

118

DRAFT

CC. APP. 15/2005

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

BRIMA JALLOH

APPELLANT

AND

SANNOH VICTOR MUSTAPHA

RESPONDENT

CORAM:

Hon. Mrs. Justice S. Bash-Taqi, JSC, Presiding

Hon. Ms. Justice S. Koroma, JSC

Hon. Mr. Justice E. E. Roberts, JA

Barristers

D. G. Thompson, Esq. for the Appellant

Mohamed Mansaray, Esq. on Record for the Respondent

(No appearance by Respondent & his Counsel)

JUDGMENT DELIVERED ON 7<sup>th</sup> DAY OF July 2009

S. BASH-TAQI, JSC: -

This appeal concerns the ownership of land at Calaba Town Freetown. By a Writ of Summons dated 12<sup>th</sup> November 1998 issued in the High Court by the Appellant against the Respondent, the Appellant claimed (i) a declaration of title to a piece of land situate at Main Road Calaba Town Freetown bounded on the North by private property 129. 5 feet, on the South by private property 114. 95 feet, on the East by Main Road 54. 8 feet, on the South West by private property 27.0 feet; on the West by private property 38. 5 feet the whole covering an area of 0.1639 Acre; (ii) Possession of the said land; (iii) Damages for Trespass and (iv) An Injunction to restrain the Defendant his servants and/or agents from trespassing, building, interfering with the said land.

In his Statement of Claim, the Appellant pleaded inter alia, that he bought the said land from one Ekundayo Mary Davies who executed a Conveyance dated 25<sup>th</sup> May 1972 duly registered as number 381 at Page 23 in Vol. 253 in the Office of the Registrar General in Freetown; that the Respondent unlawfully entered upon the said land and commenced building a house thereon and despite attempts by the Appellant to stop him from doing so, the Respondent persisted in trespassing on the land.

The Respondent filed a Statement of Defence by his Solicitor, Roland J. V. Cole, denying the Appellant's claim, and avers inter alia, that he is the fee simple owner of land situate



at Allen Town Road, Allen Town, Freetown; that the Appellant is not entitled to the land he is claiming, and further the Appellant has no locus standi in the matter as he is not Brima Jalloh. On 7<sup>th</sup> June 1999, Cowan, J, (as he then was) granted an Interim Injunction restraining the Respondent from continuing his structure on the land pending the hearing and determination of the action, with the usual undertaking as to damages given by the Appellant if he failed to establish his right to the injunction.

The trial was by Nyander J. (as he then was), and he delivered Judgment on the 25<sup>th</sup> January 2005 dismissing the Appellant's claim with costs. In his Judgment the Learned Judge, after reviewing the evidence, said: -

*".... the Plaintiff's ownership of the land as evidenced in Ex. A1 stems from a Possessory title by virtue of a Statutory Declaration dated 1970. Defendant's ownership of the land is in fee simple absolute dating from 24/3/ 81 and before that date according to the evidence of Sorie Kargbo DW3 the land was owned by one Chief Bonafide."*

**The Judge therefore concluded:-**

*"I find gaps in the evidence of the plaintiff and his witnesses. I find the evidence inadequate. I cannot safely say that he has proved his case on the balance of probabilities. I believe the report of the surveyor for the defendant. On the facts I hold that the defendant has a better title to the disputed land. The case for the plaintiff is therefore dismissed...."*

The Respondent did not file a Counter-Claim, but the Learned Judge held that there was nothing adverse to this omission and went on to adjudge that the Respondent is the fee simple owner of the disputed property. He also found that issue was made in the High Court that the land in dispute are in fact two different pieces of land i.e. "one at Allen Town and the other at Calaba Town". He recalled the Respondent's Surveyor as saying in the evidence that: - *"These are two different pieces of lands with a common boundary".* (see p. 78). He also recalled the Report of the Court Registrar as saying after his investigations on the ground that the land in dispute is located at Calaba Town. The Report states: *"The Court having visited the locus felt the land is at Calaba Town....."*

The Learned Judge compared that report to the evidence of the Respondent's Surveyor, James Morlai Bangura, and concluded in his judgment:

*"....., [and] whilst considering the evidence of DW1 James Morlai Bangura the surveyor for the defendant who once worked at the Department of Surveys and Lands, he said that the land is at Allen Town".* (see page 78).

Despite the above evidence, the Learned Judge went on to conclude that the matter concerned a single piece of land.

The Appellant is of the view that the above conclusion was wrong as the evidence quoted above suggests that there are two pieces of land which are separate and distinct, therefore



being dissatisfied with Nylander, J's Judgment he has appealed to this Court on the following ground:.

- (i) That the learned trial judge was wrong in law to hold that irrespective of whatever nomenclature is given to the location of the disputed land what we are talking about is the same piece of land, claimed by both the Plaintiff and the Defendant; ignoring the site plans of the Plaintiff and the Defendant showing that the respective pieces of land are located at Main Motor Road Calaba Town and at Allen Town Road, Allen Town. Whilst at the same time accepting that the court having visited the Locus felt the land is at Calaba Town.
- (ii) The Learned Trial Judge was wrong in his interpretation and application of the law in holding that since the Plaintiff's ownership of the land stems from a possessory title by a Statutory Declaration dated 1970 and the Defendant's title is in fee simple absolute dating from 24<sup>th</sup> March 1981 and because of that without more that Mr. & Mrs. Rashid Thomas owned the land in 1975.
  - (a) Failing to look for the root of title of the Defendant beyond 1981.
  - (b) Failing also after holding that in 1975 Mr. & Mrs. Rashid Thomas owned land without proof of documentary evidence that the Statutory Declaration dated 1970 predates the declaration that in 1975 Mr. & Mrs. Raschid owned the land by five years.
  - (c) Failing also to consider the declaration of the Vendor of the Plaintiff that is on the 25<sup>th</sup> day of May 1972 she had been lawfully seised of in fee simple in possession or otherwise well entitled to a vast piece or parcel of land tenements for well nigh sixteen (16) years without let or hindrance predating it to 1956.
  - (d) That 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.

The issues in the High Court action were three fold, (1) firstly, whether the disputed land claimed by the Appellant is a different piece of land from that claimed by the Respondent in his defence; (2) secondly, whether the Appellant's title deeds relate to the land in dispute, and thirdly, whether the Appellant proved title to the land so as to be entitled to a declaration of title.

In his Statement of Claim the Appellant claimed to be entitled to land situate at Calaba Town. He contended and called evidence to establish that the land conveyed to the Respondent in 1992 was not the land in dispute, and that the Respondent's land was in fact situated some distance from the land in dispute, at Allen Town Road, Allen Town.

He submitted that the Learned Judge found as a fact that the land was conveyed to the Appellant in 1972, and that the land the subject matter of the action is one and the same land claimed by the Respondent.



121

Counsel for the Appellant in his Skeleton Arguments argued that the evidence conveyed by the signed site plans of the Appellant's and Respondent's disclosed that both pieces of land are located at two different locations, one at Main Road Calaba Town and one Allen Town Road, Allen Town respectively. He referred to the evidence taken at the locus in quo which the learned Judge accepted when he held that the disputed land is at Calaba Town. Furthermore, the Appellant's Surveyor gave evidence to the effect that the land in dispute is at Main Road, Calaba Town and that there are two separate parcels of land. In his evidence, the Appellant's Surveyor, PW3 said: -

*".....I know a piece of land at Main Road Calaba Town. The Plaintiff hired my services to cross check and determine the orientation of his survey plan. He also told me that there was an encroachment on his property and asked that I checked to find out if this was true. I carried out the exercise and produced a composite plan. He gave me copies of his own plan and that of the defendant. I produced a report of my survey exercise which is attached to the composite plan I had drawn. These are the documents which I produce and tender marked Ex. C1 & C2." (p. 62-63)*

The Respondent's Surveyor, James Morlai Bangura, also gave evidence as DW4. He also carried out a re-survey of the land and prepared an encroachment which he tendered as Exhibit "D". He said this in evidence at page 69:

*".....I had cause to visit a piece of land at Allen Town Road Allen Town. I was asked to carry out a re-survey of the land. I was given two plans in respect of the land i.e. plans in Ex. A1 & B1 respectively. I drew an encroachment plan after visiting the land which I signed. I now produce and tender ....Ex. "D". Plan in Ex. A1 shows land at Main Road Calaba Town and plan in Ex. B1 shows land at Allen Town Road, Allen Town....."*

Under cross-examination the witness said among other things:

*".....Both plans were correct as is seen in Exhs. A1 and B1. The defendant's land is carved from land contained in plan 1284/69 while the plaintiff's land is taken from plan 410/70. These are two different pieces of land with a common boundary....." (See p. 70)*

The Appellant's Surveyor, Mr. Foday Jiba Anthony originally surveyed the Respondent's land and produced L.S. 3326/91 based on a Sub-division of L.S. 1284/69 on preparation of the Respondent's Conveyance, Exh. "B1". In the instant case the same surveyor carried out the re-survey of the land and prepared the Appellant's encroachment plan, Exh. "C1" & "C2". He said in his evidence that when he prepared the encroachment plans on the instructions of the Appellant, for the purpose of this action, the Respondent had encroached on the Appellant's land. He explained how the encroachment came about when he said he found that the Respondent had moved the beacons on his land from their original position'. Although the Learned Judge said in his Judgment (at p. 79) that from all his "years of experience in these matters, the moving of a beacon does not determine an encroachment to land", in this case, it did create a problem, especially if the beacons were moved from the original position into another person's lands, as was done in this case according to the licensed Surveyor P.W. 3. This brought about the difficulty that the



122

two pieces of land were one and the same, as the Learned Judge concluded. Whereas from all the evidence adduced and the plans and Conveyances tendered, the disputed lands were said to be separate and distinct, one situated at Main Road Calaba Town and the other at Allen Town Road Allen Town Freetown.

To buttress the above conclusion, Ex. "E" the Report of the Court Registrar on the locus quo which the Learned Judge accepted had this on the location of the disputed land: -

*"..... At the Locus, there is a house with a cement wall around it. The address of that house is 67J Kalaba Town. The land that is next to the cement wall is the land in question when heading for Allen Town. After the land in question, there is another house numbered 5 Kalaba Town; so the land in question, is between 5 Kalaba Town and 67J. I spoke to one Abdul Salaam Bah.....who is within the compound of 5 Kalaba Town. He told me that the land in question is within Kalaba Town.*

*I spoke to his Landlady, Neneh Mariama Bah, she also said the land is at Kalaba Town.*

*There is also a bridge that is said to be the boundary between Kalaba Town and Allen Town which is about 100yards from the land in question, going towards Allen Town. That is all." (See p. 108)*

The Learned Judge accepted this Report from his Registrar. Further the site plans attached to the parties respective conveyances show two pieces of land situate at Main Road Calaba Town and Allen Town Road Allen Town respectively.

We agree with Counsel for the Appellant that from the totality of the evidence, there are two distinct and separate pieces of land located at Main Road Calaba Town and Allen Town Road, Allen Town respectively. We hold that the Learned Trial Judge was wrong to infer that irrespective of what name is given to the location of the dispute land, it is one and the same piece of land. The evidence indicates that there are two pieces of land.

In the result we uphold Ground One of the Appellant's Ground of Appeal.

Counsel's complaint in Grounds (2) (a) & (b) of the Appeal is that the Learned Trial Judge was wrong in his interpretation and application of the law when he said at page 78, the "Plaintiff's ownership of the land as evidenced in Ex. "A1" stems from a possessory title by virtue of a Statutory Declaration dated 1970. The Defendant's ownership of the land is in fee simple absolute dating from 24<sup>1</sup>/3/81 and before that date according to the evidence of Sorie Kargbo D. W. 3, the land was owned by one Chief Bonafide". Counsel submitted that the above without more is not conclusive proof that Mr. & Mrs. Rashid Thomas owned the land in 1975 as the Learned Judge concluded; that the Learned Judge failed to look at the Defendant's root of title beyond 1981."

The Appellant gave evidence that he bought a piece of land along Main Road Calaba Town from one Mrs. Ekundayo Mary Davies in 1972; his Conveyance is registered as 381/72 in Vol. 253 at Page 23 in the Books of Conveyances at the Registrar-General's Office in Freetown. (See Ex. "A1"). The land was surveyed by E. E. Baxter who prepared Survey Plan L. S. 658/72 covering an area of 0.1639 Acres. His Vendor, Mrs. Ekundayo



125

Mary Davies acquired the land by a Statutory Declaration sworn to by herself and two other declarants on 16<sup>th</sup> June 1970; the Statutory Declaration was registered as No 31/70 at Vol. 8 page 8 in the Record Books of Statutory Declarations.

On the other hand the Respondent acquired his piece of land on 24<sup>th</sup> October 1992 from one Joyce Opal Johnson. The Respondent's Conveyance Exh. "B1" stated that Joyce Opan Johnson bought the said piece of land from Mr. Abdul Karim Rashid-Thomas and Morenikeh Rashid-Thomas on 24<sup>th</sup> March 1981. There is no evidence of the origin of the land or the owners before Mr. & Mrs. Rashid-Thomas. The Respondent's witness DW.3 one Sorie Kargbo, said the land was owned by one Chief Bonifide who always visited the land with a woman, (See bottom of page 78). The learned trial Judge concluded that these persons must be the owners before Mr. & Mrs. Rashid-Thomas. From this evidence the Learned Judge concluded at page 79 that "the ownership of the land past in fee simple absolute down to the defendant".

Where questions of title to land arise in litigation the Court is concern only with the relative strengths of the title proved by the parties. It follows that as against a defendant whose entry upon land was made as a trespasser a Plaintiff who can prove any documentary title to the land is entitled to recover possession of the land.

From the respective documents of title produced by the parties it appears that by Exh. "A1" the Appellant's Conveyance dated 25<sup>th</sup> May 1972, the Appellant has traced his root of title goes as far back as 16<sup>th</sup> June 1970 when his Vendor established that she had been in undisturbed possession of the land for a period of 15 years prior to her Statutory Declaration; the Appellant went into possession after purchasing the land on 25<sup>th</sup> May 1972. The Respondent's land discloses that his root of title from 1981 when the Respondent's vendor bought the land from Mr. & Mrs. Rashid-Thomas.

However even accepting the Learned Judge's conclusion, (at page 78,) that before 1981, the land belonged to Chief Bonifide; that in 1975 the Chief Bonifide conveyed it to Mr. & Mrs. Rashid-Thomas and it was then owned by Mr. & Mrs. Rashid-Thomas in 1975; this only takes the Respondent's root of title to 1975. So that when in 1975 the Respondent's predecessor-in-title acquired his land from presumably, Chief Bonafide, the Appellant had already bought his piece of land from his vendor, Mrs. Ekundayoh Mary Johnson, in 1972; and on 25<sup>th</sup> May 1972 Mrs. Johnson had established that she was lawfully seised of the land in 1970 by virtue of her Statutory Declaration. Of the two therefore it would appear that the Appellant has a better title to the land than the Respondent. There is no evidence before the Learned Judge that the Respondent's root of title went beyond 1981. Further, even if it is accepted that the Respondent obtained a valid title from Chief Bonafide, it is not clear how Chief Bonafide acquired the piece of land that he allegedly sold to Mr. & Mrs. Rashid-Thomas in 1981.

From the above reasoning we cannot accept the Learned Judge's conclusion that the ownership of the land passed in fee simple absolute to the Respondent. Nor can we hold that Mr. & Mrs. Rashid-Thomas owned the land in 1975 without necessary evidence to substantiate that fact. We also do not see from that evidence that Mr. & Mrs. Rashid-Thomas' title predates that of the Appellant's by five (5) years. We agree with Counsel for the Appellant that the Learned Trial Judge should have examined the Respondent's title beyond 1981 before coming to the above conclusions.



The Appellant's claim in this action is for a Declaration of title to the land situate at Calaba Town. The law as to what is required of a Plaintiff in a case where a declaration of title is sought is clearly stated in a long line of cases in our Courts. In *Seymour-Wilson vs. Musa Abess* Civ. App. 5/79 (unreported), Livesey, C. J. had this to say on the issue:

*"But in a case for a declaration of title, the Plaintiff must succeed by the strength of his title. He must prove a valid title to the land. So if he claims a fee simple title he must prove it to entitle him to a declaration of title."*

And at Page 68 of the said Judgment, he said inter alia:

*".....I think that 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 on the weakness of the Defendant's title"*

See also *Venn and Venn vs. Cole* (1968/69) ALR (SL) 326; *Mansaray vs. Williams* (1968/69) ALR (SL) 326

In *Kodilinye vs. Odu* (1933) 2 QACA 336 Webber, C; J. (Sierra Leone) in delivering the Judgment of the West African Court of Appeal said, inter alia:

*"The onus is on the Plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title....."*

It has also been held in a number of cases that before a declaration of title is given the land to which it relates must be ascertained with certainty, the test being whether a Surveyor can from the record produce an accurate plan of such land.

It is unfortunate that the learned Judge did not apply the above principles of law to the instant case. There is no basis for his conclusions that the defendant had a better title to the disputed land and to his findings that he found gaps in the evidence of the Plaintiff and his witnesses without indicating what was missing in the evidence; he also referred to the evidence as inadequate but did not specify in what material particular the evidence adduced in support of the Appellant's case was inadequate.

The Learned Judge in his conclusion stated that he believed the report of the Respondent's Surveyor, but his conclusion that on the facts the defendant has a better title to the disputed land is erroneous. This Surveyor testified as DW 3 and he stated that both the Plan in Exh. "A1", the Conveyance of the Appellant and B1" that of the Respondent's, are accurate; he also found that Survey Plan L. S. 1284/69 was used as the base to plot both pieces of lands. This evidence was confirmed by the Appellant's Surveyor. The Respondent's Surveyor also found that "these are two different pieces of lands with a common boundary"; the Learned Judge's conclusion on the other hand is that "what we are talking about is one and the same piece or land claimed by both the Plaintiff and defendant". We note that the defendant did not counterclaim for a declaration of title. However, even if he had, the principle of law is the same as to that of a Plaintiff who claims a declaration of title. There is therefore no basis for the Learned Judge to have held that the Respondent has a better title to the disputed land.



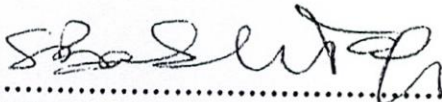
125

We find that the Appellant by his Surveyor was able to define the Appellant's land with certainty. He was emphatic in his evidence that that the Appellant's land is located at Main Road Calaba Town and not Allen Town Road; and there is also evidence from the Respondent's original Surveyor that the Respondent moved the beacons on his land from their original position, and this was the position when the resurvey of his land was done in June 1999 for the purpose of this action.

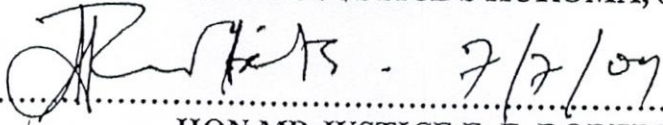
We are of the view that the Learned Trial Judge misdirected himself in the law in those circumstances we have the power to evaluate the evidence led and to reach our own conclusion on the facts.

In the result, we uphold the Appellant's appeal and hereby set aside the Judgment of Learned Trial Judge and we make the following orders:

1. That the Appellant is entitled to the declaration that he is the fee simple owner entitled to possession of all that piece or parcel of land situation lying and being at Main Road Calaba Town Freetown in the Western Area of Sierra Leone described and defined in Survey Plan registration No. L. S. 658/72 dated 16<sup>th</sup> May 1972.
2. Recovery of Possession of the said land from the Respondent.
3. An Injunction restraining the Respondent by himself his servants and/or agents from trespassing or interfering with the Appellant's land.
4. We make no order as to damages for trespass;
5. We order the costs of this action be paid by the Respondent such costs to be taxed.

  
.....  
HON MRS JUSTICE S BASH-TAQI, JSC

I AGREE.....  
HON MS JUSTICE S KOROMA, JSC

I AGREE.....  7/7/07  
HON MR JUSTICE E. E. ROBERTS, JA