

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

'MAMPEMPE LEPOLESA Appellant

v

'MAMOTANYANE MOTANYANE Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 5th day of September, 1986.

The appellant and the Respondent were respectively, Plaintiff and Defendant before Tsifalimali Local Court where in 1980 the former claimed against the latter (a) payment of M40, being rental arrears for two months in respect of certain premises which Plaintiff had leased to the defendant at the rate of M20 per month, and (b) ejectment from the said premises. Defendant's plea was that she owed no rental arrears to the Plaintiff and could not be evicted from the premises which she, in fact, occupied by arrangement with the owner thereof.

It is common cause that the trial court entered judgment in favour of the Defendant. The Plaintiff was unhappy with the decision against which she appealed to the Central Court of Ts'ifalimali. The Central Court allowed the appeal and the Plaintiff, in turn, appealed to the Court of the Judicial Commissioner who disagreed with the decision of the Central Court, allowed the appeal and reinstated the judgment of the trial court.

It emerges from the evidence heard by the trial court that defendant had been hiring premises to run a cafe business at Hlotse in the district of Leribe. It transpired that Plaintiff lost her husband and was in financial difficulties to pay for the schooling of her child. She then

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approached the defendant with a request to use her two roomed house as a cafe so that she (Defendant) could, by way of rental, pay her the badly needed money. Plaintiff assured Defendant that the site on which the house was built had been transferred, together with the improvements thereon, to her child from a certain Macfalene Lepolesa, who was the elder brother of her late husband. Defendant agreed to rent the premises from the Plaintiff and on 4th September, 1978 the two concluded a written agreement whereby the former was to pay the latter monthly rental for the use of the two roomed house at the rate of M10 per room. Defendant subsequently took occupation of and used, the house for her cafe business. She regularly paid Plaintiff monthly rental at the rate of M10.00 per room as agreed until 4th September, 1979 when in terms of the parties' written agreement the lease contract came to an end. The parties did not then enter into another written contract. However, the Defendant continued occupation and use of the premises. She continued paying rent which the Plaintiff received.

It was argued that because after the expiration of the written agreement Defendant continued paying the rent which Plaintiff accepted the parties had impliedly agreed that the lease contract should be renewed. There seems to be some sense in this argument or else defendant would not after the expiry of the written agreement on 4th September, 1979, have continued to pay rent which the Defendant accepted.

Some time before the end of April, 1980 and following the parties' misunderstanding about the installation of a water tap and toilets facilities on the premises, Plaintiff gave Defendant notice to vacate the premises by the end of April, 1980. The reason given by the Plaintiff for the move was that Mr. Macfalene Lepolesa, who was, in fact, the registered owner of the site and the house thereon wanted the house for his own use.

When she learned that the house belonged to Mr. Macfalene Lepolesa, Defendant went to him and, in the presence of his wife, successfully negotiated for the continued use of the premises. In that regard Defenant was corroborated by

D.W.1 , Evelyn Lepolesa, the wife of Macfalene Lepolesa, who told the court that her husband had ~~since~~ passed away. The evidence of Defendant confirmed by that of D.W.1 was that following the agreement for the continued use of the premises, the late Macfalene Lepolesa wrote a letter exhibit 2, in which he confirmed the new agreement concluded between him and the defendant and that the rental money was to be paid direct to him henceforth. Defendant had since May 1980 been regularly paying the rental money to Macfalene Lepolesa.

Defendant also produced in evidence a copy of the late Macfalene Lepolesa's letter dated 12th May, 1980 (Exhibit 3) addressed to the District Administrator Leribe, in which letter Macfalene Lepolesa drew the latter's attention that the site was registered in his name under Title Deed No. 7425 and he had rented the house, the subject matter of this dispute to the Defendant who should not be harassed in any way. Both exhibits 2 and 3 were not challenged by the Plaintiff. Wherefor, Defendant contended that as she was paying rent to Macfalene Lepolesa, the rightful owner of the house, she could not be lawfully evicted by the Plaintiff.

The trial court found that Plaintiff had failed to prove ownership of the site and the house thereon. As Macfalene Lepolesa was still the registered owner of the site and the house thereon Defendant was rightly paying rent to him and not the Plaintiff. Consequently Plaintiff's claim was dismissed with costs.

As has been pointed out earlier, Plaintiff appealed to the Central Court which took the view that as defendant had concluded the lease agreement with Plaintiff she should honour the agreement and pay the rent to Plaintiff regardless of who the registered owner of the site and the house thereon was. On appeal the Judicial Commissioner disagreed with the decision of the Central Court, dismissed it and re-instated the judgment of the trial court.

It is clear from the evidence accepted by the trial court that during the existence of the lease agreement between defendant and Plaintiff the latter gave notice to the former to vacate the house on the ground that the owner thereof i.e. Macfalene Lepolesa wanted it back. By so doing Plaintiff so to speak, repudiating the lease agreement which repudiation Defendant did not resist. The agreement was, therefore, terminated when the defendant was to vacate the house at the end of April 1980 in accordance with Plaintiff's notice. Plaintiff could not be heard to say Defendant should have continued to pay rent to her on the basis of a lease contract which she herself had repudiated and therefore brought to an end at the end of April, 1980.

Granted that the lease contract between Plaintiff and Defendant had come to an end in April, 1980 it must be accepted that the view taken by the Central Court that defendant should have continued to pay rent to Plaintiff instead of Macfalene Lepolesa with whom she had entered into a new contract was totally untenable. In my view the trial Court rightly dismissed plaintiff's claim although it may have been for a different reason. Consequently the Judicial Commissioner was also correct in dismissing, as he did, the decision of the Central Court and re-instating the judgement of the trial Court.

In the result, I have no alternative but to come to the conclusion that this appeal cannot succeed and it is accordingly dismissed with costs.

B.K. MOLAI

JUDGE

5th September, 1986.

For Appellant : Mr. Ramolibeli
For Respondent : Mr. Pitso.