



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2013: No. 3

BETWEEN:

BUFORD SMITH

APPELLANT

-and-

JANETTE SMITH

RESPONDENT

Date/s of Hearing: June 4, 2013

Date of Judgment: July 31, 2013

Auralee Cassidy, KAIROS Philanthropy – for the Respondent

Mrs. Oonagh Vaucrosson – Legal Aid, for the Appellant;

JUDGMENT / RULING / REASONS FOR DECISION

1. The Appellant, Mr. Buford Paul Wallace Smith appealed the decision of the Worshipful Mr. Tyrone Chin dated 9th November 2012 on the grounds that the Learned Magistrate erred in law and in fact in ordering vacant possession of the premises occupied by him by 30th November 2012.

2. The Appellant relies on five grounds of appeal which relate to errors in law and of facts. Counsel for the Appellant submits that the Learned Magistrate wrote a short note of what transpired at the hearing. He gave no reason for his decision. The Appellant seeks an order that this Court set aside the ruling of the Learned Magistrate and remit the matter to the Magistrates Court for a full hearing of the facts, supporting evidence and legal argument.

The Background

3. The Respondent sent a Registered Letter dated 29th August 2012 to the Appellant giving him Notice of Intention to evict him on the basis of his:
 - i. Rental arrears,
 - ii. Breach of the Landlord/Tenant agreement,
 - iii. Changing the lock on his unit and, his continued offensive behavior despite request for this to be rectified.
4. The Appellant did not vacate the premises by 30th September consequently, on the 18th October 2012 the Respondent filed a Summons seeking a hearing of an application that the tenancy should be terminated. The Summons was heard by the Learned Magistrate on the 9th November 2012, and at the conclusion of the hearing the Learned Magistrate ordered vacant possession by 30th November 2012.
5. The Learned Magistrate's notes of the proceedings reads:

“9th November, 2012

Ms. Smith said she sent Mr. Smith a letter dated 29 August 2012. He is financially aided and is now 8 months in arrears. Mr. Smith has changed his locks. Mr. Smith is loud and vile and threatening. Mr. Smith has opened up garbage. He has a car parked. Police has been called several times. She wants vacant possession. Mr. Smith said Ms. Smith is his sister. He only started to pay rent recently. Ms. Smith is very greedy. The property belongs to their parents. She is trying to steal his birth right and inheritance. He offered to pay \$700 per month. The Court orders vacant possession by 30th November, 2012.

Signed Worshipful Magistrate Tyrone Chin”

Counsel for the Appellant submits “*inter alia*” that this note of the proceeding does not indicate the Learned Magistrates reasons for his decision.

6. Counsel says that the Learned Magistrate made a ruling in this matter at the first appearance before the Court. There were several other new matters to be considered by the Learned Magistrate who devoted approximately fifteen minutes to hearing the facts

and, thereafter made a legal and factual ruling. Counsel submits that the Appellant objected to vacant possession and, the Learned Magistrate ought to have adjourned the matter to a further date so that he could hear the Appellant's objections to the order sought by the Respondent. Counsel stressed that on a Thursday when Civil matters are dealt with several Civil cases are mentioned. The Civil Court operates like the Criminal arraignment Court when dates are set for trial and the parties are given directions as to how the matter will proceed. It is very rare that a matter is heard and disposed of at the first hearing. The brevity of what the Learned Magistrate wrote speaks volumes. It is accepted that the Appellant was in arrears but the matter needed further investigation. For example, there is the assertion that the property belonged to their parents. The Learned Magistrate should have ascertained who in effect was the Landlord. What were the terms of the tenancy agreement. The Learned Magistrate made his ruling before he had the requisite information that ought to have been included in an affidavit (see section 21 (3) of the Landlord and Tenant Act 1974).

7. On the other hand, Counsel for the Respondent maintains "*inter alia*" that the Learned Magistrate's reason for his decision can be deduced from the record. He considered the comments from each party and took the view that it was appropriate to make the order for possession.

Court

8. The Learned Magistrate's note at Page 3 of the record is the only record of the hearing. However, I disagree with Counsel for the Respondent that the reason for his decision can be deduced from the notes. There is absolutely no written reasons for the decision provided by the Learned Magistrate. The Appellant objected to the order for possession and, in the absence of reasons for the decision it is not clear on what basis the order for vacant possession was made. The Appellant had material that he wanted to put before the Court but he was not given an opportunity to do so.
9. During the Thursday Civil mention Court a Magistrate has a large number of matters that are first appearances and must be dealt with. Fairness require that each litigant must be given an opportunity to present their case. Fairness dictates the need to give written reason for a decision., a losing party is entitled to know that his case has been properly considered and, the reason why his claim his failed.
10. It is in the Learned Magistrates discretion how much needs to be written, however a litigant is entitled to have his case considered in accordance with the criteria laid down by law. In the absence of a proper record and reasons for the decision it is impossible for this Court to know what lead the Learned Magistrate to his decision.

11. The note that was written by the Learned Magistrate is not consistent with giving reasons for the decision. Consequently, this Court allows the appeal, quashes the order for possession and remit the matter to the Magistrate's Court to be dealt with by a different Magistrate. The relevant provision of the Landlord and Tenant Act 1974 should be complied with. The Respondent should produce and or present her evidence and the Appellant given an opportunity to present his case.

Dated July 31, 2013

Justice Wade-Miller, PJ