

or such period that the parties agree upon or may be proved. The costs of all parties are to be taxed as between solicitor and client and paid out of the proceeds of the sale. Liberty to apply.

Order accordingly.

5

KANGAMA v. ALEXANDRIA

10

SUPREME COURT (Luke, Ag.J.): January 28th, 1952
(Civil Case No. 107/51)

- 15 [1] **Armed Services—discipline—redress of wrongs—procedure—statutory procedure as bar to civil proceedings must be specifically pleaded:** Where a civil action is brought by and against persons who are governed by the provisions of the Royal West African Frontier Force Ordinance (*cap.* 204), the defendant will be estopped from raising at the trial the defence that their relationship in such a matter should be regulated by s.43 of the Ordinance dealing with the redress of wrongs unless such a defence has been specifically pleaded under O.XVI, r.11 of the Supreme Court Rules, 1947 (page 172, lines 16–23).
- 20 [2] **Civil Procedure — pleading — matters which must be specifically pleaded—statutory procedure barring civil proceedings between soldiers:** See [1] above.
- 25 [3] **Land Law — licences — revocation — licensee entitled to reasonable notice of revocation to remove his property from land:** A licensee whose licence is revocable is entitled to reasonable notice of revocation to afford him sufficient time to remove his property from the land, and he therefore cannot be a trespasser on the land until such notice has been given (page 171, lines 20–36).
- 30 [4] **Tort — conversion — elements — intended conversion of goods to another's use or destruction of goods to prejudice of owner:** In order to constitute a conversion, it is necessary either that the party taking the goods should intend some use to be made of them, either by himself or by those for whom he acts, or that, owing to his act, the goods are destroyed or consumed, to the prejudice of the lawful owner (page 171, lines 13–17).
- 35 [5] **Tort—damages—measure of damages—detinue—market value of goods at date of judgment:** In an action in detinue, the damages awarded to the plaintiff in the event of the defendant's failure to return the goods are the market value of the goods assessed as at the date of the judgment in his favour and not at the time of the defendant's refusal to return them; and the same principle applies
- 40

whether the defendant has converted the goods by selling them or has refused to return them for some other reason (page 173, lines 8-14).

- [6] Tort—detinue—damages—measure of damages—market value of goods at date of judgment: See [5] above. 5
- [7] Tort—trespass—trespass to land—revocation of licence—reasonable notice of revocation necessary to make licensee trespasser: See [3] above.

The plaintiff brought an action against the defendant to recover damages for detinue and conversion. 10

The plaintiff, a soldier, was given permission by his Commanding Officer to build a house and other buildings on military property. Once in occupation the plaintiff built a rice farm and a number of barns. The licence was revoked by the Commanding Officer for alleged misuse of the property and the plaintiff and his dependants told to leave. A short time later the Commanding Officer inspected the property and found the plaintiff's dependants still there, whereupon he ordered them to leave forthwith. A few hours later the defendant, also a soldier, burned down the buildings and some of the plaintiff's property. The plaintiff instituted the present proceedings in the Supreme Court to recover damages in detinue and conversion for his loss. 15 20

The defendant did not specifically plead that the action was barred by the statutory procedure for redress of wrongs between soldiers laid down in s.43 of the Royal West African Frontier Force Ordinance (*cap.* 204), but sought to raise the defence at the trial; he further contended that the plaintiff's licence had been revoked and that he was therefore a trespasser at the time of the destruction of the property. The plaintiff maintained that no notice, or no reasonable notice, of revocation was given, and therefore he was entitled to damages for the destruction of his property by the defendant. 25 30

Cases referred to: 35

- (1) *Canadian Pacific Ry. Co. v. R.*, [1931] A.C. 414; (1931), 145 L.T. 129, *dictum* of Lord Russell applied.
- (2) *Fouldes v. Willoughby* (1841), 8 M. & W. 540; 151 E.R. 1153, *dictum* of Lord Abinger, C.B. applied.
- (3) *Rosenthal v. Alderton & Sons Ltd.*, [1946] K.B. 374; [1946] 1 All E.R. 583, applied. 40

Margai for the plaintiff;
Benka-Coker, Crown Counsel, for the defendant.

LUKE, Ag.J.:

5 This is an action for damages brought by the plaintiff against the defendant for detainment and conversion of certain goods some time in January 1951.

10 The facts briefly are these. The plaintiff, who was a soldier and rose to the rank of Regimental Sergeant Major, was granted permission by one Major Hilditch, the then Commanding Officer, to build a house in the military compound at Daru Barracks to house his dependants, as they were more in number than those permitted to live in the official billet. With this house he cultivated a rice farm and built some rice-barns where he stored the husk rice he had reaped and also tended some chickens. Whilst on leave to his home town prior to retirement, this house, one of the rice barns and several other things were destroyed by fire, allegedly started by the defendant.

20 The defence is that the plaintiff's licence was revoked by the Commanding Officer, Major Stormonth-Darling, because he was using the property as a gaming-house, brothel and for the sale of palm wine, and that notice was given to the plaintiff before he left on January 20th, 1951 that he must remove all his things and instruct all his dependants to quit the house and at the same time take all their things with them. On the morning of January 20th, 1951, the said Commanding Officer, Major Stormonth-Darling, went with the defendant to inspect these non-military quarters of the plaintiff and there they saw a number of civilians still in residence. The Commanding Officer himself informed them that they were to leave the house forthwith as the house was to be pulled down. A few hours later the defendant with some soldiers came to inspect the quarters prior to carrying out the instructions of the Commanding Officer and there they met one of the inmates who had climbed the roof of the house and was removing the grass from it. He was allowed to complete his task and pile the grass at the back of the hut. When the man had done this, the defendant lit a match and set fire to the grass, which consumed it and whilst doing so burnt down not only the hut but also a rice-barn which was adjacent to the hut and in which the plaintiff had stored husk rice.

40 The defendant denied detaining or preventing the plaintiff from removing or cutting his cassava from the cassava farm which

he states is still in the compound. He denies each and every one of the other allegations in the statement of claim other than those he has specifically admitted.

I must say that the plaintiff's claim has a wonderful tendency of increasing itself at all material times from his letter before the action until its hearing in court. There is no doubt that there was conversion of the house and one rice barn which the defendant himself in his statement of defence admitted were destroyed when he lit the match and set fire to the grass which the defendant alleged had been removed from the hut. Conversion by destruction is considered by Lord Abinger, C.B. in the case of *Fouldes v. Willoughby* (2) (8 M. & W. at 547; 151 E.R. at 1156):

"In order to constitute a conversion, it is necessary either that the party taking the goods should intend some use to be made of them, by himself or by those for whom he acts, or that, owing to his act, the goods are destroyed or consumed, to the prejudice of the lawful owner."

The defendant's solicitor argued that the plaintiff was a licensee whose licence had been revoked, and as such when this incident arose he was to all intents and purposes a trespasser. There is no doubt that a licensor can revoke a licence, but the court in determining whether the licence is determined will also look into the question whether reasonable notice was given when this revocation took place to afford the licensee sufficient time to remove his goods or things from the place. This question of the revocation of a licence was considered in the case of *Canadian Pacific Ry. Co. v. R.* (1) ([1931] A.C. at 432; 145 L.T. at 136) where Lord Russell stated:

"Whether any and what restrictions exist on the power of a licensor to determine a revocable licence must, their Lordships think, depend upon the circumstances of each case. The general proposition would appear to be that a licensee whose licence is revocable is entitled to reasonable notice of revocation. For this proposition reference may be made to *Cornish v. Stubbs* and *Mellor v. Watkins*, in the latter of which cases Blackburn J. states that a person giving a revocable licence 'is bound to give the licensee reasonable notice.'"

In this case it is established, though the evidence given both by plaintiff and the defendant is rather conflicting, that the notice, if given, was very short. The plaintiff's case is that no notice was given to him until he left for Kangama. The defendant's witnesses depose that notice was given to the plaintiff, and one of them said it was

given on January 19th by the Commanding Officer through C.S.M. James Foya. Foya in his evidence supported this. It is admitted by the defendant that the plaintiff had a licence to build a house, a rice-barn and several other things on this military land, and that the plaintiff had gone on leave prior to retirement but he was to return to the barracks to receive his discharge certificate and his pay. Reasonable notice could have been given of at least a week, if not more, in order to enable him to clear all his things before the house was destroyed.

The plaintiff was unable to satisfy the court with portions of his claim, such as that itemised under special damages as three large cassava farms. Evidence was given by the defence that there was only one mass of cassava on a farm which still stands on the land, and that the plaintiff could go and reap it if and when he so desired.

The defendant's solicitor in his address referred to the fact that both the plaintiff and the defendant are soldiers, and therefore their relationship in any question such as this should be governed by the procedure laid down by the Royal West African Frontier Force Ordinance (*cap.* 204), s.43. This is a point which, if he knew and wanted to rely on, should have been pleaded in his defence, as required by r.11 of O.XVI of our Supreme Court Rules, 1947. This not being the case, he is estopped from raising it at the trial.

Paragraph 5 of the statement of defence admitted that the defendant caused the thatch to be removed from the said dwelling house and set it on fire during the plaintiff's absence, and in consequence of that action the said dwelling house and the small barn itemised in para. 4, together with its contents, were destroyed. This was modified by his evidence to read that after a man had removed the thatch from the roof and piled it at the back of the house he set fire to it and it was this which caused the damage. To me this is merely a distinction without a difference. The contents referred to therein were, according to his own estimation, 252 ties together with 24 water yams, 2 mortars and 3 winnowing fans. Paragraph 4 of the statement of defence also states that on January 20th, 1951 the plaintiff had within the barracks: (a) the said dwelling house, (b) an unknown number of fowls, (c) two small cassava farms, and (d) some furniture in the said dwelling house.

It has been established that the plaintiff was not given sufficient notice to clear his effects when his licence was revoked and in consequence of that suffered the loss of many of his effects. The

question now for consideration by the court is what damages, if any, the plaintiff is entitled to, taking into account those articles which have been lost or destroyed through the defendant's act. One of the leading cases on this subject is that of *Rosenthal v. Alderton & Sons Ltd.* (3) which states in the headnote in the Law Reports ([1946] K.B. at 374):

"[I]n an action of detinue, the value of the goods to be paid by the defendant to the plaintiff in the event of the defendant failing to return the goods to the plaintiff must be assessed as at the date of the verdict or judgment in his favour and not at that of the defendant's refusal to return the goods, and the same principle applies whether the defendant has converted the goods by selling them or has refused to return them for some other reason."

The plaintiff, apart from his own *ipsissima verba* as to the value of these articles which have been lost or destroyed, has called no evidence to establish their value. On the other hand the defendant has not only given evidence stating that the plaintiff's claim was exaggerated, but has called an independent witness who has some knowledge of the matters which are in dispute before the court, and I propose to a certain extent to be guided by his valuation and quantities insofar as I consider them necessary.

There is evidence that the house was destroyed, but evidence was also given that materials and labour in the construction were supplied from army materials and army personnel. Taking all that into consideration and the type of house it was, I allow £15 for it. I allow £3 for the rice barn and £67. 10s. 0d. for the quantity of rice which was destroyed. For the fowls and sundry articles I assess the value at £10.

There will be judgment for the plaintiff for damages assessed at £95. 10s. 0d. and costs to be taxed.

Judgment for the plaintiff.