

C.C. 1002/04

2004

J

NO.56

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: -

ARNOLD OLU JONES - PLAINTIFF

AND

LESSIE ALLEN - DEFENDANT

JUDGMENT

BEFORE THE HON. MR. JUSTICE J. M. KAMANDA JUDGE
DATED THIS 1ST DAY OF MAY, 2006

The Plaintiff in this action is the fee simple owner of premises situate at 28 Regent Road, Lumley in Freetown, and the Defendant is his tenant. The Plaintiff seeks.

1. Revocation of the lease Agreement dated 20th November 2002
For breach of the Defendant.
2. Vacant possession of 28 Regent Road Lumley, Freetown.

By his defence, the Defendant admits he is the Plaintiff's tenant, and further that the tenancy was created by an Agreement dated 20th November, 2002 between himself and the Plaintiff. He (the Defendant) however denies Any breach of the said agreement.

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The Defendant counter claims that

1. The Plaintiff be ordered by the Court to register the Agreement dated the 20th November 2002 as same touches and concerns land and exceeds a period of three years:
2. That the Plaintiff is bound by the terms of the agreement dated 20th November 2002 and the fact that it is not registered does not vitiate its binding effect on the parties to it. Additionally the Defendant claims the refund of the cost incurred by him in constructing the demised premises which is estimated at Le. 20,000,000/00.

The Plaintiff testified but called no witnesses. He recalled sometime in November 2002 there was an arrangement between himself and the Defendant for lease of premises situate at 28 Regent Road, Freetown for a period of 11 years. This address is where the Plaintiff said he lived. By this arrangement it was understood that the Plaintiff was landlord and the Defendant, tenant. What was let to the defendant comprised two bedrooms and a sitting room. The arrangement was reduced to writing, and in his testimony. The Plaintiff identified a document which he referred to as copy of the tenancy agreement between him and the defendant. This document was not put in evidence, Mr. Koroma, Counsel for the defendant undertaking to tender the original at a later period in the proceedings. It need be pointed out straightaway that the said original was never tendered in Court. It is not evidence before this Court. This is one of the many peculiarities in this case. The Plaintiff alleged that at the end of the defendant's occupancy, he (the defendant) let out the premises to a third party. Although the Plaintiff did not know who the new occupant was, he told the court that the premises were still occupied by someone other than the defendant.

on being confronted by the Plaintiff, the defendant is alleged to have told the Plaintiff that since his (the defendant's) rented period was still subsisting he could do as he lived. At this point Mr. Koroma asked for an adjournment at which date he said he would tender the original of the tenancy agreement, and for cross examination by Mr. Serry-Kamal defendant's Counsel.

I cannot emphasise enough the importance of the tenancy agreement being put in evidence. Both the Plaintiff and defendant in their pleadings have placed such heavy reliance on the contents of a document which is not evidence. There is no point however, in even making reference to details in the pleadings in the absence of the relevant material against which to weigh it.

Then follows a long series of adjournment at which there was hardly a time when both Counsel or their clients were simultaneously present in court. On the several times when defendant's Counsel failed to turn up to cross examine the Plaintiff, Mr. Koroma opted to present his next witness at the next adjourned date. This never happened, and as if there were not yet enough procedural peculiarities in this short case, Mr. Koroma closed his case and applied for The matter to be determined on the evidence so far before the court. A couple of adjournments were granted, and when Mr. Serry-Kamal failed to show up on these adjourned dates, the court was left with no option but to grant Mr. Koroma's application. The matter was withdrawn for judgment on the evidence so far adduced.

But what evidence was actually before the court? Hardly anything. Thus came to an end what I will with no hesitation refer to as a legal and procedural force. The defendant did not testify but the frail and pointless testimony of the plaintiff did more harm than good to his case. I cannot hold in favour of this plaintiff, nor can I in favour of the defendant for obvious reasons. I am left with no option but to throw this matter out of court and award no cost to either side.

SGD: - HON. JUSTICE J.M. KAMANDA J. A.

1ST MAY 2006.