IN THE HIGH COURT OF TANZANIA

AT GEITA

H/C. CIVIL APPEAL NO. 34 OF 1980

(FROM THE DECISION OF THE DISTRICT COURT OF GEITA AT GEITA IN CIVIL CASE NO. 4 OF 1980)

WILBARD MZANILA..... APPELLANT
(Original Defendant)

Versus

HAMIS HASSAN ..... RESPONDENT
(Original Plaintiff)

J U D G M E N T

CHUA, J:

In the district Court of Geita the appellant was sued for arrears of rent amounting to 750/= shillings and for vacant possession. The claim for Shillings 750/= was accepted but vacant possession was rejected. The appellant is disatisfied with the judgment.

It was not disputed that pursuant to a verbal tenancy agreement the appellant had occupied the respondent's suit premises at the monthly rental of Shs. 50/= from 1977 to March, 1979. In April, 1979 the respondent notified the appellant in writing that he was increasing the rent to shs. 75/=. The appellant ignored the notice and went on paying shs. 50/= per month. In June the respondent insisted that he would receive nothing short of shs. 75/= per month and the appellant then defaulted paying rent. On 10/7/1979 the respondent served the appellant with a 3 months notice to vacate the premises. The notice expired on 10/10/1979. The appellant neither vacated the premises nor paid any rent. Hence this suit for recovery of arrears of rent and vacant possession filed on 9/4/1980.

The trial magistrate framed 4 issues. The first issue was whether the defendant was a tenant of the plaintiff's premises. Apparently the l learned Resident Magistrate considered this to be a straight forward matter and answered in the affirmative. The matter was not as straight forward as the learned magistrate put it. It was encumbant on the learned magistrate to consider the effect of the 3 months notice on the tenancy. It is quite clear that the tenancy must have come to an end after the expiry of the notice. As no dispute has been raised about the adequacy of this notice it was indeed the only reasonable conclusion in the circumstances. In this regard I would quote the words of Lord Goddard in Clarke V. Grant and Another (1949) I ALL E.R. 768 when he said:-

> "If a proper notice to quit has been given in respect of a periodic tenancy, such as a yearly tenancy, the effect of the notice is to bring the tenancy to an end just as effectually as if there has been a term which has expired. Therefore the tenancy having been brought to an end by a notice to quit, a payment of rent after the termination of the tenancy would only operate in favour of the tenant if it could be shown that the parties intended that there should be a new tenancy."

In the present case it is common ground that no rent was paid during and after the notice and there is no evidence to suggest, still less to prove, any consensus and idem for a new tenancy. But as there is evidence that the appellant continued to occupy the premises, though without the consent of the Landlord, he must be deemed to have been a tenant on sufferance. Had the landlord given his consent then a tenancy at will would have arisen. In this regard the views of Mr. Justice Spry (as he then was) in the case of STANLEY AND SONS V. SALEH ALIBHAI (1963) E. A. 599 are extremely relevant. The learned Judge stated:-

> "On the assumption that a monthly tenancy had existed and had been validly determined by notice, a tenant holding over would have been a tenant on sufferance; but if consent of the landlord to the holding over were given a tenancy at will would be implied. - The evidence for the plaintiff company of regular demands for rent, if accepted - and it has not substantially been denied - is I think, sufficient proof of consent. The fact that no rent was paid prevents the tenancy at will from being transformed in its turn into a periodic tenancy."

Having arrived at the conclusion that the appellant was, after the expiry of the notice, a tenant on sufferance, the next question is what rent was applicable to him.

To the best of my knowledge the Rent Restriction Act does not apply to Geita District. The Rent Tribunal does not therefore have jurisdiction over the premises in question. That being the case the standard rent of the premises must be charged according to the tenancy agreement. In this case the tenancy agreement fixed the rent at shs.50/- per month and any attempt to vary it had to be by agreement. The case of Juma Ishakiga V. Hassanali Jurub (1965) E.A. is illuminating on this point. In this case there was no agreement to have the rent increased to shs. 75/- and therefore the arrears of rent should be computed at 50/- shillings per month. I am aware of the problem that after the expiry of the notice to quit the appellant ought to have accepted the new rent if he wanted to continue with the tenancy but the answer to this is that the landlord ought to have taken steps to eject him since he was a tresspasser. By allowing him to become a tenant at sufferance he impliedly was foregoing his right to charge 75/- shillings per month. In the result the arrears of rent payable from June, 1979 to March, 1980 is shillings. 500/-.

There was evidence which was accepted by the appellant as being true that he remained in the premises until the end of May, 1980. By virtue of his continued use and occupation of the premises he is liable to pay mesne profits at the rate of 50/- shillings per month. Although mesne profits was not specifically pleaded, the appellant by accepting evidence of his having held over the property cannot plead surprise at this liability. Total liability of the appellant is therefore fixed at shillings 600/-.

The appellant having vacated the premises before judgment was delivered the question whether the respondent was entitled to vacant

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possession became purely academic. The trial magistrate in dealing with this point stated:-

> "Usually vacant possession is ordered in instances where tenants are defaulting out of stuborness. In the care at hand it seems that default was as a result of ignorance for it seems the defendant thought that he had right of sitting over same table with plaintiff and deliberating over what the rent should be. Thus the ten months in default in rent payment notiwhtstanding the plaintiff's second prayer of vacant possession can't be entertained."

With due respect I am unable to agree with the learned Resident Magistrate. It is not correct to say that the appellant was wrong to assume that he had a right to deliberate on this increase of rent because the tenancy having been founded on a verbal agreement, and the Rent Tribunal having no jurisdiction over it, an increase or decrease in rent could be effected only by consensus ad idem between the parties. Secondly, a notice of 3 months having been served on the appellant, the respondent was entiled to treat the tenancy as having come to an end and the court should therefore have recognized this fact and granted vacant possession.

In the result the judgment of the lower court is varied to the extent that the respondent is to be paid shillings 600/= and vacant possession would have been ordered if the need were there. Save as indicated the appeal is dismissed.

L. J. R. CHUA
JUDGE

GEITA
26th March, 1982.