

CIV.APP 92/2019

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN

SIERRA LEONE RED CROSS SOCIETY

- APPELLANT

AND

AYEA ROSALINE KOROMA

- RESPONDENT

CORAM:

HON. MR. JUSTICE REGINALD S. FYNN J.A. (PRESIDING)

HON. MRS. JUSTICE JAMESINA E. L. KING J.A

HON. MR. SULAIMAN A BAH J.A.

COUNSEL:

A. K. Koroma Esq. for Appellant

Osman Jalloh Esq. & Ms. J. Noldred for Respondent

JUDGMENT DELIVERED THIS 27TH DAY OF OCTOBER 2022

Background

1. The Respondent, Mrs. Ayea Rosaline Koroma, Administratrix of the Estate of Joseph Patrick Abdulai Koroma) instituted an action in the High Court against the Appellant, Sierra Leone Red Cross Society, a humanitarian non-profit Organization claiming the following reliefs: -
 1. Recovery of possession of property situate lying and being at 6 Pultney Street, Freetown currently being wrongfully occupied by the Defendant.
 2. Damages for wrongful occupation/possession of the said property for the period May 2013 until delivery of possession.
 3. An injunction restraining the Defendant whether by itself, its agents, privies, servants or howsoever otherwise called from alienating, disposing of, erecting structures thereon or in any other way from

interfering with the Plaintiff's rights, interest or estate in the aforementioned land and hereditaments.

4. Any further or other relief(s) that the Court may deem fit and just and costs.
2. The above mentioned property was owned by the said Joseph Patrick Abdulai Koroma (Deceased Intestate) by virtue of a Conveyance dated 19th May 1989 and registered in Volume 425 at Page 135 of the Record Books of Conveyances kept in the Office of the Registrar-General in Freetown. It was later confiscated by the Government of Sierra Leone (hereinafter referred to as GoSL), following the Mrs. Justice Laura Marcus Jones Commission of Inquiry, and was let out to the Appellant.
3. By a GoSL White Paper on the Chaytor Committee Report, GoSL published its decision to return the property to the original owner Mr. Koroma. GoSL also duly notified the Appellant of its decision and called on it to deliver vacant possession to the Respondent, and or make arrangements for continuous occupancy.
4. Appellants commenced construction work on the top floor of the property, without any reference to the Respondent immediately after notification of the restitution. Several letters were written by the Respondent's Solicitors to the Appellant to stop the construction work. As a result of the Appellant's failure to co-operate with the Respondent's efforts towards an amicable settlement regarding its occupancy, this action was instituted.
5. The Appellants filed a Defence that the said property was properly leased to it by GoSL as per letter of 25th May 1995 and paid rent of Le20,000 later reviewed to Le500,000/00 per month. The Defence further stated that by letter dated 18th February 2000 the Appellant was instructed to put up permanent structures on the said land within two (2) years or lose the property; as a result, with substantial donor funds it developed the property which is worth over Le2,000,000,000, /00 and now in use as a clinic, office space and stores rendering humanitarian services to the public, and have acquired 3rd party rights referred to in the GoSL White Paper on the Chaytor Report.
6. They also relied on excerpts in the Report to the effect that where third parties have acquired legitimate interests as in the Appellant's case, where properties were returned to their original owners, a "release order" from GoSL was required to take possession, and averred that the property had not been released to the Respondent and therefore cannot legally take possession of same from it, and denied wrongfully occupying the property.

7. The matter proceeded for determination on a point of law in the High Court pursuant to Order 17 of the High Court Rules 2007. A summary of the questions of law directed for the Court's determination related to Deceased Intestate's entitlement to repossess the said property following the orders from Government returning the property, extinguishment of the Government's interest in the property upon its return, the unlawfulness of the Appellant's continuous occupancy, recovery of the property by the Respondent, payment of a fair commercial rent for wrongful possession and an injunction against the Appellant. The application was supported by an affidavit of 34 paragraphs and 24 documents exhibited, relevant to the case of the Respondent.
8. There was an affidavit in opposition filed by the Appellant and both Counsel were heard on the application to the Court.
9. Hon. Mr. Justice A. K. Musa J. on 18th November 2019 answered the questions posed in the affirmative and delivered judgment in favour of the Respondent, and made the following orders:-

"1. That the Defendant does not have a claim of right over the property at No.6 Pultney Street, Freetown.

2. That the Plaintiff is entitled to recovery of immediate possession of the property at No. 6 Pultney Street, Freetown from the Defendant.

3. That the Plaintiff is entitled to the payment of a fair commercial rent for the wrongful occupation/possession of the property at No. 6 Pultney Street, Freetown from the period 1st May 2013 until delivery of possession thereof assessed at \$5,000.00 (Five Thousand United States Dollars) or its equivalent in Leones per annum.

4. That a perpetual injunction is hereby granted against the Defendant restraining whether by itself, its agents, privies or howsoever otherwise called from alienating, disposing of, erecting structures thereon or in any other way from interfering with the Plaintiff's rights, interest or estate in all the property at No. 6 Pultney Street, Freetown.

5. That costs of both this application and the action is assessed at Le10,000,000/00 (Ten Million Leones) to be borne by the Defendant."

10. The Appellant being dissatisfied with the above Judgment filed a notice of appeal with 3 grounds of appeal which are as follows: -.

1. That the Learned Judge erred in law and in fact in holding that the Appellant who is a lessee of the Government of Sierra Leone of all that premises situate at No. 6 Pultney Street, Freetown and have acquired legitimate third party right thereof should vacate same and hand over

immediate possession to the Respondent when the issue of the Appellant's third party right was not addressed thereof.

2. That the Learned judge committed an error of law in holding that the Respondent is "entitled to the payment of a fair commercial rent for wrongful occupation/possession of the property at No.6 Pultney Street, Freetown, from the period 1st May, 2013 until delivery of possession thereof assessed at \$5,000 (Five Thousand United States Dollars) or its equivalent in Leones per annum."
3. That the judgment is against the weight of the evidence.
11. This Court has reviewed the synopsis filed and considered the authorities, records and submissions by Counsel for both parties. The Appellant is seeking to have the judgment set aside so that a full trial can take place.
12. The Appellant's main contention in this Appeal is that its third party right was not addressed by the LTJ on the basis that, firstly, as a lessee it had expended large sums of money on the property to put up permanent structures on the instructions of GoSL, secondly that GoSL's return of the property to the Respondent was incomplete in the absence of a release order, and thirdly the court's determination of the case on a point of law deprived it of the opportunity of a full trial as well as adding GoSL as a party to the proceedings. The other contention in this appeal is with the LTJ's quantum of rent ordered to be paid to the Respondent.
13. It is not in dispute that having confiscated the property, possession was taken away from the Respondent and the Appellant was put into possession. It is important to note that the Appellant did not have a registered lease with GoSL neither did it have a long term tenancy or lease with a fixed term. It also did not have an unexpired tenancy; all it had was a yearly tenancy evidenced by payment of a yearly rent. At the time Respondent asked it to vacate the premises and prior to the institution of this action, the period for which rent was paid for had long expired.
14. The Appellant had expressed interest to the GoSL in purchasing the property. GoSL had never accepted or acceded to the Appellant's request to do so. The terms and conditions of the tenancy or lease between GoSL and the Appellant were in their correspondence and there was no indication on GoSL's part that it had an intention to guarantee any more interest to the Appellant other than as its tenant or lessee on a yearly basis.
15. The Appellant knew of the legal owner whose registered conveyance was valid and subsisting. Before investing in the property albeit on the invitation or instruction of GoSL, it behoved the Appellant to have also considered the risk in that GoSL never had the freehold to the property

which at all material times was properly and legally vested in Mr. Koroma by virtue of his Conveyance, and on his death in the Respondent, the Administratrix of his Estate.

16. It is not controverted that the Appellant carried out construction work on the property. The documentary evidence stated that the Appellant did not consult with the Respondent regarding their proposed construction nor did it seek his approval. There is also evidence that the Respondent informed the Appellant of his plans to develop the property. Therefore, the Appellant invested so much money at its own risk and peril. Due diligence required the Appellant to have considered the legal interest of the Respondent prior to embarking on the investment.
17. There was therefore nothing legally stopping GoSL from bringing its landlord tenancy relationship with the Appellant to an end which it in fact did. Indeed, mention is made in the Chaytor Report about third party rights, however the term is not defined and its reference does not confer any specific right to the Appellant.
18. Furthermore, upon publication of the said Report as well as the GoSL's White Paper ordering restitution to the Respondent, GoSL categorically and unequivocally maintained that the Appellant should deal with the Respondent regarding its continued occupancy.
19. It is clear from the records that the Appellant on being informed about the return of the property, GoSL in law and in fact ceased to be its Landlord and by implication the full rights of ownership of the property was at that moment vested in the Respondent.
20. It also meant that the Appellant continued possession after GoSL had relinquished interest, was no longer lawful and it was in order when the LTJ granted the Respondent's claim for recovery of possession. Implicitly the Respondent was now exercising her right of ownership over the property on behalf of her husband's estate which according to the records was fully acknowledged by the Appellant in its dealings with Solicitors of the Respondent with a view to negotiating a new tenancy.
21. Whilst the Appellant entry into the premises was lawful through the GoSL its landlord, GoSL could no longer guarantee lawful possession that is why in relinquishing its interest in the property, it advised the Appellant to make the necessary arrangements for its continued occupancy.
22. To all intents and purposes the GoSL's interest or right to the property had been extinguished and consequently any legitimate third party rights the Appellant had was also extinguished. Appellant's emphasis on their third party right therefore has no legal basis.

23. On the issue of the incomplete procedure to return the property complained of by the Appellant, this was not an issue that required any trial or Government to be added as a party to the action to determine.

This is because the position of Government was uncontroverted and unequivocal about ownership of the said property by the Respondent.

24. In view of the law and facts already established, it would have been difficult if not impossible for any trial court to make a finding that GoSL had any rights to the property or to declare that any third party rights had accrued to the Appellant bearing in mind that the Respondent was the bona fide owner of the property and consequently had full rights to possession over any infrastructural development or investment the Appellant may have made on it.

25. There is no special form that a "release order" should take. The publication of GoSL's White Paper, the notification of restitution to the Appellant by GoSL followed with successive written directions for the Appellant to deal with the Respondent without more, in this Court's view constituted a "release order" contemplated in the White Paper in the absence of any evidence to the contrary.

26. GoSL never assumed freehold ownership of the property and a Presidential Order or a Release Order could not have vested in the Appellant any form of legal or other interest in the property. Nor could a release order be challenged by the Appellant. The maxim *nemo dat quod non habet* applied as GoSL could not give what it did not have. What GoSL did was to direct the Appellant as to the steps it had to take and which enabled negotiations for a lease between the parties to commence.

27. The letter from the Office of the President dated 6th July 2010 was most crucial to the Respondent's case and complies with White paper requirements at page 57. As at 7th July 2010 Mr. J. P. A. Koroma became entitled to possession of the property. The correspondence between the parties also show efforts by GoSL to ensure Appellant complies with its release order and specifically letters from GoSL to the Appellant. Thus GoSL released the property to its original owner, and made consistent attempts to ensure Appellant's compliance.

28. In the circumstances it is reasonable to conclude that the notification to the Appellant after publication of the White Paper was sufficient to divest itself of any interest it had and the property became fully and legally vested in the Respondent.

29. Based on the correspondence between the parties, it is clear that the Respondent had his own development plans for the property, himself or his Estate and their Solicitors were not averse in entering into a tenancy

with the Appellant. It was on this basis that the LTJ did make orders on the issue of a fair commercial rent to be paid by the Appellant.

30. Moving on to the issue of the rent of \$5,000 annually awarded by the LTJ, based on the circumstances between the parties as evidenced in their correspondence presented to the Court, there was implicitly an agreement to enter into a lease agreement whose terms were been negotiated between the parties.
31. It will appear that whilst discussions were taking place between the parties herein with a view of arriving at a firm agreement for a tenancy, the Appellant continued to engage GoSL who no longer had any interest in the property, rather than negotiate in good faith with the Respondent, the actual owner of the property. It was also not prudent for the Appellant to proceed to communicate with GoSL to purchase the property when it was fully aware that GoSL never had the freehold to the property.
32. There was uncontroverted evidence before the LTJ that the parties had been in engagement with a view to a reasonable rent been paid for the continuous occupation of the property by the Appellant. Based on the discussions and submissions of the Appellant Counsel in the High Court, \$12,000 per annum was been negotiated.
33. In arriving at U.S.\$5,000 per annum as a fair commercial rent in the central business district where the property was located, the LTJ must have considered the humanitarian purposes the Appellant was engaged in as well as its infrastructural investment in arriving at a rent which was less than 50% of the rent requested by the Respondent. This was reasonable in the circumstances.
34. The Respondent was not bound by any rent the Appellant had been paying to GoSL because its lease with them had expired and there was nothing binding on them in so far as the rent was concerned.
35. The Appellant had no legal right whatsoever to justify its continued occupation of the property and the LTJ was right in its declaration that the Appellant had *no claim of right over the property*.
36. Having dealt with the substantive grounds of appeal above, all of which lack any merit for this Court to overturn the orders of the LTJ at the High Court, it is important to conclude on the procedure adopted in the light of submissions to this Court that the Appellant was disadvantaged due to the nature of the proceedings in the Court below, as it shut down any possibility for the Appellant to have tested the evidence before the Court especially the release from the President which it could have done by instituting third party proceedings and to also address the court on the

investment made in the said property from 1995 up to the time they came to court.

37. The Judgment in the High Court was obtained following an application made under Order 17 Rule 1 of the HCR 2007 which deals with disposal of cases on point of law and states as follows:

"1(1) The Court may on the application of a party or on its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that-

(a) The question is suitable for determination without a full trial of the action; and

(b) The determination will finally determine subject only to any possible appeal, the entire cause or matter or any claim or issue in the cause or matter.

(2) Upon determination, the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have either-

(a) had an opportunity of being heard on the question; or ..

(b) consented to an order or judgment on the determination."

38. The above procedure empowers a High Court by its own motion or on the application of a party to finally determine the issues in controversy between the parties on a point of law and without a full trial provided the necessary requirements are fulfilled.

39. The first issue is whether there is a question of law arising in the matter suitable for determination without a full trial and which determination will finally determine the subject only to any possible appeal, the entire cause or matter.

40. Having reviewed the pleadings, motion and affidavits, it is clear that the Learned Trial Judge's determination on a point of law was in order given that the conditions under Order 17 of the High Court Rules were fulfilled. It is important to point out that all relevant documents pertaining to the point of law were exhibited for the High Court's consideration and the Appellant was given an opportunity to be heard on the questions put to

the court and filed an affidavit in opposition which was considered by the LTJ.

41. Without commenting on the strength of the Appellant's case had it filed a third party notice against GoSL, there was nothing stopping the Appellant, the Defendant in the lower court at any time from filing such a notice. Under the High Court Rules, the Appellant could have filed a third party notice after filing an appearance without the leave of the court, or they could have done so with the leave of the Court thereafter which they failed to do. The Respondent filed a motion for determination on a point of law which they had every right to do.
42. Having fulfilled all of the requirements under Order 17, the LTJ correctly exercised his discretion to determine the matter on a point of law on the questions posed in the application of the Respondent and to grant the orders made, having formed an opinion on the suitability of the questions without a full trial, the determination of which was final as to the entire cause or matter.
43. The Appellant in their affidavit in opposition was entitled to adduce evidence about their case which they did and there was no need for a trial as most of the evidence of the Respondent consisted of documentary evidence and it was not likely that new evidence will have emerged at the trial beyond what was already before the court which was used to determine the issues.
44. The questions on point of law that were to be answered by the Court, once they were answered, the entire matter between the parties were determined bearing in mind that Order 17 is aimed to assist parties in the efficient disposal of their cases and to avoid unnecessary delays and expenses.
45. Order 17 Rule 2 of the High Court Rules, gives discretion to the Court upon determination of the issues to dismiss the cause or matter or make such order or judgment as it thinks just. In his oral submission responding to this Court, Counsel for the Appellant stated that \$1,000 is a fair rent having regard to the investment made and the fact that Appellant is a charity and a not for profit organization. The High Court was quite fair in assessing the rent to be paid as he did not order payment of \$12,000 which the lawful owner was asking for. He did not even award half of that amount.

46. The Learned Judge correctly determined that the Appellant did not have a claim of right to the property. It was on this basis that he made the subsequent orders and assessed a fair rent of \$5000. It is this Court's view that the order that the Appellant was entitled to pay a fair commercial rent must have been as a result of the Learned Judge's consideration of the humanitarian services provided by the Appellant to vulnerable groups, its investment in the property as a tenant of GoSL as well as the negotiations between the parties for the continued tenancy which stalled.

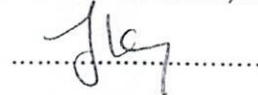
Conclusion

47. In the result the appeal is dismissed on all grounds and this Court upholds the Judgment of the High court as follows:

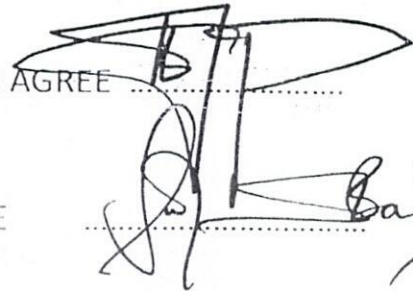
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2. That the Plaintiff is entitled to recovery of immediate possession of the property at No. 6 Pultney Street, Freetown from the Defendant.
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4. that a perpetual injunction is hereby granted against the Defendant restraining whether by itself, its agents, privies or howsoever otherwise called from alienating, disposing of, erecting structures thereon or in any other way from interfering with the Plaintiff's rights, interest or estate in all the property at No. 6 Pultney Street, Freetown.
5. That costs of both this application and the action is assessed at Le10,000,000/00 (Ten ~~Thousand~~ Million Leones) to be borne by the Defendant."

2. Cost of this appeal is awarded to the Respondent assessed at Le15,000,000.

HON. MRS. JUSTICE JAMESINA E. L. KING J.A.



HON. MR. JUSTICE REGINALD FYNN (PRESIDING) I AGREE



HON. MR. JUSTICE SULAIMAN A. BAH J.A. I AGREE

