

TENANT MADE VULNERABLE TO RENDER A 'FAVOUR'

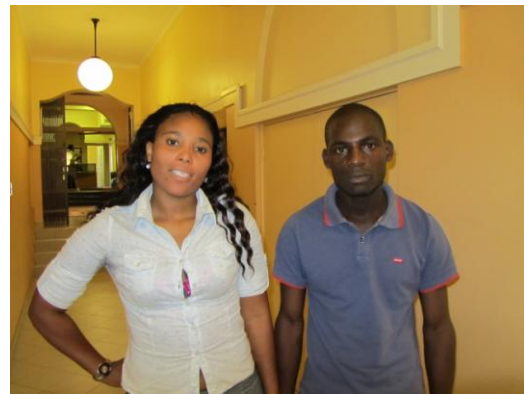
The right of an occupant as a roommate, co-tenant or a family member to undisturbed use and harassment is protected by the law. The Constriction is clear about evicting a person; it does not permit self-help by taking the law into one's own hands. Arbitrary eviction of or deprivation of the right to occupy is not allowed (section 26 (3)). Absent the legal procedure, self-help results in the evictee not given the opportunity of challenging or contesting an eviction. The law of the jungle prevails.

A case in point is that of Rachidi Mwudi a temporary asylum seeker from Malawi who previously resided for two years with his cousin at Abdul Aziz Building in Bertha Mkhize (Victoria) Street, Durban. In June this year, after arranging with the management of the building, he was given permission to live in room 29 with Nompumelelo Nyawuza, the principal tenant. The room occupied by the tenant is in fact what one might refer to as a 'cubicle' being one of several hundred in the building. This building was reported in the media a few months ago when Dawood Clifford and his father in-law Ahmed Kazi were arrested for violating the city's bylaws and were fined.

The security measures in the building and the rules are stringent and no one is allowed to even visit without clearance from the security personnel under the strictest condition and the watchful 'eyes' of the CCTV cameras. Under the vigilant supervision of Imraan Medi, who with fellow Zimbabweans, the building management operations are run militaristically.

Mwudi had an argument with the cleaning staff in the last week of November when she removed his washed clothes that he placed in the common bathroom area and threw it into a refuse bin. Mwudi was angry and words were exchanged between

them. He was subsequently informed by Medi that he will have to move out of the



Nompumelelo Nyawuza (left) with Rachidi Mwudi

building at the end of the month for having broken one of the rules.

When Mwudi returned from work on Friday 2 December 2011, he was not allowed to have access to his room and denied entry to the building. The OCR contacted the landlord's attorney (Concrete Investments CC owns the building), Abdul Rahim Kazi of Kazi & Company Attorneys to resolve the matter. Mwudi was accused of assaulting the cleaning staff, which he denied.

Kazi & Company Attorneys were sent a set of questions (for this article) following an interview with Mwudi, Nyawuza and Loshni Naidoo of the OCR.

- These related to the alleged assault, when and by whom a charge was laid; the name of the police station where the charge was laid and the charge number.
- The legal authority that an occupant can be denied access.
- How the present situation differed from the October incident involving five tenants who were locked out but subsequently reinstated in terms of a court order.
- What favour was Nyawuza required to render to Dawood Clifford when she was approached by Medi at midnight Friday December 2, 2011 after her roommate was locked out.

The response from A. R. Kazi and Company Attorneys was: -

1. *With regard to questions 1,2 and 3, we've taken instructions and advise thereon that an assault charge was laid, details whereof shall be forwarded to you shortly.*
2. *We would like to record at the outset that Mr Rashid, was 'accommodated' by your client for the last 5 months at our client's building. He being occupying the premises through his girlfriend and as such didn't pay any rental or was regarded as a tenant.*
4. *Things have come to heads when your client became abusive, unduly, and refuse to comply with the rules and threatened to assault and in fact assaulted a cleaner.*

5. *The writer's discussion with Ms Loshni it that in all fairness can we continue to accommodate such a person though we concede and have conceded that he is an occupant of the building by default in a sense that our client accommodated him for 5 months and not take the necessary steps at the relevant time to deny him access to the building.*
6. *We are at strain to point out that people of this ilk should be treated with some degree of restraint and circumspect as clearly there are those that tend to abuse the system and a reputable organisation that the OCR is and should be alive to this situation.*
7. *In an endeavour to resolve the matter, we suggested a round table conference and find a resolution that would be just, fair and equitable.*
8. *We respectfully of the view that your suggestion is a reasonable one.*
9. *We trust that you will see our client's position.*
10. *We look forward to hearing from you.*

Yours faithfully,

A week later, Mwudi having threatened legal action was allowed back unconditionally on an undertaking from the attorneys on behalf of his clients that Mwudi would have undisturbed use and access to his room. If a charge of assault case was opened, no details were provided five weeks after the alleged incident occurred.

The constitution prevailed over the law of the jungle.

Dr Sayed Iqbal Mohamed is the chairman, Organisation of Civic Rights.