IN THE SUPREME COURT OF JUDICATURE PRO FORMA
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT
(HIS HONOUR JUDGE WHITE)

Royal Courts of Justice
Strand
London WC2

Friday, 31 January 1997

B e f o r e:

LORD JUSTICE BROOKE
SIR BRIAN NEILL

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THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN
Plaintiff/Respondent

- v -

ISHOLA AKANNI
Defendant/Applicant

- - - - - -

(Computer Aided Transcript of the Palantype Notes of
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Official Shorthand Writers to the Court)

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MR S CarrottT (Instructed by Camden Community Law Centre, 2 Prince of Wales Road, London, NW5 3LG) appeared on behalf of the Applicant
MR C BAKER (Instructed by London Borough of Camden, Town Hall, Judd Street, London, WC1H 9LP) appeared on behalf of the Respondent

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J U D G M E N T
(As approved by the Court)

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LORD JUSTICE BROOKE: Sir Brian Neill will give the first judgment.

SIR BRIAN NEILL: The applicant in these proceedings is Mr. Ishola Akanni. He is aged 23 and he

is applying for leave to appeal against an order of His Honour Judge White made on 22 January 1997 whereby the learned Judge declined to set aside a warrant of possession which had been executed on 15 January 1997.

On 30 May 1994, the London Borough of Camden granted the applicant a tenancy of No 2 Rydal Water in Robert Street, London, NW1 and Mr Akanni acquired the status of a secure tenant. But almost immediately he fell into arrears with the rent. By the beginning of 1996 the arrears of rent exceeded £1,000.

In June 1996, Camden issued proceedings, claiming possession of the premises. On 20 June, the area manager wrote to the applicant to inform him of the amount of the arrears. On 16 July 1996, a suspended order for possession was made. The order provided that the applicant was to pay £1,548.77 for unpaid rent and that the total amount, including the costs, was to be paid by instalments of £23.55 per month in addition to the current rent. The current rent was stated in the order to be £41.44 a week. But those payments were not kept up.

On 20 November 1996, the area manager in the Housing Department of Camden wrote to Mr Akanni in these terms:

> "As at 18th November 1996 your rent arrears stood at £1649.52 not including this weeks charge of £43.70.
>
> Due to your failure to keep to the terms of the County Court order obtained by the Council on 16th July 1996, I now have no option but to request our Legal Department to arrange for County Court bailiffs to attend an eviction at this address. I have delegated authority to request this action and the application has now been submitted.
>
> It is essential that you contact your Estate Officer, Mrs. Caton immediately on receipt of this letter in order to discuss this very serious matter, with your proposals to clear the debt in full, and you should seek independent advice if required.
>
> You will be advised in due course of the eviction date, but please note that the eviction will only be cancelled if the entire debt is cleared. You are also advised that you can

> approach the County Court to have the Warrant set aside, but the Council will resist any such application."

A few days after that letter was received by Mr Akanni he telephoned Mrs. Caton, the Estate Officer named in the letter, and promised that he would pay £600. Previously he had made payments by a post office giro, but Mrs. Caton told him that he should not pay in that way but should come in to the District Housing Office and make his payments there. So on 29 November 1996 Mr Akanni went to Mrs. Caton's office at the District Housing Office but he paid not £600, which he had promised, but £400. On that occasion he was given a new temporary rent book as the pages in his existing rent book were running out. He was told that he should continue with his application for housing benefit because, it appears, on about 18 November his housing benefit had come to an end. He had from that date become liable for the full amount of rent of £43.70.

It is clear, however, that Mr Akanni did not apply for housing benefit. He did not continue with his application nor did he make any further payments of rent.

On 15 January 1997, the bailiffs attended at the premises and took possession. Mr Akanni had a morning job, it seems, and when he returned from work some time before midday on Wednesday, 15 January he found that the bailiffs were in the flat. He immediately took steps to try to get the warrant of execution set aside.

He applied to the Court. The matter was heard by His Honour Judge White, as I have already said, on 23 January 1997. The application was dismissed. From that order, dismissing the application, Mr. Carrott, on behalf of Mr Akanni, seeks leave to appeal to the Court of Appeal. If I may say so, Mr. Carrott has given great assistance to the Court in providing us with a chronology of the events and putting forward on behalf of Mr Akanni all the arguments that could be advanced on his behalf.

The points made on behalf of Mr Akanni are these. In his skeleton argument in writing and also in his

oral submissions Mr Carrott has drawn attention to the fact that until the warrant was executed it would have been open to Mr Akanni to make an application in accordance with section 85 of the Housing Act 1985 because up until the moment of execution a Court has power to stay or suspend the execution of the order or postpone the date of possession for such period as the Court thinks fit. After the date of execution the power of the Court to take any action is much more restricted. As has been made clear by this Court in Leicester City Council v Aldwinckle (1991) 24 H.L.R. 40 there is only a limited number of grounds on which a warrant of execution can be set aside and a tenant can be reinstated in a property on which the order for possession has been executed. This power of the Court was examined by the Court of Appeal in London Borough of Hammersmith and Fulham v Hill (1994) 27 H.L.R. 368. In that case Nourse LJ, who gave the first judgment, said this (at page 371):

> "... the effect of the decision in Leicester City Council v Aldwinckle is that after a warrant for possession has been executed in this class of case it can only be suspended or set aside if either (1) the order on which it is issued is itself set aside; (2) the warrant has been obtained by fraud; or (3) there has been an abuse of process or oppression in its execution."

Mr Carrott submits that on the facts of this case there was oppression in the execution of the warrant. He submits that the fact that the warrant of execution was proceeded with notwithstanding certain representations which were made either in writing, orally or by conduct in the period in November around the time of the interview with Mrs. Caton amounted to oppression. He relies, as I understand it, on five suggested representations.

First, Mr Akanni was told in terms in the letter of 20 November that he would be informed of the eviction date in due course. I have read out the last paragraph of the letter of 20 November in which that statement was made. Secondly, there was a representation by conduct whereby he was told to come in to pay the money and to come in quickly. The effect of that representation by Mrs. Caton was to give the impression that if he came in urgently and quickly it might resolve the housing

difficulties which he was in. The third suggested representation, again by conduct, is that although he went in with £400 rather than £600, £400 was accepted, and perhaps a reasonable person in Mr Akanni's situation would have thought: "That is an acceptable amount in the circumstances." The position would have been quite different had Mrs. Caton said to him on that occasion: "That £400 is simply not enough. Take it away." Mr Carrott draws attention to the fact that by making that payment of £400 he was more than fulfilling the obligation under the order of July.

The fourth matter relied upon is that on 29 November at the interview at the District Housing Office he was given a new rent book. The tenancy by that stage had come to an end and there was no obligation to give him a rent book and Mr Akanni might well have taken that as an indication that he was still safe.

The final matter which is relied upon as one of these representations is that he was told to continue with his housing benefit application. In those circumstances, says Mr Carrott, one has to consider: What would a reasonable person in the position of the defendant deduce from these various representations? He would, it is submitted, have thought that his position was secure for the time being. He was lulled into a sense of false security, as it is put, and the effect of that, so it is suggested, is that he was deprived of the opportunity to apply to the Court. In this context, Mr Carrott referred us to passages in the judgment in the Hill case in which on the facts of that case it was said that because of representations made it was at least arguable that the tenant had been deprived of the opportunity of making an application to the Court and of inviting the Court to exercise its powers under section 85.

Speaking for myself, I found Mr. Carrott's arguments, which were put forward very cogently, worthy of close attention, but I have come to the clear conclusion that on the facts of this case it would be quite wrong to say that there is any arguable case of oppression on the part of the Council.

The position was explained in plain terms in the letter of 20 November that unless he paid the money in full the proceedings for eviction would go ahead. The last paragraph opens with this sentence:

> "You will be advised in due course of the eviction date, but please note that the eviction will only be cancelled if the entire debt is cleared."

It seems to me that it was not surprising that Mrs. Caton took the £400, although she had been expecting £600, and it might have been thought foolish for her to have rejected it altogether. It does not seem to me that the conduct of the Council in this case could in any sense be called oppressive, if that word is given its proper meaning.

In these circumstances, despite all that Mr. Carrott has put before the Court, I do not think that this is a case where it would be appropriate to give leave to appeal to the full Court. I would dismiss the application.

LORD JUSTICE BROOKE: I agree. In this case Mr Carrott invokes the inherent jurisdiction of the Court in effect to nullify the execution of a warrant of possession issued by the Central London County Court in respect of his client's premises at 2 Rydal Water, Robert Street, London, NW1. That such a jurisdiction exists, there can be no doubt (see Leicester City Council v Aldwinckle 24 H.L.R. 40 and London Borough of Hammersmith and Fulham London v Hill 27 H.L.R. 368).

I am only adding a few words of my own in relation to the nature of this jurisdiction because an expression like "the abuse of process of the court" is now very frequently used without a clear understanding of what is at stake and the principles which underlie the inherent jurisdiction.

In Cocker v Tempest (1840-1841) 7 M&W 501, Baron Alderson said at pages 503-4:

> "The power of each Court over its own process is unlimited; it is a power incident to all Courts, inferior as well as superior; were it not so, the Court would be obliged to sit still and see its own process abused for the purpose of injustice. The exercise of the power is certainly a matter for the most careful discretion;"

In my recent judgment in AB and Others v John Wyeth and Brothers Limited (unreported 13 December 1996) I examined a number of leading cases relating to the inherent jurisdiction of the Court and then said this:

> "Three themes emerge from these and many other authorities on the topic of the court's inherent jurisdiction ... The first is that the court has an inherent jurisdiction to step in and prevent its process being abused for the purpose of injustice, or in order to maintain its character as a court of justice. The second is that the court should be very slow to exercise this summary power (see also Metropolitan Bank Ltd v Pooley (1885) 10 App. Cas. 210, per Lord Blackburn at p. 221: `it should not be lightly done'). The third is that the category of case in which the court should be willing to exercise this power is, almost by definition, never to be closed."

The context in which the court is willing in a rare, but appropriate, case to intervene to nullify the execution of a warrant for possession goes back to the principles set out in the judgment of Bowen LJ in this court in McHenry v Lewis [1882] 22 Ch. 397 at 408. He said:

> "I would much rather rest on the general principle that the Court can and will interfere whenever there is a vexation and oppression to prevent the administration of justice being perverted for an unjust end. I would rather do that than attempt to define what vexation and oppression mean; they must vary with the circumstances of each case."

I agree with my Lord for the reasons that he has given that this is not a case in which there could be any question of the court exercising its inherent jurisdiction to interfere and, for those reasons, I would dismiss this application.

Order: application dismissed; no order as to costs, save legal aid taxation of the applicant's costs.