

[2015] JMCA Civ 30

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO 31/2014

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA (AG)**

BETWEEN	ALEXANDER OKUONGHAE	APPELLANT
AND	SANDINA McPHERSON-JAMES	RESPONDENT

Appellant in person

Respondent not appearing

5 May 2015

ORAL JUDGMENT

PANTON P

[1] This is an appeal against the judgment of His Honour Mr Vaughn Smith sitting in the parish of Saint Catherine in the night court at Portmore. The judgment was handed down on 15 May 2014 and there are brief reasons provided to the court by the learned Resident Magistrate. The reasons are dated 11 July 2014. The judgment is in respect of a claim brought by the respondent, Sandina McPherson-James, against the appellant for rent, electricity and water bills arising from a tenancy at Lot 468, 2 North, Greater Portmore in the parish of Saint Catherine.

[2] The learned Resident Magistrate in his reasons indicated that when the matter was called the appellant was required to state his defence and that the appellant spent the better part of 40 minutes attempting to do so. According to the Resident Magistrate, the appellant had no receipt for the period in question whether for rent or for the utility bills. The learned Resident Magistrate said that he listened keenly to what the respondent had to say and formed the view that the appellant had no defence to the claim. Consequently, he ordered him to pay the sum of \$129,500.00 together with costs of \$1,516.00.

[3] The appellant is aggrieved by this decision and promptly gave notice of appeal and subsequently filed grounds of appeal. He listed seven grounds of appeal which complained that it had not been established before the Resident Magistrate, that the respondent was entitled to bring the suit, in that, he the appellant challenged the claim that she was his landlady. The grounds also complained of the fact that the period sued for included months that he had already paid and, significantly, the appellant complained that the learned Resident Magistrate did not observe the basic principles of natural justice and fairness.

[4] The records of the court indicate quite clearly that the respondent was served with notice of the hearing of the appeal. She was called and there has been no answer, neither is there any appearance on her behalf. The appellant who is self-represented indicated in his presentation to us that he had the following issues with the judgment of the learned Resident Magistrate:

1. the failure to establish the landlord/tenant relationship;
2. failure of the respondent to give evidence; and
3. failure of the learned Resident Magistrate to give the appellant the opportunity to give evidence.

[5] Section 184 of the Judicature (Resident Magistrates) Act reads as follows:

“On the day in that behalf named in the summons, the plaintiff shall appear, and thereupon the defendant shall be required to answer by stating shortly his defence to such plaint; and on answer being so made in Court, the Magistrate shall proceed in a summary way to try the cause, and shall give judgment without further pleading, or formal joinder of issue.”

This provision is in respect of trial of causes of this nature in the Resident Magistrate’s Court. The trial is to be a summary trial. The Resident Magistrate in this case, quite correctly, asked for the appellant to state his defence. Apparently, the appellant took some time to do so and at the end of it the learned Resident Magistrate concluded that there was no defence. However, the section actually requires the magistrate to proceed in a summary way to try the cause after the defence had been stated. There are no notes of evidence in the record and indeed the reasons for judgment given by the learned Resident Magistrate do not speak of the existence of any notes of evidence.

[6] We are of the view that in the light of what the appellant has said and which he would have said to the learned Resident Magistrate, he ought to have proceeded to try the cause, which means that he should have called on the respondent to give evidence to prove her claim, thereafter the evidence of the appellant in rebuttal, and then come

to a conclusion. That did not happen in this case. Consequently, the judgment cannot stand.

[7] The order of the court is that the appeal is allowed. The judgment of the learned Resident Magistrate is set aside. Costs of \$15,000.00 awarded to the appellant. We see no reason to order a new trial of this matter in view of the fact that the respondent has not seen it fit to appear. We take that to mean an absence of interest in any further proceedings.