



property in 1981.

- [3] In 2001, the Respondent was approached by the Appellant, who identified himself as the brother of Mr. Hazel Hood and the landlord of the spot upon which the Respondent was the tenant. The Appellant demanded that the Respondent pay all rents to him. The Respondent did not comply as she did not know him.
- [4] Some time later, the Respondent received correspondence from the Appellant dated 11 July 2001 in which he identified himself as the landowner and informed her that as of 1 January 2002, he would be collecting rent on a weekly basis and by such correspondence was giving the Appellant six (6) months notice thereof. In January 2002, the Respondent received further correspondence purporting to give her three (3) months notice that rent would be paid to the Appellant on a weekly basis and that the said rent would be ten dollars (\$10) per week. The letter also claimed that the Respondent's rent was four (4) weeks in arrear and requested that the arrears of rent be paid by 31 January 2002.
- [5] In 2001, 2002 and 2003, the Respondent indicated that she paid rent as she had always done previously on a half yearly basis to Hazel Hood, whom she knew to be her landlord. In 2004 the Respondent contacted Mr. Hazel Hood about the payment of rent. Mr. Hazel Hood did not accept the rent and informed the Respondent that he was no longer going to collect the rent and that she was to pay the rent from that point onwards to the Appellant. The Respondent sent correspondence through Counsel to both Mr. Hazel Hood and the Appellant informing them that she remained ready and willing to pay the annual rent due for 2004 as well as all further rents. Mr. Hazel Hood admitted under oath that the last time he collected rent from the Respondent was on 1 January 2006.
- [6] On 30 November 2005, the Respondent was served with a Notice to Quit dated 24 November 2005. The notice indicated that the Respondent was in use and occupation of the said house spot under a contract of tenancy pursuant to the provisions of the **Security of Tenure of Small Holdings Act, Cap. 237**. The Notice requested that the Respondent vacate the house spot by 31 May 2006.
- [7] Pursuant to the **Tenantries Freehold Purchase Act, Cap. 239B**, the Respondent issued:
- (a) a Form I Notice (Tenant's Notice to Landlord of intention to purchase the freehold of his lot) dated 28 November 2005 to the Appellant; and
  - (b) a Form II Notice dated 9 December 2005 to the Registrar of Titles giving notice of her intention to purchase the land but noting that the landlord had refused to sell.
- [8] By letter dated 16 January 2006, the Registrar of Titles acknowledged receipt of the Form II Notice and informed the Respondent that the matter was under investigation. During the period of 25-30 September 2006 various persons visited the property to survey it. When questioned, they informed the Respondent that the survey was being conducted to facilitate the sale of the said spot by the Appellant.

[9] The Magistrate found as a fact that the subsequent Notice of Complaint filed on 21 July 2006, and a Second Notice of Owners Intention to apply to a Magistrate to Recover Possession dated 9 June 2006 were served on the Respondent. The application for Ejectment Order was heard on 19 September 2006. Only the Appellant and his Counsel were present. The Respondent was absent. An Order to Quit and deliver up possession on or before 20 November 2006 was made by the Magistrate. The Respondent received a letter from Messrs. Carrington & Sealy, Attorneys-at-Law, dated 19 September 2006, informing her that an Ejectment Order had been made by the Magistrate ordering her to vacate the premises by 20 November 2006. The Respondent maintained that she was unaware of any Court Proceedings against her and therefore did not attend.

[10] Evidence was also presented by Mr. Andrew Payne of the Urban Development Commission who, in correspondence dated 4 October 2006, had previously informed Counsel for the Respondent that the land occupied by the tenant was an 'Area of land' as defined by s.5(3)(a) of the **Tenantries Freehold Purchase Act, Cap. 239B**, and that she had also qualified under s.5(3)(b) of the said Act, having carried out substantial improvements in the form of construction of indoor toilet facilities on the property. The letter further stated that the Respondent had complied with s. 12(1) of the said Act and served the requisite Form I Notice to the landlord. Since the landlord had refused to sell, the Respondent had thereafter filed a Form II Notice with the Registrar of Titles.

### ***Magistrate's Decision***

[11] The Magistrate found that the Appellant and Mr. Hazel Hood's refusal to accept rent from the Respondent was against the spirit of the **Tenantries Freehold Purchase Act, Cap. 239B**, as it was an attempt to engineer application of s.12(b) of the **Security of Tenure of Small Holdings Act, Cap. 237** to remove the Respondent as tenant. The Magistrate found as a fact that Mr. Hazel Hood collected rent from the Respondent on 1 January 2006 during the first Notice to Quit period, thereby nullifying the Notice to Quit.

[12] The Magistrate found that the Respondent was a qualified tenant under the **Tenantries Freehold Purchase Act, Cap. 239B**, and that the Respondent had met the requirements of s.4(2)(a) of the said Act, since at 1 November 1980, she had been residing on the lot for more than five consecutive years. The Magistrate also found as a fact that although the Respondent did not exercise her right to purchase the lot by 1 February 1990, she had carried out substantial improvements under s. 5(2)(b) of the Act by constructing a water borne toilet in 1981. The Respondent therefore remained a qualified tenant and as such had the right under the Act to purchase the lot from the Appellant.

### ***Grounds of Appeal***

[13] Initially, four grounds of appeal were raised by the Appellant. At the hearing Counsel for the Appellant decided to argue grounds 3 and 4 together.

1. The Magistrate erred in law in her finding that the acceptance of rent after the service of a notice to quit but prior to the expiry of that notice to quit nullified the said notice to quit.

2. The Magistrate erred in her finding of fact that Hazel Hood collected rent from the Respondent in January 2006 when she failed to give sufficient weight to the evidence before her.
3. The Magistrate erred in law in her finding that the Respondent was a qualified tenant under the **Tenancies Freehold Purchase Act, Cap. 239B**.
4. The Magistrate erred in law in her finding that Section 5 of the **Tenancies Freehold Purchase Act, Cap. 239B** applied to render the Respondent a qualified tenant on the basis that she carried out substantial home improvements.

*Ground 1*

- [14] On this ground it was contended by Counsel for the Appellant that the Magistrate erred in law in her finding that the acceptance of rent after the service of a notice to quit but prior to the expiry of that notice to quit nullified the said notice to quit. Counsel defined a notice to quit “as the formal declaration of the landlord’s intention that the contract of tenancy which defines the contractual relationship existing between the landlord and tenant will come to an end on a specified date in the future”.
- [15] Counsel also cited the case of **Clarke v. Grant [1949] 1 All ER 768** in support of her contention that acceptance of rent does not nullify the notice to quit.
- [16] Mr. Alert, Counsel for the Respondent, submitted that in any event the notice to quit did not satisfy the requirements of s.13 of the **Security of Tenure of Small Holdings Act, Cap. 237**, in that the notice to quit failed to give reasons for the termination of the tenancy or set out the area of land held by the tenant. In support of his contention, he cited **Graham v. Price, BB 1990 DC 1** where the court held that these “deviations materially affected the substance of the form which the statute required and nullified the notice”. The court referred to the statement of Lord Goddard CJ in **Orman Brothers Ltd v. Greenbaum [1955] 1 All E.R. 610 at p. 613**: “so the tenancy does not come to an end, unless it has been terminated in the way laid down in the Act and that is by means of giving the prescribed form of notice.”
- [17] This Court notes the decision in **Clarke v. Grant [1949] 1 All E.R. 768** where the Court of Appeal held that the acceptance by the landlord of rent in respect of a period after the termination of the tenancy by the notice to quit did not operate as a waiver of the notice, so the landlord was entitled to possession. **Lord Goddard CJ** reasoned at **p. 769**.
- “If a proper notice to quit has been given in respect of a periodic tenancy, such as a yearly tenancy, the effect of the notice is to bring the tenancy to an end just as effectually as if there had been a term which has expired. Therefore, the tenancy having been brought to an end by a notice to quit, a payment of rent after the termination of the tenancy would only operate in favour of the tenant if it could be shown that the parties intended that there should be a new tenancy”.
- [18] The common law position is therefore that the acceptance of rent after the notice to quit has been given does not

nullify that notice unless the person serving the notice so conducts himself as to be estopped from relying on the notice under the principle of equitable or promissory estoppel (*Halsbury's Laws 4<sup>th</sup> Edition vol. 27 para. 199*).

[19] However, the common law has been modified by statute in this jurisdiction. It is therefore clear that the Notice to Quit in the instant case cannot be classified in the same manner as that given in *Clarke v. Grant*, and must be distinguished from that case due to the statutory modification of the common law.

[20] Termination of a tenantry under the *Tenantries Freehold Purchase Act, Cap. 239B* is governed by s.12(b)(iii) of the *Security of Tenure of Small Holdings Act, Cap. 237* which provides as follows:

“The tenancy of an agricultural holding or a house-spot may, notwithstanding anything to the contrary contained in section 11, be terminated -

(b) by the landlord by three months' notice given in accordance with this Act expiring with the expiration of three months from the date of service of the notice -

...

(iii) if any of the rent payable in respect of the tenancy is in arrears for a period of three months or more or if any of the terms of the consideration for the contract of tenancy are not performed or observed by the tenant, and such non-observance or non-performance is due to the default of the tenant:

Provided that in the case of rent in arrear, if the tenant pays such rent to the landlord within the period of notice, then and in such case the notice shall be deemed to be cancelled and shall be of no force and effect;”

[21] The Appellant indicated during his cross-examination that Mr. Hazel Hood was authorised by him to let the land to the Respondent. The Appellant testified: *“I give my brother permission to rent the land out”*. Mr. Hazel Hood in fact was the only landlord known to the Respondent since she commenced the tenancy in 1974. Mr Hazel Hood said under cross-examination that *“I last collected rent from her 1<sup>st</sup> January 2006”* He also testified: *“My brother tell me stop collecting rent after I collected last time in January 2006”*. This Court concurs with the Magistrate that Mr. Hazel Hood collected rent with the permission of the Appellant until 1 January 2006 after which he was instructed by the Appellant not to do so. He therefore collected rent after the service of the first Notice to Quit on November 24, 2005.

[22] In the instant case, the Notice to Quit was served on the Respondent by the Appellant after he was informed by the Urban Development Commission that the Respondent had served the Form I Notice of her intention to purchase the lot under the *Tenantries Freehold Purchase Act, Cap. 239B*. Additionally, when one considers that the Appellant and Mr. Hazel Hood refused to collect rent from the Respondent, who had clearly indicated both orally and through her Counsel in writing that she was ready, willing and able to continue to pay the rent as she had done since 1974, this Court concurs with the finding of the Magistrate that the Appellant attempted to

engineer application of s.12(b) (iii) of the **Security of Tenure of Small Holdings Act, Cap. 237**. A well known equitable maxim is that Equity will not allow a statute to be used as an agent for the commission of a fraud. The Appellant and/or his agent cannot refuse to collect rent from the Respondent and then declare her to be in arrear of the said rent on the basis of s.12(b)(ii) of the Act in order to found grounds for the determination of her tenancy.

[23] Consequently this Court concurs with the finding by the Magistrate that it is clear from a reading of s.12(b)(iii) of the said Act that the payment of rent by the Respondent to Mr. Hazel Hood on 1 January 2006 within the period of the Notice to Quit cancelled the notice and rendered it of no force or effect.

#### *Ground 2*

[24] On this ground it was contended that the Magistrate erred in her finding of fact that Mr. Hazel Hood collected rent from the Respondent in January 2006 when she failed to give sufficient weight to the evidence before her. This Court is not persuaded that the Magistrate erred in her finding of fact in this regard. The Magistrate found as a fact that Mr. Hazel Hood, ostensibly as the Appellant's agent, collected rent from the Respondent until 1 January 2006, during the currency of the Notice to Quit dated 24 November 2005. Mr. Hazel Hood admitted this twice in examination in chief and once in cross-examination by Counsel for the Respondent that he collected rent in January 2006. In accordance with well-established principles this Court finds no valid reason to disturb the findings of fact of the Magistrate in this regard.

#### *Grounds 3 and 4*

[25] It was contended that the Magistrate erred in law in her finding that the Respondent was a qualified tenant under the **Tenantries Freehold Purchase Act, Cap. 239B** by determining that s. 5 of that Act applied to render the Respondent a qualified tenant on the basis that she carried out substantial home improvements.

[26] The Magistrate found that the Respondent had met the requirements of s.4(2)(a), since at 1 November 1980, she had been residing on the lot for more than five consecutive years. Although the Respondent had not exercised her right to purchase the lot by 1 February 1990 in accordance with s.5(1) of the Act, she still remained a qualified tenant by virtue of s. 5(2)(b) of the Act, since she had carried out substantial improvements to the lot, namely through the construction of a water borne toilet in 1981.

[27] Counsel for the Appellant contended that the construction by the Respondent of water borne toilet facilities was a breach of one of her contractual conditions under the tenancy agreement because she did not obtain the Appellant's express consent to do so. She cited **Ward v. Foster (1992) 28 Barb. L. R. 191** in support of her contention.

[28] Counsel also contended that prior to the amendment of the **Tenantries Freehold Purchase Act, Cap. 239B** in 1990 the Respondent would have been defined as a qualified tenant but the change in the definition of a tenantry from 2 lots to 5 lots operated to deprive her of the status of qualified tenant.

[29] Counsel for the Respondent submitted that where statutes embraced the concept of providing security of tenure for the tenant, a court is constrained from making an order for possession of a house-spot unless it is reasonable

to do so. In the instant case, the Respondent had been in possession of the spot for over 30 years, He contended that his client was a qualified tenant within the meaning of the **Tenancies Freehold Purchase Act, Cap. 239B**, and that the Appellant was fully aware of this when he served the notice to quit, having been informed of this by the Urban Development Commission. He therefore concluded that it would have been unreasonable for the Magistrate to grant the order of ejectment.

### **Disposal**

[30] Section 4(2) (a) of the Act states:

“Subject to section 36, a qualified tenant of a lot is a tenant

- (a) who, at 1<sup>st</sup> November, 1980, is residing on the lot and has been so residing
  - (i) for 5 consecutive years immediately preceding that day, or
  - (ii) for 5 years out of the 7 years immediately preceding that day;”

[31] Section 5 of the Act states:

“(1) A tenant who, immediately before the 1<sup>st</sup> February, 1990

- (a) was residing on the lot forming part of an area of land within the meaning of subsection 3(a); and
- (b) was a qualified tenant of the lot referred to in paragraph (a), ceases on the 1<sup>st</sup> February, 1990 to be a qualified tenant in respect of that lot.

(2) Notwithstanding subsection (1), a tenant referred to in that subsection remains a qualified tenant where,

- (a) at the 1<sup>st</sup> February, 1990, he had exercised his right to purchase the freehold of the lot of which he is tenant in accordance with s.10(1) and his landlord had not refused to comply with s.10(2); or

(b) at the 1<sup>st</sup> February, 1990, he had carried out substantial improvements to the lot in respect of which he had a right to purchase under s. 4(1).”

The term “*substantial improvements*” is defined in s.5(3)(b) as:

“the construction in stone, brick or concrete, of a dwelling-house or part of a dwelling-house and includes the construction of water borne toilet facilities.”

[32] This Court concurs with the finding of Magistrate Cooke-Alleyne that despite the fact that the Respondent had not exercised her right to purchase the freehold of the lot by 1 February 1990, she had in fact carried out substantial improvements to the lot by the installation of water borne toilet facilities in 1981. The Respondent therefore remained a qualified tenant under s.5(2)(b) of the ***Tenancies Freehold Purchase Act, Cap. 239B***.

[33] The clear purpose and intention of the legislature when it passed the ***Tenancies Freehold Purchase Act, Cap. 239B*** is expressly stated in s. 3(1) of the said Act:

“The purpose of this Act is to establish by law a right for tenants of lots in tenancies who satisfy the requirements of this Act to purchase the freehold at a purchase price governed by considerations of public policy and the requirements of the Constitution.

(2) This Act shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of its purposes.”

[34] Section 16 of the Constitution protects against deprivation of property but s. 41 of the ***Tenancies Freehold Purchase Act, Cap. 239B*** expressly states:

“To prevent uncertainty, section 16 of the Constitution is altered by this Act to any extent necessary to ensure the constitutionality of this Act.”

[35] The purpose of the Act seems therefore to modify the otherwise constitutionally protected property rights of landowners to protect the rights of persons very much like the Respondent, a long term tenant of a tenantry freehold.

[36] It is of particular note that the Respondent is now a pensioner, who has lived on the spot in continuous occupation since 1974, and has paid all rents in good faith to the Appellant’s authorised agent, Mr Hazel Hood. Given the fact that she has clearly met the requirements as a qualified tenant under the ***Tenancies Freehold Purchase Act, Cap. 239B*** and is therefore entitled to purchase the said lot from the Appellant, the Court finds that it would be contrary to the interests of justice and public policy to allow the Appellant to use the provisions for termination contained in the ***Security of Tenure of Small Holdings Act, Cap. 237*** to evict her from the house-

spot.

[37] This Court also notes the fact that the Respondent has continued to pay rent in good faith since occupation and the general injustice which eviction from the lot would cause her. The Legislature was particular to include the section indicating the fair, large and liberal interpretation of the Act to be used by the Courts to attain its purposes. This Court should not and will not aid the Appellant in his attempt to defeat the clear spirit and intention of the Act.

[38] The Court finds the following:

- (i) The Notice to Quit dated 24 November 2005 is null and void, as rent was collected during its existence.
- (ii) The Respondent is a qualified tenant under s. 4(2) (a) (i) of the **Tenantries Freehold Purchase Act, Cap. 239B** and therefore has a right to purchase the lot from the landlord.
- (iii) Despite the fact that this right to purchase had not been exercised by 1 February 1990, the Respondent remains a qualified tenant because she had carried out substantial improvements to the lot in respect of which she had the right to purchase under s.5(2)(b) of the said Act by installing a water borne toilet facility.

[39] In the result, the appeal is dismissed. The order of the Magistrate dismissing the Application for Order of Ejectment is upheld. The Appellant will bear the Respondent's costs here and in the court below to be agreed or taxed.

Justice of Appeal

Justice of Appeal

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