

IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL AND ADMIRALTY DIVISION)
(TRANSFERRED TO CIVIL DIVISION)

BETWEEN:

MR. MAJDAY HAMOUD

PLAINTIFF

AND

MR. ALHAJI MOHAMED S. JALLOH

DEFENDANT

COUNSEL

A. R Kamara Esq. for the Plaintiff

A. Macauley Esq. for the Defendant

JUDGMENT DELIVERED THIS 8th DAY OF JUNE 2022 BY HONOURABLE MRS. JUSTICE JAMESINA E. L. KING J.A

This is a tenancy dispute between Mr. Marjday Hamoud, the Plaintiff and a tenant, and Mr. Alhaji Mohamed S. Jalloh, the Defendant and a landlord, in respect of premises situated at No.20 Magazine Cut in Freetown. The Plaintiff instituted the Writ on 19th February 2020, and claims against the Defendant immediate recovery of the sum of U.S. \$2,000 interest thereon and costs as amended on 3rd March 2021. The Defendant entered an appearance and a defence.

The Plaintiff told the Court that he is a businessman, and rented a store at the above address in 2015, paying rent in advance of \$2,000 annually. He occupied it for 5 years. On 14th July 2019, the Plaintiff asked the Defendant to collect his rent and he paid him the sum of Le18,400,000. The Defendant issued the Plaintiff with a receipt. The rent was for the period 14th July 2019 -13th July 2020. In September 2019 the Defendant came to his store and asked him for an additional year's rent. Before asking him for the rent, he promised to repair the store which was leaking and damp resulting in damage to the Plaintiff's goods. It damaged his cigarettes, cornmeal and batteries. The Plaintiff had earlier informed the Defendant about the leakage and damages and he asked him for an additional year's rent.

Based on the Defendant's promise to repair the store the Plaintiff in September 2019 paid to the Defendant, rent of \$2000 for 14th July 2020 – 14th July 2021. He was issued a receipt for the said payment. The Plaintiff removed his goods where the leakage was acute. In November 2019, the Plaintiff drew the attention of the Defendant that he was not making any attempt to repair the premises and that he had removed his goods from the area which was leaking so that he can do the repairs. He made the same complaint to the Defendant on 1st December 2019 informing him that he

will leave the premises three months prior to the end of 2020 if he failed to do the repairs, and will demand a refund of his 2021 rent. Plaintiff handed over the keys to the store and gave the Landlord vacant possession on March 14th 2020, three months before the expiration of the end of his tenancy in 2020. He then asked his lawyer to request a refund of the additional rent paid and the money was not refunded to him. The store is currently occupied but he does not know who occupies it. He was told it had been rented to another person.

The Plaintiff was cross-examined by Counsel for the Defendant. Under cross examination, he agreed that he had rented the property for more than 5 years. However, he did not agree that in those 5 years he was a satisfied tenant. Nobody forced him to continue occupying the premises. He produced a letter written to the Defendant dated 14th January 2020 and receipts issued to him. In the letter he complained about damage and poor access to the property. In the letter the Plaintiff told the Defendant to do the repairs. Based on his payment the Plaintiff agreed he had a valid tenancy up to 14th July 2021. It was not the Defendant who asked him to leave but something went wrong as a result of the leakage and the Defendant did not do anything about it, so he opted to move out and handed over the keys to the Defendant. The Defendant's lawyer replied to the letter and the Plaintiff denied that in that letter, Defendant maintained that he was told of the damage for the first time. That was the case of the Plaintiff.

The matter was adjourned several times and due to Defendant's absence to proceed with his case the file was withdrawn for judgment.

Decision

This is a matter that was instituted in the Fast Track Commercial Court. It should not have been instituted in that court as it is a dispute arising from a landlord and tenancy relationship. In addition, the sum claimed in the Writ is in respect of a claim less than Le50,000,000. Rule 5(h) of the Commercial and Admiralty Court Rules, 2020, Constitutional Instrument No. 2 of 2020 provides that the Fast Track Commercial Court shall not have jurisdiction to hear and determine disputes relating to landlord and tenancy relationship. Order 4 of the High Court Rules 2007 empowers this Court to transfer the matter at any stage of the proceedings from one Division to another of the Court. I therefore order the transfer of this case to the Civil Division accordingly and any costs awarded to any party will be costs consistent with cases in that division.

Having considered the evidence adduced, I find that there was a tenancy relationship evidenced in the receipts issued to the tenant for payment of the rent. This tenancy was an oral tenancy from year to year and the rent was \$2000 which is not disputed. There has been a breach of the tenancy as the premises was in a state of disrepair which forced the Plaintiff to move out and demand his additional rent paid, which to date remains unpaid.

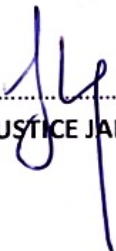
The Defendant case as presented during cross-examination of the Plaintiff was that he moved out of the premises without giving him time to do the repairs after he had informed him of the damage, and that the letter of 14th January 2020 was the first time he was informed that the store was in need of repairs.

The issue is whether the Plaintiff is entitled to recover the said sum of \$2000, a refund of the additional rent requested by the Defendant. Based on the above, it is clear that the payment made was for rent for the period 14th July 2020 – 14th July 2021. This rent was requested by the Defendant in September 2019 which was not the due date for its payment but it was paid on the premise that the Plaintiff will repair the premises, the state of disrepair having been brought to the attention of the Defendant by the Plaintiff several times from the date of payment of the additional rent in September 2019.

I find that the Defendant failed to carry out the repairs and refund the rent of the Plaintiff which he was obliged to do as the premises could no longer be occupied by him, as his goods were being damaged as a result of the leakage. The Plaintiff was forced to move out on 14th March 2020 three months prior to the expiration of his tenancy which was to have expired on 13th July 2020. It is worthy to note that the Plaintiff took steps to mitigate his loss thereby preventing further damage to his goods kept in the store.

It is but fair and in the interest of justice for the Defendant to return the additional rent of \$2000 he requested and which was paid as the Plaintiff could no longer occupy the premises due to the leakage for a period of the tenancy which had not even commenced.

I therefore find that the Plaintiff has proved his case on a balance of probabilities and judgment is granted in his favour. The Plaintiff shall recover from the Defendant the sum of \$2000, interest thereon from September 2019 until judgment at the rate of 4% per annum and costs in the sum of Le8,000,000.


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HON. MRS. JUSTICE JAMESINA E. L. KING J. A