

19/1962

O N A P P E A L

FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N :-

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

10 (1) OMAR LABABEDI  
 (2) SAID LABABEDI  
 (3) BASHIR LABABEDI  
 (Trading under the  
 name and style of  
 Lababedi & Company) (Respondents) Appellants 68235

- and -

CHAIRMAN, LAGOS EXECUTIVE  
 DEVELOPMENT BOARD (Applicant) Respondent.

CASE FOR THE APPELLANTS

RECORD

1. This is an Appeal from a judgment of the Federal Supreme Court of Nigeria (Abbott F.J. Hubbard and Taylor Ag. F.J.J.) dated the 14th day of July, 1960, varying a judgment of the High Court of Lagos (Coker J) dated the 6th day of April, 1959, in proceedings instituted by the Respondent for the determination of the amount of compensation payable under the provisions of the Lagos Town Planning Ordinance, Cap. 103 of the Revised Edition of the Laws of Nigeria, 1948, (hereinafter referred to as "the Ordinance") in respect of two properties known as No. 9. Aroloya Street and No. 17. Victoria Street, both of Lagos. This Appeal is brought in respect only of No. 9. Aroloya Street. No question arises as to the judgment of the Federal Supreme Court insofar as it concerns No.17. Victoria Street.

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2. The Respondent is a statutory corporation established under the Ordinance and empowered by Section 15 of the Ordinance to make town planning schemes in respect of any land situate within the township area of Lagos.

3. Section 16 of the Ordinance provides that upon

representations being made by the Respondent to the Governor in Council, the Governor in Council may by order declare that the area specified in such representations shall be a town planning area, such order to be published in the Gazette and to come into operation upon the date of such publication.

4. Section 18 of the Ordinance provides that :-

"Upon the declaration of a town planning area, the board shall cause town planning schemes to be framed for such area or any part thereof." 10

5. Sections 20 and 21 of the Ordinance provide for the publication of a scheme, the hearing of objections thereto and the submission of the scheme thereafter to the Governor in Council.

5. By Section 22 of the Ordinance the Governor in Council may thereupon reject or approve the scheme, such rejection or approval to be notified in the Gazette.

6. Subsection (1) of Section 38 of the Ordinance provides that :- 20

"Any person whose property is injuriously affected by the making of a scheme shall, if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date when notification of the approval by the Governor in Council of the scheme is published in the Gazette in accordance with the provisions of Section 22, be entitled to obtain compensation in respect thereof from the board." 30

Subsection (4) of this Section provides that any question as to, inter alia, the amount of the sum which is to be paid as compensation shall in default of agreement be determined by the Supreme Court.

7. Section 41 of the Ordinance provides that:-

"Where an approved scheme provides for the acquisition of any land by the board, all leases and all rights of occupancy under any tenancy in respect of such land which are existing at the time of the notification that the scheme is approved under Section 22 shall be deemed to be terminated, if not previously terminated by agreement, on the expiration of the period appointed in the scheme in that behalf, but without prejudice to any 40

lessees' or occupiers' rights in any compensation payable under section 38 or 46."

8. Subsection (1) of Section 42 of the Ordinance provides that :-

10 "Where an approved scheme provides for the acquisition of any land by the board, such land shall vest in the board on such day as is appointed in the scheme in that behalf, free from incumbrances, but without prejudice to any lessees' or occupiers' rights in any compensation payable under Section 38 or 46."

Subsection (4) of this Section provides that :-

"When any land becomes vested in the board under the provisions of this Section, the board shall by notice in writing proceed to offer to the owner thereof and to such other persons, if any, as have any interest therein, such compensation therefor as the board thinks fit."

20 9. Subsection (2) of Section 44 and Section 46 of the Ordinance provide for the lodging of objections and for the determination by the Supreme Court of any questions as to the amount of compensation payable in respect of acquired land and as to the apportionment of such compensation among the persons having an interest in the land.

30 10. Paragraph (a) of Subsection (1) of Section 51 of the Ordinance provides that where any compensation payable requires to be assessed the Court shall base its estimate of the value of the relevant lands or interests upon the fair market value as estimated at the time when the scheme was published in accordance with the provisions of Section 20.

11. The facts relevant to the Appeal are not and have never been in dispute and are as follows:-

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p.5. 1.16.

40 (i) The Respondent framed a scheme known as the Lagos Central Planning Scheme, 1951, (hereinafter referred to as "the Scheme") which received the approval of the Governor in Council and thereafter was on the 18th day of January, 1952, published as an Order-in-Council No.3. of 1952.

p.3. 1.4.  
p.8. 1.23.

(ii) In pursuance of Clause 2 of the Order-in-Council No.3. of 1952 the Scheme came into operation on the 1st day of October, 1955, being the date appointed by the Governor in

p.3. 1.9.  
p.8. 1.31.  
p.9. 1.2.

RECORD

Council for that purpose by virtue of L.N.  
103 of 1955 dated the 6th day of September, 1955.

(iii) Clause 32 of the Scheme provided that all leases and rights of occupancy under any tenancy in respect of any land to be acquired under the Scheme should terminate under Section 41 of the Ordinance one month after the date of commencement of the Scheme as appointed by the Governor in Council.

- p.3. 1.18 (iv) No.9, Aroloya Street, Lagos, was leased to 10  
p.9. 1.16 the Appellants by one Winston Madamidola Johnson  
and one Theophilus Hannibal Johnson for a term of  
70 years commencing the 1st day of August, 1955,  
p.47 et seq. under an Indenture dated the 3rd day of June,  
1955, and registered as No. L02644 at the Lands  
Registry, Lagos.
- p.3. 1.13. (v) No.9, Aroloya Street, is situate  
p.8. 1.28. in that part of Lagos designated by the Third  
p.9. 1.7. Schedule of the Scheme as Sub-Area 4 and  
became vested in the Respondent on the 1st day 20  
of November, 1956, by virtue of Subsection (1)  
of Section 42 of the Ordinance and Clause 33  
and the Third Schedule of the Scheme.
- p.1. 12. These proceedings were commenced by the  
p.2. Respondents' taking out an originating summons,  
dated the 13th day of September, 1958, in the  
High Court of Lagos, under the provisions of  
p.7. 1.30. Section 47 of the Ordinance, for the determination  
p.2. 1.6. of, inter alia, whether or not the Appellants were  
entitled to be compensated for the full value of 30  
the term granted under and by virtue of the aforesaid  
Indenture dated the 3rd day of June, 1955.
- p.13. 1.32 13. On the 6th day of April, 1959, Mr. Justice  
Coker ruled that the Appellants were entitled to be  
paid compensation for the full value of the term  
granted by the said Indenture and, in view of the  
p.13. 1.44. novelty of the difficulties of construction raised  
by the summons, made no order as to costs.
14. The learned judge based his decision on 40  
the following grounds:-
- p.11. 1.30. (i) The interest of a freeholder in property  
et seq. situate in Sub-Area 4 did not determine until  
the 1st day of November, 1956, and accordingly,  
there being no provision in the Ordinance to the  
contrary, such a freeholder was entitled in law  
p.11. 1.40. to demise, before that vesting date, his  
property for any term he might choose.



- (ii) Any such lease made to commence before the 1st day of November, 1955, would terminate on that date, though without prejudice to the rights of the lessees to receive compensation for the acquisition of the property. p.11. 1.44
- (iii) The Appellants, having taken a valid lease from the freeholders and their interest having vested both in interest and possession before the prescribed termination of all leases and rights of occupancy, were accordingly entitled to be paid full compensation for the whole of their leasehold interest. p.12. 1.35
- 10 15. The Respondent, by Notice of Appeal filed on the 27th day of June, 1959, appealed against this judgment to the Federal Supreme Court. p.14.  
p.15.
- 20 16. On the hearing of the Appeal Counsel for the Respondent sought and was granted leave to amend the originating summons by substituting for the words "to be compensated for the full value of the term" the words "to receive full compensation for the unexpired portion of the term, at the date of the vesting of the property in the Lagos Executive Development Board." p.16. 1.24.  
et seq.  
p.17. 1.4.
- 30 17. By a judgment delivered on the 14th day of July, 1960, by Acting Federal Justice Hubbard, in which Federal Justice Abbott and Acting Federal Justice Taylor concurred, the Federal Supreme Court varied the judgment of Mr. Justice Coker by ruling that the Appellants were not entitled to full compensation in respect of the lease of No. 9, Aroloya Street, and made no order as to costs. p.23 1.18  
p.24 1.24  
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p.24 1.28
18. The judgment of the Federal Supreme Court was based upon the following grounds :-
- (i) The provisions of Clause 32 of the Scheme, whilst terminating on the 1st day of November, 1955, all leases in existence on the 18th day of January, 1952, have no effect upon leases created after the 18th day of January, 1952. p.21 1.18.  
p.21 1.29.
- 40 (ii) The safeguards for lessees contained in Subsection (1) of Section 42 of the Ordinance apply only, for the purposes of the Scheme, to leases created after the 18th day of January, 1952. p.21 1.42
- (iii) Leases granted after 18th January, 1952, were terminated on 1st day of November, 1956, p.22 1.1.

RECORD

by virtue of the provision of Subsection (1) of Section 42 of the Ordinance that the land should vest in the Respondent free from incumbrances.

- p.22 1.28. (iv) At the date of the lease of No.9. Aroloya Street, all interested persons must be deemed to have notice of the Scheme and its effect on that property.
- p.22 1.35 (v) In spite of the facts that (a) between the 18th day of January, 1952, and the 29th day of September, 1955, there was uncertainty as to when, if ever, the Scheme would come into force and (b) that until the vesting date the freeholder was entitled to grant a lease of the property, the Appellants must be deemed to have acted with full knowledge that their interest was liable to be compulsorily terminated within a few years. 10
- p.22 1.42
- p.23 1.2
- p.23 1.7. (vi) If the Appellants, in the circumstances set out in sub-paragraphs (iv) and (v) of this Paragraph, chose to enter into a lease of the property for 70 years, they could not, on the balance of equities between the parties, claim full compensation for its termination. 20
- p.25 19. By an order dated the 7th day of November, 1960, the Federal Supreme Court granted to the Appellants final leave to present this appeal to Her Majesty in Council.
20. The Appellants do not contest any of the conclusions of the Federal Supreme Court summarised in Sub-paragraphs (i) to (v) inclusive of Paragraph 18 of their Case but respectfully submit that :- 30
- (a) the question to be decided in this appeal is one involving the construction of the Ordinance and, accordingly, any decision founded on a consideration of the balance of equities between the parties is misconceived, and
- (b) even if the balance of equities be the appropriate test, nothing in the agreed facts upon which the Federal Supreme Court based its judgment justified a finding that that balance is weighted against the Appellants. 40
21. It is respectfully submitted that the wording of Subsection (1) of Section 38 and Subsections (1) and (4) of Section 42 of the Ordinance unequivocally provides for the payment of compensation, in appropriate cases, in respect of more than one interest in a given plot of land, the most obvious example being the case where the land is owned by one party and occupied by another.

10 22. It is respectfully submitted that, although the Ordinance makes no explicit provision to that effect, it is to be implied from the form and purpose of the Ordinance in general and from the provisions of Section 51 in particular that in respect of any given plot of land there will be payable by way of compensation only, no matter how many or what interests may exist in that land, an ascertainable sum which sum will be apportioned between the holders of those interests.

p.22 1.42

20 23. As the Federal Supreme Court held, there is nothing contrary to law in a freeholder's granting a lease, before the relevant vesting date, of property the subject of a scheme. It is respectfully submitted that there is nothing inequitable, so far as any subsequent claim for compensation is concerned, in the lessee's accepting such a lease. The effect of the transaction is to entitle the lessee to a share in the compensation payable in respect of the property and to reduce the freeholder's share therein accordingly. No provision of the Ordinance restricts, either expressly or by implication, the freedom of parties to contract in such a manner.

30 24. It is respectfully submitted that even if the premise postulated in Paragraph 22 of the Appellants' Case be false the Appellants are nevertheless entitled to receive full compensation for the unexpired portion of their term by virtue of the explicit provisions of Subsection (1) of Section 38 and Subsection (4) of Section 42 of the Ordinance which provisions are in no material way qualified by any other provision or provisions of the Ordinance.

25. Therefore the Appellants humbly submit that that part of the judgment of the Federal Supreme Court appealed from is wrong and should be set aside and that the judgment and order of Mr. Justice Coker insofar as they concern No.9. Aroloya Street, be restored for the following among other

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R E A S O N S

1. BECAUSE the Appellants are, by virtue of the provisions of Sections 38 and 42 of the Lagos Town Planning Ordinance, entitled to be compensated for the full value of the unexpired term of their lease.
2. BECAUSE there is nothing inequitable in the Appellants' being so compensated.

3. BECAUSE the judgment of the Federal Supreme Court, insofar as it concerned No.9, Aroloya Street, was wrong.

JAMES MITCHELL.