

MAG.APP 15/11

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL JURISDICTION)

BETWEEN: -

LOUIS M. JARRETT - APPELLANT

AND

VICTOR HASTINGS-SPAINE - RESPONDENT

E. N.B. Ngakui Esq. for the Appellant
M. P. H. Sesay Esq. for the Respondent

JUDGMENT DELIVERED THE 26th DAY OF September 2012

This is an appeal from the judgment of their worships Justices of the Peace A. E. Connell Esq. and G. T. Coker Esq. sitting at Magistrates Court No.10 in Freetown ordering the Respondent to remain in the premises situate at 64 Fort Street Freetown to exhaust the amount of money he has to his credit in the form of rent.

The facts as gleaned from the records are briefly as follows: The Respondent needed accommodation desperately in 2006 and was able to get **MRS. BAMIJOKO JARRETT** to let him occupy premises No. 64 Fort Street Freetown. The premises needed a lot of repairs which he agreed to undertake whilst in occupation. They eventually decided to have the tenancy formalized and a draft agreement was drawn up.

There was then cause to have rent fixed and the quantum of expenditures on the repairs established. The Respondent submitted a figure of Le11, 000,000 as the cost of the repairs and the rent was initially negotiated at Le120, 000 per month but Mrs. Jarrett asked for it to be fixed at Le150,000. She also did not agree with the sum of Le11, 000,000 as costs of the repairs. An independent appraiser eventually fixed the cost at Le8,000,000. The Respondent also got the house electrified at a cost of Le2, 500,000. Whilst these negotiations were going on Mrs. Jarrett unfortunately died and the tenancy agreement was never signed.

The Appellant the husband of Mrs. Jarrett subsequently took out a Grant of Letters of Administration in respect of his wife's estate and gave the Respondent notice to quit. There is evidence that the Respondent never paid him rent and remained in occupation of the premises. The Appellant consequently brought proceedings in the Magistrates Court against the Respondent for possession of the premises.

He has now appealed against the decision of the Justices of Peace allowing the Respondent to remain in occupation of the premises. His grounds of appeal are as follows:

1. A. That their Worships misdirected themselves by holding that the agreed rent was Le120,000 per month when in their judgment they acknowledged that the late **MRS. BAMIJOKO JARRETT** disagreed to that amount and demanded the sum of

Le150,000 and that the parties had no consensus until the death of Mrs. Jarrett.

- B. That their Worships misdirected themselves by adding the sum of Le2, 500,000 to the appraised value of Le8, 000,000 as a figure agreed to by Mrs. Jarrett when in fact Mrs. Jarrett only agreed to Le8, 000,000.
- C. That their Worships misdirected themselves by holding that the Respondent should "stay in the premises to exhaust the remaining amount of money he has to his credit in the form of rent" when in fact there is evidence that the parties did not agree to the rent or duration.
- D. That assuming that their Worships rightly have allowed the Respondent to stay in the premises, yet they failed to sanction the duration of his stay.
- E. That the Judgment of their Worships does not support the weight of the evidence before the court in that there was no agreement reached by the parties as to rent or duration of any tenancy.

The reliefs prayed for are that the Judgment of the said Justices of the Peace be set aside and that judgment be entered in favour of the Appellant and further that he be granted immediate possession of the premises No. 64 Fort Street Freetown.

Counsel for the Appellant submitted that the Justices of the Peace had acknowledged that there was no consensus reached as to the monthly rent payable by the Respondent until the Lessor Mrs. Jarrett died and they were therefore wrong to have held that the agreed rent was Le120,000.

Counsel for the Respondent referred the court to the letter written by Mrs. Jarrett's former solicitor, Mrs. Vivian Solomon, Exh E and its attachment Exh F which state that the monthly rent is fixed at Le120,000. However the evidence of both the Respondent and his witness **BUNTING ROGERS WRIGHT** is that Mrs. Jarrett asked for an increase of Le30,000 to which the Respondent did not agree and consequently refused to sign the tenancy agreement. The said witness was clear in his evidence when he testified *inter alia* as follows:

"It was agreed that the rent should be Le120,000 per month. A letter was written by Lawyer Solomon confirming the issue of the rent. Seven days later there was an increase of Le30,000 to which the Respondent disagreed"

The witness DW2 further testified as follows:

“--- A disagreement emerged between the amount of Le120,000 and Le150,000 resulting in the document being unsigned. This state existed until the demise of the deceased.”

He again confirmed under cross-examination that he prepared a lease agreement Exh G on the instructions of Mrs. Jarrett but that it was not signed by the parties.

It is therefore evident that the parties did not agree on the rent until Mrs. Jarrett died. In fact no agreement relating to the tenancy was ever signed by the parties.

In circumstance the Justices of the Peace misdirected themselves by holding that the agreed rent was Le120,000 when the issue of the rent was clearly unresolved at the date of death of the Landlady.

With regard the second ground of appeal, counsel for the Respondent made submissions justifying the inclusion of the sum of Le2, 500,000 for the installation of electricity on the premises. Counsel for the Appellant's contention is that the appraised valuation was for Le8, 000,000 and that the Justices of the Peace erred in including the costs incurred for the installation of electricity.

It is my view that ample evidence has been given of the extensive repairs done to the premises. The Appellant's second witness, **MR. TAMBA SEPEDU** testified as to the rehabilitation work done to the premises. The installation of electricity was not included in his list of works. **MR. BUNTING ROGERS WRIGHT DW2** testified to the fact that the installation of electricity was additional to the appraised value of Le8,000,000. This is indeed borne out in the letter from the solicitor Exh D confirming the appraised valuation and dated 9th May 2007. The electricity bills Exh K1-7 are dated in October 2008 which disclose that the said installation was done after the valuation of the repair work.

In the circumstance the Justices of the Peace were justified including the costs of electrification of the premises. The said ground of appeal, Ground B is therefore dismissed.

Counsel for the Appellant has contended that the Justices of the Peace erred in holding that the Respondent stay in the premises to exhaust the amount of rent he has to his credit. Clearly that amount of rent could not be known when the parties had not arrived at a consensus in respect of the rent payable. That matter remained unresolved until the Landlady passed away.

The issue therefore to be considered is: what is the status of the tenancy on the death of the Landlady? The evidence is that the Appellant, her husband took out grant of Letters of Administration, Exh A and got his solicitor to write to the Respondent a letter dated 27th March 2009 regarding

his tenancy and forwarding a fresh tenancy agreement for his signature – Exh L. It is noted that the said agreement took into consideration the sum of Le8,000,000 expended by the Respondent on the premises. On the Respondent's failure to execute same the Appellant brought proceedings against him which have led to this appeal.

The Appellant's contention is that the Justices' decision to allow the Respondent to stay and exhaust the monies expended by him on the premises as rent was wrong firstly because no rent had been agreed upon and secondly the duration of his stay was not specified. I agree with counsel for the Appellant's contention on those grounds.

It is my view that on the death of Mrs. Jarrett without the rent payable for the premises being determined, the Respondent ought to have had that issue resolved with the Administrator of the deceased's estate who had taken over control of the premises. This was not done and at the date of the Justices of the Peace judgment the rent payable for the premises had not been fixed, to enable them to order the Respondent to stay in the premises to exhaust the money he had to his credit as rent. There was therefore no agreement as to the rent or duration of the said tenancy in existence at the material time.

The appeal on Grounds A, C, D and E is therefore allowed and the Judgment of the Justices of the Peace is set aside and judgment entered in favour of the Appellant.

The Appellant is entitled to possession of the premises. However in the light of the fact that the Respondent has made the premises habitable having carried out extensive repairs thereon and on humanitarian grounds, he is hereby given three months notice with effect 1st October 2012 to quit and deliver up possession of the said premises. He is to pay rent for the said period at a rate to be agreed upon by the solicitors for both parties who are to take into consideration all the circumstances of the case. Each party to bear its own costs.

In the event that the Respondent fails to deliver up possession on 31st December 2012, the Appellant is at liberty to issue a writ of possession to recover possession of the said premises.

A. Showers

SIGNED: - A. SHOWERS

JUSTICE OF COURT OF APPEAL

26/9/2012