

CHRISTINE V. GIBSON, Appellant, v. HIS HONOUR J. BOIMA KONTOE Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County and the NATIONAL HOUSING AUTHORITY, represented by its Managing Director, Appellees.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

**Gibson v Kontee et al [2000] LRSC 24; 40 LLR 217 (2000) (21 December 2000)**

Heard: November 13, 2000. Decided: December 21, 2000.

1. The National Housing Authority is required by law to promulgate rules and regulations for the management and maintenance of Liberian Government housing units in the Republic.
2. Tenants of government housing units are subject to expulsion by the National Housing Authority for violation of its rules and regulations regarding the occupancy and maintenance of the units.
3. A lease agreement is prima facie evidence of title and is a defense in a summary ejectment action.
4. Summary ejectment cannot be granted where title is in issue.
5. Section 62.21 of the Civil Procedure Law states that where title is not in issue, a special proceedings to recover possession of real property may be maintained in the circuit court, a court of a justice of the peace, or a magisterial court.
6. The magisterial court has jurisdiction to hear and determine special proceedings to recover possession of real property where title is not in issue and the amount involved does not exceed three hundred dollars.

The appellant, a tenant of the Liberian Government low cost housing unit managed by the National Housing Authority, was sued by the Authority in summary proceedings in the Magisterial Court for Gardnersville to recover possession of real property because of alleged violations of the rules and regulations of the Authority governing occupancy and maintenance of the unit. The appellant filed a motion to dismiss the action, stating that she had a lease agreement with the National Housing Authority and that a lease agreement is tantamount to title, therefore where title to real property is involved in any property dispute, the magisterial lacked jurisdiction to determine the matter. The magistrate denied the motion, holding that the agreement to which the appellant referred was a compilation of housekeeping rules and not a lease agreement, and that the court did have jurisdiction.

The appellant instituted summary proceedings against the magistrate, praying the Circuit Court for the Sixth Judicial Circuit, Montserrado County, to overrule the decision of the magistrate. The Circuit court denied the summary proceedings and appellant appealed to the Supreme Court.

The Supreme Court agreed with the ruling of the Circuit Court, holding that while it was true that the magisterial court has no jurisdiction over a case in which title is in dispute, in the instant case title was not involved, and hence the Gardnersville Magisterial Court, under a

grant of jurisdictional powers by the statute, was vested with jurisdiction over the matter, the amount involved in the action not being more than three hundred dollars. The Court held that housekeeping rules promulgated by the National Housing Authority under authority granted by law did not constitute a lease agreement, and hence, that the National Housing Authority had the power to have the tenant expelled from the occupied unit for any violation of those rules relating to the maintenance of the unit. The Court concluded that the trial judge did not err, therefore, in upholding the ruling of the magistrate and in denying the summary proceedings brought by the appellant against the magistrate.

Cooper W. Kruah of the Henries Law Firm appeared for the appellants. Marcus R. Jones of the Jones and Associates Legal Consultants appeared for the appellees.

**MR. JUSTICE SACKOR delivered the opinion of the Court.**

This case is before us on appeal from the judgment of His Honour J. Boima Kontoe, Assigned Circuit Court Judge, Sixth Judicial Circuit Court, Montserrado County, affirming the judgment of Magistrate Wellington Sayee, Jr. of the Gardners-ville Magisterial Court, in an action of summary proceedings to recover possession of real property.

The genesis of this case is that on September 11, 1999 the National Housing Authority, appellee herein, filed an action of summary proceedings to recover possession of real property against Appellant Christine V. Gibson, tenant of Unit F-62 in the Barnersville Estate, owned and managed by the National Housing Authority.

Appellant Gibson filed a motion to dismiss the suit, stating as reason that the magisterial court did not have jurisdiction over the cause of action by virtue of a valid written tenancy agreement executed and entered into by and between the National Housing Authority and Appellant Gibson. The National Housing Authority resisted the motion, contending that there was no title at issue and that the housekeeping rules of the Authority did not constitute a lease agreement. The magisterial court agreed with the appellee and denied the motion to dismiss the action. Whereupon, Appellant Gibson filed summary proceedings before the Sixth Judicial Circuit Court, Montserrado County, contending that Magistrate Wellington Sayee had committed a reversible error in denying the motion.

On December 8, 1999, the summary proceedings against the magistrate was argued before Judge J. Boima Kontoe, an Assigned Circuit Court Judge succeeding Judge Kaba, before whom the summary proceedings were filed. On the 11th day of January, A. D. 2000, Judge Kontoe rendered judgment holding that the tenancy agreement was not a lease agreement, and that as such the magistrate had not proceeded irregularly. The judge held further that the magistrate did have jurisdiction to hear the summary proceedings to recover possession of real property. Appellant Gibson excepted to the judgment and announced an appeal to this Court of last resort. The trial judge denied the appeal. This Court, upon a petition for a writ of certiorari, ordered the trial judge to grant appellant's appeal as a matter of right. The appeal was accordingly granted and subsequently perfected within the statutory period. Hence, the case is before us for appellate review and final determination upon a seven-count bill of exceptions, counts 5 and 6 of which this Court deem relevant for the determination of the case.

Appellant alleged in count 5 of her bill of exceptions that the trial judge had erred when he ruled that the tenancy agreement conferred no title on her, a decision which she said was

contrary to the statutory and decisional laws of Liberia. The appellant argued that a tenancy agreement and a lease agreement are one and the same, and are governed by the same principle of law. Appellant further maintained that a lease agreement and a tenancy agreement for property vest title to the property in a third party over a specific period of time.

In count 6 of the bill of exceptions, appellant contended that a magistrate cannot exercise jurisdiction over a valid written agreement, contrary to the opinion of this Court. Appellant argued before this Court that magistrates and justices of the peace cannot try summary ejection action in which the issues of title is raised, such act being against the statute and several opinions of this Court. Appellant therefore prayed the Court to reverse the judgment of the trial court and to order that the said court hears the case de novo.

The appellee, for its part, raised and argued three points before this Court. We consider points 1 and 3 to be relevant for the determination of this case.

The first contention asserted by the appellee was that the possession of the tenancy agreement by tenants of the National Housing Authority conferred no title to the units, and that as such the magisterial court had jurisdiction to try the action of summary proceedings to recover possession of real property based upon the tenant's violation of the agreement. The appellee maintained that the agreement was not a lease agreement, as contended by appellant, but instead was house-keeping rules of the units. Thus, appellee argued that tenants residing in the units were subject to summary eviction for violation of such rules, pursuant to section 20 of the agreement.

The second contention advanced by the appellee was that the magisterial court has the right to exercise jurisdiction over a written instrument, be it valid or not and that, as such, the trial judge did not commit reversible error in upholding the magistrate's ruling. The appellee vehemently argued that the management of the National Housing Authority reserved to itself the right to institute an action of summary proceedings to recover possession of real property in the event of any breach of the terms and conditions of the agreement. Thus, the appellee said, the parties to this litigation are bound by the agreement and summary proceedings would lie to oust and eject a tenant who failed to adhere to the conditions of the housekeeping rules. The appellee prayed this Court to confirm the judgment of the trial court upholding the ruling of the magisterial court, and to order the magisterial court to resume jurisdiction and proceed with the hearing of the case.

The facts and circumstances in this case present two paramount issues for the determination of this case. They are:

Whether or not the possession of a tenancy agreement by a tenant of the National Housing Authority confers title to the units?

Whether or not the trial judge committed a reversible error in his ruling upholding the magistrate's ruling?

We shall decide the above stated issues in the manner in which they are raised. As to the issue of whether or not the possession of a tenancy agreement by a tenant of the National Housing Authority confers title to the units, this Court is mindful of the historical fact that the Government of Liberia, through the National Housing Authority, decided to provide its low-income earning citizens with adequate housing units at reasonable monthly rental payments.

The Government, in establishing the project to provide housing facilities to the Liberian citizens earning low income, created the National Housing Authority to administer the project and the units. The National Housing Authority is required by law to promulgate rules and regulations for the management and maintenance of all Liberian Government housing units in the Republic of Liberia. It is in this regard that the National Housing Authority promulgated what it refers to as tenancy agreement for the management and maintenance of the Barnersville Estate units.

The National Housing Authority is a specialized autonomous housing development agency of the Government of Liberia. Its rights and powers include, but are not limited to, setting standards upon which to base plans for the erection of housing projects and regulations for their maintenance in providing dwelling accommodation to persons of low income. National Housing Authority serves as the government's custodian, manager, and supervisor of the housing programs in Liberia. See sections 1 and 2 of the Act Creating the National Housing Authority (1960). Section 3(b) of the aforesaid Act provides that "where a family has to leave the premises for any reason other than expulsion by the NHA, an application must be submitted to the Board requesting retention of equity in the property while occupancy is had by another." Thus, tenants of government housing units in Liberia are subject to expulsion by the National Housing Authority for violation of any of its rules and regulations regarding the occupancy and maintenance of said units.

Section 20 of the agreement makes it crystal clear that the tenants are subject to summary ejectment by the National Housing Authority for a violation of any of the terms and conditions of the agreement. The agreement was signed on the 8th day of September, A. D. 1997 by Christine V. Gibson, and was approved by the management of the National Housing Authority on the 12th day of January, A. D. 1998, without any legal disability of the parties to this litigation.

It is the law, practice and procedure hoary with age in our jurisdiction that a lease agreement is prima facie evidence of title and is a defense in a summary ejectment action. Civil Procedure Law, Rev. Code 1:62.21; *Ajavon v. Bull et al*, [14 LLR 178](#) (1960); *Williams v. Horton*, [13 LLR 444](#) (1960), text at 449. We therefore agree with the contention of the appellant that summary ejectment cannot be granted under our laws where title is an issue.

A recourse to the tenancy agreement before this Court reveals that such instrument does not confer title to the tenants of the Barnersville Estate units. The provisions of said document are intended for the management and maintenance of the housing units by the tenants therein. It is not considered in any form or shape a lease agreement within the contemplation of the law. Hence, the agreement does not confer any title to the tenants of the housing units as owners thereof.

The second issue for our determination is whether or not the trial judge committed a reversible error in upholding the ruling of the magistrate.

The records in the case indicate that the management of the National Housing Authority instituted an action of summary proceedings to recover possession of real property at the Gardnersville Magisterial Court. The magistrate, after a hearing, ruled that he had jurisdiction over the subject matter as there was no title in issue. The appellant then filed summary proceedings against the magistrate before the assigned judge for the Sixth Judicial Circuit Court, Montserrado County. The essence of the summary proceedings was that title was at

issue by virtue of the tenancy agreement, and that this precluded the magistrate from hearing summary proceedings to recover the possession of real property. The summary proceedings before the circuit court were assigned, heard and denied by the circuit judge who then confirmed the ruling of the magistrate, noting that he felt that there was no title in issue. The judge therefore ordered the magistrate to resume jurisdiction over the case and to proceed with the matter. From this ruling, the appellant appealed to this Court.

Section 62.21 of the Civil Procedure Law states that "where title is not an issue, a special proceeding to recover possession of real property may be maintained in a circuit court, a court of a justice of the peace or a magistrate. The court of a justice of the peace or magistrate shall have jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars".

The magisterial court has jurisdiction to hear and determine special proceedings to recover possession of real property where title is not at issue and the amount of the judgment demanded does not exceed three hundred dollars. The magistrate therefore acquired jurisdiction over the subject matter of the case as there was no title at issue. Hence, the judgment of the trial judge upholding the ruling of the magistrate was sound in law.

Wherefore, and in view of the foregoing, it is the considered opinion of this Honourable Court that the judgment of the lower court be and the same is hereby affirmed. The case is remanded to the magisterial court for hearing in keeping with law. Further, the Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction and give effect to this judgment. Costs are assessed against the appellant. And it is hereby so ordered.

Judgment affirmed.