

WILLIAM JACKS AND COMPANY (ZAMBIA) LIMITED v O'CONNOR, in his capacity as Registrar of Lands and Deeds; CONSTRUCTION AND INVESTMENT HOLDINGS LIMITED intervening (1967) ZR 109 (CA)

COURT OF APPEAL
DOYLE AG CJ, RAMSEY J AND MALLON AG J
21st August 1967

Flynote and Headnote

- [1] **Real property - Land registration - Documents requiring registration - Section 4 (1), Lands and Deeds Registry Ordinance, construed.**

In determining whether or not a document is required to be registered under the Lands and Deeds Registry Ordinance, it is not necessary to determine whether the document is a valid one, but merely whether it purports to be so.

- [2] **Real property - Land registration - Documents requiring registration - Section 4 (1), Lands and Deeds Registry Ordinance, construed - Meaning of "purporting".**

By "purporting" in section 4 (1), Lands and Deeds Registry Ordinance, Parliament intended that, if an instrument, on the face of it, more or less accurately resembles a valid document which is required to be registered under the Ordinance, then the Registrar may register it.

- [3] **Real property - Land registration - Documents requiring registration - Agreement for lease - No commencement date.**

An alleged agreement for lease which contains no commencement date is not, in fact, an agreement for lease, nor does it resemble one sufficiently to be accepted as purporting to be an agreement for lease.

- [4] **Real property - Land registration - Extension of time for registration - Not possible where document not registrable.**

An application to extend the time for registration, under section 6, Lands and Deeds Registry Ordinance, of a document that neither is, nor purports to be, a valid agreement for lease, cannot be entertained by the court.

- [5] **Real property - Agreement for lease - Essentials to validity.**

There are five essential items to be included in a valid agreement for lease, namely: (i) parties; (ii) property; (iii) length of term; (iv) rent; and (v) commencement date of term.

- [6] **Conveyancing - Agreement for lease - Essentials to validity.**

See [5] above.

Cases cited:

- (1) *In re Broad, Smith v Draegar* [1901] 2 Ch. 86.
- (2) *R v Keith* (1855), 24 LJMC 110; *Dears*, CC. 486; 25LT(O.S.) 118; 19 JP 293; 1 Jur. (N.S.) 454; 3 W.R 412; 3 CLR 692; 6 Cox CC 533.
- (3) *Harvey v Pratt* [1965] 2 All ER 786; [1965] 1 WLR 1025.
- (4) *Ismail v Patel* (1951), 5 NRLR 567.

Statute construed:

Lands and Deeds Registry Ordinance (Cap. 84), ss. 3, 4 (1), 6, 7, 12, 14 and 21.

DOYLE AG CJ

Dare Q C, for the appellant

H Mitchley Q C, for the respondent

Judgment

Doyle AG CJ: This is an appeal against an order made by Pickett, J, in relation to an application to extend the time for the registration as an agreement for lease, under the provisions of section 6 of the Lands and Deeds Registry Ordinance (Cap. 84) (to which I will subsequently refer as "the Ordinance"), of a document which was as follows:

"William Jacks & Company (Zambia) Limited
Livingstone Road,
LUSAKA.
29th December, 1966.
Pan African Construction,
P.O. Box 2197,
LUSAKA,
Zambia. ATTENTION: MR FRANCISCO
Dear Sir,

This is to confirm the Francisco/Powys conversation of the 28th instant in which it was agreed that this company would lease stand 2397 Stockton Street and the proposed buildings as shown. The following points we agreed in principle

- (1) The Lease shall be for five years.
- (2) The rental shall be £390 (Three Hundred and Ninety Pounds) *per Mensum* (sic).
- (3) The first two years rental shall be paid in advance thereafter shall be paid monthly in advance.
- (4) The premises may be sublet to suitable persons.
- (5) The proposed building will be available in April - May 1967.

This letter is presented in duplicate, kindly sign the copy in signification of your agreement.

Yours faithfully,
For and on behalf of
WILLIAM JACKS & COMPANY (ZAMBIA) LTD.
(Sgnd.) J. POWYS
J /DMH MANAGER
(Sgnd.) H. C. KINGSLAND
for PAN AFRICAN CONSTRUCTION
The relevant parts of section 6 are as follows:

"6. Any document required to be registered as aforesaid and not registered within the time specified in the last preceding section shall be null and void:

• Documents to be void
for want of registration

Provided however that the Court may extend the time within which such document must be registered or authorise its registration after the expiration of such period on such terms as to costs and otherwise as it shall think fit if satisfied that the failure to register was unavoidable or that there are any special circumstances which afford ground for giving relief from the results of such failure and that no injustice will be caused by allowing registration:"

The order of Pickett, J, adjourned the matter *sine die* for the issue to be decided whether there was in existence an agreement for lease. He held that unless this issue was first decided there might be injustice to the proposed landlords.

Section 4 (1) of the Ordinance, so far as is relevant, is as follows:

"4(1). Every document purporting . . . to be an agreement for lease . . . must be registered within the times hereinafter specified in the Registry."

Section 7 of the Ordinance provides for priority of documents by reference to the date of registration and section 21 provides that registration does not cure any defect in any instrument registered or confer upon it any effect or validity other than that provided by the Ordinance.

In a sense, therefore, the Ordinance is, as has been argued by the appellant, mainly a matter of record. But it is not every document that can be registered. Section 14 of the Ordinance requires the Registrar, before registering a document, to satisfy himself that it is an instrument to which the Ordinance applies.

[1] The Ordinance applies not only to a document which is an agreement for lease but also to a document which purports to be an agreement for lease.

[2] The meaning of the word "purport" has been dealt with in the case of *In re Broad* [1], which related to a will which on its face was validly executed. It appeared from subsequent evidence that the witnesses had neither known that they were witnessing the signature of the deceased nor that the document was a will. The will was not admitted to probate. The document was for other purposes held to be a document purporting to be a will. In *R v Keith* [2], which related to the offence of engraving a note purporting to be a bank note, Coleridge, J, said: ". . . [A]n instrument purports to be that which on the face of the instrument it more or less accurately resembles."

It seems to me that the intention of the legislature in using the word "purporting" in section 4 of the Ordinance was to relieve the Registrar of the great burden of ascertaining what in fact was the true nature of any document presented to him. Provided on its face it appears to him more or less accurately to resemble a valid document which required registration, he does not have to go further.

[1] I am of the opinion, therefore, that Pickett, J, erred in principle when he held, in effect, that a requisite to determining the question of extension of time was the determination whether the document was in fact an agreement for lease. By so doing he gave no effect to the use of the word "purporting" in section 4 of the Ordinance. He should have determined the question whether the document purported to be an agreement for lease.

[3] This court has been asked to grant the extension. It may be that as between the parties this document was intended to be an agreement for lease and that, in that respect, it purported to be an agreement for lease; but it is the Registrar who must be satisfied, and the question is whether the document would purport to be an agreement for lease to him. I confess that this question of fact has given me considerable difficulty. However, I have come to the conclusion, with considerable hesitation, that the patent invalidity by reason of the lack of a commencement date took away from the document the necessary standard of resemblance which would make it purport to be an agreement for lease.

My hesitation is to a considerable extent relieved by the fact that it seems to me that, although as the point has not been argued I will refrain from making an actual finding, the provisions of section 12 of the Ordinance would have precluded the registration of this document.

[4] In my view therefore an extension of time should not be granted in this case as the document does not come within the purview of section 6 of the Ordinance. I would allow this appeal to the extent of setting aside the order of Pickett, J, but on the substantive issue of the extension of time I would dismiss it.

Judgment

Ramsay J: Section 3 of the Lands and Deeds Registry Ordinance provides for the establishment of a registry for the registration of documents required or permitted to be registered and for the appointment of a registrar by whom the documents are to be registered.

Section 4 (1) of the Ordinance, so far as relevant, is as follows:

"Every document purporting to grant convey or transfer land or any interest in land or to be a lease or agreement for lease or permit of occupation of land for a longer term than one year . . . must be registered within the times hereinafter specified in the Registry.

On or about 29th December, 1966, the appellant entered into the agreement with Pan African Construction which has just been read out by Doyle, Ag. CJ, and I shall refer to it as "the Agreement dated 29th December, 1966". It was not registered, and on 26th June, 1967, the appellant filed a Notice of Motion in the High Court for an order that the time within which it must be registered be extended and that the Registrar of Lands and Deeds do register it, notwithstanding the fact that it was not registered within the specified time. The motion was heard on 5th July and, although the Notice was not amended, it would appear that the High Court considered the application as covering other documents in

addition to the Agreement dated 29th December, 1966, and it adjourned the application *sine die* for the main issue to be determined - that is to say, whether or not there was in existence an agreement for a lease. The ground for this adjournment was that until the court was satisfied that there was in fact an agreement for a lease on the documents put before it, there could be an injustice to the proposed landlords.

It is against this order of adjournment that the appellant is appealing, but the appeal relates only to the Agreement dated 29th December, 1966. It is not clear from the order of adjournment whether or not the learned judge considered the effect of this document standing by itself, but as Doyle, Ag. CJ, has just said, it contains no date of commencement of the proposed lease.

[3] The requirements of a valid agreement for lease were recently considered by the Court of Appeal in England in *Harvey v Pratt* [3], where it was decided that a certain agreement was invalid as an agreement for lease as it did not contain this date.

[5] I take the following three extracts from Lord Denning's judgment:

"It has been settled law for all my time that, in order to have a valid agreement for a lease, it is essential that it should appear, either in express terms or by reference to some writing which would make it certain, or by reasonable inference from the language used, on what *day* the term is to *commence*. "

"It is settled beyond question that, in order for there to be a valid agreement for a lease, the essentials are that there shall be determined not only the parties, the property, the length of the term and the rent, but also the date of its commencement and this is an agreement for a lease to start at some future time. The time has never been specified or agreed."

There was, therefore, no concluded contract."

The Agreement dated 29th December, 1966, is clearly not a valid agreement for a lease; but it remains to be decided whether or not it purports to be an agreement for lease.

[3] It is the Registrar of Lands and Deeds who effects registration. The Agreement dated 29th December, 1966, may have been thought by the parties to have been a concluded agreement, but it is to be registered, not by them, but by the Registrar. He is a qualified barrister or solicitor, and a perusal by him of the Agreement would satisfy him that, on the face of it, it does not purport to be an agreement for lease.

Sections 4 and 6 of the Ordinance therefore have no application to it.

The Motion, however, was also that the Registrar of Lands and Deeds do register the agreement. We have not heard argument on the scope of section 12 of the Ordinance, and I would mention that this section was repealed and replaced after the decision of the Rhodesia and Nyasaland Court of Appeal, in *Ismail v Patel* [4], that premises were sufficiently identified when there was a reference to the number of the stand. It is doubtful therefore if its registration could be ordered. I also would dismiss the appeal.

Appeal dismissed.