

MUSUSU KALENGA BUILDING LIMITED, WINNIE KALENGA AND RICHMANS MONEY LENDERS ENTERPRISES

SUPREME COURT

SAKALA, CHIRWA AND MUZYAMBA, JJ.S.

18TH FEBRUARY, 1999 AND 15TH MARCH, 1999.

(S.C.Z. JUDGMENT NO. 4 OF 1999)

Flynote

The Law - tenancy agreement - whether it existed as between the parties - question of wrongful detention of the respondents' goods - award of damages.

Headnote

The appellants entered into an agreement with the respondents in 1996 following which the respondents occupied an office owned by the appellants at a rental of K120,000 per month and a further amount of K3,000 for security. The 1st appellant gave to the respondent a receipt dated 11th November, 1996, for rent and security fees for the months November, 1996, December, 1996 and January, 1997. On 17th May, 1997, the appellants locked the office for non-payment of rent and detained the respondents' goods. It was argued by Counsel for the appellant that the respondent was merely a licensee. Whilst Counsel for the respondent argued that there was a verbal tenancy agreement.

Held:

- (i) We are satisfied that the relationship between the parties was that of Landlord and Tenant and not Licensor and Licensee and that the tenancy between them was a monthly tenancy.
- (ii) The respondent was in occupation for more or close to 7 months before the office was locked. It was therefore incumbent upon the appellants to comply with the provisions of the Act by giving the respondent a proper notice terminating the lease and if the notice was not complied with to commence proceedings for possession of the office and recovery of mesne profits.

Appeal

dismissed.

For the Appellant: Mrs. L. Mushota, Mushota and Associates

For the Respondent: Prof. P.M. Mvunga, Mvunga and Associates

Judgment

MUZYAMBA, J.S.: delivered the judgment of the court

This is an appeal against a finding by the High Court that there existed a tenancy agreement between the parties and an award of damages for wrongful detention of the respondent's goods.

The facts of this case are that the first appellant is a limited liability company and owns a building on plot 6888 Freedom Way, Lusaka with office space and the second appellant is its Managing Director. The respondent is a firm. Mr. Stanley Jere is its Managing Director. Sometime in mid 1996 the parties entered into an arrangement following which the respondent occupied office number 8 at a rental of K120,000 per month and a further amount of K3,000 for security. Document No. 17 in the record of appeal is a receipt dated 11th November, 1996, from the 1st appellant for rent and security fees for the months of November, December, 1996 and January, 1997. On 17th May, 1997, the appellants locked the office for non-payment of rent and detained the respondent's goods. At the hearing of this appeal we were informed by Counsel for the respondent that the goods were still being held by the appellant.

Mrs. Mushota filed 4 grounds of appeal, three of which raised issues which were not raised in the court below. We have said before and we wish to reiterate here that where an issue was not raised in the court below it is not competent for any party to raise it in this court. There is therefore only one ground for determination by this court, namely whether or not there was a

tenancy agreement between the parties or indeed that the respondent was a licensee as argued by Mrs. Mushota.

It is common cause that the 1st appellant's building is a business premises. It is also common cause that the rent for the office was payable monthly and that the respondent had been in occupation of the office for a period of six months and upwards before the appellants locked it. On these facts it was argued by Mrs. Mushota that the respondent was a licensee and as such not protected by law. On the other hand Prof. Mvunga argued that the facts show that the parties entered into a monthly verbal tenancy agreement. That the Landlord and Tenant (Business Premises) Act, Cap.193 (hereinafter referred to as the Act) therefore applied.

We have examined the evidence on record and the ruling of the learned trial Judge. We have also considered the arguments by both Learned Counsel and we are satisfied that the relationship between the parties was that of Landlord and Tenant and not Licensor and licensee and that the tenant between them was a monthly tenancy. The Act, as Prof. Mvunga rightly argued therefore applied. That this is so is quite clear from Section 3 subsection (2) (g) (I) of the Act which provides as follows:

"3. Subject to the provisions of subsection (2) this Act shall apply to all tenancies in Zambia.

(2) This Act shall not apply to:

(g) premises comprised in a tenancy granted for a term certain not exceeding three months, unless:

(i) the tenancy contains provisions for renewing the term or for exceeding it beyond three months from its beginning."

The respondent was in occupation for more or close to 7 months before the office was locked. It was therefore incumbent upon the appellants to comply with the provisions of the Act by giving the respondent a proper notice terminating the lease and if the notice was not complied with to commence proceedings for possession of the office and recovery of mesne profits. This they did not do. They therefore acted at their own peril by locking the office and detaining the respondent's goods. We therefore find no reason to interfere with the learned Judge's findings. The appeal is without merit. It is dismissed with costs to be taxed in default of agreement and we order the appellants to release the respondent's goods forthwith.
