

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2157 OF 2000

BETWEEN:

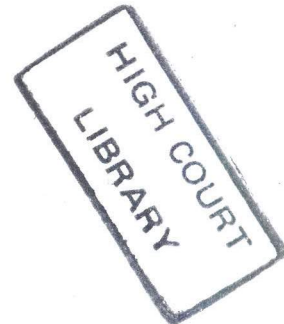
DEEKAY INVESTMENTS.....PLAINTIFF

-VS-

M.J.C. ROBERT GLASGOW.....DEFENDANT

CORAM: TWEA, J.

Silungwe, of Counsel for the Plaintiff
Tsingano, of Counsel for the Defendant
Chaika (Mrs), Official Interpreter



RULING

This is an application to dissolve an interlocutory mandatory injunction granted *ex-parte* to the plaintiffs on 29th June, 2000. This injunction, however, was, on 30th June, 2000, suspended on the application of the defendant. The suspension was to be effective until the inter-parte hearing of defendant application to dissolve the mandatory injunction.

The facts of the case which are not disputed are as follows:

The defendant is a tenant on property title No. 3/136 in Lilongwe. He entered into the tenancy agreement with Press (Property) Limited on 1st May, 1998. The tenancy agreement was for 3 years. The date when it is to expire is not shown in the lease agreement, Ex PL1, but by operations of law, it would fall on 30th April, 2000.



By a memorandum of sale, MFT1, Press (Properties) Limited sold the property in issue to the plaintiffs and requested the defendant to pay rentals directly to the plaintiffs from August, 1999. It is deponed and not disputed that in February, 2000 the defendant was supposed to have paid rentals up to July, 2000. The defendant did not. The plaintiffs on 14th March, 2000, by their letter Ex. MFT4 purported to serve a three (3) months notice to quit, no reason was given for the notice to quit, save to reserve the right to claim against the defendant. The defendant paid rentals to the plaintiffs on 6th June, 2000, as per Ex. MFT3A and 3B and on 7th June, 2000 filed an objection to the notice to quit. On 29th June, 2000 the plaintiffs brought this action, and obtained an interlocutory mandatory injunction, which the defendant now seek to dissolve.

The defendant application is grounded on the law. First it is alleged that since the sale of the property is not completed, as the Government consent has not yet been obtained, the legal owner of this property remains Press (Properties) Limited. The plaintiffs are equitable owners and cannot exercise any of the legal remedies on the lease: ***S.C. Yiannakis vs Tione Enterprises Civil Cause No. 877 of 1991*** (unreported). Secondly that the lease was a fixed term lease and it did not provide for notice. It was asserted that the plaintiffs could, which they are not entitled to do at law anyway, only forfeit after serving the statutory notice in accordance with section 51 of the Registered Land Act.

The plaintiffs did not seriously contest this. They contended however, that the defendant was bad at paying rentals which is a very serious obligation in a tenancy agreement. They asked the court to allow defendant to remain in occupation only up to 15th July, 2000, when the rentals paid would expire.

I have looked at the lease document between the defendant and Press (Properties) Limited. It is for a certain period. Both the time of commencement and the duration of the lease is certain; the lease is for 3 years starting on 1st May, 1998. This was a fixed period lease, see ***Harvey vs Pratt*** (1965) 1 WLR 1025. This lease agreement Ext. MFT1, did not, as a fixed period lease should, stipulate for notice for determination. The plaintiff therefore, could not determine the lease by serving notice to quit. The general rule is that a fixed period lease is determined automatically when the period fixed expires. This is also the gist of section 57(1)(a) of the Registered Land Act.

What are the remedies of the landlord? The landlord has the statutory remedy of forfeiture. The right to forfeiture however, is not automatic unless, the lease itself provides for forfeiture or if it is a granted upon some conditions being fulfilled: See ***Jeffrey Thindwa vs George Gabriel Kaliwo Civil Cause No. 676 of 1997*** (unreported). The lease in issue had clause 4(a) which

provides that the lessor may re-enter the premises if the lessee does not pay the reserved rentals for 30 days. This lease therefore, provided for forfeiture.

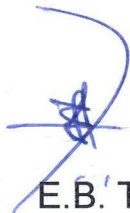
Be this as it may, the landlord can only forfeit if section 51 of the Registered Land Act is complied with. Section 49 of the Registered Land Act, however, makes it clear that forfeiture is subject to court discretion as the court may grant relief to the lessee in accordance with section 52 of the same Act.

In the present case, section 51 of the Registered Land Act was not complied with at all. The plaintiff were purported to give notice to quit. In my view this notice is totally in-operative, therefore null and void. The rights that our statutes give to tenants must be protected by the courts. The plaintiff therefore ought to have given the defendant notice of the breach and an opportunity to rectify the breach. That is the law. Only then would they be entitled to forfeit the lease.

There is one last issue I would wish to deal with; that is, that an equitable owner is not entitled to enforce legal remedies. The defendant had referred this court to the judgment of Tambala, J. as he was then in ***S.C. Yiannakis vs Tione Enterprises*** (Supra)(unreported). While I agree with that, I wish to note that defendant did pay the rentals to the plaintiff and it is conceded that the plaintiff is the equitable owner of the property pending Government consent to transfer of title. In my view, once the existence of equity is established, the court will have jurisdiction to grant equitable relief to protect it. What the court is doing is to protect that which the law recognizes to exist, the equity; ***Jeffrey Thindwa vs George Gabriel Kaliwo*** (Supra) (unreported). It would be a scandal to rule that the defendant can live on the property without any obligation at all until Government consent to transfer the property to the plaintiff is obtained. Had the plaintiffs had complied with the law, this court would have had no difficulty in granting them an equitable relief.

I therefore dissolve the mandatory injunction granted to the plaintiffs on 29th June, 2000 with costs.

Pronounced in Chambers this 14th day of July, 2000 at Blantyre.



E.B. Twea
JUDGE