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CIV.APP 61/2012

**IN THE COURT OF APPEAL OF SIERRA LEONE**

BETWEEN:-

DR. STANELLA BECKLEY - APPELLANT/APPLICANT  
(Suing by her Attorney JENNER ARTHUR  
BECKLEY)

AND

DAVID CHAMBERS - RESPONDENT

**CORAM**

**HON. JUSTICE A. SHOWERS, J. A.**  
**HON. JUSTICE E. E. ROBERTS J.A.**  
**HON. JUSTICE V. M. SOLOMON, J. A.**

**Advocates**

**Y. H. Williams Esq. for the Appellant/Applicant**  
**I. S. Koroma Esq. for the Respondent**

**RULING DELIVERED THE 28<sup>th</sup> DAY OF February 2013**

By Notice of Motion dated 29<sup>th</sup> November 2012 the Appellant/Applicant herein is seeking an interim injunction restraining the Respondent whether by himself, his servants or agents howsoever otherwise from entering, using, selling, disposing or remaining on the land herein more particularly delineated on survey plans LS 4311/87 and LS 723/85 pending the final determination of the appeal herein.

In support of the application is the affidavit of **JENNER ARTHUR BECKLEY** sworn to on 29<sup>th</sup> November, 2012. He deposed that he is the attorney for and the brother of the Applicant in the matter herein.



He went on to aver that the Applicant is and was at all times material to this action the fee simple owner of all that piece or parcel of land situate lying and being at Kent Beach, Kent Village in the Western Area of the Republic of Sierra Leone as delineated on survey plan LS 4311/87 by virtue of a Deed of Conveyance dated 23<sup>rd</sup> April 1988 and made between **ARTHUR ZUZEL BECKLEY** as Vendor of the one part and the Applicant as Purchaser of the other part covering an area of approximately 1.286 acres.

The deponent further deposed that the said property was previously owned by their late father whose Deed of Conveyance for the said property is dated 9<sup>th</sup> July 1948 and is duly registered as No. 430 at page 4 in Volume 159 of the record Books of Conveyances kept in the office of the Registrar General in Freetown.

He stated that since their father purchased the land they had at no time encountered problems relating thereto until the Respondent started his trespass on the said land in July 2011.

He further deposed that the Respondent has erected a makeshift structure on the said land and despite several warnings proceeded to start the construction of more permanent structures on the said land.

He referred to the witness statement made by a **WILLIAM B. SMALL**, the person whom the Respondent alleged sold the land to him and in which the said witness denied ever having any such transaction with the Respondent.



He stated that inspite of the several warnings and requests made to the said Respondent to desist from trespassing on the said land he has failed to take heed and continues his wrongful activities on the land.

He stated that by such acts the Respondent has deprived him of the use and enjoyment of the said land and went on to aver that his agents and workmen have been very violent and rude to him. He therefore prayed the court to grant the injunction sought.

The Respondent opposed the application and swore to an affidavit in opposition on 17<sup>th</sup> December 2012 which was filed on his behalf. He denied the several averments made in the affidavit in support and stated that it has always been the case that the Applicant did not know the location of her land and had approached him as well as other persons to help her locate the said land.

He admitted doing construction on the said land but denied erecting temporary structures thereon or continuing with construction work after the commencement of the action.

He also denied that his vendor was the **WILLIAM B. SMALL** who had made the witness statement referred to by the Applicant and asserted that he had bought the land from a **WILLIAM BERESFORD SMALL** formerly of Bureh Town but who had now moved to Liberia.



He further deposed that his property measured 19.2055 acres shown on survey plan LS 723/85 where as the Applicant is claiming land measuring 1.286 acres based on survey plan LS4311/87 but that the Applicant is seeking to prevent him from entering his entire land which would be most unfair to him.

He opined that the Applicant has failed to show him the extent of his encroachment or the area within his land that she is claiming. He therefore believed that it would be unjust to grant the injunction prayed for by the Applicant without clear evidence of trespass or breach of right. He asked the court to refuse the application.

The application herein is for an injunction restraining the Respondent from entering, using, selling, disposing or remaining on the land delineated on two survey plans, namely LS 4311/87 which covers land claimed by the Respondent and LS723/85 covering land claimed by the Applicant. The Applicant's reason for praying for the said injunction is her fear that if it is not granted, the Respondent may sell portions of the land and in the event that judgment is given in her favour, third parties right would have arisen making the issues compounded and complicated.

There are set principles for the guidance of the court in exercising its discretion whether or not to grant an injunction. These principles are set out in the celebrated case of **American Cyanamid Co. vs. Ethicon Ltd, {1975}** 1 All E.R. 504.



Counsel for the Applicant has rightly submitted that there is a serious case to be tried here and that the claim is not frivolous or vexatious. It is also clear that damages according to the circumstances of this case would not be the appropriate remedy here. The court ought therefore to proceed to consider where the balance of convenience lies.

There is clear evidence that the Applicant's land has been owned by the Applicant's father since 1948 and he conveyed it to her in 1988 as is evidenced by their respective title deeds. Counsel for the Applicant submitted that the land has been in the Applicant's family for a period of 65 years.

The Respondent on the other hand alleges that the Applicant has had problems identifying her land and sought assistance from him and other persons in locating the said property. He exhibited evidence to that effect. Furthermore he stressed that his land covers an area of approximately 19.2055 acres whereas the Applicant's land covers only 1.286 acres.

The question therefore is in the light of the prevalent circumstances where does the balance of convenience lie? Would it be prudent to restrain the Respondent from utilizing his 19 or so acres of land when the Applicant claims that he is laying claim to parts of her 1.286 acre? The Applicant claims that her piece of land is within the Respondent's property but she has so far failed to identify to him the portion of land where he has encroached.



Counsel for the Respondent stressed that the applicant has failed to tell the court the loss she has suffered which cannot be remedied by damages. He submitted that the Applicant has asked for a mandatory injunction since she is seeking an order asking the Respondent to vacate the land. He relied on the case of **Shepherd Homes Ltd. vs. Sandham** {1970} 3 All E. R. 402 and stressed that the Applicant's case has to be unusually strong and clear to succeed.

The object of an injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the Plaintiff's need for such protection must be weighed against the corresponding need of the Defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights. The court must weigh one need against another and determine where the balance of convenience lies. See the **American Cyanamid** case (supra).

The Defendant alleges that he has since 2010 been doing construction work on his land and have tenants living there but that he has stopped construction on the said land since he received advice from his solicitors not to do so.

In our view it would create grave hardship on the Defendant and on his tenants especially if they are restrained from going on the land bearing in mind that they reside on a portion therein.

In as much as the rights of the Plaintiff ought to be protected against injury, the rights of the Defendant too ought also not to be violated.

In these circumstances we do not believe it would be prudent to grant the injunction prayed for. The application is therefore refused. Costs in the cause

*A. Showers*

HON. JUSTICE A. SHOWERS, J. A.

I AGREE

*E. E. Roberts*

HON. JUSTICE E. E. ROBERTS, J.A.

I AGREE

*V. M. Solomon*

HON. JUSTICE V. M. SOLOMON, J. A.