JABER *v.* BASMA

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Beoku-Betts, Ag.C.J. (Sierra Leone) and Coussey, J.A.): June 18th, 1952
(W.A.C.A. Civil App. No. 13/52)

[1] **Civil Procedure—judgments and orders—notice to persons interested—sub-tenant to be served with copy of judgment against tenant before writ of possession issued:** Where judgment in an action for possession has been obtained against a person who has sub-let the property in question to another, and that other is in actual occupation of the property, the sub-tenant, being a person affected by the judgment, is entitled to be served with a copy of such judgment in accordance with the provisions of O.XXXIV, r.2 of the Supreme Court Rules, 1947 before a writ of possession can be issued (page 246, lines 32–38).

[2] **Landlord and Tenant—possession—action for possession—notice of judgment obtained against tenant to be served on sub-tenant in occupation before writ of possession issued:** See [1] above.

[3] **Tort — damages — general damages — trespass to goods — general damages may be awarded for plaintiff's inconvenience:** General damages may be awarded to a plaintiff in respect of inconvenience resulting from trespass to his goods (page 247, lines 22–27).

[4] **Tort—damages—special damages—special damage must be strictly proved—court must not estimate loss if not strictly proved:** Since special damage must be strictly proved, a trial judge who is not satisfied by the plaintiff's evidence in respect of his losses is not justified in endeavouring to estimate them (page 247, lines 6–16).

[5] **Tort—trespass—trespass to goods—damages—general damages may be awarded for plaintiff's inconvenience:** See [3] above.

The respondent brought an action against the appellant in the Supreme Court to recover special and general damages for trespass.

The respondent was the sub-tenant of certain premises which were sold by the owner to the appellant, who then sued the tenant for possession. Judgment was given for the appellant, and in execution of a writ of possession in respect of the premises occupied by the respondent the latter's stock-in-trade and personal effects were deposited outside on the pavement. The respondent was not given notice of the proceedings against the tenant, his lessor, and instituted the present proceedings against the appellant to recover general damages for trespass and special damages for loss of cash and goods.

The Supreme Court gave judgment for the respondent, although

the trial judge took the view that the respondent's claim in respect of special damages for loss of goods was exaggerated and reduced the amount of damages accordingly.

On appeal, the West African Court of Appeal considered whether, under O.XXXIV, r.2 of the Supreme Court Rules, 1947, the appellant should have served on the respondent notice of the judgment obtained in the action for possession, and whether the trial judge erred in awarding special damages in respect of damage which was not strictly proved by the respondent.

Legislation construed:

Supreme Court Rules, 1947 (P.N. No. 251 of 1947), O.XXXIV, r.2:

> "Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed."

R.W. Beoku-Betts for the appellant;
Zizer for the respondent.

FOSTER-SUTTON, P.:

The respondent claimed the sum of £933. 5s. 10d. which he alleged was the value of his stock-in-trade, personal effects and money lost as an outcome of the wrongful execution of a writ of possession which the appellant caused to be issued in connection with the premises occupied by the respondent. He also claimed general damages for the trespass.

The respondent was a sub-tenant of one Abdul Radar of the ground floor and a portion of the first floor of premises known as No. 14 Little East Street, Freetown, where he lived and carried on his business. Radar leased the whole of the premises from one Mrs. Marian Taylor who afterwards disposed of her interest in the property to the appellant. The appellant brought an action against Radar for recovery of possession of the premises for breach of covenant under the lease, and judgment was given in his favour. As a result of the judgment the appellant obtained a writ of possession and the sheriff, by his officers, took possession of that portion of the premises occupied by the respondent and caused his stock-in-trade, his personal effects and those of his wife to be removed outside the premises on to the pavement. The respondent alleged

that the sheriff's action resulted in his suffering loss of cash, amounting to £150, and stock-in-trade and personal effects to the value of £783. 5s. 10d.

It was proved that at the time of the execution of the writ of possession the respondent's lease still had approximately six months to run and the appellant admitted that at the time of the execution he knew that the respondent was in occupation of the shop premises.

The respondent alleged, and it was not disputed, that he had no notice of the proceedings brought by the appellant against Radar, or of the writ of possession, and that the first intimation he had that a writ of possession had been issued was when the under-sheriff arrived with his assistants at the premises occupied by him.

The appellant sought to prove that no pilfering had occurred as a result of the execution of the writ of possession as alleged by the respondent, but the learned trial judge found in favour of the respondent on that issue, although he took the view that the special damages claimed had been exaggerated. He awarded the respondent the sum of £150 in respect of money alleged to have been stolen, £250 for loss of goods and £100 by way of general damages. It is against that judgment that the appellant has appealed.

Counsel for the appellant submitted that the learned trial judge erred in holding that notice of the judgment obtained by the appellant against Abdul Radar should have been served on the respondent. He argued that although r.1(2) of O.47 of the English Rules of the Supreme Court provides that in these circumstances notice must be served on a person in occupation of the premises, the local rules and orders make no such provision, and he submitted that the equivalent local rule is r.2 of O.XXXIV of the Supreme Court Rules, 1947, and that as that rule is silent as regards notice the English Rules do not apply. I do not think it is necessary to consider that point because I am satisfied that r.2 of O.XXXIV of the Sierra Leone Rules does apply. It was admitted by counsel for both the appellant and the respondent that the interest of a sub-tenant ceases with the interest out of which it was carved, and that the respondent's sub-lease disappeared upon the appellant recovering judgment against Radar. That being so, in my view a copy of the judgment ought to have been served on the respondent, who was affected by it, in accordance with r.2 of O.XXXIV.

Counsel for the appellant also submitted that the learned judge erred in awarding any special damages in this case, since it is implicit from his judgment that he disbelieved the respondent's evi-

dence regarding the volume of his alleged losses. Counsel for the respondent has invited us to say that the learned trial judge, in spite of the fact that he rejected the appellant's evidence regarding much of his alleged special damage, was justified in making an estimate as to what he thought had been lost.

I feel bound to say that I regard the £250 awarded for loss of goods and personal effects as being unsatisfactory. As counsel for the appellant has submitted, it is clear from the learned trial judge's judgment that he substantially rejected the respondent's evidence regarding his losses. That being so, in my view, remembering that special damage has to be strictly proved, the learned trial judge was not justified in endeavouring to assess the amount of loss since he was obviously unable to indicate which of the articles he believed to have been lost. I am of the opinion that the whole of the evidence as to special damages, including the item of £150 cash alleged to have been stolen, must be regarded as unsatisfactory.

Counsel for the appellant submitted that in view of the fact that the under-sheriff and his men only arrived at the shop at about 10 o'clock in the morning and remained there until about 2 o'clock in the afternoon, the trespass is not really a serious one. With that argument I am unable to agree. In my view the learned trial judge was justified in taking a serious view of this case. The respondent's goods, as I have already pointed out, were removed—not only his stock-in-trade but also his personal effects—and put on the pavement in the public highway, and he must have suffered grave inconvenience as a result. That being so I am of the opinion that the award of £100 general damages should stand.

It follows from what I have said that I would allow this appeal to the extent of amending the judgment of the court below by deleting the award of £150 and £250 special damages. In other respects the judgment is to stand, and I would make no order as to costs on this appeal.

BEOKU-BETTS, Ag.C.J. (Sierra Leone) and COUSSEY, J.A. concurred.

Order accordingly.