

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN: LAKE DELICATESSEN LIMITED APPELLANT
AND
NORTHMEAD PROPERTIES LIMITED RESPONDENT

CORAM: Gardner, Sakala and Chirwa JJJS.,
25th November, 1993

S.S. Phiri of S.S. Phiri and Company appeared for the appellant.

R.M. Simeza of RMA Chongwe and Company appeared for the respondent.

J U D G M E N T

Gardner J.S. delivered the judgment of the court.

This is an appeal from a judgment of a High Court refusing an interim injunction and granting an order for possession of premises at Northmead, Lusaka.

The facts of the case are that the respondent let the premises in question to the appellant and on 25th August, 1988 the respondent served proper notice to quit requiring the appellant to vacate the premises at the expiry of six months from that date. The appellant did not vacate the premises on that date nor did it give notice within two months as required notifying the respondent whether or not it was willing to vacate the premises. No application was made by the appellant for a new tenancy. However, on the 11th September, 1990 the appellant and the respondent entered into an agreement whereby the appellant acknowledged that the tenancy had expired and agreed that the landlord should have vacant possession of the premises on the 31st March, 1991. It was agreed that the appellant would pay K30,000.00 rent per month and it was provided that no payment would be made for the last three months period, it being understood that the tenant would use that period for decorating the premises before giving up possession.

The appellant did not give up possession as agreed and the respondent then threatened to evict the tenant from the premises.

The tenant then applied to the court for an interim injunction to prevent such eviction. The learned trial judge on an inter partes hearing made an order indicating that the appellant was not entitled to an injunction and presumably saying that the respondent was entitled to an order for possession of the premises. The learned trial judge died and the parties came before another judge of the High Court to clarify the ruling that had been made. Clarification of such ruling was made by granting possession of the premises to the respondent.

The appellant had appealed against the order for possession on the grounds that the tenant was not a mere licensee of the premises but that the agreement of the 11th of September created a tenancy of the premises, and that by section 20 of the Landlord and Tenant (Business Premises) Act, it should be void in so far as it purported to preclude the tenant from making an application for a new tenancy. In reply to Mr. Phiri's arguments to this effect Mr. Simeza on behalf of the respondent argued that, after the original notice to quit was given, the appellant did not give notice that it would not comply with the notice to quit nor did it make an application for a new tenancy. He maintained that it was clear that the agreement dated the 11th September, 1990 was a mere licence by virtue of the provision that the occupation for the last three months would be free of charge while the appellant redecorated the premises prior to vacating the premises.

Mr. Phiri argued that the agreement created a tenancy so that the provisions of the Act apply including the right of the tenant to apply for a new tenancy.

We will deal first with the second ground of appeal which was that the learned trial judge should not have made an order under Order 20 Rule 11 of the Rules of the Supreme Court Practice (The White Book), the slip rule, on the ground that the first learned judge could not have intended to grant possession because the issue of possession was not before the court. The first learned judge specifically indicated that he intended that his order should be final and the second judge ruled that it was his intention to finalise all possible proceedings between the parties. To this effect he said that it could be assumed that the respondent would counter-claim for an order for possession and it was proper to construe the first judgment as meaning to deal with this issue. We agree with the sentiments that it is better to

to deal with all issues in order to bring litigation to an appropriate end, and, in this case, the second learned judge was entitled to construe the first learned judge's intentions as he did. In the event, all the legal arguments have been canvassed and it is now for this court in its turn to say that it is better that all issues should be finalised at this stage. The second ground of appeal is dismissed.

The courts will always construe agreements relating to rent controlled premises strictly in order to prevent the evasion of the provisions of the Rent Acts, and, for this purpose, section 20 of the Landlord and Tenant (Business Premises) Act would be implemented if the courts were to consider that an agreement between parties was a mere sham arrived at by collusion in order to prevent the act applying. However, in this case, when the parties entered into the agreement dated the 11th September, 1990, it was intended that there should be a surrender of the premises leased by the appellant. This surrender was effected by the grant of a licence for the last three months of the period of occupation when no payment was to be made and the occupation was to be used solely for the purpose of redecorating the premises. The arrangement here between the parties was not entered into at the beginning of a proposed lease but at the end of one. The intention of the parties to bring the lease to an end was genuine and was entered into by both parties after advice by their lawyers. The granting of a licence for the last three months of occupation effectively terminated the previous tenancy (if it had not been brought to an end already) and entitled the respondent to an order for possession.

For the reasons we have given, the appeal is dismissed and it is ordered that the appellant deliver-up possession of the premises to the respondent on or before 31st January, 1994. Costs to the respondent.

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B. T. GARDNER
SUPREME COURT JUDGE

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E. L. SAKALA
SUPREME COURT JUDGE

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D. K. CHIRWA
SUPREME COURT JUDGE