CIV. APP 32/2005

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

OKEKEY AGENCIES LTD - APPELLANT

AND

KELFALA LAHAI
MRS. KHADIJATU LAHAI - RESPONDENTS

CORAM:

HON JUSTICE U.H. TEJAN-JALLOH – J.S.C.
HON JUSTICE SALIMATU KOROMA – J.A.
HON JUSTICE A.N.B. STRONGE – J.A.

HEARING DATE: 14TH DECEMBER, 2006.

JUDGEMENT: 1ST NOVEMBER, 2007.

ADVOCATES:

N.C. BROWNE-MARKE, ESQ, FOR THE APPELLANT
J.B. JENKINS-JOHNSTON, ESQ, FOR THE RESPONDENTS.

JUDGEMENT: DELIVERED ON 1ST DAY OF NOVEMBER, 2007.

TEJAN-JALLOH – J.S.C. - This is an appeal against the judgement of the High Court dated 16th March 2005. The appellant being dissatisfied with the decision filed four grounds of appeal, namely:-

1. *The learned trial Judge erred in law and in fact in holding that the plaintiff had not proved its title to the land on which the Defendant had trespassed and built a house.*

2. *The learned trial Judge erred in law and in fact in holding that, despite the fact that there was cogent and irrefragable evidence that the dimensions and boundaries of the plaintiffs land encompassed that of the defendants land the land did not, ipso facto belong to the plaintiff.*

3. *The learned trial judge erred in law and in fact in failing to hold that since there was clear evidence that defendants could not prove the legitimacy of their title to the property in dispute, while the plaintiff had proved its title to the said land Judgment should be entered for the plaintiff.*

4. *The Judgment is against the weight of the evidence.*

The Parties gave evidence and called witnesses and produced documentary evidence to wit exhibits A and K; exhibits "A", copy of conveyance dated 10th November, 1992, exhibits K copy of lease dated 22nd August, 1983, and amongst others of particular importance are exhibits H1-H3 i.e. three (3) official reports from Messr Lincoln, Coker and Koroma which were produced by the witnesses called by the plaintiff/appellant. Amongst others of particular importance are exhibits H1 to H3 which were produced by the witnesses called by the plaintiff/Appellant. The evidence adduced clearly revealed that the portion of land being claimed and on which the defendants respondents built is a private

property and not state land that could have been sold to the plaintiff/ appellant as their plan depicted; and we note that the explanation for that is that the land was not surveyed when the plaintiff/appellant leased the land. The evidence is also to the effect that the Department of surveys and lands never inspected the property nor installed the boundary beacons at the time of the lease in 1970 as well as the time of the purchase of the free hold in 1992.

The evidence of PW6 together with exhibits H1– H3 confirm that the wall fence had been in place since 1958, when it was PWD works land, which was finally leased to Continental Fishing Company. We cannot ignore the evidence that Mrs. Princess Roberts occupied part of the land being claimed by the plaintiffs/appellants and the irrefutable evidence that she had seen in undisturbed occupation of the land and paying by leasehold rents to the Ministry for a period of about 26 years. Following the guidelines in Dr. Seymour Wilson Vs Musa Abess. C.V. App. No 5/79 (Unreported) that in an action for a Declaration of Title, the plaintiff must succeed on the strength of his title and not on the weakness of the Defendant's title, the appellant in an attempt to prove that the portion of land they are claiming belong to the state called witnesses who clearly testified that the place being claimed by the appellant could not properly be claimed by the appellants. Having heard all the arguments on both sides and after perusing the records, what I consider to be the heart and soul of the appeal is whether the appellant proved his case as pleaded. In answering this question, I am not unmindful that it is a well established principle of law that in a claim for declaration of title, the onus is always on the plaintiff to establish his claim and

that it is not open to him to rely on the weakness of the defendants' case as Mr. Browne-Marke was seeking to do.

We think it was obvious particularly at the stage when the evidence was adduced that the claim for a declaration of title was lost. It is clear that the claim of title which the appellant depicted by their pleading was not supported by the oral as well as documentary evidence tendered by the personnel of the Ministry of Lands and survey. The attack on the title of the defendants/respondents by Mr. Brown-Marke was designed to show the deficiency in the respondent's titles, but the law is clear that the appellants cannot and should not rely on that weakness.

There are numerous authorities on the point. We refer to Kodilinge vs. Odu (1935) WACA 336 at page 337 – 338. It was a case for declaration of title. The court said that onus lies on the plaintiff to satisfy the court that he is entitled and must rely on the strength of his case and not on the weakness of the defendant's case; that if the onus is not discharged the weakness of the defendant's case will not help him. Mr. Browne-Marke in his arguments placed reliance on this decision, but his argument seemed to ignore the principle of law emanated in the case. We do not think the plaintiff/appellant can succeed by canvassing a title, which itself was demonstrated to be defective. The trial Judge was not satisfied that the plaintiff/appellant discharged the onus on them to satisfy the court that they are entitled on the evidence brought by them to a declaration of title to the land in dispute, because the appellant's vendor represented by the personnel of the Ministry of Lands and survey have firmly established that they could not properly lay claim to that portion of land, where the defendants/respondents

have built, although the defendants/respondents building ought not to have been where it is.

On the question of evaluation of the evidence a witness has first to be believed before a court can be satisfied with his testimony. Believing or disbelieving witnesses is within the competence of the trial Court and where such belief is supported by any evidence howsoever slight an appellate court will not normally interfere. In this case, there was enough evidence to justify the stand taken by the trial judge not awarding title to the plaintiff/appellants. It is trite law that a declaration of title is a relief entirely at the discretion of the trial judge, who should be satisfied that from the totality of the evidence led, and that on the proper evaluation of that evidence he should rightly exercise his discretion in favour of the successful claimant. We agree with Mr. Jenkins-Johnson that the learned trial judge in this case rightly decided that the plaintiff's/appellant's case had failed and rightly dismissed it.

We do not believe that this case comes within the principles under which an appellate court can interfere with the findings of the trial judge. We agree that the law is well stated in the well-known case of Dr. Seymour Wilson Vs Musa Abess (Supra) which considered Watt or Thomas (1947) AC 484. And Benmax Vs Austin Motors Company Limited (1955) 1 All ER 326.

In that case, Justice E.L. Luke said, *inter alia*,

> *"It is trite law that in an action for a Declaration of Title, the Plaintiff must succeed on the strength of his title and not the weakness of the Defendants' title"*

Continued at Page 82.

> *"One of the ways that he may do this is to prove that he has a better title to the land than the Defendant.... the Party who proves a better title succeeds even though there may be another person, not a party, who has a better title than him".*

On the question of evaluation of the evidence by an appellate Court, His Lordship stated in the Seymon – Wilson's case (Supra) at page 67-68 as follows:-

> *"There is no doubt that an appellate Court has power to evaluate the evidence led in the Court below, to reach its own conclusion, and in a suitable case, to reverse the finding of fact of a trial judge. But these powers are exercisable on well settled principles, and an appellate Court will not disturbed the findings of fact of a trial judge unless these principles are applicable. (and citing Thomas v. Thomas (1947).A.C.484 the appellate Court is, however, free to reverse his conclusions if the grounds given by him, therefore, are unsatisfactory by reason of material inconsistencies or in accuracies, or if it appears unmistakeably from the evidence that in reaching them he has not taken proper advantage of having seen and heard the witnesses, or has failed to appreciate the weight and bearing of circumstances admitted or proved, (and citing Benmax vs. Austin Motors Co. Ltd. **(1955) 1 All ER** 326 per Lord Reid at Page 329, said :-*

"but in cases where there is no question of the credibility or reliability of witness, and in cases where the point in dispute is the proper inference to be drawn from proved facts, an Appeal Court is generally in as good a position to evaluate the evidence as the trial Judge, and ought not to shrink from that task, thought it ought, of course, to give weight to his opinion".

Also, in Joint venture Construction Company vs. Conteh & Others A.C. 1971-72 ALR SL 145 per Mr. Justice Tambiah at Page 150 4452-10:-

"It is a well known principle of law that judges' findings made after the hearing of witness, and observing their demeanour, are entitled to great weight and should not be disturbed, unless it is clear that they are unsound.....but it is often open to an appellate court to find that the view of a witness was ill-founded. Where the point in dispute has to be decided by the proper inferences to be drawn from proved facts, an Appeal Court is in as good a position to evaluate the evidence as the trial judge, and may form its own independent opinion".

A very important point that we did not lose sight of is the fact that it was the plaintiff's/appellants' witnesses, whom he cannot afford to disown or discredit that gave the damaging evidence against the plaintiff/appellant. The law is clear that the plaintiff's/appellants' cannot be heard to say that their witnesses should not be believed.

Mr. Brown-Marke also contended that since the defendants'/respondents' property was supposed to be at Roporti in Wellington, the plaintiffs/appellants should be held to have proved their case of trespass against the defendants/respondents on a balance of probabilities. This proposition over looked the fact that the land on which the defendants/respondents built has been said and declared by the plaintiff/appellant's witnesses to be a private land as against state land which they are claiming. The position would have been different if both places had been on state land.

For the forgoing reasons, we find the contention untenable and misconceived. We see no merit in this appeal and it is hereby dismissed. Costs to the Respondent to be taxed.

..... I AGREE
HON JUSTICE U.H TEJAN-JALLOH - J.S.C.

..... I AGREE
HON JUSTICE S. KOROMA - J.A.

..... I AGREE
HON JUSTICE A.N.B. STRONGE - J.A.

Ref: TJ/JS