

SALIM ABDUL KARIM NOORMAHAMED
versus
CHATPRIL ENTERPRISES (PVT) LTD
and
CEPHAS MATANDI

HIGH COURT OF ZIMBABWE
CHINAMORA J
HARARE, 21 November 2019 & 27 November 2019

Civil Trial

D Drury, for the plaintiff
W Bherebhende, for the 1st and 2nd defendants

CHINAMORA J: The plaintiff in this matter seeks to evict the first and second defendants and all those claiming occupation through them from his property at 79 Chinhoyi Street, Harare (“the premises”), and for the payment of costs of suit. According to the Joint Pre-Trial Conference Minute filed by the parties, the sole issue for determination was whether the plaintiff had good and sufficient grounds for the eviction of the first and second defendants. I shall return to this.

The essential background to this matter is as follows. The first defendant is a registered company, while the second defendant was its manager until sometime in 2015. The plaintiff leased the premises, aforesaid, to the defendants in terms of a verbal agreement. On 3 January 2017, the plaintiff gave the first and second defendants three (3) months’ notice to vacate the leased premises as he intended to use it for his own purposes. The defendants did not vacate the property at the expiry of the notice period, resulting in the plaintiff issuing out summons for their eviction. This is the matter before me.

The defendants filed a plea in which they denied that the plaintiff intended to use the premises for his own personal use. They pleaded that the plaintiff was seeking their eviction because, in December 2016, they had made a request to him to lower their rentals from \$750-00 to \$700-00, which he turned down. The defendants said that, before this request, two previous pleas

they had made for reduction of rent had been accepted by the plaintiff. In addition, the defendants stated that the plaintiff was victimizing them for refusing to agree to an increase in rentals, and the plaintiff intended leasing the property to a new tenant for more rentals. They further asserted that, at the time notice was given, a bigger shop belonging to the plaintiff was vacant, which the plaintiff could have taken for his own use.

At the hearing of the matter, the plaintiff gave evidence that he required to use the premises and that, on 3 January 2017, he gave the defendants three (3) months' notice to vacate. He stated that before the shop was leased to the defendants, it had been operated as a bed and mattress selling business and general dealer. The plaintiff testified that the rentals were up to date, but he wanted the premises to run a bed and mattress selling business, since times were hard and he needed more income to fund the education of his five year old daughter who attended Twin Rivers School. To demonstrate his intention to use the premises personally, the plaintiff referred to a shop licence application form and a form he had completed for submission to the Director of Health Services, City of Harare, which he testified was required for a shop licence to be issued. In addition, he produced a letter dated 26 April 2017 from Bowline Furniture confirming that he had visited them and indicated that he would like to purchase beds from them. Attached to this letter was a quotation with prices of beds and mattresses of various types and sizes. His evidence was that this was done in anticipation of operating business on his own after vacation of the premises by the defendants. The plaintiff denied the suggestion made under cross-examination that the premises were too small to run a bed and mattress selling business, and maintained that he had operated the same business in the shop prior to leasing it to the defendants. He was also steadfast that there was no other vacant shop available as pleaded by the defendants. The plaintiff gave his evidence well and was not shaken under cross-examination. He made concessions where it was necessary, even telling the court without probing that Bowline Furniture was a tenant at his property in Marondera. I found him to be a truthful witness.

The defence case was presented by two witnesses, Mr Cephas Matandi, the second defendant, and Mr Bo Zhang, who represented the first defendant authorized by a resolution given by its board. Both Mr Matandi and Mr Zhang largely confirmed the plaintiff's testimony, particularly, on the issue of the requests for reduction of rent on two occasions and refusal of the last request. The plaintiff had on two earlier occasions acceded to their request to reduce rent from

an initial amount of \$3000-00 (according to Mr Zhang) or \$2000-00 (according to Mr Matandi) down to \$750-00, which he said was the lowest amount he could go. They also affirmed the plaintiff's evidence that he gave them notices to vacate which explained that he required the premises for his personal use. Mr Matandi confirmed in his evidence that the plaintiff had sold beds and mattresses in the shop alongside him before the plaintiff gave up the half he was using to lease the shop to the defendants. The defendants went on to deny that the plaintiff genuinely required the premises for his own use, suggesting that the rejection of their last request for rent reduction prompted him to give them notice to vacate. Mr Matandi stated that he was convinced that the plaintiff wanted to lease the premises to a new tenant who was willing to pay higher rentals, because two people had come to the shop to view it soon after the defendants were served with notices. However, under cross-examination, Mr Matandi said he only knew the first person as Bison, whom he described as an agent who was in the business of finding premises to let for people. Nevertheless, he did not know the said Bison's address or the company he worked for. The said Bison was not called to corroborate Mr Makandi's evidence. Mr Makandi also accepted that he did not know the name of the second alleged prospective tenant, whose name he did not bother to ask. In fact, pressed under cross-examination, he admitted that he had not seen this person. Nor could any of the defendants explain why they did not confront the plaintiff to ask him why he was pushing them out of the leased premises yet there was a vacant shop at 64 Chinhoyi Street, Harare. Additionally, none of the defendants disputed the plaintiff's right as the owner to use the premises as he desired. The defendants were evasive, prevaricative and slippery when asked pertinent questions under cross-examination.

The issue I have to determine is whether the plaintiff has shown that he has good and sufficient grounds for requiring possession of 79 Chinhoyi Street, Harare. The starting point in the applicable law is the *Commercial Premises (Rent) Regulations 1983*, SI 676 of 1983 ("the rent regulations") which, by virtue of the definition of "lease" in Section 3 (1), makes a verbal lease fall under the purview of this legislation. In this respect, section 3 (1) of the rent regulations defines a lease as a "written or unwritten lease". These regulations set out the basis upon which a landlord may repossess leased premises. The justification for the eviction would be a demonstration of "good and sufficient grounds" for seeking possession of such premises. That is a ground provided in section 22 of the rent regulations, which stipulates that:

“22. Limitation on ejectionment

- (2) No order for the recovery of possession of commercial premises or for the ejectionment of a lessee therefrom which is based on the fact of the lease having expired, either by the effluxion of time or in consequence of notice duly given by the lessor, shall be made by a court, so long as the lessee -
- (a) continues to pay the rent due, within seven days of due date; and
 - (b) performs the other conditions of the lease;
unless the court is satisfied that the lessor has good and sufficient grounds for requiring such order other than that -
 - (i) the lessee has declined to agree to an increase in rent; or
 - (ii) the lessor wishes to lease the premises to some other person.”

The full import of this provision was explained with clarity by MAFUSIRE J in *The Paget-Pax Endowment Trust v Highlife Investments (Pvt) Ltd* HMA 518-15 as follows:

“What constitutes “*good and sufficient grounds*” in the regulations is not capable of precise or exhaustive definition. Every case depends on its own set of facts. However, if the landlord proves that he needs the premises for his own use, that should qualify as “*good and sufficient grounds*”. In *Moffat Outfitters (Pvt) Ltd v Hoosein Ors* 1986 (2) ZLR 148 at 154C-D GUBBAY JA (as he then was) said:

“It is hardly possible and, in my opinion, certainly undesirable, to attempt any definition of the words ‘good and sufficient grounds’ which appear in the latter part of...s 22(2) of the Regulations. Whether a lessor succeeds in overcoming the burden they create depends on the particular circumstances of each case, viewed against the real purpose behind the Regulations. That purpose...is to ‘to prevent unscrupulous landlords from taking advantage of the shortage of commercial premises by increasing the tenants’ rents unjustifiably’. The court is enjoined to exercise a value judgment, which if arrived at without caprice or bias or the application of a wrong principle, will not lightly be interfered with.”

In *casu*, the plaintiff averred that he leased the premises to the first and second defendants; gave them three (3) months’ notice to vacate as he required the premises for his own business in order to boost his income. By the expiry of the notice period the defendants had not moved out. In consequence, the plaintiff issued summons for eviction on 5 December 2017. The evidence does not show that the plaintiff desired repossession of the premises for an ulterior motive as claimed by the defendants. The evidence tendered in court confirm his assertion that he wanted to go into the bed and mattress selling business once again. The shop licencing application he had completed for submission to the City of Harare and the enquiries he made to Bowline Furniture verify the genuineness of his intentions. In this context, it is settled law that in order to establish “good and sufficient grounds”, the landlord need no more than give his reasons in good faith and provide some

evidence to show that his intentions are genuine. (See *Newman v Briggs 1945 EDL 51*, cited in *The Paget-Pax Endowment case supra*).

Before concluding I need to make a critical observation, and this is a point emphatically, and quite correctly, argued by Mr Drury. On the authority of *Kingstons Ltd v D Ineson (Pvt) Ltd 2006 (1) ZLR 451 (S)*, I am required to look at the position of the lessor and not at that of the lessee, when determining whether there are good and sufficient ground for seeking repossession of the premises. This is for an obvious reason, that derives from the architecture of Section 22 (2) (b) of the rent regulations, which precludes the granting an order for recovery of possession “*unless the court is satisfied that the lessor has good and sufficient grounds for requiring such order*”. In other words, the rent regulations place the onus of proving good and sufficient grounds on the landlord, and it is for that reason that the position of the tenant is irrelevant. Once I am satisfied that the plaintiff has met the burden placed up him by the law the matter is resolved.

Bearing in mind the legal position on onus, I make the following concluding observations. The plaintiff’s evidence was not seriously challenged vis-à-vis his reason for seeking to evict the defendants. More crucially, the defendants’ assertion that the plaintiff sought their eviction because he had rejected their request to reduce the rent from \$750-00 to \$700-00, as he intended to lease the premises to a new tenant at increased rentals is highly improbable. On the contrary, the history of this matter as it unfolded in the evidence shows that the plaintiff had unquestionably acceded to every request they previously made for rent reduction. I found it disingenuous for the defendants to suddenly attempt to paint the plaintiff as a greedy person whose reason for repossessing the premises was motivated by money. That allegation was not borne out by the evidence. Thus, left without the protection afforded to tenants by Section 22 (2) of the rent regulations, the defendants were required to demonstrate a valid basis for clinging onto possession. They simply had no defence to the plaintiff’s claim.

From the evidence that was led before me, I am satisfied that the plaintiff genuinely seeks the eviction of the defendants in order to utilize the premises for his own business. He has established good and sufficient grounds for repossession of the premises and is entitled to the relief that he seeks in the summons. As the plaintiff has established his case, costs will follow the result.

In the result, judgment in favour of the plaintiff as against the defendants is granted as follows.

1. The 1st and 2nd defendants and all those claiming occupation through them shall vacate the shop situated at 79 Chinhoyi Street, Harare, within fourteen (14) days of the date of service of this order.
2. In the event that the defendants fail and/or neglect to comply with the above order then the Sheriff for Zimbabwe or his lawful deputy shall be authorized and empowered to evict the defendants and all those claiming occupation through them from the property aforesaid.
3. The 1st and 2nd defendants shall pay the plaintiff's costs of suit jointly and severally, the one paying the other to be absolved.

Honey & Blanckenberg, plaintiff's legal practitioners
Bherebhende Law Chambers, defendants' legal practitioners