

IN THE HIGH COURT OF MALAWI

MZUZU DISTRICT REGISTRY

CIVIL CAUSE NO 274 OF 2013

BETWEEN

FELIX MUNTHALI----- PLAINTIFF

AND

ALEX BANDA-----DEFENDANT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Chunga, for the Plaintiff

T. Chatupa, for the Defendant

C.B. Mtiti, Court Reporter

A. Kanyinji, Court Interpreter

JUDGMENT

INTRODUCTION

The plaintiff Felix S. Munthali brought this matter against the defendant Alex Banda. This matter was filed with the court on the 25th of November 2013. The case could have been disposed of long time ago. Unfortunately, due to the shortage of Judges at the Mzuzu District Registry, I had to travel all the way from Lilongwe as a visiting Judge to preside over this matter. Thus on the 17th of June, 2015, I heard this matter and had reserved my judgment to a date to be fixed.



PLEADINGS

In his statement of claim, the plaintiff stated as follows:

1. That he is and has been the owner of a house at plot N0. CP/2/013 at Lower Chasefu in the city of Mzuzu.
2. That the defendant was a tenant for 4 years.
3. That on 4th October 2013 by chance, the plaintiff found the defendant shifting to his new house without giving the plaintiff any notice.
4. That at the time of vacating the house, the defendant owed the plaintiff rent arrears of Mk106,000.00
5. That the defendant refused to renovate the house arguing that he had left the house in the condition it was at the time of occupancy, some four years ago.
6. That the plaintiff renovated the house on his own, and he thus suffered loss and damages.

Particulars of damages related to:

- (a) Expenses to have the house renovated.
- (b) Loss of business in terms of rentals during the period of renovation.
- (c) Inconvenience suffered.

The plaintiff therefore claims for:

- i) Damages for breach of contract
- ii) Payment of the sum of Mk474,500.00, Mk106,000.00 and MK20,000.00 being repair costs, rentals in arrears and payment in lieu of one month notice respectively.
- iii) Damages for inconvenience.
- iv) Costs of this action.

In his defense, the defendant admitted that he was a tenant for the plaintiff for the said four years. He however denied vacating the house without notice. He stated that on several occasions, the plaintiff had threatened him to vacate the house. That it was actually the defendant who had pleaded with him to allow him

to vacate the house after completing the construction of his own house and the plaintiff had accepted and he was aware that anytime the defendant would be vacating the house.

The defendant categorically denied owing any rent arrears. With regards to the renovation of the house, the defendant stated that he declined to renovate the entire house since when he occupied it he had found it in that state. He was however ready to repair a few things which were damaged when he was in occupation and not those which were already in a dilapidated state at the time he was taking over the house.

SURVEY OF EVIDENCE

This matter should not be deliberately complicated. The evidence on record is clear and straightforward. It is settled as a fact that the plaintiff and the defendant were in a contractual relationship of land lord and tenant. The Plaintiff was the landlord and the defendant the tenant. Their relationship was not reduced in writing. It was purely based on an oral arrangement and their conduct towards each other. Such types of arrangements are very common and are also permissible. The defendant was what is known as a tenant at will. It is also settled as a fact that the defendant had found this house in August 2009 through a friend of his who had lived in this very house. This person was known as Mr Steven Zimba. It is also settled as a fact that when Mr Zimba vacated the house and the defendant took over as tenant, the house was not renovated by Mr Zimba. The defendant proceeded to occupy it on as is basis.

The defendant in his witness statement said that at that time, the house was not in good condition. For example, the cistern in the toilet had a crack and the water could not fill to the beam. He had to buy a new one and replaced the broken cistern. Almost all the sockets in the house were old and not working. He had to buy new ones and replace them. The kitchen sink tap was not working. He had to replace it with a new one. He met the costs of all these repairs but the plaintiff did not deduct this cost from the rent. In around July 2013, the plaintiff requested the defendant to vacate the house by August 2013. The defendant said that he had to plead with the plaintiff if he could allow him to be there for the next two

months and the plaintiff gave him a deadline of September 2013. Apart from the time when the plaintiff had asked him to repair the 6 broken pane windows, the defendant said that he does not remember a single day when the plaintiff had asked him to renovate the house.

The plaintiff told the court that one day through some chance, he found the defendant vacating the house. The defendant had already shifted some of his properties to his new house. The plaintiff confronted the defendant as to why he was secretly shifting. He then and there demanded that the defendant should pay him the rent arrears of MK106,000.00 that he owed him. He also demanded the defendant to renovate the house since the four years of occupation had left the house in poor state. The defendant was however not cooperative hence this case today.

On his part, the defendant said that at the time he was leaving the house, he was not sure as to what was the exact rent per month. The defendant said that at one point the rent was MK15,000 or MK16,000.00. He however confirmed that at the time he was vacating the house, the rent was MK20,000.00 per month then he changed saying that it was MK17,000.00 per month. The defendant admitted that at the time he vacated the house he owed the plaintiff some rent. He however said that the plaintiff declined to get the money from him before the defendant had renovated the house. With regards to the renovation of the house, the defendant said that he had found the house already in a dilapidated state as the previous tenant had not renovated it. He therefore found it unfair to be responsible for all the costs of renovation.

ANALYSIS OF THE EVIDENCE

My assessment of the evidence is that the plaintiff was a more consistent and truthful witness. He was very precise on the rent at the time the defendant was vacating the house. The plaintiff also impressed me as a witness of truth when he said that he was shocked to find the defendant shifting without giving him notice. It was not true as the defendant had said that the plaintiff was already aware that the defendant would be vacating the house anytime. If this was a sincere vacating of the house, the defendant could have informed the plaintiff on that day when

he was shifting the property. I did not believe the defendant when he said that he wanted to inform the plaintiff after removing his luggage from the house. The plaintiff said that he was owed MK106,000.00. The defendant though admitting that he owed the plaintiff arrears of rent, he however could not tell the court in his evidence in chief as to how much he did owe the defendant. It had to take cross examination by the plaintiff's counsel for him to disclose that he owed the plaintiff Mk52,000.00 for two months.

I found the defendant a very evasive character and he was such a witness who was very economic with the truth. I therefore chose to believe the plaintiff who said that he was owed Mk106,000.00. On the issue of renovation, the defendant was given the opportunity to inspect the house together with his friend Mr Steven Zimba. If the house was then in a bad state, it was up to the defendant to take it or not. He was not at all forced by the plaintiff to become a tenant. This was a voluntary decision. Asked by counsel for the plaintiff if he could produce any evidence that he had bought and repaired the things he mentioned, the defendant had nothing to show. The defendant had been in that house for 4 years and I cannot believe him that in those four years this house was still as it was in 2009 when he occupied it. In four years certainly this house should indeed have deteriorated and required renovation before someone could move in. This renovation is in relation to painting and anything that was damaged during the stay of the defendant. I have looked at the quotation that was tendered in court by the plaintiff. What has however troubled my mind is the fact that the plaintiff should not have left Mr Zimba completely free when he was vacating this house. Although the defendant might have been desperate to occupy the house without serious thinking about the obligation of Mr Zimba when he was vacating the house, the defendant should not completely suffer for all the renovation costs. Much as I believe the plaintiff on this that the defendant had to renovate the house, I find that it would be unfair for him to be saddled with the entire cost. I therefore order that defendant should be responsible to pay half of the cost of this quotation which is the amount of MK237,250.00 instead of MK474,500.00.

On the issue of notice, I did believe that this agreement was on a month to month basis. The defendant as I have said was not truthful when he said that it was the

plaintiff who had pressured him to vacate the house and that by the time he was leaving the house the plaintiff was already aware about it. On the contrary, I found that the defendant had vacated the house without any notice. I therefore find that he should pay Mk20,000.00 in lieu of that notice. I did not find any justification to award any damages for loss of business and inconvenience.

The defendant is condemned to pay costs of this action.

DELIVERED THIS 10th DAY OF FEBRUARY 2016 AT MZUZU

M.C.C. MKANDAWIRE

JUDGE