

Privy Council Appeal No. 3 of 1964

**S. M. Ogundipe-Alatishe trading under the name and style of
French Medicine Stores – – – – – Appellant**

v.

The Lagos Executive Development Board and another – – Respondents

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 13TH JULY 1964

Present at the Hearing:

LORD REID.

LORD HODSON.

SIR BENJAMIN ORMEROD.

[Delivered by LORD REID]

This is an appeal by the former owner of No. 18 Breadfruit Street, Lagos. That property was acquired by the first respondents under the Lagos Central Planning Scheme which was approved by Order in Council No. 3 of 1952. The second respondent was the owner of No. 20 Breadfruit Street and that property was also acquired by the first respondents under the same scheme. The scheme was made under the Lagos Town Planning Ordinance, Chapter 95, of the Laws of the Federation of Nigeria.

The result of the acquisition was that parts of the land acquired were used for road widening and the rest was amalgamated, under the terms of Section 38 of the Lagos Town Planning Ordinance, so as to form one lot.

The duties of the first respondents are those set out in Clause 4 (f) of the Schedule to the Planning Scheme. The purpose of that clause is: "The offer of land within the replanned area to the original owners thereof, as far as it is possible to do so". Then there is provision for the price to be paid.

The first respondents decided that it was not possible to divide up the new lot which, accordingly, had to be offered either to the appellant or to the second respondent. The first respondent decided to offer it to the second respondent and the *bona fides* of that decision is not now attacked.

The appellant's case is that the first respondents were not entitled to offer the land to the second respondent because the second respondent had not been the owner of No. 20 Breadfruit Street within the meaning of the relevant legislation. Accordingly, it is necessary to go to the legislation to see what was meant by "owner". "Owner" is defined in Section 2 of Chapter 95 of the Lagos Town Planning Ordinance as follows: "'Owner' means the person for the time being receiving the rent of the land or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person or as receiver (not being appointed by or on behalf of a mortgagee) or who would receive the same if such land or premises were let to a tenant, and shall include a mortgagee in possession".

The learned trial Judge appears to have decided the case on the footing that the plaintiff, the present appellant, had admitted in his pleadings that the second respondent was the owner of No. 20 Breadfruit Street; but their Lordships think that it would be better to look at the facts and see whether on the evidence the second respondent can be regarded as owner of that ground within the meaning of the definition.

Evidence was given by the Estate Officer of the first respondent and by the second respondent himself. The second respondent said in evidence that he had been receiving rents from No. 20 Breadfruit Street since 1938 and then he explained in cross-examination how that had come about. It appears that the last registered owner of that land was a certain Mr. Cole, that the property had been mortgaged to a mortgagee, that the second respondent had bought Mr. Cole's interest and had then paid off the mortgage debt, but he had never taken any conveyance of the ground. His evidence is to a certain extent corroborated by the Estate Officer who said that he knew that the owner of No. 20 Breadfruit Street was the second respondent and that he could not lay hands on the paper from which he took the second defendant's interest as dated from 1938. He further said that he knew that the second respondent had a freehold interest.

Accordingly, if the definition of "owner" is to be taken at its face value, there can, in their Lordships' view, be no doubt that the second respondent was the owner of No. 20 Breadfruit Street when it was acquired by the first respondents.

The argument which was submitted on behalf of the appellant turned on the provisions of Section 38 of the Lagos Town Planning Ordinance. Before coming to Section 38, their Lordships must also cite the definition of "holding", or at least the relevant part of it. In Section 2 of that Ordinance "holding" is defined as meaning: "any piece of land, and 'original holding' and 'final holding' mean respectively, with reference to a scheme which provides for the redistribution of holdings, a holding prior to its amalgamation with other holdings for the purpose of redistribution and a holding allotted in pursuance of redistribution".

Their Lordships need not quote the whole of Section 38 but, in view of the importance attached to it by Counsel for the appellant, they will quote a part of it. The section provides: "A redistribution of holdings comprised in any scheme shall be effected in the following manner", and then there is provision in sub-paragraph (a) for amalgamation of holdings belonging to private owners, public bodies, Crown land, together with all roads, streets etc. within the scheme area. The second paragraph provides for the allotment of an area in respect of roads, streets, back-lanes and open spaces. Then there is the paragraph specially relied on: "(c) by the assignment, so far as is practicable, to as many original owners as is possible, having regard to the provisions of the scheme, of one or more final holdings, equivalent or proportionate in extent and value, or both combined, to their respective original holdings".

The argument is that that collocation in Section 38 (c) of owner and holding indicates that the owner, in order to qualify for an allocation, must be not merely a person receiving the rent of the land but also a person with a title to receive the rent.

Their Lordships are unable to attach this meaning to that section. There is nothing in the definition section to indicate that owner has any different meaning from that in the definition in any part of this Ordinance. Their Lordships are unable to see any reason why Section 38 (c) should not be workable just as well if owner is given the definition in Section 2 as it would be if owner was given a different meaning, namely, a person having a title to receive the rents.

If that is right, it was not argued that there is any other ground on which the present appellant is entitled to succeed.

Accordingly, their Lordships must humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs of the respondents.



In the Privy Council

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