

CIV.. APP. 13/2006

IN THE COURT OF APPEAL OF SISERRA LEONE

BETWEEN:-

VIDAL KENNICK )  
BENJAMIN KENNICK )  
SHEKA FORNAH ) APPELLANTS  
AND  
ABU RAHMAN COKER RESPONDENT

CORAM: HON MR. JUSTICE S.A.ADEMOSU - J.A.

HON. MR. JUSTICE N.C.BROWNE-MARKE – J.A.

HON. JUSTICE. MRS.A. SHOWERS - J

ADVOCATES:

D.G.THOMPSON ESQ., FOR THE APPELLANTS

C.F.EDWARDS FOR THE RESPONDENT

JUDGMENT DELIVERED ON 19<sup>th</sup> DAY OF JANUARY, 2009

S.A.ADEMOSU J.A.

This is an Appeal from the Judgment of Hamilton J.A.sitting as a Judge of the High Court. The Appellant before the High Court was the Plaintiff and the Respondents were the Defendants in an Action brought Pursuant to the Summary Ejectment Act Cap.49 of the Laws of Sierra Leone 1960. The proceedings were before J.K.Sharpe Esq., J.P. and A.R.Wurie Esq., J.P. sitting as Magistrate. The two Justices of the Peace gave Judgment to the effect that there was no landlord and tenant relationship between the parties and that the Government of Sierra Leone is owner of the land.

The High Court upheld the Grounds of Appeal which were that the Trial Justices acted on wrong principles of Law and fact in giving judgment for the Respondents and that the decision was against the weight of evidence. The record shows that because the tape recorded evidence of one Abibatu Suma being missing the Learned Judge on the Appeal had to receive oral evidence from Abibatu Suma pursuant to Rule 15 of the Appeals from Magistrate's Court Rules (1969) P.N. No.25 of 1969. At the conclusion of the Appeal the Learned Judge found that the Respondent did lead evidence in compliance with Section 7

of Cap.49 and judgment ought to have been given in his favour and not to declare that the property belongs to the Government of Sierra Leone who was not a party to the proceedings.

Being dissatisfied with the decision the Appellants have set out four Grounds in their notice of Appeal. The Grounds set out are as follows:-

- i. The Learned Trial Judge acted on wrong principle of law having reviewed the evidence and there were four(4) conflicting documents of Title tendered by the Applicant/Respondent to show ownership of No.86, Sir Samuel Lewis Road Aberdeen with none of them showing actual ownership as against the evidence of the Senior Lands officer that the land is State land and that the Respondent/Appellants are on the land as Licensees of the Government of Sierra Leone to have held that pronouncement of the trial Justices that "The Bench is satisfied that the property at Sir Samuel Lewis Road, Aberdeen belongs to the Government of Sierra Leone, who is entitled to the reversion of the tenancy to that piece of land" to amount to a Declaration of Title
- ii. The learned Trial judge reprobated and misdirected himself in holding that the evidence when read clearly shows that the Appellants led evidence in compliance with Section 7 of Cap.49 and judgment ought not to declare that the property belongs to the Government of Sierra Leone who was not even a party to these proceedings nor did they given any notice to enable them have the reversion, and in the event wrongly ignoring the fact that.
  - (a) The proof of a landlord and tenant relationship and the determination thereof is also an ingredient to be satisfied.
  - (b) The Government of Sierra Leone need not be a party to the proceedings.
  - (c) Nor that the Government of Sierra Leone should issue out a Notice to Quit to enable them have the reversion.

ii The Learned Trial Judge reprobated and misdirected himself when found out that the evidence of the Appellant by tendering document to show ownership of the lands which fails played this very weakness down and



proceeded to decide for the Appellants that DW4's evidence detailed about State Land without any supportive document giving the burden placed on the Applicant to prove his case against the Respondent.

iv the said judgment is contrary to the legal proposition the Learned Trial Judge set out to apply to the facts and is against the weight of the evidence adduced in the case.

In my own opinion the above Grounds of Appeal are just a multiplication of words as they are in effect saying (1) that the learned trial judge acted on wrong principles of law and (2) that decision is against the weight of the evidence. It is on these Two Grounds I intend to approach and consider this Appeal.

As regards Ground 1 having regard to the totality of the evidence the point at issue is a short one namely whether the Appellants were occupying the premises within the meaning of the definition of tenant in Section 2 of Cap.49 of the Laws of Sierra Leone 1960 (as amended). The evidence of Abibatu Suma which the Learned Trial Judge believed clearly shows that a landlord and tenant relationship existed between the Appellants and Respondent.


Reading Section 7 of the Act the law is clear that what the Magistrate has to decide is whether or not a tenancy of one of the kind specified in Section 3 existed between the Appellants and the Respondent and if it existed the next point to consider is whether it has been properly determined. Once the tenancy has been properly determined the Court may disregard any other claim of right or title that might have been raised by the tenant because it is not the business or concern of the Court to decide whether the Complainant has a sound title to any interest in the premises in question. The case of *Mason v. Roberts* (1963)3SLLR48 which is the locus classicus on Ejectment matters is very instructive on the issue. It says that the Magistrate can investigate title but can not determine title to property. Section 11 of Cap.49 is clear and unequivocal in its terms that the court can inquire into title in an ejectment matter but not to determine title. I am in full agreement with the Trial Judge that the decision of the Justices of the Peace amounts to a declaration of title in someone not a party to the proceedings i.e. That State

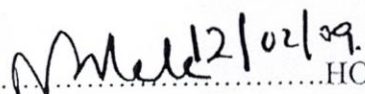
It seems to me that the Court got carried away by the fact that it did not believe the Appellants paid rent to the Respondent even though he tendered copies of the receipts

issued to the Appellant in support of his contention that the Appellants did pay rent to him up to a point before they ceased doing so. The evidence of DW4.(Mr. Coker) which the Court accepted that the State owned the land did not substantiate the claim that the lands is State land. I do not think it was prudent for the Court to rely on the ipse dixit of the witness without more. More so, when it came from the lips of the witness that he was in court at the instance of the Counsel for the Appellants and without the knowledge of the Director Surveys and Lands and yet the witness had the temerity to tell the Court that he was representing the Director of Surveys and lands. He had not a jot of documentary evidence to support his evidence.

I think the Court must have lost sight of the fact that the Respondent's case was that he was entitled to possession and not that he had a sound title. By Section 7 of the Act the Law is clear that the Respondent was expected to prove his case only on the balance of probabilities and not proof of a sound title. This is a case where the Appellants were denying the Respondent's title forgetting what was said in *Mansaray v. Williams* (1968-69) A.L.R.S.L. 326 where it was held that a tenant is estopped from denying his Landlord's title.

I am in full agreement with the Trial Judge that the Respondent led evidence in compliance with Section 7 of Cap.49 and judgment ought to have been given in his favour and that it was wrong for the Magistrate Court to have declared that the property belongs to the Government of Sierra Leone who was not even a party to the proceedings. I am satisfied that the judge came to correct conclusion and this leads me to say there is no merit in the omnibus ground that the judgment is against the weight of the evidence. This Appeal, therefore fails. The judgment of Hamilton J.A. together with the order <sup>for</sup> costs is affirmed. The Appeal is dismissed with costs to the Respondent such costs to be taxed.

  
(Sgd) HON.MR.JUSTICE S.A.ADEMOSU- J.A.

I AGREE...  HON. MR.JUSTICE N.C.BROWNE-MARK- J.A.

I AGREE..... HON. JUSTICE MRS. A SHOWERS -J