

UGANDA / JUDGMENT

Lwanga and Another v Muzira (Civil Appeal 104 of 2017) [2024] UGHCCD 208 (19 December 2024) [2024] UGHCCD 208

COURT

HC: Civil Division (Uganda)

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Civil Appeal 104 of 2017

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION) CIVIL APPEAL NO. 104 OF 2017 (ARISING FROM MAKINDYE CM MISC. CAUSE NO. 143 OF 2015) 1. LWANGA CHARLES 2. ARYAMWIJUKA KABILA ::::::::::: APPELLANTS VERSUS MUZIRA FRED ::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA JUDGMENT

Introduction

[1] The appellants being dissatisfied with the decision of His Worship Benson Semondo, then Magistrate Grade One at Makindye Chief Magistrate's Court, delivered on the 26th day of October 2017, brought this appeal seeking orders that the appeal be upheld and the ruling of the trial court be set aside and the costs in this court and in the lower court be awarded to the appellants.

Background to the Appeal

[2] The appellants instituted Miscellaneous Cause No. 143 of 2015 against the respondent in the Chief Magistrate's Court at Makindye under the Distress for Rent (Bailiffs) Act Cap 76 seeking orders that the respondent pays rent arrears of UGX 1,200,000/=, an eviction order be issued against the respondent and for costs of the application. It was alleged by the appellants (then applicants) that a tenancy existed between the respondent and themselves, with a monthly rental payment of UGX 150,000/=. The tenant (respondent) last made payment in September 2014 but remained in the premises up to May 2015 when the applicants brought the action to

distress for rent. The appellants therefore claimed for arrears of rent for eight months, amounting to UGX 1,200,000/=. The respondent opposed the application and denied the allegations raised therein. On 26th October 2017, the trial court dismissed the application with costs hence this appeal.

Representation and Hearing

- [3] At the hearing, the appellants were represented **Mr. Bikangiso Ezra** from M/s Bikangiso & Co. Advocates. Neither the respondent nor his lawyers appeared at the hearing despite sufficient evidence of service of hearing notices on several occasions. The Court allowed the hearing of the appeal to proceed *ex parte* and adopted the submissions that had been filed by the appellants. I have taken the submissions into consideration in determining the matter before Court.

Grounds of Appeal

- [4] The appellants raised five (5) grounds of appeal in their Memorandum of Appeal namely;

a) *The learned trial Magistrate erred in both law and fact when he said that the supplementary affidavit of Kigongo Alex was in agreement with the respondent's assertion whereas not.*

b) The learned trial Magistrate erred in law and fact when he held that a tenancy agreement had expired by the time of filing the application hence the application was incompetent whereas not.

c) The learned trial Magistrate erred in law and fact when he held that a tenancy agreement between the appellants and the respondent had ceased by the time CMA No. 142 of 2015 was filed when there was overwhelming evidence to the contrary.

d) The learned trial Magistrate erred in law and fact when he held that the tenancy agreement between the parties ended in December 2014 and failed to award rent for the time when the tenancy was subsisting.

e) The learned trial Magistrate was biased when he only relied on the respondent's evidence and ignored the applicant's evidence thus reaching a wrong conclusion.

Duty of the Court on Appeal

- [5] The duty of the first appellate court is to scrutinize and re-evaluate the evidence on record and come to its own conclusion and to a fair decision upon the evidence that was adduced in the lower court. See: *Section 80 of the Civil Procedure Act Cap 282*. This position has been restated in a number of decided cases including *Kifamunte Henry v Uganda SC CR. Appeal No.10 of 1997 [1998] UGSC 20 (15 May 1998)*; *Fredrick Zabwe v Orient Bank Ltd SCCA No. 4 of 2006* and *Baguma Fred v Ug* SC Crim. App. No. 7 of 2004. In the latter case, **Oder JSC** stated thus;

"First, it is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly, in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court".

Consideration of the Grounds of Appeal

- [6] Counsel for the appellants dealt with grounds 1, 2 and 3 jointly and then grounds 4 and 5 separately. It appears to me that all the five grounds raise the same complaint regarding the manner in which the learned trial Magistrate construed the evidence on record, chose to believe the respondent's evidence, and ignoring the appellants' evidence. I therefore find it expedient to deal with all the grounds of appeal at the same time.

Submissions by Counsel for the Appellants

- [7] Counsel for the appellants faulted the trial magistrate for misquoting the date when a one Kigongo Alex was called to witness the removal of the respondent's property from the appellants' land. Counsel stated that whereas under paragraph 6 of the supplementary affidavit, it is stated that Kigongo Alex was called to the land on 30/10/2015, the trial magistrate construed the date as 30/10/2014. Counsel for the appellants submitted that this was an error in fact on the part of the trial magistrate hence leading to a wrong conclusion. Counsel further submitted that whereas the trial magistrate held that the tenancy agreement had expired by the time of filing the application on 27/5/2015 which made the application incompetent, the correct position was that the tenancy was still subsisting by the said period. Counsel pointed out that the said conclusion by the trial court was reached based on the misquoted date in the supplementary affidavit.
- [8] Counsel also submitted that the respondent had wrongly stated in his affidavit in reply that the tenancy had ended in December 2014 and that he had paid all the rental dues to the 1st applicant who refused to give him receipts or to renew his tenancy. Yet in paragraph 5 of the submissions in the lower court, the respondent had alleged that the 1st applicant had in February 2015 ordered people to pour rocks and stones on the land that the respondent was renting as well as threatening the respondent's workers that he would imprison them. Counsel submitted that the above evidence shows that the respondent was still operating his business on the premises of the 2nd appellant by February 2015. Counsel concluded that the trial magistrate was therefore wrong in concluding that the tenancy had ended in December 2014.
- [9] Counsel further submitted that the rental arrears that were being claimed were from October 2014 to May 2015 at a monthly rate of UGX 150,000/=. Counsel stated that the allegations in paragraph 9 and 10 of the affidavit in reply to the effect that the respondent took the money to the 1st applicant and was not given a receipt was false. Counsel prayed

that the court orders the respondent to pay UGX 1,200,000/= for the 8 months in dispute and also for the time his property remained on the premises though not actively operating the business as the owner could not use the premises.

- [10] Lastly, Counsel for the appellant submitted that the ruling of the learned trial magistrate considered the evidence of the respondent and ignored that of the applicants. Counsel reasoned that when the trial magistrate attempted to consider the evidence in the supplementary affidavit deposed by Mr. Kigongo Alex, he misquoted the same thereby reaching a wrong conclusion. Counsel prayed that the Court allows the appeal as prayed.

Determination by the Court

- [11] It is not disputed that the respondent and the 1st appellant were involved into a tenant-landlord relationship. The written agreement was, however, not translated into the language of the court or typed and, as such, the terms of the agreement cannot be fully ascertained from the document. What appears undisputed however is that the respondent was to pay monthly rent of UGX 150,000/= and that he paid the agreed rent for some time. The actual dispute between the parties is on two elements; one being when the tenancy agreement came to the end; and the second being when the respondent last paid rent.
- [12] Counsel for the appellant faulted the learned trial Magistrate for finding that the tenancy agreement had stopped subsisting by the time of instituting the suit. Before the trial court, the respondent's evidence by way of the affidavit in reply was that his core business at the rented premises was car parking. The respondent further averred that the tenancy agreement had come to an end in December 2014 when he had fully paid rent to the 1st appellant and the latter had refused to issue him a receipt and to renew his tenancy. On the other hand, the 1st applicant's evidence was that the respondent had not paid rent from October 2014 to May 2015, a period of eight months leading to a sum of UGX 1,200,000/= as rent arrears. The applicants (now appellants) led further evidence by way of a supplementary affidavit deposed by a one Kigongo Alex, the LC1 Secretary of Nakinyuguzi ward where the suit rented premises were located. The evidence by Kigongo Alex was that he was called by the 1st appellant on 30/10/2015 to witness the removal of the respondent's property. The deponent went with a photographer to the scene but reached when the vehicle had left without taking the property. The photographer took photographs of the scene in an attempt to prove that the property was still at the premises by 30/10/2015.
- [13] In his ruling, the learned trial Magistrate found that the evidence contained in the supplementary affidavit was in agreement with the respondent's assertion that the tenancy agreement had ceased and that the applicants had not adduced evidence to rebut the respondent's assertion. It is apparent that the evidence contained in the supplementary affidavit relates to an attempted removal of property from the premises which was not successful. It is alleged that the photographs were taken to show that the property of the respondent was still on the premises at the time. However, a look at the photographs that are on the court record does not reveal the property that is alleged to have been still on the

premises. Neither was any such property identified in evidence before the trial court. The photographs appear to have been taken at different time periods given that while one set shows premises with overgrown grass, the other set shows premises with marram and stones. The inference that can be drawn from the photographs is that at the time they were taken, the premises were not being used for the business of car parking on both occasions of the capture.

- [14] The above set of facts consequently leads the Court to believe the respondent's assertion that the tenancy had ceased and the respondent was no longer carrying on business at the premises. The appellants did not lead any evidence to the contrary capable of rebutting the above assertion by the respondent. Although I could agree that the trial Magistrate could have misconstrued the date of 30/10/2015 as being 30/10/2014, I do not find a material effect of this misconstruction on his findings. It is clear to me that the learned trial Magistrate's conclusion was no so much based on the date as it was on the totality of the facts that were before him. My own evaluation of the evidence has disclosed that the photographs that were said to have been taken on 30/10/2015 do not reveal that the respondent was still using the premises or that his property was still at the premises. Yet the appellants attempted to insist to that effect, albeit without evidence. I have, therefore, not found any fault on the part of the trial Magistrate in his finding that the supplementary affidavit evidence was in agreement with the respondent's assertion. This finding by the trial Magistrate is supported upon the available evidence. The learned trial Magistrate therefore arrived at the correct conclusion and I find no merit in this complaint.
- [15] It was further contended by Counsel for the appellants that the respondent had in his submissions in the lower court stated that the 1st applicant had ordered people to pour rocks or huge stones and threatened the respondent's workers with imprisonment in February 2015. Counsel stated that this was evidence that the respondent was still at the premises by that time. However, the alleged facts did not get on record by way of affidavit evidence in the lower court. As such, the statements in the submissions were simply evidence from the bar upon which the lower court could not rely. It follows, therefore, that upon available evidence, the learned trial Magistrate was well grounded when he found that the tenancy agreement in issue had expired by December 2014 and was not subsisting by the time the action for distress for rent was filed. [16] There was also no evidence before the trial Magistrate that the respondent had not paid accrued rent up to December 2014. The trial court believed the evidence by the respondent that he had fully paid rent and was only not given receipts. The appellants led no evidence showing that they routinely gave receipts to the respondent. Had such evidence been adduced, there should have been a question as to why the respondent was given receipts for the rest of the tenancy period except the period of October to December 2014.

[17] Lastly, I have not found anything on record to make me believe that the learned trial Magistrate was biased against the appellants or that he had chosen to rely on the respondent's evidence and had ignored the evidence adduced by the appellants. From my analysis, I am satisfied that the learned trial Magistrate properly evaluated the evidence before him and came to the right conclusion.

Decision of the Court

[18] In all, therefore, all the grounds of appeal have been found to be devoid of merit and have thus failed. The appeal is accordingly dismissed. The decision of the lower court is upheld. The costs of the appeal and of the proceedings of the lower court shall be paid by the appellants.

It is so ordered.

Dated, signed and delivered by email this 17th day of December, 2024.

Boniface Wamala JUDGE

Application of the Slip Rule

[19] It has come to my attention that at page 1 of this judgment, under paragraph [2] in the second last line, the date supposed to be **May 2015** was stated as **May 2025**. This was an accidental slip which I accordingly correct in line with the provision under Section 99 of the Civil Procedure Act Cap 282. It is so ordered.

Dated and signed this 19th day of December, 2024.

Boniface Wamala JUDGE

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