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

SUPREME COURT (Kingsley, J.): March 28th, 1955
(Civil Case No. 289/54)

[1] **Land Use Planning—compulsory acquisition—compensation—ex parte assessment by court not award of compensation under Public Lands Ordinance (cap. 193), s.18(4)—court has no jurisdiction under s.18(4) to hear claim for compensation out of time:** Sub-section (4) of s.18 of the Public Lands Ordinance (*cap.* 193) deals only with cases in which there is a claimant to whom compensation can be awarded; it does not give the court jurisdiction over a case where no claim for compensation was brought within the time limit laid down in the proviso to s.18(3) but an *ex parte* assessment of the compensation payable had been made by the court (page 393, lines 7–15).

[2] **Land Use Planning — compulsory acquisition — compensation — no acquisition without compensation unless statute expresses such intention clearly and unambiguously—provision of time limit for claims in Public Lands Ordinance (cap. 193), s.18(3) does not show such intention:** An intention to take away property without compensation is not to be imputed to a statute unless it is stated in unequivocal terms; and the fact that the proviso to s.18(3) of the Public Lands Ordinance (*cap.* 193) provides a time limit within which a claim for compensation must be made is entirely different from an intention to appropriate property without compensation (page 393, lines 19–35).

[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 [2] 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) not same as acquisition without compensation:** See [2] above.

The petitioner sought an order for the payment of compensation for property compulsorily acquired.

The petitioner 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 the appellant did not lodge a claim for compensation 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 9½ 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 considered whether it had jurisdiction to hear the petition in view of the time limit of one year for claims for compensation laid down in s.18(3) of the Public Lands Ordinance.

Cases referred to:

(1) *Commissioner of Public Works* v. *Logan*, [1903] A.C. 355; (1903), 88 L.T. 779, considered.

(2) *Kissi Methodist Mission Case*, 1946, distinguished.

Legislation construed:

Public Lands Ordinance (Laws of Sierra Leone, 1946, *cap.* 193), s.18(3):

> "The decision of any Court having competent jurisdiction, whether original or appellate, . . . 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 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:
>
> 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."

s.18(4): "In all cases where any compensation has been awarded except where a valid written title to the land shall be delivered, payment thereof shall be postponed until the period of one year shall have elapsed from the date of judgment, or judgment on appeal, whereupon it may be paid over to the person who shall then appear by the judgment of the Court to have the best right thereto, and such payment shall . . . operate as a complete discharge and acquittance of such compensation and of all claims in respect of such lands or any interest therein:

Provided that such payment shall not hinder any subsequent proceedings at the instance of any person having or alleging better right thereto as against the person to whom such payment may have been made."

R.B. Marke for the petitioner;
M.C. Marke, Ag. Sol.-Gen., for the respondent.

KINGSLEY, J.:

In this case certain land, its precise situation is not material, was declared "unclaimed" land under the provisions of the Public

Lands Ordinance (*cap.* 193) (hereinafter referred to as "the Ordinance"). The case came before the Supreme Court on February 20th, 1945, and, whilst declaring the land "unclaimed," Beoku-Betts, J. valued it at £160.

There is no suggestion that the requirements of the Ordinance were not in any way complied with. The land was declared "unclaimed" for the simple reason that nobody put in any claim. Now, some 9½ years afterwards, the petitioner has put in a claim for the money, and her title apparently is a good one. At any rate the acting Solicitor-General appearing for the authorised officer said that he was satisfied that the petitioner's title could not be disputed. Doubtless the court, had it come to look into the question, would have been similarly satisfied, but upon that I express no definite opinion. Without my having seen the documents of title, it is obviously impossible to do so.

The preliminary point upon which I invited counsel's assistance, and which arises before I can consider the petition, is one of jurisdiction. Has the court jurisdiction to consider the petition? Not without some regret I have come to the conclusion that it has not.

At the first hearing Mr. R.B. Marke for the petitioner referred me to a case in 1946 in which the Methodist Mission at Kissi was concerned, and which he said was on all fours with this petition. Mr. Melville Marke apparently agreed with him. At least that is the impression I gathered, as he had himself appeared in the case. The Director of Surveys, who of course for some years now has been intimately connected with all these land cases, has been kind enough to extract from his records the basic dates of this *Methodist Mission case* (2). It is by no means on all fours with the present case. In that case the land was adjudged "unclaimed" on May 4th, 1944, and it was valued at £92. 11s. 4d. But, and this of course is the vital point, a claim was lodged on behalf of the Methodist Mission on July 28th, 1944, in other words well within the time limit specified in the proviso to s.18(3) of the Ordinance. The fact that compensation was awarded only on July 5th, 1946 is beside the point. The claim had been lodged well within time.

In this present petition the claim has been lodged some 9½ years after the judgment declaring the land unclaimed, and I hold that, under the proviso to s.18(3) of the Ordinance, that concludes the matter and the court has no jurisdiction to consider this petition. Having invited both counsel to consider whence I could obtain such jurisdiction, both seemed to rely on sub-s.(4) of s.18 of the Ordinance.

That sub-section in my view is quite irrelevant. It commences: "In all cases where any compensation has been awarded . . ." and in my view quite clearly is complementary to the proviso to sub-s. (3). Sub-section (4) merely says that except where a valid title has been produced, no money shall be paid out until the time (*i.e.*, one year) has elapsed during which people who have not claimed may do so.

In any event the sub-section deals, as its wording clearly states, with cases "where compensation has been awarded," in other words where there has been a claimant to whom compensation has been awarded. In this case, no such award has been made. All that happened before Beoku-Betts, J. on February 20th, 1945 was that, in the absence of any claimant, the court, having declared the land unclaimed, fixed its value at £160 in case anybody claimed compensation within the time limit set out in the proviso to s.18(3) of the Ordinance.

The learned Acting Solicitor-General referred me to the headnote in *Commissioner of Public Works* v. *Logan* (1) and Mr. R.B. Marke for the petitioner more or less repeated the commonplace which the first part of that headnote sets out, namely, that an intention to take away property without compensation is not to be imputed unless a legislature says so in unequivocal terms. I do not agree that this question arises here at all. Far from taking away land without compensation, Part II of the Ordinance is concerned solely with letting people know how they can get compensation for any land which the Government takes over. The fact that a time limit is fixed within which a claim for compensation must be made is an entirely different thing from saying that the land is being appropriated without compensation. Even the Government must be allowed some finality in its financial dealings. If after the authorised officer has done all in his power—all that is required of him by the Ordinance—to let you know that your land is in peril, you go to sleep over the matter and that sleep lasts over 12 months after the court has dealt with your land, under the Ordinance you lose your right to claim. Were it otherwise, there could never be any finality in many of these land cases. Whether an *ex misericordia* appeal to the Governor would succeed is of course a matter upon which I am unable to express an opinion. Indeed it would be improper for me to do so. But I feel that I ought to say this. For the petitioner to come along at this late stage and explain the delay in making her claim as she does in para. 9 of her affidavit and petition—"that through some inadvertence for which I am not

wholly to blame I did not submit a claim to the said land"—is in my opinion to invite a summary rejection of any petition she might be advised to send further.

The petition is dismissed. In the circumstances there will be no order as to costs.

Petition dismissed.

GARRICK *v.* WHITFIELD

SUPREME COURT (Luke, J.): April 4th, 1955
(Civil Case No. 310/53)

[1] **Civil Procedure—pleading—defence—plea of possession—plea sufficient denial of landlord's title to bar tenant's relief from forfeiture—amendment of pleading ineffective:** Where, in an action by a landlord to enforce forfeiture of a lease, the tenant in his statement of defence makes a plea of possession under O.XVIII, r.20 of the Supreme Court Rules, 1947, that amounts to a denial of the landlord's title so as to bar any relief from forfeiture being granted to the tenant; and it is impossible for the tenant to destroy the effect of his plea by subsequently amending it (page 400, line 40—page 401, line 31).

[2] **Equity—relief against forfeiture—relief not granted where landlord's title impugned—inadvertent denial in pleadings sufficient:** See [1] above.

[3] **Equity—relief against forfeiture—requisites of notice of breach of covenant:** Before a landlord commences proceedings against his tenant to enforce forfeiture of the lease, he must give the tenant notice of what is complained of and what has to be put right and allow him a reasonable time thereafter in which to remedy matters, but he does not need to give a detailed specification of the work to be done (page 399, lines 19–24; page 400, lines 1–18).

[4] **Landlord and Tenant—determination of tenancies—forfeiture—relief against forfeiture—relief not granted where landlord's title impugned—inadvertent denial in pleadings sufficient:** See [1] above.

[5] **Landlord and Tenant—determination of tenancies—forfeiture—relief against forfeiture—requisites of notice of breach of covenant:** See [3] above.

The plaintiff brought an action against the defendant for forfeiture of a lease and recovery of possession of the leased property.

The plaintiff and the defendant entered into a 25-year lease