

C.C. 205/13

2013

R.

NO. 4

IN THE COURT OF APPEAL OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)

BETWEEN:-

RUB SAYIE (SL) LTD

- PLAINTIFF/APPLICANT

AND

IBRAHIM BAZZY

-1ST DEFENDANT

ALLIED COMPANY FOR

-2ND DEFENDANT

QUARRY PROJECT

HON. ATTORNEY-GENERAL

-3RD DEFENDANT

AND MINISTER OF JUSTICE

MINISTER OF LANDS COUNTRY

PLANNING AND THE ENVIRONMENT

-4TH DEFENDANT**M. S. Bangura Esq. for the Plaintiff/Applicant****S. K. Koroma Esq. for the 1st and 2nd Defendants****O. Kanu Esq. for the 3rd and 4th Defendant**

RULING DELIVERED THE 2nd DAY OF October 2013

The Plaintiff/Applicant herein has filed a Notice of Motion dated 23rd May 2013 in which he seeks, inter alia, an interlocutory injunction prohibiting the 1st and 2nd Defendants from trespassing and engaging in any form of excavation or construction on the Plaintiff/Applicant's property pending the hearing and determination of the application and proceedings respectively.

In support of the application is the affidavit of **MOHAMED UMAR BABAR** sworn to on 23rd May 2013. He deposed that he is the Managing Director of the Plaintiff/Applicant Company which is the fee simple owner of the piece of land situate at Regent Grafton Road by virtue of a conveyance dated 7th November 2012 and registered as No 2317/12 in Volume 698 in page 112 of the Book of Conveyances kept in the office of the Registrar General Freetown.

/2

He further deposed that on Friday, 17th May 2013 the 1st Defendant led some men armed with machetes, knives and other dangerous weapons into the Plaintiff/Applicant's land destroying the makeshift structures erected thereon and forcefully taking possession of same.

He alleged that the 1st and 2nd Defendant have continued to trespass on the said property and stationed their men thereon thereby preventing the Plaintiff/Applicant, their workmen and agents from entering and remaining on the said property. Further that the Plaintiff/Applicants workmen were forcefully chased out of the property and the Defendants have brought caterpillars and bulldozers and other heavy machinery into the said property and are currently excavating the said land. In addition the Defendants men have issued threats against the lives of the Plaintiff's workmen. The deponent opined that unless restrained the Plaintiff would lose possession of the said land.

The Defendants opposed that application and an affidavit in opposition sworn to by **HUSSEIN IBRAHIM BAZZY** the 1st Defendant herein on 7th June, 2013 was filed on their behalf. He deposed that the land in issue is the property of the Government of Sierra Leone and that the 2nd Defendant is only a lessor from the said Government. He opined that in the circumstance the application cannot be granted as an injunction cannot be grant against the Government of Sierra Leone who are the owners of the land.

I should at this stage mention that an application was filed dated 4th June 2013 for an Order that the Attorney General and Minister of Justice and the Minister of Lands be added as a party to the action pursuant to Order 18 rule 6 (2) (b) (i) of the High Court Rules 2007 and for them to enter appearance and defend the action. The Order was accordingly granted.

The Plaintiff/Applicant filed an affidavit in answer to the affidavit in opposition filed by the Defendants. It was deposed therein that contrary to the averment made by the 1st Defendant in his affidavit in opposition, the land in issue is private land and does not belong to the Government to enable it to lease it to the said 2nd Defendant company.

He further deposed that the court can grant an injunction against an individual who purports to have obtained a lease from the Government of Sierra Leone in so far as it is private property and where the said Government has not followed due process for compulsory acquisition of land.

He also stated that he had filed a written undertaking as to damages if it turns out that he is not entitled to the injunction prayed for.

Counsel for the Plaintiff in his submissions to the court referred the court to the survey plan attached to the Plaintiff's conveyance and pointed out that it was duly signed by the Director of Surveys and Lands as required by law. He contended that the fact that it was so signed and allocated an LS number showed that the said property has been cleared of Government ownership.

/4

He also referred to the survey plan attached to the 2nd Defendants lease and noted that the Plaintiff's survey plan is dated 24th October 2012 precedes the 2nd Defendant's which is dated 6th May 2013. He also submitted that the properties belonging to the Plaintiff and the 2nd Defendant are distinct and separate pieces of lands, the Plaintiff's piece of land being situate at Regent /Grafton Charlotte whereas the 2nd Defendants is situate at Mothana. He urged the court to grant the Order prayed for.

In opposing the application both counsel for the 1st and 2nd Defendants and the 3rd and 4th Defendants relied on s. 18 of the State Proceedings Act 2000 and submitted that by virtue of that provision the application cannot be maintained. Mr. Kanu of counsel for the 3rd and 4th Defendant submitted that the subject matter is state land as the 2nd Defendant was granted a lease by the Government. He argued that to grant the injunction prayed for against the 2nd Defendant would be tantamount to depriving the Government of Sierra Leone from dealing with the land in issue. Mr. Koroma of counsel for the 1st and 2nd Defendants relied on the case of **Mrs. Rosamond Strasser Nicol vs. Minister of Lands, Country Planning and the Environment and others** a 2012 High Court decision which he submitted is on all fours with the present case and where it was held that the court cannot grant the relief of injunction or specific performance against the Government of Sierra Leone or persons occupying land as lessees of the Government. He urged the court to refuse the application.

It seems to me that the issue to be determined here is whether or not the court can grant an injunction against the 2nd Defendant who has derived title from the Government of Sierra Leone and also having regard to the circumstances of this case.

Counsel for the Plaintiff has argued that the land claimed by the Plaintiff is separate and distinct from that claimed by the 2nd Defendant and that the Plaintiff's land is private property. The issue of identity or the correct location of the land has therefore been raised. There is therefore a serious issue to be determined here. The claim is therefore not frivolous or vexatious.

I do not believe that it is sufficient merely to submit that the land in issue has been leased to the 2nd Defendant by the Government. That is a matter for determination at trial. Section 18 of the State Proceedings Act 2000 will therefore be applicable where it has been established that the land in issue is indeed State land which has been leased to the 2nd Defendant.

It is therefore necessary to look at where the balance of convenience lies as the grant of an interlocutory injunction is a remedy that is both temporary and discretionary.

The Plaintiff complained that the Defendants have gone on to his land, destroyed the temporary structures built thereon, evicted his workmen and have started excavation work on the land. As stated earlier the issue here seems to be the determination of the location or identification of the land in issue.

In the celebrated case of **American Cyanamid vs. Ethicon** {1975} 1 All E. R. 504 at 511 Lord Diplock stated that "Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo."

It is my view that until the ownership of the land in issue is determined the balance of convenience seems to lie in maintaining the status quo by granting the interlocutory injunction prayed for pending the trial of the action. The Plaintiff has already given a written undertaking in damages to cover any damages suffered by the 2nd Defendant if he succeeds at the trial. The application is therefore granted and I make the following Orders

1. An interlocutory injunction is hereby granted prohibiting the 1st and 2nd Defendants from trespassing and engaging in any form of excavation or construction on the land in issue pending the hearing and determination of this action.
2. An interlocutory injunction is hereby granted restraining the 1st and 2nd Defendants from occupying, altering demolishing and constructing on the land in issue pending the hearing determination of the action herein.

3. The Undertaking given by the Plaintiff/Applicant herein dated 4th June 2013 and filed herein is to stand.
4. Costs in the cause.

SIGNED: -

A. Showers
2/10/2013
A. SHOWERS

JUSTICE OF COURT OF APPEAL