JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL No. 54 of 1974

BEFORE: The Hon. Mr. Justice Edun, J.A.(Presiding).
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Zacca, J.A.

B E T W E E N ELISHA HENRY - Plaintiff/Respondent

A N D WINNIFRED RECKORD - Defendant/Appellant

Mr. H.S. Dale for the Defendant/Appellant.

Mr. K.C. Burke for the Plaintiff/Respondent.

18th December, 1974
14th February, 1975

EDUN, J.A.:

An important point in this appeal is whether or not the contract of tenancy between the appellant and respondent falls within the provisions of the Agricultural Small Holdings Law, Chapter 8 (hereinafter referred to as the "Act"). If it does, then the judgment entered by the learned Resident Magistrate in favour of the respondent in the sum of $500 and costs $51.70 must be upheld. If it does not, the question which arises is whether the judgment must be set aside or be upheld.

The respondent claimed damages against the appellant for the appellant's wrongfully evicting him in December 1973 from his possession of about one acre of land rented by the appellant to him and for the appellant reaping his cultivations therefrom. The appellant denied evicting the respondent and claimed that she was entitled to retake possession of her land because the respondent's tenancy had expired and that he was given notice and sufficient time within which to reap his crops.

The learned Resident Magistrate gave judgment for the respondent and in his reasons for judgment said:

" 1. That the plaintiff /respondent/ rented one acre of land from the defendant at $4.00 per annum;

2. That the defendant /appellant/ entered the plaintiff's cultivation on the 3rd December, 1973 and thereby repossessed the land;
3. That there were crops thereon ready for reaping and valued at $485.00.

..... I found as a matter of law that this action falls within the provisions of the Small Holdings Law ....."

Section 3 of the Act provides as follows:-

" 3 (1) A contract of tenancy shall be in writing in duplicate and shall be signed by the parties thereto and attested.

(2) The form of contract of tenancy prescribed in the First Schedule of this Law may be used with such variations as circumstances may require."

The evidence in the case for the respondent discloses the following written documents -

Ex 1 " October 4 1971

Received from N. Henry the sum of Four dollars ..... cents as payment for 1 year rent for one acre of land situated at Monkland due 1971 from 4th October 1971 to 4th October 1972

Sgd. W. Beckford "

Ex 2: "

NOTICE

Mr. Henry

I hereby give you notice to leave the one acre of land rented to you as from 4th October 1972 to 4th October 1973.

Sgd. W. Beckford

Please send rent. "

There are no other written documents evidencing the relationship between the appellant and respondent.

Learned attorney for the appellant submitted to us that the contract of tenancy between the parties was not in writing and so the provisions of the Act were inapplicable and that the appellant was not under any obligation to give the respondent five years notice in writing to terminate the tenancy in keeping with s. 18 of the Act. He urged that the respondent knew that the land was rented only for a year and

the appellant was within her rights to repossess her holdings. On the other hand, learned attorney for the respondent, submitted that the evidence established a contract of tenancy of an agricultural small-holding and as the parties could not contract out of the law (s.45 of the Act) the contract in this case comes within the provisions of the law; the contract of tenancy was therefore, never terminated and so the appellant had no right to repossess the land. He cited Wright v. Horton (1887) 12 A.C. 371 and urged that the non-compliance with a provision in the law, (in this case of s. 3 of the Act) did not invalidate the tenancy agreement between the parties.

In my view, Wright v. Horton (supra) has no relevance to the facts in this case. Here, section 3 of the Act says that the contract of tenancy "shall be in writing in duplicate and shall be signed by the parties thereto and attested." Sub-section 2 of that section prescribed a form in which the contract of tenancy may be used. Section 4 of the Act provides that "forthwith upon the execution" of the contract of tenancy the landlord shall -

1 deliver a signed copy of such contract to the tenant,
2 keep a file containing all contracts of tenancy entered into by him,
3 permit any such file kept by him to be inspected at all reasonable times by any person authorised in writing for that purpose by the Minister of Agriculture, and
4 the landlord was guilty of an offence if he failed to comply with any provisions of that section.

In Wright v Horton (supra) debentures were issued to a director of a company but were not registered in accordance with section 43 of the Companies Act 1862. The company went into liquidation and the validity of the debentures was contested by the unsecured creditors. It was upon the true construction of section 43 that the determination of the question depended. The House of Lords held that the mere omission to register the debentures, without concealment, did not invalidate the debentures. Lord Halsbury L.C. observed that from the language of the section, the validity of the debentures did not depend upon registration. The words of the section were: "Every limited company under this Act shall keep a register of all mortgages and charges

specifically affecting the property of the company, and shall enter in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entered to such charge." The section made it an offence, where, if any property of the company was charged without such entry, a director knowingly or wilfully authorised or permitted the omission of such entry.

In the instant case, the validity of the contract of tenancy as falling to be considered within the provisions of the Act depended primarily upon compliance with section 3 of the Act. How can a signed copy of contract of tenancy be delivered to the tenant, how can it be in duplicate and attested thereto, how can a file be kept containing a contract of tenancy, how can an authorised person inspect a file containing a contract of tenancy - unless the same was in writing. No doubt, the Act sought to give the agricultural tenant a security of tenure at the expense of the landlord being enforced to restrict the user of his own lands. For that reason, one would reasonably expect positive evidence manifesting the intentions of both parties to create the relationship of landlord and tenant. In our view, it is a condition precedent that section 3 must be complied with before a contract of tenancy can fall within the provisions of the Act and if, as in this case, the contract of tenancy is not in writing, the provisions of the Act cannot regulate the duties and obligations of the parties.

It is to be noted that section 3 does not say that there should be a note or memorandum in writing signed by the party to be charged. Nor does it provide that any contract of tenancy not in writing shall be illegal or void.

The fact that the contract of tenancy in this case is not in writing, does not finally dispose of the appeal because the position of the respondent in relation to the appellant under the general law of the land must be considered. There is no doubt that from the evidence in the instant case, there is -

1 a contract of tenancy
2 of an agricultural small holding
3 of one acre of land,
4 for the valuable consideration of $4,
5 for a period of time.

As a result, the respondent expended money, time and labour to cultivate the land. The learned Resident Magistrate found that the appellant evicted the respondent in December 1973 when there were to the appellant's knowledge, crop cultivations belonging to the respondent, ready for reaping, to the value of $485. There were no arguments addressed to us, challenging the findings of those facts.

The learned Resident Magistrate, however, went on to hold that as a matter of law, the contract of tenancy fell within the provisions of the Act, that Ex 2, the notice to quit, did not comply with s.20 of the Act and so did not terminate the tenancy. He did not go on to consider if he was wrong, whether or not the respondent was entitled to judgment. As it turns out, our conclusion is that the contract of tenancy does not fall to be considered under the provisions of the Act. Is it a case where we should remit the matter to be considered by the learned Resident Magistrate or that the facts are such that this Court can deal with the case?

The respondent has given evidence thus:-

"Mrs. Beckford (appellant) gave me a notice to leave by 4th October 1973. She never told me to reap the things I had on the place and not to plant any more. It is true that Mrs. Beckford came on the land and reap things. ....."

The appellant has given evidence thus:-

"I went back and wrote a notice and I give it to him /respondent/ on 4th October 1972. He was supposed to leave on 4th October 1973. I told him I had development for planting forest trees. He decided to leave. He said he would leave at end of 1973. He didn't, I didn't go to his place on 3rd December 1973 with my husband and a fellow at about 7 a.m. ..... I didn't see Mr. Henry /respondent/ on 3rd December 1973. I have not removed anything from his place.

I didn't give anyone permission to remove anything ..... "

The learned Resident Magistrate accepted the evidence of the respondent and his witness and rejected that of the appellant. He specifically stated in his reasons for judgment that the appellant entered the respondent's cultivation on 3rd December 1973 and thereby repossessed the land; and that there were crops thereon ready for reaping and valued $485.00. In awarding judgment for the respondent, he must have been satisfied that the appellant destroyed or otherwise converted to her benefit the respondent's cultivations. On the evidence found by the learned Resident Magistrate, even assuming that the appellant had terminated the contract of tenancy, the appellant was not entitled to destroy or otherwise convert to her benefit, the crop cultivations which exclusively belonged to the respondent. See: Kilbourne v Caymanas Estates Ltd (1962) 4 W.I.R. 461; Ramsay v Walker (1962) 4 W.I.R. 539; Linda Corcho v Charles Campbell R.M.C.A. No. 55 of 1969.

From the state of the evidence and to the end thereof, as per record before us, the onus shifted upon the appellant to establish by what right she destroyed or otherwise converted to her benefit the respondent's crop cultivations. This aspect of the case has nothing to do with the provisions of the Act. The appellant's defence was that she did not, by herself or by anyone else, remove anything belonging to the respondent. And, that defence, as I have mentioned before, was rejected and properly so, by the learned Resident Magistrate. In those circumstances, to remit the case to the learned Resident Magistrate would be a worthless exercise. It is thus well within the jurisdiction of this court to adjudicate finally upon the matter. That is, in our view the judgment of the learned Resident Magistrate cannot be disturbed.

For the reasons given, we dismiss the appeal with costs of appeal to the plaintiff/respondent of $40.00.