy in Zambia. (1995) At Pg. 3)

²³ Contained in The MMD Manifesto of 1991 at Pg. 7. See note 19

²⁴ National Housing Policy. Ministry of Local Government and Housing. Lusaka. Pg. 15

²⁵ Times of Zambia. April 24, 1996.

²⁶ Times of Zambia Internet Archives. January 31st – February 8th 2005.
www.coppernet.zm

²⁷ Ibid.

²⁸ Supra, note 9. However, the programme was dissolved in 2002 amid corruption and legality challenges against the programme.

²⁹ National Housing Policy, 1996. Pg. 6-7

³⁰ Ibid Pg. 8

³¹ Ibid. Pg. 18

³² Ibid.

³³ This was disclosed in an interview with Mr. Wina, Principal Housing and Planning Officer at the ministry of local government and housing. 26/09/05.

³⁴ (1951) Ch. D. 39 at 59

³⁵ Supra, note 11

³⁶ Disclosed by Mr. Courtson Lungu, the Chief Personnel Manager of The Authority on 7th September 2005

³⁷ Disclosed by Mr. Charles Wale Kabuka, an officer at the valuation department.

³⁸ National Housing Policy, 1996. Pg. 8

CHAPTER FIVE (5.)

SUMMARY, RECOMMENDATIONS AND CONCLUSION.

This chapter will assess whether or not, in the light of the previous discussions, our Rent Act has attained all or any of its intended objectives. It will begin by giving a synopsis or summary of the previous discussions and what major problems the Rent Act has faced since inception. This will give an insight as to whether something can be done to the Rent Act in order to make it more relevant and effective.

The social, economic and political challenges that any society faces are often great and need the attention of all that are concerned. Law has been well known to be of effect in giving these spheres (economics, politics, etc) form, as well as defining various social relations of man.¹ In Zambia, the Rent Act was enacted to govern the relationship between the landlord and tenant. As was noted in the introductory chapter, the Rent Act of 1972 had its history founded on two principal Rent Acts (1968 and 1971), which were hastily enacted into law to address the urgent issue of prohibitive rents, and were meant to be temporary. Much of these hastily enacted provisions were retained in the 1972 Act with additions to provide increased security of tenure for the tenant as well as restrict the landlord from increasing rent whenever it fit him. This hastiness in enacting the Rent Act could be one possible reason why the Act has encountered a myriad number of problems because it may not have addressed all the complexities that exist between the landlord and tenant, such as instances where the tenant constantly breaches the lease agreement. Because the Rent Act is pro-tenant, the landlord is *prima facie* put at a disadvantage and

the procedure envisaged in the Act for the landlord to get redress through the courts seems to be quite tedious.²

From the outset, it is submitted that the Rent Act has failed to meet most of its intended objectives, viz, restrict rent increments, prohibit the payment of premiums, restrict the right to possession of the premises, etc. As chapter three discussed and concluded, the majority of interested parties in landlord and tenant matters are completely ignorant of the Acts existence itself, as well as its salient provisions that provide security of tenure for the tenant. A realisation of this sort by the policy makers and implementers is of paramount importance because only then can they work to make the Rent Act more effective. Without the stakeholders or those concerned knowing what their rights, interests, and duties are under the Act, the effectiveness of the Act is almost at nil. Moreover, if landlord and tenant relations have continued to exist without the guidelines provided under the Act, then it is submitted that the Act is not relevant and suitable. Notably, the 1972 Act was enacted in such a way that it reflected the objectives of the one party UNIP government. The humanist attitudes of the party discouraged the capitalist philosophy of exploitation of man by man. Since it was realised that the landlord had more bargaining power, the Act would come in handy and assist protect the tenants' interests. However, the political and economic philosophies have changed a great deal. As was discussed in the fourth chapter, the current political objectives of government and the economic environment are very incompatible with the Rent Act in its current form, making it even the more irrelevant and unsuitable.

As regards effectiveness, an analysis shows that the Rent Act has had little impact. As was earlier noted, it is generally unknown by the section of the public that ought to be

concerned, i.e. landlords and tenants alike. Secondly, though the Act vests the power of enforcement on two institutions, viz, rent controllers and the courts, these two mechanisms have lamentably failed in their mandate. An attempt was made to appoint rent controllers in the early seventies, but this did not work.³ In the absence of a viable rent control team, the sheer enormity of the courts task has been impossible to exercise especially in the absence of any specific legal action by an interested party.⁴ Moreover, the courts may simply not have the proper administrative capacity in terms of time and resources as well as the expertise to adequately exercise its supervisory powers, including the investigation of complaints. As regards lease agreements, most are still being drafted in such a way that there is provision for the charge of an excess amount of rent, or premium, meant to be a security in case of breach by a tenant as to payment of rent.

The fact that the Act seems to have been excluded from many areas where it ought to have been included, i.e., housing and improvement areas, further questions its relevance. Moreover, lack of official statistical data as to which residential housing units are actually on rent makes it extremely difficult for the concerned institutions to enforce the Act. And like any other undertaking that generates income and invites the tax authorities, rented property is liable to taxation under section 17 of the Income Tax Act⁵, yet this is also difficult to achieve because of such statistical inadequacies as to exactly which property is actually on rent.

Indeed, the Rent Act has fallen into serious disrepute, and although it criminalises most acts of non-compliance of its provisions, there has generally been no recorded instance where the courts have convicted either party to the tenancy agreement for breach of their statutory obligations.

If it can be concluded that the Rent Act has proved to be irrelevant and inefficacious due to the problems and inadequacies that it has been met with, then the question that inevitably follows is that what should be done about it? Do we recommend that we remove it from the statute books or amend it accordingly? How would the relations of landlord and tenant be without rent control legislation? Most respondents in the survey conducted by the author strongly felt that doing away with rent control would 'kill the tenant.' Even with the law in place that's meant to protect the tenant, the landlord has somewhat continued to be exploitative and so to do away with rent law would severely prejudice the interests of tenants even more. One respondent for instance stated that though the economy might have been liberalised, certain areas of the economy, i.e. investment, telecommunications, housing, etc, still needed government intervention.⁶ The author agrees with this line of thought and submits that providing housing for the citizenry is basically a socialist welfare attitude, which cannot be condoned by the profit oriented capitalist. The notion of *freedom of contract* is more or less an illusion or ideal because in the midst of critical accommodation problems, the tenant is always put to an option less disadvantage. Though landlords argue and justify themselves from the point of location convenience, their property hardly matches up to a standard that would justify exorbitant rents.⁷ The issue thus seems to bore down to the problem of accommodation. Since the government sold its housing units, and generally no longer provides housing for its staff, the problem of tenant exploitation seems to have been exacerbated. The counter argument to this as proposed by some landlords and reflected in the 1996 National Housing Policy⁸ is that rent control would stifle and discourage private investment in the housing industry, as this would be like imposing on the owner what he should do or how

he should deal with his property. But without more, the author argues that rent controls cannot be done away with, just like the rest of the economy cannot be left to the private sector, which has no welfare concerns other than realise profits and externalise them where the investment is foreign. There is thus need to have rent control legislation that will strike a balance between the interests of the tenants and those of the landlord.

Therefore, from this brief summary of the problems that have attended the Rent Act since inception, it is proposed that rather than repeal or do away with it, there is urgent and long overdue need for its reform to suit the existing facts as regards housing and rent policy in Zambia. A number of recommendations and proposals for reform are offered below.

Since it has been argued and concluded that the inherent weaknesses and extrinsic problems that the Rent Act has have rendered it ineffective and irrelevant, it is proposed that one way of making it effective is to ensure that there is public awareness of the Acts existence and its salient provisions. The quickest and perhaps cheapest way the government can do this is through the media. Just like the public has been enlightened about issues such as the constitution, the concerned government ministry, i.e. local government, can source funding from the ministry of finance to fund such educative programmes on the landlord and tenant rights and duties under the Rent Act. In questionnaires distributed within Lusaka, one of the respondents suggested that government should source funds to create offices at district level that will be responsible for sensitizing people on their rights under the law. A parallel suggestion, however, would be to strengthen the institution of rent controllers already established under the Act. The minister of local government and housing should seriously take up this mandate

of appointing rent controllers who would conduct random surveys of properties on rent and whether there's compliance with the provisions. Under the Income Tax Act, though notwithstanding their role under the Rent Act, the same rent controllers can be given the mandate to check whether the owners of rented premises pay tax, so that if this is found out not to be the case, the owner of rented premises can be reported to the tax authorities. Therefore, for both tax and rent control purposes, there must be a register of property that is on rent. Though there might be administrative hiccups in achieving this, it is suggested that the once this system is developed, it can be improved upon as time goes on.

As regards the role of the courts, it has been argued that the courts are overwhelmed with so much work and generally have no time and the administrative capacity to conduct investigations on their own volition. Therefore, it is suggested that the Rent Act be amended to provide for a separate institution, such as a rent control board or tribunal, in place of the courts, that will devote all its time and resources towards dealing strictly with landlord and tenant cases. It is a body such as this that would effectively conduct random investigations on various disputes between landlords and tenants even without being moved by either party. Moreover, it has also been argued that the courts ought to be neutral institutions that should act as referees without taking sides. The Rent Act seems to bring the court into the contract between landlord and tenant as an interested party on the tenant's side.⁹ Since justice must not only be done, but must also be seen to be done, the court is put in an awkward position of wearing two wigs at the same time, i.e. that of prosecutor and judge.¹⁰

The penal sanctions under the Rent Act are rarely if at all enforced. As was stated above, it is often very difficult for the courts to move on their own, thus the rent controllers or

the rent board or tribunal would come in handy to enforce these sanctioning provisions by taking an interest in cases where the provisions are breached and bringing the wrongdoers before the court, as a neutral body.

The Rent Act as was noted is pro-tenant and not compatible with the capitalist law of supply and demand. Therefore, there is need for reform to provide a balance between the landlord and the tenants' interests. After all, it is true that land and building today are quite costly and so the landlord needs to get back a net return of his investments on building within a reasonable period of time. Therefore, in a way of not making the landlord simply avoid the Act because of its *prima facie* bias towards the tenants' interests, there must be some balance that will attract him to rely on and comply with the Act. This can be achieved principally by giving the landlord a bit more powers to expeditiously evict defaulting tenants or enforce payment against them. For example, through the local authorities in each district, a landlord could simply obtain a written consent from the local authorities or a rent board to evict a tenant. Where the tenant refuses to comply, he can then be brought before the court and will bear all the costs for unreasonably refusing to comply.

The Rent Act also needs serious reform in the area of its application. It was noted in the second chapter that the Act has had least impact due to the fact that a large section of areas are not subject to the Act. Quite a large tract of state land has not been serviced and since serviced land along the line of rail is generally expensive and quite difficult to access for the ordinary Zambian, most people have resorted to settle in squatter and housing areas where land is cheaper to acquire and strict building standards are not enforced under the Town and Country Planning Act, Chapter 283 of the Laws of

Zambia.¹¹ Undoubtedly, housing and improvement areas like Matero, Libala, and Chawama, to mention just a few, have large populations with many ordinary Zambians renting housing units in such areas. To restrict the Rent Act from application in these areas is to disadvantage the very people that need protection under the Act. This is undesirable and the legislators and/or policy makers should ensure that the laws on Rent Control are consolidated to cover each and every citizen that is subject to a landlord and tenant agreement.

It is admitted that for the policy makers to be able to implement the above recommendations, and many more, there is need for lots of financial and material resources to provide for the enforcement institutions as well as remuneration of officers. Whether resources are or will be available in the near future is not a subject of this discussion. But it will suffice to state that with the requisite government will and commitment, a fair rent policy may one day be worked out that will not only be relevant by covering all concerned areas, but will also be efficacious in that it will ensure the compliance of all.

In conclusion, it will be an injustice to this work not to state that the best solution towards ensuring that rent is not used as an instrument of oppressing those that are desperate for accommodation, is to reflect on what has been generally discussed throughout this paper, namely, create a deliberate housing empowerment scheme that will benefit the majority. After all, *the Rent Act was enacted to address the symptoms of housing shortages, viz, rent profiteering. However, the real cure lies in addressing the acute housing problem. Once this problem is dealt with adequately, there may not be need for a Rent Act even!*

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¹ Bodenheimer, E. Jurisprudence: "The Philosophy and Method of Law." (2004.) Rev. Ed. New Delhi: Universal Law Publishing Co. Pvt. Ltd.

² Most landlords find this procedure rather time and resource consuming. The general feeling is that why should an incessantly defaulting tenant continue to benefit from his wrongs simply because court leave has not been granted? Most landlords feel they must be given powers to evict defaulting tenants immediately to save them from inconveniences.

³ Mulimbwa, A.C. "Land Policy and Economic Development in Zambia." Zambia Law Journal. Special Edition, 1998 at 98

⁴ Ibid.

⁵ Chapter 323 of The Laws of Zambia.

⁶ Disclosed by Caroline Munzongwe from Rhodespark, Lusaka. (2nd September 2005).

⁷ Ibid.

⁸ Page 18

⁹ Locha, G.L. "The Efficacy of Rent Control Legislation Under The Housing Policy in Zambia." Obligatory Essay, 1996. Pg 38

¹⁰ Ibid

¹¹ Disclosed by Mr. Sangulube, senior Estates and Valuation officer, Ministry of Lands. 16/09/05.

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