

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1199/91

In the matter between:

SUSAN MSIBI	PLAINTIFF
and	
R.H. MATTHEIS	1ST DEFENDANT
MRS D.G. MABUZA	2ND DEFENDANT

CORAM: DUNN J

FOR THE PLAINTIFF: MR DUNSEITH
FOR THE 1ST DEFENDANT: MR SHILUBANE

JUDGMENT

30TH SEPTEMBER 1994

The plaintiff purchased plot No. 1293 from the second defendant in June 1989. There was a house on the plot which the first defendant had leased from the second defendant in terms of a written agreement for a period of 5 years commencing the 1st May 1986. Clause 3 of the lease agreement provided that-

Any improvements the lessee may wish to undertake on the premises will be compensated for after expiry of the lease.

The plaintiff was aware of the lease agreement at the time of the purchase of the property and on the basis of the rule **huur gaat voor koop**, was obliged to honour the agreement. The first defendant continued in occupation of the premises, after the sale of the property, paying the monthly rental to the plaintiff's agents, Buzzby Services (PTY) Ltd.

It later transpired that the lease agreement was null and void because of a failure to comply with certain provisions of the Land Speculation Control act No. 8/1972, the first defendant not being a citizen of Swaziland. The first defendant accepted the position and vacated the premises in February 1991. One of the improvements he had effected on the property was the erection of a 158 metre diamond mesh perimeter fence.

The plaintiff issued summons against the two defendants claiming payment of a total sum of E12,800.00. The plaintiff's case was that the second defendant had not disclosed to her that the first defendant was entitled to compensation for improvements to the property. The plaintiff alleged that the first defendant had removed some of the improvements upon vacating the house. The amount claimed was the value of the improvements plus rental for the months of March and April 1991.

It is common cause that the plaintiff's agent prevented the first defendant from removing the perimeter fence and that it remains in place to date.

The two defendants entered an appearance to defend but in time, the plaintiff obtained default judgment against the second defendant as prayed in the summons. The first defendant had filed a counter claim for payment of the sum of E6,000.00 being the cost of the perimeter fence.

When the case was called, the plaintiff withdrew the action against the first defendant and the action proceeded on the counter-claim.

The first defendant established in his evidence that he erected the perimeter fence during the currency of the "lease".

He was not challenged in his evidence that the cost of the fence was E1,102.00. He gave evidence of what it would cost to erect such a fence at to-day's prices namely E6,000.00 as claimed. It is trite law that a lessee's right to claim compensation for improvements accrues upon the termination of the lease and only after he has vacated the property. Further, that his claim is against the person who is the owner of the property at the time of the termination of the lease. See **COOPER, THE SOUTH AFRICAN LAW OF LANDLORD AND TENANT 1st Edition p. 304** and the authorities there cited.

The fact that the lease agreement was null and void does not alter the position regarding the payment of compensation. The first defendant was at the very least a tenant on a monthly lease vis-a-vis the plaintiff. The rental for the house was paid on that basis to the plaintiff's agent. The plaintiff was aware of the agreement between the two defendants regarding improvements to the property and the obligation to pay compensation continued into the relationship between the plaintiff and the first defendant. There can be no escape from the conclusion that the plaintiff is obliged to pay compensation to the first defendant for the perimeter fence. The question for decision is as to the extent of the compensation. The learned author Cooper *supra* states at p.303 that the compensation to which a lessee is entitled is the actual cost of material. The lessee has no claim for the cost of labour. The authorities referred to by the learned author regarding the exclusion of the labour costs are not available to me but I accept the learned author's statement as correctly stating the law. The first defendant is in the circumstances only entitled to compensation for the perimeter fence in the proved sum of E1,102.00.

Judgment is accordingly entered in his favour in that sum, on the counter-claim, together with interest at 9% p.a. from to-day's date to date of payment and costs.


B. DUNN
JUDGE