

LONGMAN ZIMBABWE (PVT) LTD  
versus  
J. MIDZI  
and  
OTHERS

HIGH COURT OF ZIMBABWE  
MUSAKWA J  
HARARE, .....2006

**Civil Action**

Mr *T. Biti*, for applicant  
Mr *P. C. Paul*, for the defendants

MUSAKWA J: This matter was originally set down as a trial on the continuous roll. On the date of hearing the parties agreed that there were no triable issues. They sought to file a statement of agreed facts and presented their arguments.

This is an action for the ejectment of the respondents from Paternoster Court which is situated at Number 157 Josiah Chinamano Avenue, Harare.

The statement of agreed facts reads:-

- “1. The plaintiff is the registered owner of the immovable property in question, namely Paternoster Court.
2. That notice was given to the defendant on the 27<sup>th</sup> May 2003 and purportedly on the 29<sup>th</sup> August 2003.
3. That an application was made to the Rent Board for an ejectment order certificate in late 2003 or early 2004.
4. The parties attended the hearing before the Rent Board in June 2004.
5. The Rent Board issued the individual certificates for ejectment and an order in June 2004, although the individual certificates were not served on the defendant.
6. That the defendants purportedly noted an appeal against the certificate of the Rent Board on the 19<sup>th</sup> July 2004.
7. On the 28<sup>th</sup> July 2004, the 6<sup>th</sup> November 2004, and the 26<sup>th</sup> July 2005, defendants through their legal practitioners of record requested the report by the Chairman in terms of section 35(3)(a) of the Rent Regulations S.I. 1626/1982.
8. The Chairman furnished his abovementioned report on the 29<sup>th</sup> November 2005.

9. That in the event of the event of the court ruling in favour of the plaintiff of (sic) the issue of ejectment the parties will agree on the quantum of damaged for holding over.”

From the bundle of documents produced before the court, there is a letter addressed to the first defendant, giving him notice to vacate by 31<sup>st</sup> October 2003. The letter by plaintiff’s agents is dated August 2003. The letter further states that the notice supercedes that issued on 27<sup>th</sup> May 2003. The reason given for termination of the lease was that plaintiff wanted the premises for use by its own members of staff. It was further stated that the occupation by members of staff would be preceded by structural renovations. On 3<sup>rd</sup> May 2004 plaintiff through its agents had applied to the Rent Board for a certificate of ejectment.

It was agreed that a valid notice to vacate was not given. It was also contended that plaintiff does not require the premises for its personal use since the notice states that the premises are required for use by plaintiff’s employees. This, it was further argued, was not consonant with the provisions or wording of section 30(2) of the Rent Regulations. It was also submitted that the nature of renovations to be effected were not submitted to the Rent Board. Another argument raised was that the decision of the Rent Board had been appealed against and therefore it was suspended. Related to that argument was the validity of the notice of appeal which was filed with the Secretary of the Board. It was submitted that the fact that the Chairman of the Rent Board furnished his report to the Administrative Court was indicative of the validity of the notice of appeal.

A hearing was conducted by the Rent Board which issued a certificate of ejectment on 21<sup>st</sup> June 2004. Defendants filed a notice of appeal on 19<sup>th</sup> July 2004. Applicant contended that the notice was defective because it was titled: “Before the Rent Board, Northern Region”.

Nonetheless the Chairman of the Rent Board furnished his report in terms of the regulations. The report states that one of the intended beneficiaries, Obert Kutadzaushe gave evidence on behalf of the plaintiff.

Mr Biti submitted that plaintiff complied with the regulation in two ways. Two months’ notice was given to the defendants and plaintiff also approached the Rent Board for a certificate of ejection. He further submitted that if either of the two actions taken by the plaintiff was invalid, then the court should uphold the one that is procedural. It appears Mr Biti made this submission having taken cognisance of section 3(a)(i) of the regulations which provides that:-

- “3. No notice to vacate a dwelling given by a lessor for the purposes of -
  - (a) paragraph (c) of subsection (2) shall be of any force or effect -
    - (i) if it does not specify the person for whose personal occupation the dwelling is required.”

It is accepted that the notice given did not specify the persons for whose personal occupation the premises were required. From a plain reading of the aforementioned provision it is quite clear that the notice to vacate was defective.

However, plaintiff also places reliance on the certificate of ejection issued by the Rent Board. Section 30(2) of the Rent Regulations provides that -

- “Subject to the provisions of this section no order for the recovery of possession of a dwelling or for the ejection of a lessee therefrom, which is based on the fact of the lease having expired, either by effluxion of time or in consequence of notice duly given by the lessor, shall be made by any court so long as the lessee continues to pay the rent due within seven days of due date and performs the other conditions of the lease, unless, in addition -
- (a) .....
  - (b) .....
  - (c) .....
  - (d) .....
  - (e) The appropriate board has issued a certificate to the effect that the requirement that the lessee vacate the dwelling is fair and reasonable on some other ground stated therein, and the date specified in the certificate for the vacation of the dwelling has passed.”

Defendant's contention in respect of this ground is that they have noted an appeal which at law suspends the decision of the Rent Board. Mr *Paul* based his submission on the common law position. I am not persuaded by the authorities cited by Mr *Biti* that the noting of appeal does not suspend the decision of the Rent Board.

In the case of *Chadamoyo Chatizembwa v Circle Cement* HH 121-94 applicant's contract of employment was terminated following a hearing in terms of the company's code of conduct. He appealed against the decision to the Labour Relations Tribunal in terms of the then Labour Relations Act. SMITH J (as he then was) held that there was no provision in the Labour Relations Act that pending the appeal the determination shall be suspended. He further held that if it was the legislature's intention, there should have been a specific provision to that effect. This decision was distinguished by the Supreme Court in *U.T.C. (Zimbabwe) Ltd v Chigwedere* 2001 (1) ZLR 14 on the basis that the decision that was being appealed against was not that of a statutory or administrative body. The Supreme Court further held that such a distinction is crucial.

The Rent Regulations are silent on the effect of noting an appeal against the decision of the Rent Board. It does not automatically follow that in the absence of such a provision, then the noting of an appeal does not suspend the decision of the Board. In the absence of a specific statutory provision, the common law applied. There are several statutes that have ousted the common law principle and examples that immediately come to mind are the Labour Act [*Chapter 11:02*] and the Maintenance Act [*Chapter 5:07*].

Accordingly, I hold that plaintiff has not made a case for defendant's ejection. The matter is dismissed with costs.