

CC. 76/15

2015

B.

NO. 6

**IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROPERTY)**

BETWEEN:

**MRS. CHRISTINE BUREH (NEE KAMARA)
MS. LOVETTA BUCKLE
MS. CATHERINE GBASSAY-KAMARA
C/O 3 CAMPBELL STREET
FREETOWN**

-

PLAINTIFFS

AND

**MR. HUSSEIN HAMOUD
3, CAMPBELL STREET
FREETOWN**

-

DEFENDANT

**BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA
DATED THE 19 DAY OF SEPTEMBER 2016**

Counsel:

**Christopher J. Peacock Esq for the Plaintiffs/Applicants
Tomell A.Q. Harding Esq for the Defendant/Respondent**

1. This application before this court was made by way of Notice of Motion dated 31st day of March 2016, together with a supporting affidavit sworn to by Christopher J. Peacock Esq with exhibits attached pursuant to Order 17 R 1 SR 1(a) & (b) of the High Court Rules of Sierra Leone 2007, for and on behalf of the Plaintiff/Applicant.
2. In the file is a Tenancy Agreement, Exhibit CJP1 same expressed to be made between the 2nd Plaintiff/Applicant and the Defendant and dated 18th day of August 2004 and registered as No. 150/14 in Vol. 68 at page 32 in the Record Books of Tenancies. The application is that this Court, among other prayers, determines the following points of law:
 - a. Whether the term of years created under the above-cited Tenancy Agreement expired on 30th April 2014.
 - b. Whether the period of tenancy created under the said Tenancy Agreement was for a fixed term and was not renewable under Clause 2.12 of the said Agreement.
 - c. Whether the Defendant, having failed to surrender the demised premises and appurtenances thereto was holding the said premises as Tenant-at-Sufferance and is liable to pay *mesne* profits.
 - d. Whether the Defendant can rely on a defective letter dated 10th June, 2008 for a renewal of his lease.

- e. Whether the Plaintiffs are duly entitled to the reliefs prayed for in the Writ of Summons, if this Court construes the said Tenancy-Agreement as well as the legal questions in the affirmative.

In support of the application is the affidavit of Christopher J Peacock sworn to on the 31st day of March 2016 with certain exhibits attached.

- i. Exhibit CJP1 is a Tenancy Agreement dated 18th day of August 2004 between the 2nd Plaintiff and the Defendant/Respondent herein.
- ii. Exhibit CJP2 is a letter written by Christopher J. Peacock Esq addressed to the Defendant herein in respect of the subject-matter in this case.
- iii. Exhibit CJP3 is the Writ of Summons commencing this action.
- iv. Exhibit CJP4 A & B is a Memorandum and Notice of Appearance filed for and on behalf of the Defendant/Respondent herein.
- v. Exhibit CJP5 is a Defence and Counter-Claim filed for and on behalf of the Defendant/Respondent herein.
- vi. Exhibit CJP6 is a Reply and Defence to the Counter-Claim filed on behalf of the Plaintiff/Applicant herein.
- vii. Exhibit CJP7 is a letter to the Defendant/Respondent from Lovetta Pratt dated 6th day of June 2008.
- viii. Exhibit 8 A & B is an entry for trial and Notice of entry for trial respectively.

3. On file is an affidavit in opposition sworn to by Hussein Hamoud on the 7th day of April 2016 with five exhibits attached.

- a. Exhibit HM1 is the Tenancy Agreement hereinbefore referred.
- b. Exhibit HM2 is a letter dated the 10th day of June 2008 from Mrs. Lovetta Pratt.
- c. Exhibit HM3 is the Writ of Summons hereinbefore referred from the law offices of Christopher J. Peacock Esq.
- d. HM4 is the Defence & Counter-Claim on behalf of the Defendant hereinbefore referred.
- e. Exhibit HM5 is a hand written document titled "Fresh terms of the Plaintiffs-17th December 2015.

4. By way of reply to the affidavit in opposition is an affidavit sworn to by Catherine Gbassay-Kamara, the 3rd Plaintiff herein, sworn to on the 28th day of April 2016 with the following exhibits attached.

- i. Exhibit AA1 is a letter dated 8th day of December 2015 from the law offices of Tejan-Cole, Yillah and Bangura, Solicitors for the Defendant, to Christopher J Peacock Esq, Solicitor for the Plaintiff/Applicant.
- ii. Exhibit 2A & B is an undated and unsigned minutes of consent judgment.
- iii. Exhibits BB5 A&B, BB4 A & B are without prejudice letters and an attachment which I will not consider for purposes of this application for obvious reason.

iv. Exhibit CC1 is a copy of a weigh book page showing service of Exhibits BB5 A & B and BB4 A & B which is in line with para. 3 above and which shall be of no moment to this application.

5. The application was made by Christopher J. Peacock Esq on the 5th day of May 2016 before this Honourable Court. Clause 1 of said Tenancy Agreement herein creates a tenancy between the parties therein for a period of ten years, effective 1st day of May 2004, paying the required consideration as therein specified under the Clause 1(1-3). For the purposes of this application and its determination, I refer to Clause 2.1 of the Tenancy Agreement which stipulates that the rents in respect of the property referred and described in the said Agreement, the Defendant herein, who is the tenant thereunder, agreed to pay the rent for the said property in the manner described in Clause 1 sub-clauses (1-3) respectively.

6. For further understanding of the terms in respect of payment of rent and possible forfeiture of occupation in the event of failure to pay the said rent in the manner hereinbefore referred, I refer to Clause 4.1 of the Tenancy/Lease Agreement.

7. I refer to Clauses 2.12 and 2.13 of the Tenancy Agreement, which provides what the tenant, the Defendant/Respondent herein must do at the determination of the Tenancy Agreement, that is to say, after the said ten years created by the Agreement, which is 30th day of April, 2014. I hold that the Tenancy Agreement dated 18th day of August 2004 created a fixed term tenancy for a period of ten (10) years certain between the 2nd Plaintiff and the Defendant herein.

8. A lease which creates a tenancy for a term of years may confer on the tenant an option to take a lease for a further term. See *Austin Vs Newham* (1906) 2K.B. 167, D.C. The option may be so phrased that the tenant is entitled to a fresh lease containing all the terms, including the option to renew, contained in his original lease. A tenant desirous of exercising an option to renew must conform with the conditions in the lease as to its exercise. A lease may contain a covenant on the part of the landlord that he will, at the end of the term or at some stated period within the term, grant a renewal of the lease if so required by the tenant. Such a lease confers on the tenant an immediate term with a right to the further term.

9. In the instant case, there is no provision in the Tenancy Agreement herein for the exercise of an option for renewal of the tenancy created under the Agreement nor does the lease contain an option for determination by the tenant. The Agreement herein, as per Clause 2.12 was determined on 30th day of April 2014. Suffice it to say that the Tenancy Agreement dated 18th day of August 2004 and registered as No. 180/2004 at Volume 68 page 32 in the Book of Misc/Instruments in the Office of the Registrar General in Freetown created a fixed and certain term tenancy which expired on 30th day of April, 2014.

10. A lease for a certain term generally requires no notice to quit at the end of the term, whether the term expires by effluxion of time, *Cobb Vs Stokes* (1807), 8 East 358 or on the happening of an event on which it is expressed to determine.

A lease for a fixed period may be determined by effluxion of time or if it contains an option for determination by the landlord or the tenant, it may be determined by the exercise of that option.

11. The above legal position notwithstanding and out of an abundance of caution, as Peacock Esq puts it, a letter dated 13th day of September 2013 signed by Christopher J Peacock Esq, for and on behalf of the Plaintiffs/Applicants which said letter is a Notice to the Defendant that his tenancy will not be renewed upon its expiration and for him to quit the property referred in the Tenancy Agreement hereinbefore mentioned, at the expiration of the fixed and certain term of ten years provided by the said Agreement, ie. 30th day of April 2014 was served on the Defendant/Respondent herein. This was not controverted by the Defendant. The Defendant was asked by the said letter to settle all areas of rent and utility bills incurred and for him to make repairs as necessary and drop the keys to the premises referred in the Agreement at the law offices of the Plaintiffs/Applicants' Solicitor on or before the 1st day of May 2014.

12. A person who enters on a land on a lawful title and after his tenancy has ended continues in possession without statutory authority and without obtaining the consent of the person then entitled, is said to be a tenant at sufferance. This is the legal position what ever was the nature of the original estate. See Halsbury's Laws of England, 3rd Edn. Vol. 23 para 1158 p 509.

13. A landlord may recover in an action for *mesne* profits the damages which he has suffered through being out of possession of his property. *Mesne* profits, being damages for trespass can only be claimed from the date when the Defendant ceased to hold the premises as a tenant and became a trespasser, and in the instant case, payment for *mesne* profit is effective 1st day of May 2014 until the day the Defendant delivers possession of the property which he now occupies at sufferance. See *Elliott Vs. Boynton* (1924) 1 Ch. 236 C.A at p. 250.

14. The Court notes that a penalty for payment of *mesne* profit at Le. 2,000,000/00 per month until delivery of possession, was imposed on the Defendant in the event that he failed to deliver up possession at the expiration of the tenancy, on the 30th day of April 2014 by the letter dated 13th day of September 2013.

15. In his affidavit in opposition, the Defendant/Respondent agrees to the existence of the Tenancy Agreement aforementioned. In his Defence and Counter-Claim as in exhibit HH4, the Defendant admits to receipt of the letter dated 13th day of September 2013 as in Exhibit CJP2, that is the notice to quit at the expiration of his fixed term under the said Agreement.

16. The Defendant however refers to a letter Exhibit HH2, dated 10th June 2008 purportedly coming from the 1st, 2nd and 3rd Plaintiffs but only signed by supposedly the 2nd Plaintiff, now known as Mrs. Lovetta Pratt. According to the Defendant, the said letter is an agreement to renew his Tenancy. Under the said Exhibit HH2, the Defendant is reminded of being in breach of payment of his

rent. In fact, Exhibit HH2 deals with two issues mainly, the breach of the covenant under the Agreement in respect of the manner of payment of rent and the none renewal of the Agreement.

17. There is nothing in evidence that shows acceptance from the Defendant nor is the said exhibit signed by the rest of the Plaintiffs named thereunder. I do not consider Exhibit HH2 to be a document renewing the registered Tenancy Agreement dated 18th day of August 2004. If indeed the Defendant believed in the authenticity of Exhibit HH2 why then would he exhibit and rely on Exhibit HH5 dated 17th day of December 2015 which granted him only a six months extension from the day it was served? I do not believe in the authenticity of Exhibit HH2.

18. The Defendant/Respondent referred the Court to Exhibit HH5, a letter dated 17th day of December 2015 granting an extension of six (6) months to 30th day of June 2016 to the Defendant on condition that he pays the rent for the said extended term and that the Defendant/Respondent must pay his annual rent for the years 2014 and 2015 to the Plaintiffs' Solicitor. He was also required under the said Exhibit HH5 to pay all utility bills before vacation of the said premises on 30th day of April 2016. As said hereinbefore, the Plaintiffs are not limited to a claim for *mesne* profits. It was suggested in Exhibit HH5 that the terms thereof must form part of a consent judgment. On file is what I will refer to as a draft consent judgment which was never signed by any of the parties herein and will therefore be treated as a draft document as is and will not be taken into consideration.

19. Commenting on Exhibit HH2, that is letter dated 10th June 2008, Peacock Esq recognized and rightly so that the Tenancy Agreement herein is a registered document and could only be varied by another registered document. He noted, as I have noted herein, that Exhibit HH2 was not signed by the two other Plaintiffs whose names appear on Exhibit HH2 as authors. Peacock concludes that Exhibit HH2 is an incomplete and defective document. I refer to paragraph 4 of the affidavit in reply sworn to by the 3rd Plaintiff/Applicant herein where she denied any knowledge of Exhibit HH2. I have held that the Tenancy Agreement herein creates a fixed and certain term of 10 years tenancy and that same is determined by effluxion of time. To my mind therefore, there is no issue of variation of the Tenancy Agreement, which as said, determined itself on the 30th day of April 2014.

20. I refer to a Skye Bank cheque for Le. 16,000,000/00 attached to a 'without prejudice' letter dated 7th day of March 2016 and state that though the letter is not taken into consideration because of its nature, I shall consider the oral averment in respect of payment of the said Le. 16,000,000/00. The Solicitor for the Plaintiffs/Applicants argued that same was received as *mesne* profit for the period the Defendant/Respondent stayed in the demised premises after determination of his tenancy. I refer to Exhibit CJP2, paragraph 2 thereof where the Solicitor for the Plaintiffs/Applicants notified the Defendant about payment of *mesne* profit at Le. 2,000,000/00 per month in the event that he fails to vacate the premises at the determination of his tenancy.

21. The Defendant/Respondent fails to admit or deny the fact that he has refused and or neglected to vacate the premises which forms the subject-matter of this application at the expiration of the Tenancy Agreement hereinbefore referred. I have held that the Agreement as it is expired on 30th day of April 2014. As to whether or not Exhibit HH2, creates a renewal of the Defendant's tenancy, I have already stated that the document itself is not signed by two of the persons named thereunder and is therefore not authentic.

22. Further, it is trite law that a fixed Tenancy Agreement is determined at the expiration of the term provided for under the Agreement and a tenant under such an Agreement must deliver up possession at the expiration of his tenancy even without notice. That notwithstanding, in the matter herein, Exhibit CJP2, as stated hereinbefore, notified the Defendant about the expiration of his tenancy on 30th April 2014 and that same will not be renewed.

I have held as follows:

1. That the term of years created under the Tenancy Agreement referred to hereinbefore expired on 30th day of April 2014.
2. That the said Tenancy Agreement was for a fixed term and that Clause 2.12 thereof determines the tenancy with no provision thereunder for renewal.
3. The Defendant's tenancy having expired on the 30th day of April 2014 and having failed to vacate the said premises, he remains a tenant at sufferance beginning 1st May 2014 and liable to pay *mesne* profit therefrom.
4. The letter dated 10th day of June 2008 cannot serve as a renewal of the Tenancy Agreement hereinbefore referred.

In light of the above, **IT IS THIS DAY ORDERED AND DECLARED AS FOLLOWS:**

1. That the Defendant's fixed and certain term of tenancy for that part of the premises at No. 3 Campbell Street, which he now occupies as tenant at sufferance was determined on the 30th day of April 2014.
2. That the Defendant was bound by the Agreement dated 18th day of August 2004 and ought to have delivered up possession of the property referred to in the said Agreement on or before the 30th day of April 2014.
3. That the Defendant pays *mesne* profit to the Plaintiff, same assessed at Le. Le. 2,000,000/00 per month from the 1st day of May 2014 till delivery up of possession, less Le. 16,000,000/00 herein before referred.
4. That the Plaintiffs immediately recover possession of that part of the property at No. 3 Campbell Street, Freetown, now occupied by the Defendant as a tenant at sufferance.
5. That the Defendant settles all utility bills incurred whilst in occupation of that part of the property hereinbefore referred until delivery up of vacant possession of same.
6. That the Defendant effects all necessary repairs within that part of the demised property which he occupied failing which the Plaintiffs be at

liberty to fix a bill of cost and make repairs as may be necessary and serve the incurred cost on the Defendant who shall settle same in monetary terms.

7. Costs borne by the Defendant at Le. 2,500,000/000.

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Delivered on:

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Delivered on: 19/09/16