

CIV.APP.6/2004

IN THE COURT OF APPEAL OF SIERRA LEONE

LAMIN B. NGOBEH - APPELLANT

AND

FINDA L. KPUNDEH - RESPONDENT

CORAM:

Hon Justice U.H. Tejan-Jalloh JSC

Hon Justice S. Koroma JA

Hon Justice A.N.B. Stronge JA

Hearing Date: 2nd November, 2006

Judgment: 15th March, 2007

Advocates: C.F. Margai, Esq., for Appellant
M.N. Kamara, Esq., for Respondent

JUDGMENT

Delivered this 15th day of March, 2007.

TEJAN-JALLOH JSC: The Plaintiff now Respondent's claim against the defendant now Appellant is for:

1. Recovery of possession of all that portion or piece or parcel of land situate lying and being off Macauley Street, Murray Town, Freetown in the Western Area of the Republic of Sierra Leone measuring about 0.0118 Acre;

2. An injunction restraining the Defendant whether by himself, his servant or agents privies or howsoever otherwise from trespassing, entering and or remaining on the said land or portion thereof and from carrying out or continuing the erection of a structure/building/fall on the said land or any portion thereof.
3. Damages for trespass to the plaintiff's said piece or parcel of land.
4. All necessary and consequential directions thereof.
5. Further or other reliefs.
6. Costs.

The matter went to trial at the conclusion of which the Hon. Mr. Justice Nylander found in favour of the Plaintiff now Respondent and ordered as follows:-

1. Recovery of possession of the disputed land as prayed for in Relief No.1 is granted with immediate effect.
2. A permanent injunction is granted as prayed for in relief No.2 of the prayer.
3. Damages for trespass – five million Leones.
4. The defendant shall pull down the Boys Quarters he erected in contravention of the Court Order during trial. This shall be done within 5 days of the date of the Judgment otherwise Plaintiff shall seek a further Court Order to pull the structure down.
5. The defendant shall pay the cost of this action (SIC) of this action, such costs to be taxed.

The Appellant, being dissatisfied with the decision of the Court appealed to this Court. He has filed five grounds of appeal, the pith and substance of which in my own opinion is that the judgment is against the weight of the evidence. This is because each of the grounds of appeal alluded to various parts of the evidence adduced at the trial and to the conclusion by the Judge.

In my opinion the issues raised in the appeal may be summarized as follows:-

1. Did the Respondent's title deed cover the portion of land in dispute?
2. Did the Respondent prove title to the land in dispute?
3. Who has proved a better right to possession?

It has to borne in mind that this was a case of trespass and there is no claim for a declaration of title. The law is well settled that in a case of trespass, what the plaintiff has to prove is a better right of possession than the defendant.

The evidence of the Respondent which the learned Trial Judge accepted is the fact that the Respondent claimed to have bought her land at Macauley Street, Murray Town in 1998 from one Pa Alpha Amadu Mansaray. She alleged that sometime in the year 2001, the Appellant encroached on her land and the encroachment was confirmed by his licensed Surveyor. The encroachment in the land was by building a Boys Quarters on her access road. That when she complained to the appellant that the land was hers, Appellant ignored her protest and also laid claim to the land. The matter was reported to the police. Pa Alpha Amadu Mansaray who sold to the Respondent confirmed that the Appellant encroached on the Respondent's land. The witness told the Court that he advised the Respondent to take the

matter to Court. It was clear from the evidence of the witness that he was positive that the Appellant was the trespasser and that he never met the Appellant up to the time he sold the land to the Respondent.

The Respondent admitted that the Appellant bought his land before hers, but she maintained that her land is at the back of the Appellant's land and that she has her own Access Road close to Macauley Street and that the Appellants' land is not close to Macauley Street.

The fact that Appellant bought the land before the Respondent is not without more, evidence of a superior title.

See *Dr. Seymour Wilson V Musa Abess (unreported) Civ.App.5/79(SC)*

The strength of the Appellants case appears to rest on the evidence of his licensed surveyor (DW.3) who advised him to block the Access Road. It is observed that when the Surveyor was cross-examined, his evidence revealed that he prepared his Encroachment plan solely on the Appellants documents. That since 2000 he had not revisited the land and he did not know if there was land dispute between the Appellant and the Respondent in 2000. In the case of the Respondent her Surveyor said inter alia:-

"I did a field exercise by drawing two plans showing the actual survey plan LS1259/01. I made a compact (Sic) composite plan from the two plans. I also drew up Survey Plan showing the actual physical position of the land."

In cross-examination, the witness also told the Court that he determined the Access Road by the facts on the grounds. The learned Trial Judge quite rightly concluded by saying,

"I am satisfied in my mind that the behaviour of the defendant

and his surveyor is high handed. The evidence of the defendant and his surveyor is conflicting, and on the facts.

I also believe the evidence adduced by the Plaintiff."

I do not believe the evidence by the defendant. I am satisfied in my mind that the Plaintiff has proved her case on the balance of probabilities, as such Judgment is in plaintiffs favour etc. etc.

In the premise, I see weighty and more convincing evidence in support of the Respondent' case that should entitle her to Judgment. As a result I see no merit in the complaint against the Judgment of Nylander J. As an Appellate Court, we should be more concerned with decision and not with reasons. I am guided in this view by what Blackhall P. said in Likejiana v Uchendu 13 WACA at page 46, - where he said:

"It seems to me, however, that what this Court has to decide is whether the decision of the Judge was right notwithstanding his reasons were. It is only if the misdirection had caused him to come to the wrong decision that it would be material."

The decision of Nylander J, is in line with the justice of this matter. I agree with him. I affirm it. The appeal is dismissed with cost to be taxed.

Hon Justice U.H. Tejan-Jalloh JSC

Hon Justice: S. Koroma JA

Hon Justice: A.N.B. Stronge JA