

DAMIANO MUKUNKAMI AND IDAH MWALE

SUPREME COURT
CHIRWA, J. S.

25TH MARCH AND SEPTEMBER, 2000
S.C.Z. APPEAL NO. 48A/99

Flynote

Tenancy - subtenancy - whether subtenant entitled to buy from City Council when there is a previous owner - question of fraud.

Headnote

The house in issue was originally lawfully rented out by Ndola City Council to one Dennis Mwale, a relation to the respondent. Around 1976 the appellant came to live with the respondent on a temporary basis. In 1977 the respondent left the house to join her husband. The appellant remained as a caretaker. In 1995 the respondent learnt that the appellant had bought the house. The appellant refused to allow the respondent to re-posses the house. The respondent sued the appellant in the local court and succeeded. The Appellants consequent appeals in the Subordinate Court and the High Court failed. In arguing the Appeal the Appellant submitted that the Council as landlord changed ownership of tenancy to the appellant and after change of tenancy the respondent did nothing for over 12 years.

Held :

The appellant was left in the house as a caretaker by the respondent and the change in tenancy card or ownership was done surreptitious by the appellant, completely without the knowledge of the respondent. This is fraud and fraud is a good ground to cancel any title deeds issued. Appeal dismissed.

For the Appellant L.P. Mwanawasa, S.C., Mwanawasa & Co.
For the Respondent Col. Mudenda, National Legal Aid Clinic.

Judgment

CHIRWA, J.S., delivered the judgment of the court.

This case originated in the Local Court and involves house No. CHT 2298 Chifubu. the background to the case is that the house in issue was originally lawfully rented out by Ndola City Council to Dennis Mwale, a relation to the respondent. Later tenancy card was changed to the respondent. Around 1976 the appellant was introduced to the respondent by her aunt saying that the appellant wanted to live with them temporarily whilst he was looking for his own house. The respondent permitted the appellant to live with them in the house. In 1977 the respondent left the house to join her husband. Sometime in 1985 whilst the appellant was still living in the house in issue, he approached the respondent and reported that the Council wanted to evict him from the house. They went to the Council where the respondent was advised to put it in writing that the appellant was in that house as a caretaker. The respondent did write the letter to that effect. However, in 1995 the respondent learnt that the appellant had bought the house. She approached the appellant with her mother but the appellant was hostile to them and refused to hand over the house. The respondent then sued the appellant in the Local Court and succeeded. The appellant's appeal to the Subordinate Court was unsuccessful as well as the appeal to the High Court. He has now appealed to this Court and in advancing the appeal, Mr. Mwanawasa argued three grounds of appeal.

The first ground was that the Local Court erred in holding that the property belonged to the respondent when evidence showed that the property was registered in the name of the appellant by the Ndola City Council and that it is the Ndola City Council that should be sued. It was submitted that the Council as landlord changed ownership of tenancy to the appellant and after change of tenancy the respondent did nothing for over 12 years. It was further put forward that there was no option in the tenancy agreement to allow the respondent to buy the house. In reply Col. Mudenda submitted that the Local Court findings cannot be faulted as the appellant himself admitted in evidence that he occupied the house as a caretaker of the respondent who was a legitimate tenant of the same. The ownership was changed by the appellant without the knowledge of the respondent.

We have looked at the evidence of the parties in the Local Court also the evidence of an agent of the Ndola City Council. There is no doubt that the original tenant was Dennis Mwale who was later replaced by the respondent. There is no doubt also that the appellant came into the house as a sub-tenant to the respondent and he came in after his own daughter told him that the house he was previously renting was expensive and that there was a cheaper house elsewhere; the cheaper house being the house in issue. When the respondent got married she left the appellant in the house as a caretaker. When the Council later queried the status of the appellant in the house, both the appellant and the respondent went to the Council offices where their respective positions were explained. On the Council's advice, the respondent wrote the letter to the Council confirming that the appellant was her caretaker in the house. This letter is at page 27 of the record. The attempt by the learned State Counsel to impugn this letter is not the procedure in which a Court record can be challenged. On the totality of the evidence on record, therefore, there is no doubt that the appellant was left in the house as a caretaker by the respondent and that the change in tenancy card or ownership was done surreptitiously by the appellant, completely without the knowledge of the respondent. This is a fraud. The Local Court can therefore not be faulted in its finding that the lawful tenant was the respondent and that the appellant was left in the house as a caretaker. The change in the tenancy was done fraudulently by the appellant and fraud is a good ground to cancel any title deeds issued. This first ground of appeal cannot succeed and it is dismissed. As the issue in the case was ownership of the house and having upheld the finding of the Local Court on ownership, there is no need for us to consider other grounds of appeal. This appeal is therefore dismissed with costs to be agreed, in default to be taxed. It is also ordered that if any title deeds have been issued to the appellant by any authority, the same should be cancelled and in their place title deeds issued to the respondent on fulfilling any conditions set up on the sale for the houses. The appellant is given 60 days from today within to vacate the house.