

IN THE HIGH COURT OF SIERRA LEONE
(Land and Property Division)

Between
ALI BITTAR - **PLAINTIFF/APPLICANT**

VS.

MRS MAGDALENE TAQI - **DEFENDANT/RESPONDENT**

Coram:

Reginald Sydney Fynn JA

Counsel:

Lansana A Boyce Esq for the Plaintiff/Applicant

Charles Vandy Esq for the Defendant/Respondent

RULING DATED...17th.. NOVEMBER 2020

Fynn JA

- 1.** The main issue at stake in this action is “Who is the tenant in respect of premises at 4 Sir Samuel Lewis Road?” The plaintiff has brought the present action to recover the rent due and owing in respect of those premises. It is the tenant who should be liable for the rent due on the leased property so the question; ‘Who is the tenant is crucial to this action?’
- 2.** I have before me a claim against the defendant who does not deny that she once occupied the premises of the plaintiff including that which is the subject matter of this claim. However the defendant argues pointedly that though she was in occupation she was not the tenant. She urges that it was her husband who paid her rent and therefore he was the tenant and the person liable to the plaintiff in the amount claimed.
- 3.** The plaintiff will have none of this and insists that the defendant was more than a mere occupant. She was also in fact his tenant, he contends. Exhibited by the plaintiff are receipts for earlier periods and in respect of the same premises. These receipts are made out in the defendant/ respondent’s name.
- 4.** On 1st March 2017 the defendant having been repeatedly absent from court I had granted an order striking out the defence and allowing the plaintiff liberty to enter judgment. The defendant changed Counsel and Vandy Esq as Counsel for the Defendant applied for the defence to be reinstated urging that the premises had been given up by the defendant. I reinstated the defence on the condition that the disputed rent in the sum of \$ 4,000 be paid into court.

5. Lansana Esq of counsel for the applicant promptly filed another requesting the reinstated defence to be struck off and judgment entered for the plaintiff as the defence “is evasive and in nowise speaks to the plaintiff applicants claim and is thus a farce calculated to delay the proceedings”
6. Counsel on either side addressed the court. Legal submissions and citations were offered by both sides and I am grateful for the assistance and I have perused the references and considered the papers filed.
7. The respondent urges that the receipts which have been exhibited as AB1 & AB2 are in respect of premises separate and distinct to that which is the subject matter of the case. However in answer to this the applicant directs the courts attention to paragraph 3 of the affidavit in support.
8. I have seen the receipts exhibited and both parties agree that they are in respect of other premises. The plaintiff insists that these were payments made for only a portion of the two premises the defendant had rented from him. The defendant objects that she ever rented the second set of premises urging that it was the husband who had rented the premises from her. She does not deny however that she was the one who used or otherwise enjoyed the benefit of the tenancy.
9. I am faced with the crucial question of who was the tenant on the premises at No 4 Sir Samuel Lewis Road. I have no independent evidence to assist me. There is no agreement exhibited nor is there a third person who is alleged willing to testify as to the nature of the relationship between the parties with respect to the premises in question. At this stage I have come to the conclusion that the evidence before me is insufficient to lead me to a decision on this pivotal question and so end this application and bring the dispute to an end.
10. The defendant’s denial of being a tenant is a substantial question of fact worthy of being tried. Similarly so it is suggested that where there appears to be a prima facie case on both sides as presented it is preferred that the case goes to trial (see 14/4/11 pg 176 Supreme Court Practice 1999, **Saw v Hakim (1889)**)
11. As there is a significant lack of clarity on the facts I am unable to bring this matter to an end at this stage. A trial may be required to unravel fully the factual disagreements.

I. This application for summary judgment is therefore refused and I order that the matter proceeds to trial as there has already been compliance with the directions regarding the filing of the court bundle.

II. Trial is hereby fixed for Monday 30th November 2020. Each party is ordered to be present with his witnesses.

III. The trial will go from day to day and will last for no more than three days.

.....(SIGNED).....**Reginald Sydney Fynn JA**