

EDWARD RAMIA, LTD. v. AFRICAN WOODS, LTD.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

19TH JANUARY, 1960

CORAM: LORD TUCKER, LORD DENNING AND THE RT. HON. MR. L. M. D. DE SILVA

Land | Concession of timber rights | Failure to comply with statutory requirements | Whether statutory requirements imperative | Concessions Ordinance (No. 19 of 1939 as amended) Cap. 136 (1951 Rev.) ss. 12(2) (3) (4) and 13(11).

CASE SUMMARY

Section 12 of the Concessions Ordinance Cap. 136 (1951 Rev.) lays down the procedure to be adopted in concessions relating to timber rights in Ashanti. Section 13 of the Ordinance further provides that:

"No concession shall be certified as valid—

(11) unless, in the case of a concession granted in respect of an area of land of which either the whole or the greater part is situate in Ashanti, the concession has been obtained in accordance with the provisions of section 12."

E. R. Ltd. had in respect of a concession dated the 26th May, 1953, failed to comply with subsections (2), (3) and (4) of section 12. Realising this omission, they entered into another agreement with the same grantors and a supplementary document dated the 26th February, 1954, was executed before the Government Agent, but section 12 (2) and (3) were not complied with nor was there compliance with section 8 (4). Furthermore the document, although expressed to be supplementary to the lease of the 26th May, 1953, contained a demise from its date, viz, the 26th February, 1954, and related to a smaller area of land than the lease dated the 26th May, 1953.

Held:

(1) since the supplementary lease related to a smaller area of land and the requirements of section 12(2), and (3) and section 8(4) were not complied with, it could not operate to validate the first agreement as a concession;

(2) the provisions of sections 12 and 13(11) are imperative. The intention of the legislature was clearly to protect the grantor in the public interest and the court had no discretion in the matter.

Principles applied by Denman, J. in *Caldow v. Pixell* (1877) 36 L.T. 469 at p. 470 approved.

Judgment of the West African Court of Appeal affirmed.

CASE REFERRED TO

Caldow v. Pixell (1877) 36 L.T. 469; 46 L.J.Q.B, 541; 2 C.P.D. 562

NATURE OF PROCEEDINGS

APPEAL (No. 33 of 1958) from the judgment of the West African Court of Appeal (Coussey, P., Korsah, J.A., and Baker, Ag. J.A.) reported at (1956) 1 W.A.L.R. 193, which had declared invalid a concession the Edward Ramia, Ltd., and reversed the decision of Quashie-Idun, J., in the Concession Division, Land Court, Kumasi, delivered on the 13th January, 1955 (unreported). The facts are fully set out in the judgment of the Judicial Committee.

JUDGMENT OF LORD TUCKER

Lord Tucker delivered the judgment of their Lordships. This appeal concerns two concession enquiries, numbered 447 and 450 in the Concession Division, Land Court, Kumasi, Ashanti. In concession enquiry No. 447, the present appellant, Edward Ramia, Ltd., was the claimant and in concession enquiry No. 450, the present respondent, African Woods Ltd., was the claimant. On the 13th January, 1955, the Land Court dismissed the opposition of African Woods, Ltd. as opposer in enquiry No. 447, to the grant of a certificate of validity to Edward Ramia, Ltd. in respect of a concession, notice of which was filed on the 20th July, 1953. The claim of African Woods, Ltd. to a concession in enquiry No. 450 in respect of land, part of which is the same as that claimed by Edward Ramia, Ltd. in enquiry No. 447, was not dealt with by the court having regard to the view it took adverse to African Woods, Ltd. as to the rights of the parties under their competing concessions. The parties will be referred to hereafter as "Ramia" and "African Woods".

The claimant Ramia in enquiry No. 447 on the 20th July, 1953, filed notice of a concession dated the 26th May, 1953, granted to it by the stool of Bekwai. On the 30th March, 1954, Ramia filed a supplementary document dated the 26th February, 1954, between the same parties in support of the said concession. By notice dated the 20th November, 1953, African Woods gave notice of a concession dated the 3rd October, 1953, granted to it by the same stool of Bekwai covering a large part of the land comprised in the concession claimed by Ramia. By notice filed on the 4th June, 1954, African Woods entered opposition to the grant of a certificate of validity to Ramia in respect of the concession, the subject-matter of enquiry No. 447, in so far

as it purported to coincide with the grant claimed by it by virtue of the concession, the subject-matter of enquiry No. 450. The principal ground of opposition was that the provisions of section 11 (now section 12) of the Concessions Ordinance¹ had not been complied with.

It will be convenient at this stage to set out the material sections of the Ordinance.

"2. In this Ordinance—

'Concession' means any instrument whereby any right title or interest in or to land, or in or to minerals, timber, rubber, or other products of the soil in or growing on any land or the option of acquiring any such right, title or interest purports to be granted or demised by a native..."

"3. (1) Any agreement whereby any right, interest, or property in, to or over land, in or to minerals, metals, precious stones, timber, rubber or other products of the soil in or growing on any land, or the option of acquiring any such right, interest or property, purports to be granted by a native to a person who is not a native, shall be void unless it is in writing."

"4. (1) ... every concession shall be held to be under and subject to the operation of this Ordinance".

"6. The Court shall have power, jurisdiction, and authority to enquire into and certify as valid or invalid any concession, except so far as otherwise provided in this Ordinance, and shall exercise such power, jurisdiction and authority subject to and in accordance with the provisions of this Ordinance.."

"8. (1) Notice of every concession shall within two months of the date thereof be filed in the Court having jurisdiction to enquire into the concession by the person claiming to be entitled to the benefit thereof (hereinafter called the claimant).

(3) The notice shall be in form A of the Schedule and shall contain the particulars specified in the said form and together with the said notice there shall be delivered a plan of the land comprised in such concession which shall be prepared in accordance with any regulation from time to time made under section 5.

(4) The claimant shall also file within the said period of two months such other documents (including a copy of the concession) or duly certified copies thereof as he relies upon in respect of his right to the concession and together with any such documents there shall be filed a list of such documents in such form as may be provided by rule.

Provided that the filing of any such copies shall not be deemed to render unnecessary the due production at the enquiry into any concession or at the trial of any questions relating thereto of the original documents so relied upon.

(5) Every concession, in respect of which compliance has not been made with the provisions of this section, shall on the expiration of two months after the date of the concession, become null and void and all rights of the claimant with respect to the concession shall thereupon determine absolutely:

Provided that the Court may in its discretion for good cause shown, and upon such terms as to it seem fit, extend the said period of two months for one or more terms not exceeding in all four months.

"12. (1) Any person desiring to obtain a concession in respect of an area of land of which either the whole or the greater part is situate in Ashanti shall make application to the chief or chiefs concerned for the grant of such concession and the chief or chiefs concerned may grant such concession.

(2) Any person who has made application as aforesaid (hereinafter called the applicant) shall give notice in writing to the Chief Regional Officer of Ashanti of such application.

(3) Upon receipt of any such notice the Chief Regional Officer of Ashanti shall instruct the chief or chiefs concerned to appear before him or before a Government Agent, and the Chief Regional Officer or Government Agent shall ascertain from them, in the presence of the applicant or his agent, whether they are willing to grant the concession applied for, and shall make such other enquiries touching the grant of the concession as he shall consider necessary and shall arrange with the applicant or his agent in the presence of the chief or chiefs concerned the sum which should be paid annually in consideration of the concession.

(4) The terms of the agreement reached between the applicant and the chief or chiefs concerned after the aforesaid appearance before the Chief Regional Officer or Government Agent shall be embodied by the applicant in a concession which shall contain full particulars of the boundaries and which shall be executed by the interested parties in the presence of the Chief Regional Officer or a Government Agent, and the Chief Regional Officer or the Government Agent before whom any such interested party executes such concession shall certify to the due execution of such concession by such party".

"13. No concession shall be certified as valid . . .

(11) unless, in the case of a concession granted in respect of an area of land of which either the whole or the greater part is situate in Ashanti, the concession has been obtained in accordance with the provisions of section 12".

"32. (1) A certificate of validity shall be good and valid from the date of such certificate as against any person claiming adversely thereto, and shall be effective in respect or the whole area of land contained by the boundaries stated in such certificate, whether or not any discrepancy exists between such area and the area indicated by the notice and plan of the concession referred to respectively in subsections (1) and (3) of section 8.

(2) A certificate of validity . . . shall be conclusive evidence that all the requirements of the Ordinance . . . and all matters precedent and incidental thereto have been complied with..."

The concessions in question relate to timber rights in land in Ashanti. Section 12 of the Ordinance lays down the procedure to be adopted in such cases. It is common ground that Ramia failed to comply with the provisions of subsections (2), (3) and (4) of this section in respect of the concession dated the 26th May, 1953.

The supplementary document dated the 26th February, 1954, was executed before the Government Agent but subsections (2) and (3) of section 12 had not been complied with nor was there compliance with section 8 (4). Furthermore, the document, although expressed to be supplementary to the lease of the 26th May, 1953, contained a demise from its date, viz, the 26th February, 1954, and related to an area of land of 64 square miles, whereas the lease of 26th May, 1953, related to 82 square miles.

The trial judge held that the intention of the legislature was purely to protect the grantors of concessions in Ashanti from exploitation and that where the grantors raised no objection to the terms contained in a lease, as in the present case, it would be inequitable to hold that such lease was null and void. He considered that the court had a discretion in the matter and dismissed African Woods' opposition to the validity of Ramia's concession. He made no finding with regard to enquiry No. 4502.

On appeal the West African Court of Appeal allowed African Woods' appeal and declared Ramia's concession invalid³. They remitted the case of enquiry No. 450 to the Supreme Court of the Gold Coast for adjudication, and on the 19th May, 1956, Benson, J. declared African Woods' concession invalid on the ground that in granting it the Bekwai chiefs had not understood the nature and terms of the grant and were under the impression that the land already leased to Ramia did not include the land leased to African Woods⁴. This judgment was not appealed, and the hearing before their Lordships was confined to enquiry No. 447.

It will be convenient first to dispose of the supplementary grant of the 26th February, 1954. As already stated this lease related to a smaller area of land than that comprised in the original grant and the requirements of subsections (2) and (3) of section 12 and of section 8 (4) were not complied with. It is therefore clear that if the original grant was invalid for non-compliance with section 12 the supplementary grant will not avail Ramia, whose case must stand or fall on the validity of the original concession.

As to this the President of the West African Court of Appeal (the late Sir Henley Coussey) in his judgment allowing the appeal of African Woods, after quoting from the judgment of Denman, J. in *Caldow v. Pixell*⁵ said 6,

"Applying these principles, the words of sections 12 and 13 (11) are, to my mind, clearly imperative. The respondent could only take a concession under the Ordinance and in compliance with section 12. It is true that there are no negative words in the

sections referred to but the affirmative words are absolute, explicit and peremptory and when you find in an Ordinance only one particular mode of effecting the object, one train of formalities to be observed, the regulative provisions which the section prescribes are essential and imperative. To render the purpose of section 12 unmistakable, subsection (4) provides that the terms of the agreement can only be embodied in a concession after they have been agreed upon before the official named. The policy of the law clearly insists upon strict observance of the steps already alluded to before there can be a concession. Sections 12 and 13(11) are so clearly designed to protect the grantor in the public interest that in my opinion the learned judge erred in holding that a waiver is possible of any of the conditions of section 12 and that the grantors had waived them. To accede to this proposition would be entirely to ignore the intention of the legislature for the public good and to defeat one of the main purposes of the Concessions Ordinance."

With these words their Lordships are in complete agreement and do not desire to add anything thereto.

Later in his judgment, the learned President referring to the lease of the 26th May, 1953, used these words⁷

"That deed may be good as a demise of land and the covenants therein no doubt are binding on the parties, but it never came into existence as a concession owing to non-observance by the parties of the imperative provisions of section 12".

Relying on these words counsel for Ramia invited their Lordships if against him on the main issue, to vary the order of the West African Court of Appeal by making no order instead of declaring the concession invalid.

DECISION

Their Lordships express no view with regard to the first sentence in the above quoted passage which may raise issues which are not germane to the present proceedings and were not canvassed in the courts below. They find no ground for varying the judgment pronounced by the West African Court of Appeal and will for the reasons indicated above humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.

COUNSEL

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