

is forfeiture to take effect? I fix the date as February 2nd, 1955. The plaintiff is entitled to her rent of £72 p.a. as from January 1st, 1953 under the terms of the lease until forfeiture. The plaintiff is to recover immediate possession, and I assess the damages at £100 together with the taxed costs of this action.

Judgment for the plaintiff.

IN RE PUBLIC LANDS ORDINANCE and IN RE FOURAH BAY ROAD BURNT-OUT AREA

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Coussey, J.A. and Luke, J. (Sierra Leone)): June 17th, 1955
(W.A.C.A. Civil App. No. 40/54)

[1] **Land Use Planning — compulsory acquisition — compensation — no acquisition without compensation unless statute expresses such intention clearly and unambiguously:** A statute should not be held to take away private rights of property without compensation unless the intention to do so expressed in clear and unambiguous terms (page 404, line 38—page 405, line 3).

[2] **Land Use Planning—compulsory acquisition—compensation—disputed assessments—Public Lands Ordinance (cap. 193), s.18(3) not restricted to disputed assessments—property may be compulsorily acquired without compensation if claim not brought within time limit:** The application of s.18(3) of the Public Lands Ordinance (*cap.* 193) is not restricted to persons disputing the quantum of compensation appropriate for the compulsory acquisition of property, but includes persons who have not been offered any compensation in respect of property compulsorily acquired; and therefore the Ordinance clearly and unambiguously permits compulsory acquisition of property without payment of compensation if a claim for compensation is not brought within the time limit laid down in the proviso to s.18(3) (page 405, lines 4–13).

[3] **Statutes—interpretation—statutes affecting existing rights—statute purporting to take away property rights—no compulsory acquisition without compensation unless statute expresses such intention clearly and unambiguously:** See [1] above.

[4] **Time—claim for compensation—compulsory acquisition of land—time limit for claim for compensation in Public Lands Ordinance (cap. 193), s.18(3) permits acquisition without compensation:** See [1] and [2] above.

The appellant filed a petition in the Supreme Court seeking an

order for the payment of compensation for property compulsorily acquired.

The appellant was the undisputed owner of property in an area compulsorily acquired by the Government under the provisions of the Public Lands Ordinance (*cap.* 193). At the time of the acquisition no claim by the appellant for compensation was lodged with the Director of Surveys and Lands, but under s.17(e) of the Ordinance the Supreme Court (Beoku-Betts, J.) made an *ex parte* assessment of the compensation payable. Some nine years later the appellant filed the present petition for an order for payment of the amount of compensation previously assessed by the Supreme Court.

The Supreme Court (Kingsley, J.) dismissed the petition, notwithstanding the agreement of both parties that an order could be made, on the ground that the claim had not been brought within the time limit laid down in the proviso to s.18(3) of the Ordinance. The proceedings before the Supreme Court are reported in 1950-56 ALR S.L. 390.

On appeal to the West African Court of Appeal, both parties sought a ruling as to whether s.18(3) did in fact apply in the circumstances of the case.

Legislation construed:

Public Lands Ordinance (Laws of Sierra Leone, 1946, *cap.* 193), s.17(e):
 "When the owner . . . shall not appear at the time appointed for the hearing, a decision may be given *ex parte* upon hearing the evidence adduced by the Attorney-General, or any person on his behalf, and such decision shall be as effectual as if given after hearing and in the presence of all parties."

s.18(3): The relevant terms of this sub-section are set out at page 404, lines 15-26.

R.B. Marke for the appellant;
M.C. Marke, Crown Counsel, for the respondent.

FOSTER-SUTTON, P.:

These proceedings originated with the appellant filing a petition in the Supreme Court asking for an order for the payment out to her of the sum of £160, assessed by a judgment of Beoku-Betts, J. given on February 20th, 1945, as being the compensation payable in respect of certain land situate at Fourah Bay Road, Freetown, which was part of an area compulsorily acquired by the Government under the provisions of the Public Lands Ordinance (*cap.* 193).

5 It was agreed that at the time of the acquisition no claim was lodged with the Director of Surveys and Lands in respect of the land in question, and that the court gave its decision *ex parte* under the provisions of para.(e) of s.17 of the Ordinance. The respondent's counsel also intimated that he was satisfied that the appellant's title to the land could not be disputed.

10 The petition was filed on June 2nd, 1954, that is to say, over nine years after the date of the judgment of Beoku-Betts, J. In the court below counsel for both sides submitted that the order as prayed could properly be made. The learned trial judge, however, held that, since the claim was not made within the period of one year stipulated in the proviso to s.18(3) of the Ordinance, the court had no jurisdiction to consider the petition. For convenience of reference that sub-section reads as follows:

15 "The decision of any Court having competent jurisdiction, whether original or appellate, where appeal has been taken in manner above mentioned, respecting compensation, or on any, question of disputed interest or title, shall be final and conclusive in regard to all persons upon whom notices have
20 been served or who have appeared and claimed or on whose behalf any person having authority to that effect has claimed any lands or any interest therein:

25 Provided that persons upon whom notices have not been served, and who have not appeared or claimed or on whose behalf no claim has been made, may do so at any time within one year after the date of the final decision."

30 At the hearing of this appeal counsel for the appellant and the respondent joined in repeating the submission they made in the court below. They argued that s.18(3) of the Ordinance does not apply to a case such as this because the appellant is not disputing the quantum of compensation, that her interest or title is not in dispute, and that she is not, therefore, one of the class of persons envisaged by the proviso, which has to be considered in the light of the subject-matter of the section in which it appears. They further urged
35 that the court ought not to deprive the subject of compensation unless there are express words in the legislation requiring the court so to do.

40 In considering the construction and effect of this Ordinance, the court must be guided by the well-known principle that a statute should not be held to take away private rights of property without compensation unless the intention to do so is expressed in clear and

unambiguous terms, but it seems to me that, applied to the present case, the language of the provision in question clearly leads to that conclusion.

In my view the effect of the proviso is to require a person, upon whom notice has not been served and who has not appeared or claimed, or on whose behalf no claim has been made, to present his claim within one year after the date of the final decision, whether original or appellate, and I am unable to agree with counsel that the appellant does not fall within those categories. Nor do I think it unreasonable for the legislature to have provided a time limit within which claims may be made. If the various steps required to be taken by the Ordinance are considered, I am unable to see how it can reasonably be said to work any injustice.

The learned trial judge expresses the opinion that the reasons given by the appellant for the long delay in presenting her petition invite a summary rejection of any petition she might be advised to send further. Since he has made the comment, I feel constrained to say that I do not share his views on the point. The Government have the land in question; they have had the use of the money for over nine years; and I can see no valid reason, if the appellant's title was a good one, why any application for an *ex gratia* payment should be "summarily" rejected.

For the reasons given I would dismiss this appeal, and in the circumstances I would make no order as to costs.

COUSSEY, J.A. and LUKE, J. (Sierra Leone) concurred.

Appeal dismissed.

5

10

15

20

25

30

35

40