

ALOIS NGONIDZASHE MARUTA
versus
AROSUME PROPERTY DEVELOPMENT (PVT)

HIGH COURT OF ZIMBABWE
TAGU J
HARARE 8, November 2017, 2 February, 30 May,
25 June and 7 November 2018.

Civil Trial

S Chako, for the plaintiff
T Mbala, for the defendant

TAGU J: The parties entered into an unwritten lease agreement the terms of which the defendant was to lease the plaintiff's property known as House Number 14 St Brelades Road, Colne Valley, Borrowdale, Harare at a monthly rate of US\$1 300.00. The rentals were to be paid through Generation Revenue (Private) Limited represented by one Mr Muhwadi. The defendant was represented by Mr Manson Mnaba in his capacity as a Director of the defendant. It is common cause that the defendant failed to pay rentals for a period of nine (9) months amounting to US\$ 11 700.00. When the defendant was evicted from the premises by an order of the rent Board this amount had not been paid. This is the amount the plaintiff is claiming together with interest at the prescribed rate of 5% per annum from the date of service of Summons to date of payment in full as well as costs of suit on a legal practitioner and client scale. The defendant's plea is basically that at the time of occupying the said house it was not habitable and some renovations had to be done. The defendant then carried out the renovations whose amount totaled to US\$ 10 142.00. The defendant claims that it did not pay rentals for a period of 9 months because it was offsetting the amount it used in renovating the house. The plaintiff in his declaration stated that parties further agreed that the defendant would erect a water tank at the premises and that such water tank would become plaintiff's property.

The issues to be decided in this case are:

1. Whether or not it was agreed by the parties that Defendant would renovate the leased property, and if so, whether or not it was further agreed by the parties that there should be offsetting of the amounts expended by the defendant on the renovations against the rentals due to the plaintiff.
2. In the event that the answer to question (1) is in the affirmative, whether or not the defendant expended the sum of US\$ 11 700.00 (Eleven Thousand Seven Hundred Dollars) towards renovating the leased property.
3. What is the amount owing to the Plaintiff, if any, in rental arrears, should it be proved that parties agreed on renovations as well as to the offsetting of amounts expended on renovations against rentals.

THE EVIDENCE

The plaintiff alone gave evidence. He was the sole witness. He denied that parties agreed that the defendant was to renovate the house save for the fact that defendant was to install a water tank. When it was suggested to him that his agent Mr Muhwandi had orally told the defendant to renovate the house and that there was going to be a set off, he disputed that Mr Muhawndi was his agent. He said Mr Muhwandi was his personal friend who would collect rentals from defendant and hand it over to him. He said Mr Muhwandi had no mandate to discuss any terms pertaining the house other than just collecting the rentals.

The defendant led evidence from three witnesses. The first witness Cartson Kwaramba told the court that he was the defendant's Accountant and that they did renovations amounting to US\$ 10 142.00. He admitted that there was a point where the defendant failed to pay rent. He claimed they had paid rent in advance. Asked through cross examination if there was any agreement that the house be renovated and a setoff made in lieu of rentals he said such an agreement was not before the court. The second witness was Calvin Mpofu who told the court that he was the one who did the repairs at the house. He said he mounted a 5000 litre water tank and stand, did the piping, fixed chambers, sinks and flashing components and also replaced worn out tiles, did some painting and vanishing cupboards. Under cross examination he was asked to comment on the fact that someone from defendant said they also did some fixing his response was-

“It's possible, maybe they did other things on their own and I am not aware of that.”

The last defence witness was Jotham Mnaba the defendant's Director. He told the court that his father was the one who entered into the lease agreement with the plaintiff. Then later he altered the terms of the oral agreement with Mr Muwandi but Mr Muwandi had asked them not to

effect any repairs, but they agreed to offset later. They then did not offset soonest because they had challenges with funds. Asked on what repairs were to be effected he said he did not have full details. All he recalled was that toilet needed to be fitted and fixed as well as the water reticulation.

ANALYSIS OF EVIDENCE VIS- A- VIS THE ISSUES.

1. Whether or not it was agreed by the parties that defendant would renovate the leased property, and if so, whether or not it was further agreed by the parties that there should be offsetting of the amounts expended by the defendant on the renovations against the rentals due to the plaintiff?

The plaintiff and defendant agreed that the oral lease agreement was to the effect that the defendant was to install a water tank. Plaintiff produced exh 1 an application form that only speaks of the installation of the water tank and there was no mention of other renovations and the issue of offsetting. The defendant maintained that there was an agreement that some renovations besides installing water tank were to be done. No such evidence was produced. The defendant's allegation was that this was agreed between Mr Muwandi and the defendant's director. In my view this ought to have been proved. The defendant ought to have called Mr Muwandi to come and testify regarding the alleged agreement to make renovations. In the absence of such evidence the court finds that there was no such agreement.

2. In the event that the answer to question (1) is in the affirmative, whether or not the defendant expended the sum of US\$11 700.00 towards renovating the leased property?

This question in view of my findings above falls away. In fact the court found that some sums of money were expended in the installation of the water tank. This in my view involved the attention to sinks and taps and pipes since this is party and parcel of installation of water system. This cannot qualify as renovations.

3. What is the amount owing to the plaintiff, if any, in rental arrears, should it be proved that parties agreed on renovations as well as to the offsetting of amounts expended on renovations?

The court found that no renovations were done. Whatever amounts spent on installation of the water tank were not subject to offset. The plaintiff told the court that at the time the defendant was evicted from the house an amount of US\$11 700.00 was owing. The defendants were evicted from the house by the Rent Board which confirmed that indeed the defendant was in arrears. The

defendant does not dispute that they did not pay rent for 9 months. They were supposed to pay US\$ 1300.00 per month and multiplied by 9 this gives us US\$11 700.00. The court therefore finds out that this is the amount of money owing to the plaintiff.

IT IS ORDERD THAT

1. The defendant be and is hereby ordered to pay the sum of US\$11 700.00 (Eleven Thousand Seven Hundred United States Dollars) to the plaintiff being outstanding rental arrears that accrued during the subsistence of the lease agreement parties entered into in respect of a property known as House No. 14 St Brelades Road, Colne Valley, Borrowdale, Harare.
2. Interest on the said sum at the prescribed rate of 5% per annum from the date of service of Summons to date of payment in full.
3. Costs of suit on a legal practitioner and client scale.

Mawire J.T & Associates, plaintiff's legal practitioners

Nyikadzino, Simango & Associates, defendant's legal practitioners