

IN THE SEYCHELLES COURT OF APPEAL

- 1. **WALTER DESAUBIN**
- 2. **ANICETTE LUCAS**

APPELLANTS

VERSUS

THERESIA ISAAC

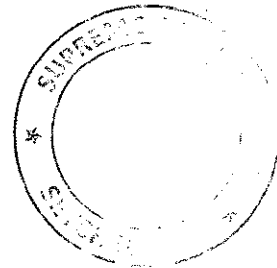
RESPONDENT

Civil Appeal No. 5 of 1996

[Before: *Goburdhun P., Silungwe, Ayoola, JJA*]

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Mr. R. Valabhji for the appellants
 Mr. F. Bonte for the respondent



JUDGMENT OF THE COURT

Delivered by Ayoola, J.A.

On 6th September 1983 the Registrar of Tenants Rights provisionally registered the respondent as a Statutory Tenant under Section 14 of the Tenants Rights Act, 1981 ("the Act") in respect of land owned by Walter Desaubin ("the first appellant"). That provisional registration was confirmed by the Tenants' Rights Tribunal ("the Tribunal") on an appeal by the first appellant and on a second appeal by him to the Supreme Court in a decision given by Perera, J. on 31st July 1991. On 4th April 1989, the respondent, as the Certificate of Statutory Tenancy (Exh. P9) shows, had been registered as a Statutory Tenant of the premises. A further application to Amerasinghe, J apparently to order the 1st appellant to allow the respondent to buy the land was rejected in March 1994, Amerasinghe, J rightly pointing out that all that the Tribunal had ordered was that the respondent, Theresia Isaac, be registered as a Statutory Tenant.

In October 1994 the 1st appellant had sold land described as Parcel T1191 (which the respondent claimed had been carved out of Parcel T302 adjudicated to be sold under the Act to her) to the 2nd appellant. The respondent claimed that she was aggrieved by the sale because in her view, it was effected with the object of attempting to deprive her of her rights under the Act, and, that her said rights had been "severely prejudiced" by the acts of the appellants.

By plaint dated 14th November 1994 the respondent commenced proceedings against the appellants praying the Supreme Court to order -

- (i) that the transfer of T1191 be set aside on the ground that its sole objective was to deny her of her rights under the Act and that the 1st appellant should transfer the said parcel T1191 to her at the price of R10,000; in the alternative -
- (ii) that the 2nd appellant should transfer the said parcel T1191 to her at the same price and
- (iii) in the event of their several failure to transfer, the judgment of the court be registered to effect such transfer.

In addition to these reliefs she claimed damages against the appellants, and costs.

Bwana J, who tried the action entered judgment for the respondent but not exactly in terms of her plaint. He declined to order that the transfer made by the 1st appellant to the 2nd appellant be set aside. Purporting to use the court's inherent powers to order compliance with the procedure under the Act in favour of the respondent, he directed that the judgment of the court "be brought to the attention of the Registrar of Lands in respect of parcels T302 and T1191 with the aim of informing him that the current purchasers (Walter Desaubin and Anisette Lucas) obtained their title deeds through deception and fraud. Then steps should be taken to rectify those

errors." He awarded damages against the appellants because, as he put it, "there had been attempts by the defendant to breach her right to purchase the land."

This is an appeal from that decision. The appellants (described in this appeal as "1st appellant" and "2nd appellant" or simply as "the appellants") are respectively Walter Desaubin and Anisette Lucas who were the defendants in the Supreme Court. The respondent is Theresia Isaac who was the plaintiff. The premises in question are described as parcels T302 and T1191. Parcel T302 was owned by one Camille Desaubin, a brother of the 1st appellant. Prior to her application in February 1983 to be registered as a provisional Statutory Tenant of the said parcel T302 which covered 4124 sq. metres the respondent had built a house on the land with the permission of Camille Desaubin who had offered the respondent an alternative vacant land after the sale of T302 to the 1st appellant on 25th March 1983. The respondent had rejected that offer for reasons which the Tribunal found to be reasonable. Subsequent transactions in respect of the land between the 1st appellant and the 2nd appellant which gave rise to the action before the Supreme Court have been noted earlier in this judgment. Allegation of fraud in the transactions by the respondent was aroused by the facts alleged by the respondent that parcel T1191 carved out of T302 was bought by the 2nd appellant during the pendency of the present case and with the knowledge of the previous decisions.

Several issues were raised in the proceedings before Bwana, J but it is evident that only few of them are of importance on this appeal. Attempt by the appellants to reopen issues which have been determined in previous proceedings was rightly rebuffed by the judge. The Tribunal had held that the sale transaction by which the 1st appellant acquired Parcel T302 "was effected with one object in mind and that is to attempt to deprive the respondent of her rights under the provisions of the Tenants' Rights Act 1981." In the result, that Tribunal further held that: "To enable him (i.e. Walter Desaubin) to claim exemption under the Act of 1981 would not only encourage

similar transactions in future but to permit him benefit through a transaction though to all appearance perfectly legal but dishonest outright." The issues settled by the Tribunal and confirmed on appeal by the Supreme Court (Perera, J.) cannot be reopened in the present proceedings. Bwana, J. was right to have so held.

The main question however on this appeal is whether at the time the action was commenced the respondent had remained a Statutory Tenant or had any rights in the premises.

The rights, as well as duties, of a Statutory Tenant are prescribed by section 26 of the Act. That section provides -

"(1) The rights and duties of a Statutory Tenant in respect of the registered premises for 5 years from the registration date are -

- (a) to enjoy security of tenure under this Act
- (b) to enjoy peaceful and undisturbed occupation in terms of this Act and free from harassment by the Statutory Landlord.
- (c) not to be evicted except in terms of Section 30.
- (d) to purchase the premises by terms of Part VII."

Section 27(1) of the Act which prescribes the rights and duties of Statutory Landlord in respect of the registered premises includes in subsection 27(1)(d) and (e) a duty -

"(d) subject to section 34, not to sell, transfer ownership of, or mortgage the premises except under specific reservation of the Statutory Tenancy.

(e) to grant a transfer of the premises to the Statutory Tenant when called on to do so under Section 34;"

The right of purchase which the Statutory Tenant has must be exercised within 5 years of the registration date defined in section 23(3) of the Act as "the original date of provisional registration under section 14." Section 31 of the Act provides that the Statutory Tenant may give notice to the Registrar within five years of the registration date that he wishes to purchase the registered premises from the Statutory Landlord.

If a Statutory Tenant does not apply to the Registrar to purchase the premises within five years from the registration date (a) the Statutory Tenancy terminates and he shall cease to be a Statutory Tenant of the premises; but (b) he shall not be evicted from the premises unless 30 days notice in such form as may be prescribed are given by the Statutory Landlord before any steps towards eviction are taken and a copy of that notice is sent to the Registrar. (Section 30(3) of the Act.)

Having regard to the provisions of the Act which have been earlier set; out it is not difficult to agree with the submissions made by counsel for the appellants that -

- (i) The mere application to register as a statutory tenant does not prohibit the sale of a land occupied by a tenant nor does even the registration of a person as a statutory tenant.
- (ii) The rights of a Statutory Tenant are fully protected under Section 12 of the Act, whether the property is sold or not.
- (iii) The sections relating to the right to purchase i.e. Sections 31 et seq have not been followed.
- (iv) The five year time limit applicable in this case under Sections 30 and 31 has been ignored. The five year time limit relates back to the Registration Date. The time limit cannot be extended by the courts.

A few comments are made on these submissions taking them as serially numbered for ease of reference.

(i) Section 27(d) of the Act does not absolutely prohibit the Statutory Landlord from selling the premises but requires such sale to be made subject to the Statutory Tenancy, (ii) The prohibition of harassment or eviction of the Statutory Tenant in terms of Section 12(1) of the Act operates not only against an owner but also "other person", (iii) Failure to serve the prescribed notice of wish to purchase registered premises means that the Statutory Tenant cannot be said to have exercised a Tenants' Right of Purchase. A Statutory Tenants' Rights of Purchase which is not exercised does not confer any benefit on the Tenant or obligation on the Landlord, (iv) Where the five year limit for exercising the Statutory Tenants' Right of purchase had lapsed without the Tenant exercising such right the Statutory Tenancy terminates in terms of Section 30(3) of the act, and the person ceases to be a Statutory Tenant and ceases to be capable of enforcing rights of a Statutory Tenant.


The evidence in this case reveals that the respondent was provisionally registered as a Statutory Tenant on 6th September 1983. In terms of Section 23(3) of the Act that is the "registration date" for the purpose of determining the 5 year period within which the respondent should have exercised a right of purchase, by giving the requisite notice under Section 31. On this appeal, it is conceded that the 5 year period elapsed without the respondent giving such notice. The consequence is that her Statutory Tenancy had been terminated by operation of law as far back as September 1988.

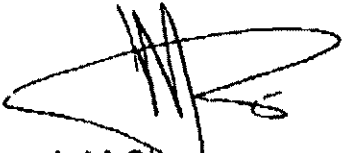
At the first blush the time limit imposed by Section 30(3) and 31 appears harsh in view of the possibility of the several appeals provided in Section 19(1) and (2) of the Act (as amended by Act No. 7 of 1984) being protracted, as happened in this case, beyond five years from the Registration Date. However, Section 30(3) is not ambiguous. Compliance with the provisions of Section 31 is not an impossibility


despite the provisions for challenges to the provisional registration by way of appeal. The Statutory Tenant could still have lodged the requisite notice prescribed under Section 31 in compliance with its provisions. It would then have been left with the owner appealing from the decisions of the Registrar or as the case may be, of the Tribunal, to find ways of staying further process under Part VII of the Act pending the determination of the appeal.

Effect must be given to the provisions of section 30(3) of the Act. Doing so, it is evident that when in December 1994 the respondent commenced these proceedings before the Supreme Court, the Statutory Tenancy had already determined and her claims based on rights and interest as a Statutory Tenant in fact had no such basis. The respondent had in fact ceased to have any standing to make the claims. Bwana J, erred in not giving effect to the provisions of section 30(3) of the Act. If he had he would have held that the respondent's case must fail.

In the result this appeal succeeds and it is allowed. The judgment of Bwana, J given on the 26th February 1996 is set aside. In place thereof judgment is entered dismissing the plaintiff's case. The appellants are entitled to costs both in the court below and of the appeal.


H. Goburdhun
President


A.M. Silbergwe
Justice of Appeal


E.O. Ayoola
Justice of Appeal

Delivered on this 31st day of October, 1996.