IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL [CIVIL DIVISION]
ACCRA - A.D. 2004

CA. 102/2001
20TH FEBRUARY, 2004

CORAM -

ARYEETEY, JA
TWENEBOA – KODUA, JA
QUAYE, JA

JOHN AMMAH TAGOE … PLAINTIFF/APPELLANT

V e r s u s

MOBIL OIL [GH.] LTD. … DEFENDANT/RESPONDENT

J U D G M E N T

QUAYE, JA -

The facts in this appeal per se, are not in controversy. The plaintiff/appellant is one of a total number of fifteen children who survived their father Jonathan Teiko Ammah, late deceased. The said father of the plaintiff and his siblings, in 1959 executed a lease of the herein disputed land in favour of the defendants/respondents herein; for a term of twenty years certain with an option for renewal for not more than two terms of fine years each. The parties, upon the expiry of the initial twenty years exercised and exhausted the provisions for renewal. Accordingly the leasehold agreement finally expired on 10th November 1989, after it had remained extant for a total of thirty years. At the expiration of the term, the plaintiff/appellant, speaking for himself, as head of the J.T. Ammah family and on behalf of the said family demanded vacant possession of the land from the defendants/respondents. Upon the latter showing a strong disinclination to surrender the land to the lessor family, the plaintiff/appellant (now referred to

simply as appellant) instituted an action in the Circuit Court for recovery of possession. The defendant/respondents (respondents) successfully resisted the action. The trial Circuit Court rested its decision of 8th October 1991 on two main legs, to wit; that the appellant failed to adhere to statutory requirement to give six months notice of termination of the lease and also that they failed to disclose the purpose for which they required the land. Subsequent to the said action the appellants gave the required notice to the respondents and upon the expiry thereof, commenced the action from which this appeal was filed, in the High Court for recovery of immediate possession of all that piece or parcel of land situate lying and being at Liberty Avenue, Fanofa, North of Adabraka, and occupied by the defendants…" and also for arrears of rent.

In addition to the service by the appellants of a new six months notice on the respondents to give vacant possession of the land, the appellants further attempted to satisfy the requirements as stated by the Circuit Court in the earlier action by showing the purpose for their claim for recovery of possession. This, according to the appellants, was, to develop a chain of stores on the ground floor and offices complex on the first and second floors – building plans for the project having been completed by a firm of competent architects and submitted to the appropriate department for approval. The intended stores and offices were for use by the family of the appellant.

In response to the above, the respondents' pleaded case was that upon the expiry of the lease on 10th November 1989 they entered into negotiations with the appellants for rent and new terms for the property. The parties could, however, not arrive at a definite conclusive agreement thus, the appellants returned a cheque drawn in their favour for rent. Upon the failure of the negotiations the appellants wrote to the respondents requesting them to remove their petrol filling station and petrol tanks and vacate the land. The petrol filling station of the respondents in fact spans or astrides two plots belonging to two families. On the approach from Accra Central toward Kwame Nkrumah Circle, one comes to the disputed land owned by the appellant family, and, adjoining that, is the other plot of land belonging to the Adjah Tetteh family. The respondents have sunk petrol

tanks on both plots of land and by this they render great service to the general public on the Kwame Nkrumah Avenue. Accordingly the respondents would suffer exceeding hardship if they are compelled to demolish half of their service building. Further to the above situation, the land in issue has been zoned by the Department of Town and Country Planning as a commercial petrol filling station, and the respondents contend that the present zoning of the land is likely to continue for the foreseeable future.

The fact remains however, that the appellant family has not been licensed as a marketeer and distributor of petroleum products and for that matter cannot use the land for any other purpose. Upon the above facts, the respondents claim that the notice to quit which was served on them by the appellants on 15th June 1992 is incompetent and contrary to law, and the present action being founded on the said notice to quit is also incompetent.

At the summons for direction stage the issues set down for trial were –

(a) whether or not there exists any tenancy agreement between the plaintiff and the defendants.

(b) whether or not the plaintiff's family require their land for development into a chain of stores and offices complex.

(c) whether or not there is any legal basis for the defendants' refusal to yield up possession of the land to the plaintiff and his family, as beneficial owners thereof, after the leasehold agreement had expired, and statutory notice duly served on the defendants to vacate the land.

In addition to the above, the respondent too filed the following:-

(1) whether or not the plaintiff brought a similar action against the defendant in Civil Suit No. 614/90 and had judgment given against him.

(2) whether or not the area in dispute is zoned by the Town and Country Planning for commercial filling station.

(3) whether or not after Suit No. 614/90 plaintiff approached defendants

and finalised negotiation for the sale and or leased of the land to them.

(4) whether or not the present suit is competent in law.

On 2nd March 1994 the above issues were joined and set down for trial. The appellant opened his evidence on 15th June 1994 and closed their case on 19th July 1994 without calling any witness in support. The respondents opened their defence on 30th January 1995 by their representative and further called evidence from an official of the Town and Country Planning.

The court delivered its judgment on 12th July 1996 and dismissed the appellants' action notwithstanding her finding of fact that "it is the evidence that the statutory six months notice was served on the defendants as per Exhibit B. The lease has also expired as confirmed by the defendants representative who gave evidence on its behalf. From this I am of the opinion that the plaintiff has met all the requirements laid down by Section 179 (1) (h) of the Rent Act 1963 (Act 220)." Inspite of the above findings of fact the trial High Court Court was obviously swayed in her decision by the evidence of the official from the Town and Country {DW1} who introduced to the Court, excerpts from the Town and Country Planning Ordinance Cap 84 of 1951 which reserve powers of zoning, rezoning, building, demolition, alteration et cetera to the Sector Minister. The Court relied on the evidence of DW1 and the provisions of Section (7)(1)(h) of the Rent Act 1963 (Act 220) to inform its decision. The Court then surmised as follows:-

> "from the above quoted section of the Rent Act coupled with Exhibit E and the evidence of DW2 Mrs. Anipa from the Town and Country Planning, and the fact that the plaintiff intends developing the disputed premises into shops could it be said that the plaintiff requires the premises for business purposes and more importantly the premises are constructed to be used as such. I do not think so."

It was upon the above reasoning and analysis that the trial High Court dismissed the applicant's claim and proceeded to order the Valuation Board to determine the appropriate rent.

Even before I consider the merits of the appeal, I cannot resist pausing, if briefly, to comment that by the consequential order, the trial High Court is seen to be rewriting the lease agreement between the parties and imposing its own terms. I will most humbly and politely state that the trial court had no such powers.

The grounds of appeal are:-

(a) Since the lease was entered into as a lease of land upon which there was a building but that building was to be demolished it was wrong for the learned Judge to apply the Rent Act, (Act 220) to the subject-matter of the case because by section 1(2) (c) of Act 220, a tenancy of the kind between the landlord and the defendant/tenant is not covered by the Act.

(b) It was wrong for the learned Judge to apply the provisions of the Town and Country Planning Ordinance, 1951 (Cap 84) which are entirely irrelevant to the issue whether the defendant/respondent as a tenant whose tenancy has expired is entitled to continue in possession against the will of its landlord.

(c) It was wrong for the learned Judge to hold that the plaintiff/appellant cannot develop the "premises" into offices and shops because:

(i) the lease in question did not specify that the land was to be used as a petrol filling station, and

(ii) assuming that the Town and Country Planning Ordinance aforementioned was applicable and that only a petrol station could be operated thereon, it does not necessarily follow that only the defendant/respondent could operate such a business – the plaintiff/appellant too could obtain a

franchise from another oil company to operate a station there if it turned out that the application for re-zoning or variation was refused by the Town and Country Planning Department.

(d) The judgment is against the weight of the evidence the case Being a simple straight forward landlord and tenant matter over a subject-matter excluded by Act 220.

In his submissions before us, Counsel for the appellant argued grounds (a) and (d) together and I intend to follow the sequence of his presention in the order as made. Counsel submitted that the Rent Act 1963 (Act 220) does not protect all tenancies and in this he called for support section 1(2)(b) and (c) of Act220 and argued that the section under reference does not apply to a lease of bare or vacant land on which there is no building at all , or on which there were premises but the premises were demolished and new ones erected within five years after the lease.

In reply to the above the respondent conceded that the Rent Act excludes certain types of tenancies from its scope of operation, and further that the Act does not cover the original lease of twenty years entered into by the parties on 11th November 1959 which lease was in respect of vacant land that was to be demolished. The respondents however reiterated that at the time the original twenty-years lease expired on 10th November 1979 they had developed the land and constructed buildings thereon. The new five years lease granted the respondents in 1979 by the appellants did not therefore relate to the bare land which was the subject matter of the 1959 lease agreement, but rather to the now developed land adorned with a petrol filling station and a service station.

Under the circumstances prevailing the new lease of five years could only have been granted under the Rent Act, since the terms, more particularly the rent, took cognisance of the developments on the land.

In order to resolve this ground of appeal, it is essential that a careful study be made of the lease agreement of 1959 and the renewed lease of 1979 under the microscope of the relevant provisions of the Rent Act 1963 (Act 220).

Section 1 provides:-

(1) Subject to the provisions of subsection (2), this Act shall Apply to all premises in Ghana.

(2) This Act shall not apply to – (a) any premises of which a public officer is a tenant by reason of his employment and of which premises the Government is the landlord;

(b) any lease of any premises when such lease, whether entered into or renewed before, on or after the date of the commencement of this Act, was entered into or renewed as a lease of land upon which there were no premises at the time of the grant of renewal of the lease;

(c) where a lease, whether entered into, before, on or after the date of the commencement of this Act, was entered into as a lease of land upon which there were premises but the premises were demolished and new premises were erected within five years of the grant of the lease, such lease after the erection of the new premises.

……."

In preparing this judgment I made an effort to find if there had been any decided cases based on Section 1(2) of the Rent Act 1963. I found none readily available. I shall therefore presumably explore virgin grounds by my analysis of the relevant provision. The operative words in (2) (b) are any lease of any premises" "entered into or renewed before, on or after the date of commencement of this Act." In conformity with the general principles of interpretation the words, where they are unambiguous, must be interpreted according to their ordinary meaning. In line with this caveat, from which I should not deviate, I see the intention of the drafters of Act 220 as to rope within the purview of subsection (2) of section 1, any lease of any premises that was made of land upon which there was no premises ie. which had not been developed at the time the grant or the renewal thereof was made. The essential character of the subject-matter as contained in paragraph (b) of subsection (2) is "land upon which there were no

premises at the time of the grant of renewal of the lease." The use of the word "premises" might tend to mislead, more especially in our circumstances where the word has assumed synonymy with a house or building. Legally however the word has been defined at page 1180 of Black's Law Dictionary 6th Edition to mean land with its appurtenances and structures thereon. It is an elastic and inclusive term and it does not have one definite and fixed meaning; its meaning is to be determined by its context and is dependent on circumstances in which used, and may mean a room, shop building or any definite area."

The lease agreement of 11th November 1959 contains provisions that suggest irresistibly that at the time that lease was executed, the subject-matter thereof was a bare, vacant land, or land upon which there were no premises. This conclusion is informed by the description of the property in the ALL PARCEL CLAUSE. Therein the premises was described as "ALL THAT piece or parcel of land "which description does not suggest that there was a building on the demised land. Following the above comes the covenant of the lessee.

> "(b) To bear pay and discharge all existing and future rates charges assessments……..imposed on the demised premises or on any building or buildings which may be erected thereon during the said terms……"

It turns more on the side of sound reasoning and rationalization to infer That at the time of the lease agreement Exhibit A, there was no building on the land. There was therefore no mention of any existing building. The only contingency provided for by the parties was in respect of "any building or buildings which may be erected thereon during the said term.

If the question whether the Rent Act 1963 (Act 220) applies to decide the issues in this case is to be limited to section 1(2)(b) alone, then I will say without any equivocation that the Act does not apply.

Before I draw the curtain however, I am enjoined to equally consider paragraph (c) of subsection 2 of Section 1 in similar vein. The paragraph in question limits its preview of exclusion to "lease of land upon which there were

premises but the premises were demolished and new premises erected within five years after the grant of the lease." Whether the appellant can successfully invoke this provision or not would depend on the evidence led at the trial. The appellant is saying that the parties agreed in 1959 for the respondents to demolish any building standing on the demised property and erect new ones. This assertion was not denied by the respondent. Indeed it behooves upon the respondent merely to tell the court that the buildings were not erected on the land within five years after the grant. Their failure to debunk the assertion of fact by the appellant amounts in law to admission of what their opponent had asserted.
I will accordingly accept as I am bound to do, that the land was bare, or in any case, whatever building stood thereon at the time of the execution of the lease in 1959, was demolishes and new buildings erected thereon within the space of five years after the grant of the lease.

In sum the effect of the relevant provisions of the Rent Act 1963 (Act 220) and the Lease agreement of 1959 is that the Rent Act 1963 is excluded from application to the said lease by virtue of section 1(2)(b) and (c) thereof.

I am fortified to dismiss the argument of the respondent that the renewal of the lease for five years in 1984 brought the transaction under the cognisance of the Rent Act. That submission simply flies in the face of section 1(2)(b) and (c) of the Rent Act wherein it is provided that the renewal of a lease of land upon which there were no premises at the time of the grant or renewal; or the renewal of a lease where existing buildings were demolished and new ones erected within five years after the grant, would not, per se, alter the original character of the transaction. Those contingencies were specifically mentioned and excluded from the operation of the Rent Act. The Circuit Court committed the initial error of introducing and applying the wrong legislation and basing its judgment and orders thereon. That initial error misled the appellants into serving a fresh "so called statutory notice" of six months on the respondents for recovery of possession and also induced them to state and justify their demand for possession. The error was compounded when the High Court too fell into the trap.

I will uphold the appeal on ground (a) and (d) and accordingly dismiss the references to and reliance on section 17(h) of Act 220 and the conclusions drawn therefrom to inform the judgment from which this appeal was filed. Neither the case of JOSEPH VRS. FARISCO (GHANA) LIMITED (1991) 2 GLR 151 nor AFRANIE VRS. QUARCOO (1991) 2 GLR 538 is applicable to this case.

Upon a strict application of the rules, the actual intention of the parties can be found from the terms and provisions of the lease agreement.I should emphasise that when the two options for renewal were exercised and exhausted, no new leases were made to replace, cancel or abrogate the lease agreement of 1959. What happened in 1979 and again in 1984 were only a renewal by extension of term of the 1959 lease. In fact the verb "renew" is defined at page 1398 of The Chambers Dictionary to be "to renovate; to transform to new life; revive; to begin again; to repeat; to invigorate; ….to extend (eg. The period of a loan, validity of a lease etc)." To renew a lease is not to replace or repeal the old agreement.

The 1959 lease agreement was very clear in its intendment. It was understood and agreed by the parties contracting that at the expiration or

> sooner determination of the term hereby created
> to demolish the building or buildings erected upon and
> to restore the surface of the demised premises to their
> former state and condition."

The above quotation was what the respondent bound themselves to do by way of a covenant to the lessor. They cannot now in good conscience and faith resile renege or introduce conditions which neither existed nor were contemplated at the time they executed the lease.

The next ground of appeal argued by counsel for the appellant is (c) – that it was wrong for the

> Learned Judge to hold that the Plaintiff/Appellant
> cannot develop the "premises" into offices and shops…."

This ground of appeal and the one following which alleges that the judgment is against the weight of evidence led, indeed raise very substantial questions. The evidence leaves no doubt that a layout of the land has been made,

the area is zoned and the user indicated. The facts which emerge are clear: that the respondents applied to the Town and Country Planning and succeeded obtaining permission to use the land in dispute as a petrol filling station in conformity with the declared user as commercial area. It is also a fact that even if the land subject matter herein is strictly pencilled for use as petrol filling station, it would not accord with law, equity and reasonable appraisal to interpret that user as reserved for only the respondents. I should at this stage sound a strong warning of the dangers that stand to arise and result when the clear provisions of statute are not adhered to. One such statute is the Town and Country Planning Ordinance 1951 (Cap 84). The Ordinance makes elaborate provisions regarding the zoning of land, the rights reserved to the Minister, as well as the expectations of affected or interested persons and procedure attendant thereto. I will only refer to a few of the sections thereto.

Under section 10(1) of the Ordinance provision has been made for the Minister to "grant to anybody applying in writing therefor permission in writing….to develop land or to construct, demolish, alter, extend, repair or renew a particular building lying within the Planning Area.

By Section 35 the Minister has power to revoke or modify at any time a scheme which has been previously approved. It is evident that the layout of a given area might be altered at anytime upon the occurrence or prevalence of certain conditions. It may in consequence not be remote to conjecture that the whole or parts of the present zoning of Accra might change with time. It was in recognition of this possibility that the respondent wrote to the Town and Country Planning to confirm the user of the subject land as a petrol filling station. Need I say that similar considerations informed the appellants' application to the same body, the Town and Country Planning for permission to build stores and offices on the disputed plot. Both the operation of a petrol filling station and stores and offices meet the criteria of commercial area. It therefore lies with the Town and Country Planning as the statutory body vested with the requisite powers, to consider any application forwarded to them on its merits and grant or refuse them as they deem fit. In this appeal, the important fact that must not be glossed over is

that there are two distinct issues. The first issue relates to the operation of the lease agreement. That is the issue between the appellant and the respondent. The agreememt has expired simplicita. Once there is no new agreement between the appellant and the respondents the latter has nothing to legally stand on, and they must respect the agreement on the strength of which they took possession of the land. The law will not permit them to determine their own rent or the terms upon which they would want to extend their occupation to the detriment of the real owners of the land. The case of SAVAGE VRS. GHANA INDUSTRIAL HOLDING CORPORATION (1973) 2 GLR 242 might offer us a guide. In the recited case, the defendants failed or refused to abide by the terms of the lease relating to the payment of rents and unilaterally terminated the lease. When the plaintiff sued, the court held inter alia that the length of the notice required, the time it was to be given and other related matters depended on the terms of the lease. In other words, the parties to the lease agreement are enjoined to conform to the terms thereof and act accordingly. The second case of reference addresses the offer or acceptance of rents. It was held that the mere acceptance of rents after the expiration of the lease could not justify an inference that a new contractual tenancy had been created between the parties. See UNION TRADING CO. LTD. VRS. KARAM and ANOTHER (1975)1 GLR 212. Significantly, there are cases which were decided after the Rent Act 1963 Act 220 had come into force, including the two references above, and in the determination of which the Rent Act was not applied. This underscores the fact that it is not every case involving a landlord and a tenant or a Lessor and a Lessee which is cognisable under Act 220.

Earlier in this judgment I identified the existence of two district issues. I have addressed the one between the appellant and the respondent per se. The other issue which I will briefly address is the aftermath of the respondent yielding vacant possession to the appellant. It has been contended strongly by the respondent that the appellant has not been licensed to sell or deal in petrol or petroleum products. This contention begs the terms and conditions of the lease agreement.

Further to that, I do not think the respondents would sincerely invest a high premium on this contention. I firmly believe that society has formulated laws for good conduct. If the appellants apply the land to a user contrary to the law, there are adequate provisions to enforce the law against them, and this would not necessarily require any assistance or intervention at all from the respondents. By far the most important factor upon which to resolve the dispute between the parties is the lease agreement and that agreement essentially weighs against the respondents.

Upon carefully considering the submissions of counsel on either side, the facts, circumstances of the case as well as the applicable legislation, I will allow the appeal.

G.M. QUAYE
JUSTICE OF APPEAL

I agree.

B.T. ARYEETEY
JUSTICE OF APPEAL

I also agree.

TWENEBOA-KODUA
JUSTICE OF APPEAL

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