

JUDITH BANDA
versus
TENDAI MAFUNDIKWA

HIGH COURT OF ZIMBABWE
PATEL J

Civil Trial

HARARE, 28 September 2010 and 11 January 2011

The plaintiff in person
S. A. Taona, for the defendant

PATEL J: The plaintiff initially claimed payment of US\$350 and US\$250 respectively for unpaid rentals and malicious damage to her property. She also sought damages for pain and suffering in the sum of US\$2500 for unlawful arrest on a charge of extortion instigated by the defendant. The defendant used to be the plaintiff's tenant in certain cottages owned by the plaintiff at a property in Greendale, Harare.

During the course of the trial, after the defendant had testified, the plaintiff formally withdrew her claim for damages, having conceded that the evidence adduced did not provide any basis for the alleged unlawful arrest. The trial then proceeded solely in respect of her claims for unpaid rentals and damage to property, totalling US\$600.

Evidence for the Plaintiff

The plaintiff's evidence was as follows. The defendant occupied three separate cottages at different times in terms of a lease agreement concluded in February 2006 [Exhibit 2]. She paid a deposit of ZW\$2 million which was never refunded because it had become valueless. After the defendant vacated the first and second cottages, there was some damage which the plaintiff rectified at her own expense. She obtained three quotations at the end of April and in early May 2009 [Exhibit 1] and opted for the lowest amount of US\$250

which she defrayed. However, she did not produce any receipt in proof of such payment.

According to the plaintiff, the defendant still owes rentals amounting to US\$350, being US\$250 for February 2009 and US\$100 for part of March 2009. Immediately before the defendant vacated the premises, the plaintiff detained some of her belongings as security for arrear rentals. This was not done unilaterally but by agreement, as reflected in a note by the defendant [Exhibit 3] and a letter from the plaintiff [Exhibit 4].

Under cross-examination, the plaintiff accepted that the defendant moved into the second cottage after it had been vacated by another tenant who undertook to fix certain defects by the 7th of November 2007 [Exhibit 6]. She also conceded that she attempted to evict the defendant in the middle of March 2009 without a court order. She explained that she did not realise this was a criminal offence under the Rent Regulations.

Evidence for the Defendant

The defendant testified as follows. She moved into the second cottage in November 2007, immediately after the previous tenant had vacated, and had to clean up the cottage with the help of her friends. She reported certain major defects to the plaintiff who asked the defendant to have them rectified. She did so and also placed new tiles in the bathroom and a lawn around the house, with the plaintiff's agreement. She did not retain the receipts for these repairs and improvements because she did not anticipate any dispute. Throughout the tenancy, the plaintiff never provided any receipts for the rentals and deposits that were paid by the defendant.

In September 2008, the plaintiff asked for rentals in foreign currency. The defendant initially paid US\$350 as rent and a further US\$350 over a period of three months as security deposit. In February 2009, she could no longer afford the rent fixed and only paid US\$100. The plaintiff then agreed to allow her to occupy the third cottage at a

lower rent of US\$200 and to accept the deposit as rental. The defendant moved into that cottage at the beginning of March and remained in occupation until the middle of the month. The deposit of US\$350 together with the US\$100 that she had paid in February amounted to US\$450. This covered the full February rent for the second cottage and half the March rent for the third cottage.

On the 11th of March, the defendant went to see the plaintiff for time to pay a fresh deposit amount. The plaintiff, in the company of her son, went to the defendant's cottage and removed some of her belongings to the main house. She then emerged with a letter [Exhibit 4] which the defendant refused to sign. Consequently, the plaintiff became violently aggressive and the defendant's boyfriend signed a note [Exhibit 3] in order to placate her.

On the 13th of March, the defendant reported the matter to the police in Highlands. Following their mediation, the plaintiff restored the defendant's belongings. However, she then switched off the defendant's electricity supply, secured the water taps and blocked her bathroom and toilet. The defendant found new premises on the 14th of March and moved out of the cottage on the 15th of March, with police assistance.

The defendant's mother (Martha Paul) also testified, generally corroborating the defendant's evidence. She lives in Gweru and, together with her son, she helps out with the defendant's living expenses. She has covered the defendant's rental and security deposit payments throughout the tenancy *in casu*. She also supplied the bathroom tiles and the money for their installation in the second cottage. In September or October 2008, she drove to Harare and met with the plaintiff to negotiate the payment of rentals and the deposit in foreign currency. The plaintiff agreed to the payment arrangement that was explained by the defendant in court. When the rent fell in arrears in February 2009, she advised the defendant to tell the plaintiff that she would settle the arrears within two weeks.

Findings

In assessing the evidence adduced at the trial, I find that the plaintiff was an extremely poor witness and that her demeanour was evasive and entirely unconvincing. In general, her evidence was incoherent and riddled with distortions and contradictions. In my view, her version of events was so inconsistent and implausible as to be nothing more than pure fabrication.

In marked contrast, the defendant and her witness gave their evidence very clearly and consistently. Moreover, they were not shaken in their testimony under cross-examination and when questioned by the Court. All in all, I find that they were very credible witnesses and am fully persuaded by their version of what transpired.

As regards the claim for arrear rentals, the plaintiff failed to challenge key aspects of the defendant's evidence, to wit, that she paid a security deposit of US\$350 and that this was then converted to rentals by agreement between the parties. As for the claim for damage to property, the plaintiff did not dispute the defendant's evidence that the cottages in question were damaged before the defendant took occupation. Equally significantly, the plaintiff's so-called evidence of having effected repairs to the cottages is wholly untenable. The quotations produced by the plaintiff do not indicate which cottage they relate to and her alleged payment of US\$250 towards repairs is not substantiated by any receipt whatsoever.

Disposition

It is trite that the party alleging any fact bears the burden of proving that fact on a balance of probabilities. In the instant case, the plaintiff has dismally failed to discharge that onus in respect of both of her remaining claims. In the result, the plaintiff's claims are dismissed with costs.

Muza & Nyapadi, defendant's legal practitioners