

HC 11702/2001

JANE KUWANA
versus
RUSAPE TOWN COUNCIL
and
PETER CHERIYA

HIGH COURT OF ZIMBABWE
KAMOCHA J
HARARE 2 and 23 July 2003

Mr *Toto*, for the applicant
Mr *Mandizha*, for the respondents

KAMOCHA J: On 1st October 1984 the parties concluded a lease agreement whereby applicant leased immovable property known as stand number G13 in Vengere Township, Rusape. The second respondent is the present occupier of the property. Papers filed of record reveal that the second respondent obtained occupation through means which were not above board. The council through its town secretary acknowledged that the circumstances under which the second respondent obtained occupation were questionable and council sympathised with the applicant but it did not have any choice in the matter.

Council's sentiments seem to confirm the applicant's averments that she was forced to vacate the house by one of the Council's officers - a councillor known as Mr Nyatoro. She went on to allege that she contested the unlawful eviction to no avail since the reasons for her eviction were said to be political and council was incapable of doing anything. She, on numerous occasions personally approach the director of Housing and Community Services one Mrs B. Matsanga who in fact confirmed on many occasions and admitted that all the Council records pertaining to the said property still had her name on them. Councillor Nyatoro had the applicant forcibly evicted from the property to make way for the second respondent.

Mr *Muzawazi* the council secretary who swore to the opposing affidavit averred that council had no knowledge that applicant was forcibly evicted from the said property. He clearly contradicted himself because he had earlier on acknowledged, in a letter dated 24 July 2001, that the council noted that applicant had vacated the house on 15 August 1992

due to circumstances which council agreed may be questionable.

The second respondent did not file any opposing papers. One would have expected him to do so and explain the circumstances under which he obtained occupation of the property were not as alleged by the applicant.

No affidavit was filed by Nyatoro to controvert what the applicant alleged. Neither did the Director of Housing and Community Services Mrs B. Matsanga. It seems to me, therefore that the allegations made by the applicant are true.

Council offered to sell the property to the applicant on 10 March 1986 and she accepted the offer. She continued to pay instalments until 1991. If the applicant had breached any agreement council was expected to declare the agreement cancelled. What is clear is that council did not cancel the agreement. To do so council would have to proceed in terms of the provisions of the agreement. Clause 8 of the agreement provides as follows:

“(8) That if the Lessee shall default in payment of rent, the Lessor shall be entitled to demand payment in writing, which if not paid within 14 days, or if the Lessee shall commit any breach of terms and conditions thereof, the Lessor shall be at liberty to declare this lease cancelled and eject the Lessee therefrom, without prejudice.”

Council did not declare the agreement cancelled which explains why all documents, pertaining to the said property, kept at its offices still bear the name of the applicant. It realised that the purported eviction, by Mr Nyatoro for political reasons, was illegal.

Having made a finding that council did not cancel the lease agreement I therefore need not deal with the question of prescription.

The order of the court is that the application be and is hereby granted in terms of the draft.

Messrs T.A Toto & Partners, applicant's legal practitioners.

Messrs Chiwanza, Chigadza & Partners, 2nd respondent's legal practitioners.