THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2019

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)

GBADEGBE, JSC

BENIN, JSC

APPAU, JSC

PWAMANG, JSC

CIVIL APPEAL
NO. J4/18/2019

24TH JULY, 2019

1. MRS. VERONICA SARHENE

2. MRS. MARY ATTA SIAW …… PLAINTIFFS/RESPONDENTS/RESPONDENTS

VRS

1. EDWARD NASSAR & CO. LTD. & ORS. .. DEFENDANTS/RESPONDENT/RESPONDENTS

2. PAUL OTCHERE & 14 ORS. ……. CO-DEFENDANTS/APPELLANTS/APPELLANTS

JUDGMENT

BAFFOE –BONNIE, JSC:-

We wish to place on record from the very onset that we find no merit in the appeal and therefore dismiss same. We believe that the judgment of the Court of Appeal discussed the very essential issues and more, and came to the right conclusions. We therefore see

this short write up as confirming the very unassailable judgment delivered by the Court of Appeal.

This case commenced in the High Court, Kumasi on 12th October, 1998 and for more than twenty years it is still pending in the courts as the co-defendants have appealed against the judgment of the Court of Appeal dated 19th October, 2016. This is a sad narrative of the manner we deliver justice to law abiding parties who seek redress from our courts, particularly in a case such as this one which is quite straight forward. We hope that this delivery will signal the end of a matter which we believe could have been curtailed by resort to legal arguments.

The essential facts of the case are contained in documents tendered at the trial to be found in the record of appeal and not subject to serious contestation. The co-defendants were sitting tenants in landed property at Kumasi popularly called Edward Nassar Supermarket, owned by the 1st defendant. In 1997 the 1st defendant offered the property for sale through Merchant Bank (Ghana) Ltd. The plaintiffs purchased the property on terms contained in an agreement for sale dated 11th February, 1998 and paid the purchase price to Merchant Bank (Ghana) Ltd. Upon this, the 1st defendant applied to the Lands Commission, Kumasi for consent to formally assign the property to them and same was granted on 29th April, 1998. Thereafter, the 1st defendant notified the co-defendants that plaintiffs were the new owners of the property so thenceforth, they should deal with them.

The co-defendants took objection to the sale and in a letter dated 11th June, 1998 their lawyer wrote to the 1st defendant to protest, claiming that they were supposed to have been given the first option to purchase the property. In a response dated 21st July, 1998 the 1st defendant stated that the tenants were all along aware that the property was being sold but made no serious effort to purchase it. 1st defendant however purported to re-open the sale of the property to accommodate the co-defendants, but when Merchant Bank (Ghana) Ltd were contacted, they informed the co-defendants that the property

had been sold already and there was nothing anyone could do to reverse the sale except the plaintiffs consented to it.

The plaintiffs however held to their purchase and demanded that the draft assignment for which the Lands Commission had given consent be sealed by the 1st defendant to them. Strangely, the keeper of the seal of 1st defendant refused to seal the deed of assignment, wherefore plaintiffs sued in the High Court for specific performance, recovery of possession and perpetual injunction. The co-defendants applied and were joined to the case. The High Court gave judgment in favour of the plaintiffs and the co-defendants appealed but lost in the Court of Appeal and they have further appealed to the Supreme Court.

We have read closely the judgment of the Court of Appeal and are satisfied that it answered competently and comprehensively, all the grounds of dissatisfaction the co-defendants had with the judgment of the trial court.

The central issue in this case is a very narrow one and it is; whether the co-defendants, as sitting tenants, had a right of first option of purchase at the time the property was bought by the plaintiffs? As the Court of Appeal rightly held, there is no common law right of a sitting tenant to be given first option when the landlord decides to sell the property. Such right can only be conferred by agreement between the tenant and the landlord or by statute. Incidentally this erroneous proposition of the law is held by many practitioners of the law.

In the statement of case of the co-defendants at page 12 they stated as follows;

"….the appellants were asked by the 1st defendant company to assist financially to renew the expired lease, so as to enable them, as tenants to continue to occupy the premises and this the appellants obliged, **on the understanding that the property will not be sold or assigned to any person without them given the first option."**

The claim by co-defendants that they acted on an understanding that they would be given a first option of purchase is not what was pleaded in their statement of defence and

counter-claim and is not borne out by the evidence on record. What they pleaded was that, **as sitting tenants, they were entitled to be given that option**. Clearly therefore, the claim that they were of that understanding is an after thought which, in any case, did not bind the 1st defendant since it was their unilateral understanding.

Besides that, the co-defendant averred in their defence and counter-claim that after the renewal of the head lease by 1st defendant they entered into tenancy agreements with it. They tendered some agreements as Exhibits 15 to 26. But while some of them bear dates after the date of renewal of the head lease, others are dated prior to the renewal. None of these agreements contains a term to the effect that the co-defendants would be given a first option to purchase the property. Though the tenancy agreements that pre-dated the renewal may have expired as at the date of the sale to plaintiffs, the law is that a tenant who holds over premises after the expiry of a tenancy agreement continues in possession on the terms of the expired agreement. See **section 29(1)(a) of Act, 220**. In the circumstances, the legal rights of the co-defendants were as stated in the agreements they tendered which they are bound by and cannot contend the contrary. It is therefore plain, that the co-defendants did not have a contractual term for a first option of purchase.

We have examined the relevant statutes in Ghana to see if there is a statutory conferment of a right of first option of purchase by a sitting tenant. Section 22 of the **Conveyancing Act, 1973 (NRCD 175)** by law implies certain covenants by a lessor of property, but a right of first option of purchase by a lessee is not among the implied covenants. Similarly, the **Rent Act, 1963 (Act 220),** which confers general rights on tenants, has not conferred a right of first option of purchase on sitting tenants. Consequently, there is no merit whatsoever in the claims the co-defendants have been pursuing all these years and their appeal to this court fails and same is hereby dismissed. The judgment of the High Court dated 26th November, 2013 granting all the reliefs claimed by plaintiff, as well as that of the Court of Appeal dated 19th October, 2016 are hereby affirmed.

But before resting from this judgment, we wish to express our reservation about the manner this simple case was managed by the High Court leading to unacceptable delay of the plaintiffs in obtaining justice from the court. As we pointed out at the outset, the facts in the case are covered by documents which are not disputed and if the trial court had adverted its mind to the pleadings and properly identified the legal issues that arise on the undisputed facts, this case should have been determined by legal arguments and concluded timeously. We urge trial courts to pay due attention to the legal questions that arise in cases before them and take advantage of the case management mechanisms that have been provided for in the Rules of court to relieve parties from avoidable delay and high cost of litigation.

(SGD) P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

GBADEGBE JSC:-

I agree with the reasoning and conclusion of my brother Baffoe- Bonnie JSC.

SGD. N. S GBADEGBE
(JUSTICE OF THE SUPREME COURT)

BENIN, JSC:-

I agree with the reasoning and conclusion of my brother Baffoe-Bonnie JSC:-

SGD. A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

APPAU JSC:-

I agree with the reasoning and conclusion of my brother Baffoe-Bonnie JSC.

SGD. Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the reasoning and conclusion of my brother Baffoe-Bonnie JSC.

SGD. G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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