

IN THE COURT OF APPEAL FOR SIERRA LEONE

CORAM:

HON. MR JUSTICE S.C.E. WARNE - J.A.
HON. MR JUSTICE S.T. HAVO - J.A.
HON. MR JUSTICE S.H.F. KUTUBU - J.A.

BETWEEN:

DUNBUYA FALLAH - APPELLANT

AND

MOSERAY KAHARA - RESPONDENT

DR. H.M. JOKO-SHARE FOR APPELLANT

ERIAN M. SAVAGE ESQ. FOR RESPONDENT

JUDGMENT DELIVERED THE 20TH DAY OF JANUARY 1984

HAVO, J.A.

This appeal arises from the judgment of Thompson-Davis, J (as he then was) delivered on the 10th June 1981. I have had the advantage of reading in print the judgment that has just been delivered by my learned brother Warne, J.A. and it is with regret that I have to disagree with his conclusion, and I do so with utmost respect. The appellant's grounds of appeal are set out in the judgment of Warne, J.A. I therefore do not find it necessary to repeat them herein.

I however find it expedient to set out in full the plaintiff/appellant's amended statement of claim and the defendant's defence filed.

"AMENDED STATEMENT OF CLAIM:

- "1. The Plaintiff at all times material to this action was and still is joint fee simple owner in possession of all that piece or parcel of land situate lying and known as Robis near Calaba Town in the Western Area of Sierra Leone having inherited same jointly with his younger "brother Bomboli Fallah from their father the late Ansumana Kompa who died some 40 years ago owning and being in possession of the said land. The said piece or parcel of land is

delineated on Plan L.S. 1823/77 attached hereto and forms part of this Statement of Claim.

2. "Sometime in 1972 the Defendant wrongfully and unlawfully entered and has since persisted in entering part of the Plaintiff's land aforesaid and claimed approximately 0.615 acre of the said land and purported to sell portions thereof and on each occasion has so entered without the permission and against the will of the Plaintiff.
3. "The Defendant also wrongfully and unlawfully built a hut on the Plaintiff's land aforesaid without the consent of permission of Plaintiff and/or his brother, the said Bomboli Falla.
4. "The Defendant still persists in the acts of trespass.
5. "The Plaintiff, therefore, claims:-
 - (i) Declaration that all that piece or parcel of land situate lying and known as Robis, Calaba Town in Western Area of Sierra Leone now occupied by the Defendant and portions whereof the Defendant has unlawfully sold is the property of the Plaintiff."
 - (ii) Recovery of possession of the said land.
 - (iii) An injunction restraining the Defendant his servant or agent from interfering with the said land.
 - (iv) Damages for trespass.
 - (v) Mesne Profits.
 - (vi) Any further or other relief that may be just."

"DEFENCE"

1. The Defendant denies paragraph 1 of the Plaintiff's Statement of Claim.
2. In answer to paragraphs 2 and 3 the Defendant denies the allegation herein."

- "3. The Defendant further denies paragraph 4 of Plaintiff's Statement of Claim.
- "4. The Defendant again denies paragraph 5 of the Plaintiff's Statement of Claim.
- "5. Save as herein before expressly admitted the Defendant specifically denies each and every of the other allegations contained in the Plaintiff's Statement of Claim Seriatim."

It is therefore quite clear from the pleadings that the Defendant offered no defence to all the averments in the statement of claim other than a general denial of every statement of fact without setting them out and denying them specifically as is required by the rules of pleadings. Even the Plaintiff's Claim for relief is denied.

The case went to trial on the above pleadings. The plaintiff/appellant called three witnesses (including himself) in support of his claim. In his evidence the plaintiff deposed that he was now over sixty years of age and was born on the land known as Robis in respect of which he instituted this action and ever since lived on it. He deposed that he and his brother Bockarie Bomboi Fallah, inherited it from their father Salami Kompa who died about forty years ago. His father also inherited it from his (the appellant's) grandfather one Kompa Bomboli. All throughout this period he had lived on this land except when he got ill in 1972 and went away and returned later. It is not in evidence the exact date he returned, but when he did so, he saw respondent on his land, who had built a house of C.I. Sheets. He said that he did not give permission to respondent to go on his land. He reported the matter to one Momoh Kargbo, Headman of Calaba Town who summoned respondent before him. When the headman asked why he had gone on appellant's land respondent told the headman that the land was given to him by one Today of

Wellington. The headman asked that Today be brought to him but neither Today, nor his wife, nor his son were brought by the respondent. The Headman then warned respondent that the land in dispute belonged to appellant and that he the respondent must get out of it. On respondent refusing to do so appellant instituted action against him in the High Court in 1976.

While this case was in court appellant and his brother Bockarie Fallah prepared a Statutory Declaration for the land. One Allie Conteh and one Alimamy Conteh witnessed the document testifying to the truth of the contents. The document was put in evidence (unchallenged) as exhibit 'A'.

Bockarie Bomboli Fallah the brother of the appellant also gave evidence corroborating that of the appellant and added the appellant had his authority to sue for the land.

The Headman of Calaba Town, Momoh Kargbo next gave evidence. In his evidence he said, that he knew the land in dispute and that it belonged to appellant. That in 1978 the appellant complained to him that respondent had gone into his land. The headman said that he himself went to Calaba Town in 1934 about (50 years ago) and found respondent on the land.

The Headman said:

"I told Moseray that the land was owned by plaintiff and that he should leave it, as he owned no land in that area. He refused to leave, plaintiff came back and complained. I then advised him to go to court. Plaintiff then took defendant to the C.I.D. to get him to leave"

All throughout the trial respondent was represented by able counsel whose cross-examination I would say, with respect, was not directed to the issue before the court nor even suggestive that the land belonged to respondent or that he did not trespass or built on the land as alleged. He gave no evidence nor called any witness. Not even Today the alleged vendor to him was called to give evidence or made a party to the action

In effect no legal defence was filed, only a general denial of everything in the statement of claim - nor did he defend the action at the trial, outside irrelevant cross-examination.

However, at the close of the plaintiff's case the learned trial judge in his reserved judgment dismissed the action and rejected the claim.

As I have said earlier I have had the privilege of reading in draft the judgment of my brother Warne, J.A. which ~~xxx~~ he has just read dismissing the appeal and affirming the judgment of the learned trial judge. It is with utmost respect that I disagree with my brother Warne, J.A. as I do with the learned trial judge,

The principles governing declaration of title to ~~xxx~~ land and trespass have been fully and most acholarly discussed by the Supreme Court of Sierra Leone in the judgment of the learned Chief Justice E. Livesey Luke in Civ.App.5/79 Dr.C.J. Seymouy Wilson Vs. Musa Abess delivered on the 17th June 1981 (yet unreported) a passage from which is very relevant and apposit to this case, and which I quote:

"....., it is a matter of common knowledge that most of the lands in the Western Area outside the City of Freetown are based on possessory title and most of them are not covered by title deeds. That situation is the result of the history of land holding established in the Western Area about two centuries ago. The system which has been in operation in the Western Area since the founding of the Colony (now the Western Area) is that land passes within the same family from one generation to another in many cases without the existence of any document of title. Does the mere registration of a Deed conveying any such land confer title on the purchaser as against the true owner who may have an indefeasible possessory title but no document of title?"

"Indeed the courts in Sierra Leone have on innumerable occasions decided in favour of owner of a possessory title without documents of title as against the holders of registered Conveyance. See for example Cole V. Cummings

(No.2) (1964-66) A.L.R. (S.N.) 154. For example

"example of cases where the rival titles were based on possessory non-documentary titles. See Mansary v. Williams (supra) and John & Macauley v. Stafford & Ors. (supra)."

I do not only feel loyally bound by this exposition of law but also entirely agree with, and adopt it in this judgment. This same view was held in the case Cottrell v. Watkins (1839) 1 Beav. 361 at 365 cited by my brother Warnes J.A. as ~~follows~~ follows:

"There are good titles in which the origin cannot be shown by any deed or will; but then you must show..... that there has been such a long uninterrupted possession, enjoyment and dealing with the property as to afford a reasonable presumption that there is an absolute title in fee simple".

See Williams on Title - 2nd edition 570

In this case quite apart from exhibit 'A', the Statutory Declaration the appellant and two other witnesses gave oral evidence on Oath to the effect that the appellant inherited the land delineated in plan attached to exhibit A from his father who also inherited it from his own father, over 40 years, the Headman Momoh Kargbo putting it as from 1934 when he came to Kalaba Town and met the appellant on the land in question. It was only in 1972 when appellant fell ill and went away and on his return he found respondent on his land. The evidence of all these witnesses went uncontroverted and unchallenged on all material points. What more evidence is required of appellant to establish title to that land, and of long and uninterrupted possession thereof in view of the two passages cited above. The courts would be setting a dangerous and unrealistic standard of proof of title to land outside the original Preetown Municipality where the question of Title Deed is only now being introduced. The tracing of title to father, grandfather and beyond even by hearsay evidence, which is permissible in such cases, has been the only proof of title to such lands: even more so in the Provinces and the Rural Areas.

Two criticisms levied against the appellant are that firstly he did not define the boundary of his land. But quite apart from exhibit A which though it may not per se be proof of title yet it

contains the pain of the land in dispute, paragraph 1 of the statement of claim was amended to further read, "The said piece and parcel of land is delineated on Plan L.S. 1823/77 attached hereto and forms part of this Statement of Claim". What more is required of the appellant to define his boundary? Secondly, that in answer to cross-examination, the appellant is recorded as having told the court: "..... I know nothing about the land area in dispute, my surveyor should know". In my view what the appellant was saying was that as a layman and from the witness box he would not define the extent of his land or area trespassed on; only his Surveyor would know. But in cases of trespass to land is it always necessary to have a plan? If a man trespasses in a room he has done so in the name of the whole premises without producing a plan of either the premises or the room or narrower still the area trespassed on.

In my view the evidence before the learned trial judge was ample proof of the plaintiff's title to the land delineated on plan L.S. 1823/77 and of the respondent's trespass thereon to entitle appellant to a declaration of title as against the respondent and judgment for trespass. And I so hold.

I would set aside the judgment of ~~the~~ the court below and enter one for the appellant~~x~~

On the question of the reliefs sought by the appellant

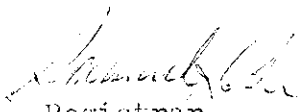
- (1) I declare that the plaintiff/appellant is the fee simple owner of the land at Robis, the subject matter of this action and which is described in Plan L.S. 1823/77.
- (2) The appellant is entitled to an is granted re-possession of the said land.
- (3) An injunction is ordered restraining the respondent, his servant or agent or anybody claiming through him from entering the said land and committing further acts of trespass.
- (4) I award the appellant Le1,000 general damages.
- (5) Nense Profits. The appellant has led no evidence on this and I make no award.
- (6) I award the appellant costs in this court and in the Court below,

on taxation.

(Sgd) S.T. Navo J.A.

I agree..... S.M.F. Kutubu (sgd) Justice of Appeal

Certified True Copy


Registrar,
Court of Appeal.