

GODFREY MURANGANWA
versus
SHORTHAULS TRANSPORT (PVT) LTD

HIGH COURT OF ZIMBABWE
MAVANGIRA, MWAYERA JJ
HARARE, 6 February & 7 May 2014

Civil Appeal

Appellant in person
Z. Makorie, for the respondent

MAVANGIRA J: On 1 January 2010 the applicant and the respondent entered into a lease agreement in terms of which the respondent would sublet part of No. 3 Market Street, Eastlea, Harare to the appellant who would pay monthly rentals of US\$750 to the respondent.

The appellant stopped paying rentals in March 2010 in breach of the lease agreement. The respondent instituted proceedings in the Magistrates Court against the appellant. The trial magistrate found that the appellant herein was in breach and had no right to claim, as he did before her, that rental arrears were due to the City of Harare as the appellant did not then have a lease agreement with the City of Harare. She granted an order in the following terms:

“IT IS ORDERED THAT:

1. The Respondent and all those claiming title through him, be and is (sic) hereby ordered to vacate No. 3 Market Street, Eastlea, Harare within 7 days from delivery of judgment and in the event that the Respondent fails to vacate, the Messenger of Court be and is hereby authorised to evict Respondent and all those claiming title through him.
2. Payment in the sum of \$2000-00 due and owing by the Respondent to the Applicant as outstanding rentals. (sic)
3. Costs of suit.” (sic)

The appellant appealed against the court *a quo*'s judgment on three grounds. The following are the grounds of appeal that he raised:

“1. The Learned Magistrate erred as a question of fact and law in failing to appreciate that there are several material disputes in this matter, that it could not be resolved on papers alone.

2. The Learned Magistrate also erred as a matter of fact in disregarding that the rights and interest in the property in dispute, are now vested in the appellant in terms of the letter of authority to use the property from City of Harare.

3. Further, the Learned Magistrate erred in disregarding that evidence from City of Harare was of paramount importance to advise of the status of the portion occupied by the appellant.” (*sic*)

The background to the matter is that as at August 2010 the respondent had been leasing No. 3 Market Street, Eastlea, Harare, from the City of Harare for 10 years in terms of a verbal lease agreement. The respondent alleged that in terms of the verbal lease agreement that he had with the City of Harare, he was allowed to sublet and that it was on this basis that he had entered into the 6 month lease agreement with the appellant in terms of which he sublet part of the property.

In terms of their lease agreement the respondent gave the appellant vacant and peaceful possession of a piece of land being part of No. 3 Market Street, Eastlea, Harare. Based on his reciprocal obligation in terms of the same agreement, the appellant paid rent to the respondent in January and in February 2010. The lease period of 6 months was to expire on 30 June 2010. The appellant does not dispute that after paying rent for January and February and part payment for March, 2010, albeit late, he did not make any further payments.

On an earlier date on which this appeal had been set down for hearing the matter was postponed and the parties advised to approach the City of Harare in order to seek clarification as to who had title over the disputed land. Mr. *Makorie* for the respondent advised this court that the advices that he got from the City of Harare were to the effect that the City of Harare had in September 2010 given to the appellant title in the piece of land that the respondent was previously subletting to the appellant. The appellant confirmed that this was the state of affairs. Mr. *Makorie* submitted that in view of this state of affairs the respondent no longer opposes the appeal in as far as it relates to the issue of the appellant's ejection from the piece of land as he is now entitled to occupy it. He submitted that the respondent persists however, in opposing the appeal only in relation to the issue of arrear rentals for the period March 2010 to July 2010 which the court *a quo* had granted to the respondent in the sum of \$2000-00. The reason for this persistence, he submitted, is that the appellant's title to the piece of land only came into effect in September 2010. Accordingly, for the period March 2010 to July 2010 the appellant's occupation was premised on the parties' lease agreement.

The appellant's contention is that the respondent had no right to sublease the land to him and that as the respondent was subletting it to him illegally, he had no obligation to pay any monies to it.

In *Robinson v Grimm* 1996 (2) ZLR 83 at 85E and 86A the following was stated per KORSAH JA:

"The general rule of the common law is that a lessee may not dispute the lessor's title. This rule that a lessee may not dispute the lessor's title has been applied where a lessee, upon termination of the lease, refused to vacate the property. See *Loxton v LeHanie* (1905) 22 SC 577 at 578 where BUCHANAN ACJ said:

"The defendant has set up the defence that the title of the ground is in dispute, and, therefore, the magistrate has no jurisdiction. But it is not competent to dispute his landlord's title."

So also in Kala Singh v Germiston Municipality 1912 TPD 155 at 159 – 160, where, upon the point being taken that the municipality, being a statutory body, was not entitled to let the stand to the appellant, DE VILLIERS JP expressed himself thus:

"But in answer to this, we have the general rule of the English law, which it was decided amongst others in Clarke v Norse Mines Ltd (1910 TS 512) is also a rule of our law, that as between lessor and lessee it does not lie in the mouth of the lessee to question the title of his landlord. He could be met by the exception dolimali... (emphasis added)"

It appears to me that the above stated rule of our law disposes of this appeal as it leaves the appellant with no valid leg to stand on in his resistance to pay the outstanding rentals for the period March 2010 to July 2010. Such rentals became due by virtue of a lease agreement in terms of which a landlord and tenant relationship was created between him and the respondent. The appellant was given occupation of a piece of land, part of No. 3 Market Street, Eastlea, Harare by his landlord. His obligation was to pay rentals for the duration of the period of the lease agreement. As a tenant, the appellant cannot question the title of the landlord and purport to rely on the landlord's lack or want of title as a defence.

It is for the above reasons that the court *a quo*'s decision cannot be faulted. The opposition to the appeal insofar as it relates to the appellant's eviction having been withdrawn, the appeal will therefore succeed only to that extent. However, for the reasons appearing earlier above, the appeal against the order that the appellant herein pays to the respondent \$2000-00 in outstanding rentals cannot succeed. Costs will follow the cause.

In the result, it is ordered as follows:

1. The appeal against the order by the court *a quo*, that the appellant herein and all those claiming through him vacate No. 3 Market Street, Eastlea, Harare, be and is hereby allowed.
2. The appeal against the order by the court *a quo*, that the appellant herein pays \$2000-00 to the respondent herein in outstanding rentals be and is hereby dismissed with costs.

MWAYERA J Agrees _____

Coghlan, Welsh & Guest, respondent's legal practitioners.