IN THE SUPREME COURT OF BELIZE A.D. 2008
FROM THE INFERIOR COURT OF STANN CREEK JUDICIAL DISTRICT

CIVIL SUIT CASE NO. 1 OF 2008

DELIA ANDREWS Appellant/Defendant

AND

KENT McKENZIE Respondent/Complainant

Before: Hon Justice Sir John Muria

Ms T. Pitts for Appellant
Mr M. Chebat for Respondent

REASONS FOR DECISION

MURIA J. On 10 October 2008, the Court dismissed appellant's appeal against the decision of the learned Magistrate, Stann Creek Judicial District, given on 13th April 2007 and indicated that reasons for dismissing the appeal would be given at a later date. I do so now give those reasons.

The case before the Magistrate's Court, Stann Creek District was for eviction of the defendant (now appellant) from the premises situated at 1st New Site, Dangriga Town. The premises is said to be owned by one Hersel

Lincoln McKenzie who is the brother of the plaintiff (the respondent). Due to Medical reasons, Mr. Hersel Lincoln McKenzie left the country leaving his brother, the respondent to complete the construction of the house and to take care of it.

The appellant was employed by the respondent and was allowed to occupy the house, rent free, because she had nowhere to stay. At the end of her employment in 2004, the appellant was allowed to continue occupying the house, rent free, until she could find an accommodation. In 2005, the respondent's brother needed the house and so the appellant was asked to leave the premises. She refused to do so, despite repeated requests from the respondent for her to vacate the premises.

The respondent thereafter issued proceedings in the Magistrate Court to evict the appellant. On 13 April 2007, the Magistrate Court found for the respondent and ordered the appellant to vacate the premises by 1 June 2007, in default, an eviction process to be executed.

The appellant was not happy with the decision of Magistrate Court and appealed on three (3) grounds, namely:

1. *The Learned Magistrate erred in law in allowing the Plaintiff to be heard since the Plaintiff/Respondent has no locus standi to commence the action.*

2. *In the absence of evidence of ownership of the property the Learned Magistrate ought not to have allowed the Plaintiff's/Respondent's claim to succeed.*

3. *Having regard to the Plaintiff and evidence the Learned Magistrate erred and was*
   wrong in law when he allowed the Respondent's claim to succeed since at the end of the taking of evidence the Magistrate ought to have concluded that he has no jurisdiction to conclude the matter as he did under Section 3 of the District Court Procedure Act.

On the first ground, Ms. Pitts of Counsel for the appellant, submitted that before the appellant could bring proceedings before the Magistrate Court acting as an agent of the owner of the property concerned, he ought to have himself registered as agent under Section 64(1) of the *Landlord and Tenant*

Act (Cap. 189). Non-registration as agent was fatal to the respondent's case, as no standing could be conferred on him to bring the case. This, Counsel submitted, is so, despite the fact that Mr. Hersel Lincoln McKenzie confirmed in evidence that the respondent was his agent to take care of his property while he was away.

I set out Section 64(1) of the *Landlord and Tenant Act*, relied upon by the appellant. It provides as follows:

> *"64.(1) Every person shall, before acting as an agent, be registered as such with the Clerk of Court of the Judicial District in which the tenement is situate, and if he so acts while his name is not on the register, he commits an offence."*

The submission of Counsel for the appellant is that this provision requires the respondent to be registered as 'agent' before he could bring proceedings to evict the appellant. Emphasis is placed on the word "shall" in the sub section.

While the word "shall" denotes a mandatory requirement for an act to be done or not to be done, I feel that, in the context of the present case, the more critical point to ascertain is the definition of "agent" for the purpose of section 64(1) of the Act. It is therefore necessary to look at the definition of "agent" in the act. Section 2 defines "agent" as –

> *"a person authorized by a Landlord to let any land or buildings, or to collect rent, or to levy distress, or to do any other act in relation to a tenancy".*

It is quite plain from that definition that the agent must be someone who is authorized by a landlord to take certain action on his behalf in relation to a tenancy. In the present case there is plainly no landlord and tenant relationship created. The appellant had not been charged rent nor conditions imposed on her for occupying the house. So the "agent" required to be so registered under section 64(1) is an agent authorized by the landlord to do the things set out in the definition of "agent" in section 2 of the Act. Counsel cited the case of ***Affan –v- D badie*** (9 November 2006) Court of Appeal of Trinidad and Tobago. That case, however deals with a rented premises. There was a landlord/tenant relationship between the landlord and

appellant. So the "agent" had to establish his authority as agent of the landlord. That is not the case here.

The position of the appellant in this case is correctly put by the learned Magistrate as a bare licensee. See ***Facchini –v- Bryson*** (1952)1 LTR 1386. She had been given gratuitous occupancy of the premises by the respondent as an act of friendship and generosity. The evidence before the Magistrate Court was that, the appellant was a good friend to the respondent's wife and because she had no place to stay, she was allowed to live in the house while being employed and even, after her employment ceased. Those are gratuitous gestures on the part of the respondent, and by extension, of his brother, the owner of the premises. Those acts of grace have now come to an end, and the respondent, with the authority of his brother and owner of the premises was entitled to tell the appellant to leave the premises. The respondent need not register as "agent" to demand a gratuitous licensee, such as the appellant in this case to vacate the premises.

There is also another compelling reason in favour of dismissing this appeal, namely, there was never an intention to create any tenancy between the parties in this case. On the evidence, the arrangement to allow the appellant

to occupy the premises concerned was clearly personal in nature. This made her a clear licensee. See ***Abbeyfield (Harpenden) Society Ltd –v- Woods*** [1968]1 WLR 374. In his decision, the learned Magistrate referred to the cases of ***Issac –v- Hotel de Paris Ltd*** [1960]1 All ER 348 and ***Cyrus –v-Gopaul*** (1989) Court of Appeal, Trinidad and Tobago, Mag. App. No. 69 of 1987. Those case are apt in point.

The second ground relied upon by the appellant is that the respondent had not shown any evidence of ownership over the premises concerned, as such the learned Magistrate was wrong to allow the respondent to succeed. The short answer to that argument is that the appellant was a mere gratuitous licensee, allowed into the premises by the respondent on the authority of his brother, the owner of the premises. This is not a landlord/tenant relationship and in such a case, the respondent's authority from his brother, the owner of the property was sufficient to demand the appellant to vacate the premises, and to bring proceedings in the Magistrates Court, should the appellant refused to comply with the demand.

In any case, the appellant cannot rely on the argument that the respondent had not shown evidence of ownership of the property and so could not bring

proceedings against her, since her occupancy of the premises was by gratuitous gesture on the part of the respondent. At the very least, the respondent had the confirmed authority from the owner of the property to take care of his property and so had rights and obligations flowing there from. The appellant had none flowing from her bare licensee. The most she can do was to ask for time to vacate the property.

The third ground is without merit. The Learned Magistrate clearly had jurisdiction to determine the case. There was nothing in the evidence before the Court to suggest otherwise.

For the above reasons, the appeal is dismissed.

Sir John Muria
3 November 2008