

FRANCIS NDOWA

versus

GODFREY ANYIGA ADEBE

and

T ANYIGA ADEBE

HIGH COURT OF ZIMBABWE

GOWORA J

HARARE, 25 November 2010 & 2 December 2010

Opposed Court Application

C. Mavhondo, for the applicant

V. *Makuku*, for second respondent

No appearance for the first respondent

GOWORA J: On 20 September 2005 the applicant and the two respondents concluded an agreement in terms of which the respondents leased from the applicant an immovable property, namely, 6 Thames Rd Vainona in Harare. The lease agreement was to extend for a period of twelve months terminating on 31 August 2006. It is common cause that the lease was not renewed but the parties after some dispute entered into a settlement in terms of which it was agreed that the lease would continue until 30 December 2008 after which the respondents would vacate the premises. When the fateful day arrived the respondents did not vacate as agreed and as a consequence the applicant approached the Rent Board for a certificate for the eviction of the respondents from the premises. On 9 April 2009 the Northern Region Rent Board issued a certificate for the eviction of the respondents from the premises. The eviction was effective on 1 May 2009. The applicant has now approached this court for an order for the eviction of the respondents from the premises.

Although both respondents were served with the application, it is only the second respondent who has filed papers opposing the grant of the relief being sought. She states in her opposing affidavit that she did not refuse to vacate the premises after the settlement between the parties and avers that there was an oral agreement for the extension of the lease as had been the norm between the parties. She maintains that as a result the settlement fell away and she became a statutory tenant all over again. She admits that a certificate for her ejection was issued by the Rent Board and says that the certificate was wrongly issued and she intends appealing to the Administrative court against the decision of the Rent Board. She stated further that she was entitled to be given three months notice before being evicted and further that the person who had represented the applicant when the settlement was entered into had no *locus standi* and that as a consequence the deed of settlement was a nullity for want of a power of attorney from the applicant.

Whether the respondent was a statutory tenant or not is not an issue that I can debate. That was supposed to be placed before the Rent Board by the respondent. I do not know whether or not she did so. The fact remains that the matter was placed before the rent board which issued a certificate for the ejection of the respondent and her spouse. She is aware that an appeal lies against the decision of the rent board to the Administrative court. She has not appealed. In terms of s 35 of the Rent Regulations 2007 a lessor or lessee who is aggrieved by a decision of the rent board may lodge an appeal against such decision to the Administrative court. The respondent is before me attempting to raise a defence against the decision of the rent board. That is no longer before me as it was determined by the rent board that the applicant had shown good cause for her ejection from the premises. Apart from registering the certificate as an order of court, this court cannot enquire into the propriety of the determination by the rent board as that is function of the Administrative court when considering the appeal.

In my view, the applicant is entitled to an order for the eviction of the respondent from the premises. In the premises an order will be issued in terms of the draft.