

Civ. App. 68/2008

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

MR. ABU BAKARR FINNOH	-	1 ST APPELLANT
AND		
MR. SALIEU SESAY	-	2 ND APPELLANT
AND		
MISS. VIDA YAMOAHA	-	RESPONDENT

CORAM:

HON. JUSTICE S.A. ADEMOSU	-	J.A.
HON. JUSTICE E.E. ROBERTS	-	J.A.
HON. JUSTICE MRS. C.L. TAYLOR	-	J.

JUDGMENT DELIVERED ON 23rd DAY OF June 2011

ADEMOSU, J.A.

This is an appeal against judgment of Browne-Marke J.A. delivered on 27th November, 2008 in which he granted the plaintiff the following reliefs.

1. A declaration that she is entitled to all that piece or parcel of land, and the buildings and structures thereon situate lying and being at Malama Village, Kaningo Area, Lumley at Access Road Off Regent Road, Lumley, Freetown in the Western Area of the Republic of Sierra Leone.
2. Immediate recovery of possession of the said piece or parcel of land and all the buildings thereon.
3. Damages for trespass assessed at Le500,000/00.
4. Injunction with immediate effect.
5. Costs to the plaintiff and to be taxed.

The counterclaim of the 1st defendant is dismissed with costs to the plaintiff.

2nd defendant's counterclaim is dismissed with cost to the plaintiff.

Being dissatisfied with the above decision the defendants have appealed to this Court on the following grounds:

1. That this being an action for declaration of title instituted by the plaintiff against the defendant in respect of which the plaintiff could only succeed on the strength of her title and not on the weakness of the defendants' respective titles (as the learned trial judge himself said in his judgment). The learned trial judge misdirected himself in law and propelled himself to an erroneous conclusion that
 "In the result I find for the plaintiff and against the defendants"

Particulars of Misdirection

- (a) "It is clear therefore that the Deed numbered 100/82 must have been a Deed of Conveyance and not a Deed of Statutory Declaration as purported in exhibit 'K'. This being the case, it follows that both Defendants' title to their respective properties goes no further back than 2000 the year their joint Vendor's Deed was registered. Having reached this conclusion the next question should be where does this lead us?"
 - (b) The presence of the beacon K935/82 in the survey plan in plaintiff's deed and also in the respective Survey Plans of DW4 and the 1st Defendant appears to me sufficient indication that both Defendants' respective properties are wrongly located. This case turns not so much on who has a better title but whose property has been properly located. I have come to the inescapable conclusion that Plaintiff's property is located in the place where it should be and that the Defendants' respective properties are wrongly located."
2. That the learned trial judge made a very substantial and significant error of fact, (which led him consequently to make a serious misdirection and to come to an erroneous conclusion) when he started in the concluding part of his judgment that,
 ".....The presence of the beacon K935/82 in the Survey Plan of Plaintiff's deed, and also in the respective survey plan of DW4 and the 1st Defendant appears to me sufficient indication that Both Defendants' respective properties are wrongly located."

When as a matter of fact, the beacon K935/82 is not in Plaintiff's Plan at all nor is It in DW4's Plan, but only in 1st Defendant's Survey plan LS 2969/2000.

3. That the learned trial judge was totally wrong to have led himself to the conclusion that the title of both Defendants goes no further back than 2000 when the Survey Plan in the Conveyance of DW4 (Defendant's Vendor) clearly states that the said Plan is a sub-division of L.S. 1697/82, the same as is stated in Exhibit B, the Conveyance of Plaintiff, especially so as the Deed No. 1008/82 in Volume 342 at Page 84 dated 2nd September 1982 is recited in both the Conveyances of Plaintiff and Defendants.
4. That on the evidence, there was no reasonable justification for the conclusion of the learned trial judge that the Plaintiff's property is located in the place where it should be, and that Defendant's properties are wrongly located, especially in the light of the evidence of the two(2) Surveyors PW3 Sundima and DW1 Forster which were in conflict with each other, and without the benefit of a visit to the locus-in-quo, which could have resolved the obvious conflict.
5. That the learned trial judge totally failed, and/or neglected to consider the pleading of both Defendants that they are

"bona fide purchasers for valuable consideration of a Legal Estate without Notice in respect of the land acquired by them".

Supported by the evidence of DW4 (Defendants' Vendor) that no one challenged his ownership of the land before he sold it to Defendants, and those of both Defendants that before and while they were building on their respective Plots of Land, no one challenged or stopped them, thereby depriving the Defendants of a very crucial aspect of their defence.

6. That the learned trial judge seemed to allow himself to be unduly influenced by the fact that the Plaintiff's predecessor-in-title was EDWARD J. AKAR(a former colleague at the Bar,) even though he had stated in his judgment that

"....There is no evidence as to the whereabouts of his (Akar's) Vendors...."

As against Defendants predecessor-in-title who appeared in court and testified on oath.

7. That the learned trial judge was wrong in law to have awarded the Plaintiff Damages for Trespass when there was absolutely no evidence before the Court that the Plaintiff was ever in "clear and exclusive possession" of the Land occupied and built upon by the two (2) Defendants, which is separate and distinct from the Plaintiff's land, and there was therefore no basis for such an award.
8. That the judgment is against the weight of the Evidence.

Pursuant to this Court's directions both sides filed their synopses.

Although eight (8) grounds and not 7 (seven) of appeal had been filed the appeal was canvassed on three grounds 1,2 and 3 which were argued together.

After reading the records in this case it is clear to me that the case was fought in the Lower Court wholly on the issue of title therefore it is necessary to consider very carefully the chronology of undisputed facts which are as follows:

1. The Plaintiff/Respondent's document of title is in evidence as exhibit A. It is a conveyance between Edward Joseph Akar and Vida Yamoah registered as No 1058/83 at page 62 in volume 353 of the Books of Conveyances.
2. The 1st and 2nd defendants/appellants' documents of title are exhibits L and M whilst their common Vendor's (Solomon Thomas) own title deed is exhibit K. Exhibit K has a Survey Plan LS 1150/99 which shows clearly beacon K935/82 at the junction of two(2) Access Roads.
3. Exhibit M which is 1st Appellant's document of title has a Survey Plan LS2969/2000 shows clearly the same beacon in 935/82. The record reveals that the Survey Plan of the 1st Appellant's predecessor-in-title LS 1150/99 which shows that it is a sub division of LS1697/82 contains the same beacon K935/82.
4. The evidence before the Court further reveals that it was Edward Joseph Akar who sold to the Vida Yamoah. The Respondent whilst it was S.M. Squire who sold to Solomon Thomas who in turn sold to the Appellants.

At page 121 of the record the properties of Edward Joseph Akar and P.E. Squire are shown as Plot A for Akar and Plot B for Squire are shown together. It is quite clear that plot A from which Akar sold to the Respondent does not contain beacon K935/82 at all. While Plot B from which Squire sold to Solomon Thomas the

predecessor-in-title of the Appellants contain beacon K935/82 which appears in exhibit K and also in the 1st Appellant's conveyance. Exhibit M. it is observed that beacon is exactly at the corner of two(2) Access Roads and that it is beacon K 933/82 which appears in Respondent's Survey Plan is over 400 feet away from beacon K 935/82.

The composite plan prepared by Mr. E.C.A. Forster which is found on page 175 of the record clears shows where the two properties of the Respondent and the 1st Appellant are located relative to each other. That K933/82 is far away from that of K935/82 is 1470.311 feet apart in Eastings and 36432 in Northings. It is necessary to note that the evidence of PW3. Aiah Joseph Sundima told the court that he undertook a re-survey of the Respondent's land and prepared a composite plan which is exhibit C. He said he plotted the Respondents' land with that of the 1st Appellant and concluded that both lands are separate and distinct and that there is a distance of about 510 feet between the two properties. Page 169 of the record refers. The witness's report confirms that beacon K935/82 is on the 1st Appellant's plan.

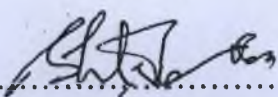
There is a great deal of force in the argument that if beacon K935/82 was not in the survey plan of Edward Akar who sold to the Respondent how could it be in the Respondent's plan which was taken from it when it is a sub-division of LS 1697/82 in Plot A. This important beacon K 935/82 is found in plot B which was B.M. Squire's property part of which was sold to Solomon Duwu Thomas who was predecessor-in-title of the 1st Appellant. The record shows that LS 1150/99 property of Solomon D. Thomas is a sub-division of LS 1697/82 and contains beacon K935/82.

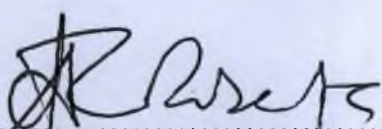
The argument is well-founded that the learned trial judge made a glaring error when appeared to have based his decision on the assumption that beacon K935/82 was in the Survey plan of the Respondent's deed and also in the respective plans of Solomon D. Thomas and the 1st Appellant and came to the mistaken conclusion that the Appellants properties are wrongly located. In the circumstances there can be no doubt that the ground of appeal covering the weight of evidence must and does succeed. I have come to the conclusion that the complaints before this Court are well grounded and the appeal must succeed.


The appeal succeeds and it is allowed and make the following orders:

1. The Judgment of the High Court dated 27th November 2008 together with the order for costs is set aside.
2. Judgment is entered for the 1st Appellant on his claim for declaration of title to the land described in LS2969/2000 covering an area of 0.1236 acre.

Costs of the appeal to the Appellant and such costs to be taxed.


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Hon. Justice S.A. Ademosu - J.A.


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Hon. Justice E.E. Roberts - J.A.


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Hon. Justice Mrs. C.L. Taylor - J.