a judgment regularly obtained, although the application is made out of time, if circumstances require it to be so set aside. The first two cases cited by Mr. Berthan Macaulay, with respect, do not, in my view, go any distance whatever in assisting the court. In the recent case of *Macfoy* v. *United Africa Co. Ltd.*, also cited by him, the question there, as Lord Denning put it, was what is the effect of delivering a statement of claim in the long vacation, was it to be regarded as a nullity or an irregularity. The court held, among other things, that it was within the discretion of the Court of Appeal after considering all the circumstances to have refused to set aside the judgment obtained in default of defence.

I find in the case of *Evans* v. *Bartlam* [1937] 2 All E.R. 646 (H.L.), cited by Mr. Harding, a helpful passage. I quote from Lord Atkin at p. 650:

> "It was suggested in argument that there is another rule, that the applicant must satisfy the court that there is a reasonable explanation why judgment was allowed to go by default, such as mistake, accident, fraud or the like. I do not think that any such rule exists, though obviously the reason, if any, for allowing judgment and thereafter applying to set it aside is one of the matters to which the court will have regard in exercising its discretion. If there were a rigid rule that no one could have a default judgment set aside who knew at the time and intended that there should be a judgment signed, the two rules would be deprived of most of their efficacy. The principle obviously is that, unless and until the court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the rules of procedure."

Whilst it is true that the defendant treated the court with contempt by not appearing to the writ even when the plaintiff wrote to tell him that he would sign judgment within a certain time, yet, I opine, this is not necessarily a good ground for refusing to set aside the judgment, if there is disclosed a defence on the merits and the circumstances warrant it. It is rather a ground for imposing terms.

I have come to the conclusion that the defendant/applicant's affidavit shows a substantial ground of defence and taken together with the affidavit of the plaintiff/respondent there is clearly a triable issue. I will, therefore, grant the order sought on the motion on terms, namely, that the defendant/applicant pay the costs of the motion to assess damages as well as the costs of this application.

Freetown
May 7,
1962
Bankole Jones
Ag.C.J.

[SUPREME COURT]

ELIAS MUSA ZACHARIAH . . . . . *Appellant*

v.

G. N. JOHNSON . . . . . *Respondent*

[R.A.C. 2/62]

Rent assessment—Appeal from decision of Rent Assessment Committee—Whether Committee obligated to obtain legal assistance in arriving at decision—Whether evidence to support Committee's decision—"After having taken into account the

rents obtaining in the same locality in respect of similar accommodation"—Rent Restriction Act (Cap. 52, Laws of Sierra Leone, 1960), s. 7.

By an agreement dated January 2, 1951, respondent rented certain premises to appellant for a period of three years at a yearly rental of £142. At the expiration of the term, the tenancy continued on the same terms with the consent of both parties. In 1960, an unsuccessful attempt was made to eject appellant. On February 2, 1962, on an application brought before it by the respondent, the Rent Assessment Committee assessed the rent for the premises at £600 per annum. Appellant appealed against this decision to the Supreme Court.

Section 7 (*c*) of the Rent Restriction Act provides: ". . . the rental value shall be such as the Committee shall assess in accordance with the circumstances after having taken into account the rents obtaining in the same locality in respect of similar accommodation. . . ." Respondent failed to introduce any evidence of the "rents obtaining in the same locality."

Held, allowing the appeal that the Committee, in assessing the rent, "failed to apply the correct principle as laid down in section 7 (*c*) as their guide but rather applied wrong principles or no principle at all."

Zinenool L. Khan for the appellant.
Freddie A. Short for the respondent.

BANKOLE JONES AG.C.J. This is an appeal against the decision of a Rent Assessment Committee created under the Rent Restriction Act, Cap. 52 of the Laws of Sierra Leone. On an application brought before it by the respondent, the Committee on February 2, 1962, assessed the rent of premises known as 4 East Street at £600 per annum.

Mr. Khan, counsel for the appellant, filed four grounds of appeal. At the hearing he abandoned ground 1 (a) and argued grounds 1 (b) and 2 together and grounds 3 and 4 also together.

As to ground 1 (b) which reads as follows: "That if the Committee was not influenced by the said legal adviser to the said Committee—being laymen, was deprived of legal assistance in arriving at their decision." I find no substance in this ground because there is no statutory obligation placed on the Committee to obtain legal assistance in arriving at their decision. Their charter, so to speak, is the Act itself, the wording of which may or may not be considered by them as altogether free from difficulty. This, of course, is not to say that they may not seek legal assistance, but to say that they were deprived of such assistance is no good ground for upsetting their decision.

Ground 2, in my opinion, has far more substance. It reads: "The Committee failed to appreciate and therefore did not consider what was materially to be considered in accordance with section 7, Cap. 52 of the Laws of Sierra Leone."

Mr. Short, counsel for the respondent, conceded that the application before the Committee fell under section 7 (*c*) which reads:

> "7 (*c*) Where the dwelling house or shop was first let after the 1st August, 1940, or where the dwelling house or shop was let on or within a period of two years prior to that date and the terms upon which it was so let are not proved to the satisfaction of the Committee, or where the dwelling house or shop was not let on or within a period of two years prior to the 1st August, 1940, the rental value shall be such as the Committee shall assess in accordance with the circumstances after having taken

into account the rents obtaining in the same locality in respect of similar accommodation."

I find myself in agreement with both counsel. The application fell under section 7 (*c*) for treatment. This, therefore, in my view, narrows the question for the determination of this appeal to the question as to what construction should be placed on this subsection. The facts are that the respondent, by an agreement dated January 2, 1951, let out the premises to the appellant for a period of three years, that is to say, from January 2, 1951, to December 31, 1953, at the yearly rental of £142 with the following proviso, namely, that if there was an increase on city rate and water rate on the amount chargeable on the demand note for 1950 and 1951 the difference should be paid by the tenant. This proviso is not of importance. At the expiration of the agreement, it would appear that with the consent of both parties the tenant held over the tenancy to this day on the same terms. In 1960 an unsuccessful attempt was made by the respondent to eject him. The appellant is still in possession. Curiously enough the respondent deposed before the Committee as follows: "My reason for applying to this Committee is because I gave the tenant notice to quit and he refused to do so." But this is neither here nor there. I mention it, because there is often the mistaken belief that a Rent Assessment Committee has power to eject a tenant. It has no such power. Its function is to assess rents between the parties, and nothing else.

With respect, I find that the Committee's reasons for assessing the rent at £600 do not comply with the yardstick to be applied under section 7 (*c*) of the Act. This Act clearly states that where premises have been let after August 1, 1940, which is the case here, then the rental value *shall* be such as the Committee shall assess in accordance with the circumstances, *after taking into account the rents obtaining in the same locality in respect of similar accommodation*. This means, that the first duty of the Committee is to receive evidence of rents of similar accommodation as the one they are called upon to assess. If there is no such evidence their duty is to dismiss the application. The onus of producing such evidence is on the applicant. Was there such evidence produced in this case? It has been submitted that the evidence of the applicant to the effect that the present-day assessment of the premises by a Mr. Beresford Cole, a real estate agent, at £720 per annum is evidence of rents obtaining in the locality of similar accommodation. Apart from the fact that this piece of evidence is hearsay, it cannot for one moment be successfully urged that this is the kind of evidence contemplated by section 7 (*c*) of the Act. Also the fact that the Committee visited the locus and examined the premises and merely saw other premises in the locality does not cure the lack of evidence as regards rents obtaining in respect of similar accommodation.

In my opinion the Committee gravely erred in allowing the various matters mentioned in their decision to affect their minds, for example, in one portion they say as follows:

> "The building is situated in a highly commercialised centre and should not have been left to get into such a bad and dangerous condition; immediate steps should be taken to put it right or else if the health authorities order it to be pulled down it will be a loss to the centre and particularly to the owner. It is difficult to believe that the present tenant who allows the house to fall into such dilapidated condition and reduced value, took the house several years ago in quite a good condition and

carried on flourishing business in baking, mineral waters manufacturing, trading and actually lived there—he and his family. Now that those premises have been reduced to a forlorn condition by himself he only uses portions as stores and portions as shop. The landlord had long detected this unsatisfactory state and had called attention, he had wanted the tenant to quit so that he could put the premises into good condition again."

With the utmost respect, not only were the comments in this passage uncalled for and irrelevant but most of the facts as stated, if not all, had no supporting evidence. I find, therefore, that the Committee failed to apply the correct principle as laid down in section 7 (*c*) as their guide but rather applied wrong principles or no principle at all.

Grounds 3 and 4 in my opinion necessarily flow as a result of my finding on ground 1. They contain nothing new and can be disposed of by stating that I agree that the decision of the Committee amounted to a penalty rather than a finding on the evidence and that having regard to the evidence the decision was unreasonable.

It follows that the appeal is allowed. I therefore quash the order of the Committee and remit the matter back to them for reconsideration directing them to be guided by the provision laid down in section 7 (*c*) of Cap. 52. The appellant is to have the taxed costs of this appeal.

[SUPREME COURT]

Freetown
May 4,
1962
Bankole Jones
Ag.C.J.

JAMES W. RUSSELL . . . . . *Plaintiff*

v.

JOHN KOMBE . . . . . *Defendant*

[C.C. 369/60]

Tort—False imprisonment—Plaintiff arrested for contempt of Native Court—Whether arrest lawful—Whether plaintiff imprisoned—Defendant protected in discharge of judicial duty—Native Courts Act (*Cap. 8, Laws of Sierra Leone,* 1960), *s.* 28 (2)—*Courts Act* (*Cap. 7, Laws of Sierra Leone,* 1960), *s.* 39.

Practice—Indorsement of claim—Writ specially indorsed—Supreme Court Rules (*Vol. VI, Laws of Sierra Leone,* 1960), *Ord.* III, *r.* 6.

Plaintiff was, on two occasions, orally summoned to attend the Taiama Native Court in a civil case, but he refused to attend the hearing on each occasion. He was arrested on a warrant signed by defendant, who was Vice-President of the court, and was taken to Taiama, where he remained five days. When he was brought before the court, the President told him that his name was not on the list of accused persons, and he was, accordingly, discharged. He then brought suit against defendant for false imprisonment.

Plaintiff's writ of summons was specially indorsed contrary to the provisions of Order III, r. 6 of the Supreme Court Rules. When plaintiff discovered his mistake, he proceeded to file and deliver a statement of claim in the same terms as his special indorsement. At the trial, defendant submitted that the writ was null and void because of the violation of rule 6.