

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 30 OF 2014.

ARISING FROM SOROTI MA. 51 OF 2014

OCEN PATRICKAPPELLANT

V

EDATU JOSEPH.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant through his advocate Mr. Dagira, appealed the decision of HW baker Rwatooro Chief Magistrate Soroti dated 8.10.2014 on three grounds of appeal that I will revert to later in the judgment.

The respondent was represented at the hearing by Mr. Philip Engolu from Isodo & Co. Advocates .

This appeal is against the order of the chief magistrate dismissing an application to distress for rent.

The appellant filed an application to distress for rent against the nine respondents . He averred in his application that he is the registered proprietor of plot 22 Gweri road which he rented to the respondents in 2012. He attached tenancy agreements, demand notes to pay rent and a certificate of title in support of the application.

At the hearing of the application on 8.10.2014, six of the respondents were present while three were absent . The appellant was present.

During the proceedings, one Okanyi is recorded as standing in for his uncle Peter Asamo Itoot Otai the registered proprietor.

At this point, the chief magistrate made an order that in view of the appellant's expired certificate and in view of the running certificate of another person, the appellant had no locus standi and he proceeded to dismiss the application.

While the procedure to distress for rent is provided for in the Distress for rent (Bailiffs) Act cap 76 and the rules made there under, the general principles of law landlord and tenant relationships apply before the distress order can issue.

The applicant must show that a landlord /tenant relationship exists and that the tenant has been in breach of that agreement by failing to pay rent agreed upon.

Osborn's dictionary 8th edition defines landlord and tenant relationship as dependant upon a contract and 'is created by the landlord allowing the tenant to occupy the landlord's property for a consideration termed rent, recoverable by distress'.

The appellant demonstrated that such a relationship existed between himself and the nine respondents.

He also demonstrated that the respondents were in arrears of rent hence his application for distress.

The respondents did not file any response to the notice to distress and merely appeared in answer to the notice to show cause against distress. The respondents did not address court on the application. Instead it is one Okanyi , who was not a party to the proceedings who addressed court. It was on the basis of

the information conveyed by this Okanyi that the chief magistrate disposed of the application.

I find that the magistrate erred in acting on information that was not properly before the court. In any case, the information suggested that some other person was making claims to ownership of the premises in question but it did not show that person was in control or that he was in a landlord /tenant relationship with the respondents.

Turning to the grounds of appeal, the first ground is that the learned chief magistrate erred in law and fact when he held that the appellant lacked locus standi to claim rent.

Counsel Dagira supplied authorities on this point that I have carefully considered.

Based on the evidence before the court, If there was a person with the locus standi it was the appellant. Broadly, locus standi means the right to be heard or to present a claim before court. He was entitled to be heard on the documents he presented. The respondents were entitled to respond to the claims by the appellants . This did not happen. Ground one succeeds.

Ground two is that the learned magistrate erred in dismissing the application in a summary manner.

An application for distress for rent is a very short proceeding and is usually disposed off in a summary manner. I find no merit in this ground.

Ground three is that there was a miscarriage of justice. There is merit in this ground because the parties to the application were not heard.

In the result, I allow the appeal, set aside the order of the chief magistrate and order that the application be heard afresh before the Grade one magistrate.

DATED AT SOROTI THIS 13th DAY OF MARCH 2015.

HON. LADY JUSTICE H. WOLAYO