CIV APP 21/2009

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

DR JOSEPH FODAY BANGURA - APPELLANT

AND

EPHRAIM CHRISTIAN THOMPSON - RESPONDENTS
EUSTACE THOMPSON

CORAM:
THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT
THE HONOURABLE MR JUSTICE E E ROBERTS
JUSTICE OF THE SUPREME COURT
THE HONOURABLE MR JUSTICE S A ADEMOSU
JUSTICE OF APPEAL (Now deceased)

COUNSEL:
A E MANLY-SPAIN ESQ for the Appellant
V V THOMAS ESQ (as he then was), for the Respondents

JUDGMENT DELIVERED THE 8th DAY OF OCTOBER,2015

THE NOTICE OF APPEAL

1. The Appellant has appealed to this Court by way of Notice of Appeal filed on 18 June,2009 – pages 93 – 94 of the Record – against the Judgment of SHOWERS,J dated 1 June,2009. The Grounds of Appeal are as follows:
   (1) The Learned Trial Judge was wrong in law to uphold the claim of the Defendants/Respondents to adverse possession of the premises situate at 11 Old Railway Line, Tengbeh Town having regard to the evidence adduced.
   (2) The Learned Trial Judge was wrong in law to uphold the claim of the Defendants/Respondents that the Plaintiff/Appellant's claim was statute barred.
   (3) The Judgment is against the weight of the evidence.
2. The Learned Trial Judge decided the first issue, i.e. as to whether the deed of conveyance dated 15th December,1986 conveyed the property at 11 Old Railway Line, Tengbeh Town to the Appellant, in the Appellant's

favour. Having concluded thus, it is our view that the Learned Trial Judge had also impliedly declared that the Appellant was the fee simple owner of the property as this was the purport of the deed of conveyance. Thus it was that the Appellant confined his appeal to the decision relating to whether his action was statute-barred, and whether the Respondents could claim that they had become owners of the property by adverse possession.

THE ACTION IN THE HIGH COURT

3. The action was commenced by the Appellant by way of Originating Summons issued on 9 June,2006. The questions posed for the decision of the Court below, were as follows:
   (a) Whether or not by a deed of conveyance dated 6th June,1975 made between Ephraim Christian Thompson and Jane Miriam Beckley registered as no. 590/75 at page 87 in volume 276 of the Books of Conveyances the said Ephraim Christian Thompson conveyed premises No. 11 Old Railway Line, Tengbeh Town, Freetown to Jane Miriam Beckley.
   (b) Whether or not by a deed of conveyance dated 15th December, 1986 and registered as No.1948/86 at page 38 in volume 396 of the Books of Conveyances made between Jane Miriam Beckley as Vendor and Dr Joseph Foday Bangura as purchaser, the said Jane Miriam Beckley conveyed premises No. 11 Old Railway Line, Tengbeh Town, Freetown to Dr Joseph Foday Bangura.
   (c) Whether or not Dr Joseph Foday Bangura is therefore the fee simple owner of the said premises at 11 Old Railway Line, Tengbeh Town, Freetown.
4. If each of these three questions was answered in the affirmative, the Appellant asked that it be Ordered, inter alia, that the 15th December,1986 deed of conveyance, conveyed the property at No. 11 to him; that he was the fee simple owner of the property; and that he do recover possession of the property from the Respondents. The first two questions were answered in the affirmative by the Learned Trial Judge as appears on page 79 of the Record, and there is no appeal against these findings. But at the end, she also decided that the Appellant's claim was statute-barred, and that the Respondents had proved that they were entitled to adverse possession of the property.

ISSUES IN THIS APPEAL

5. We think that the issues which call for determination in this appeal are, first, in whose favour should adverse possession be claimed? And when does time begin to run against the holder of the paper title to land? Is it when he purchases the property in dispute, or, subsequently, when his title to the same is challenged, or, when he takes action to counter an act of trespass? If, for example, a man bought a piece of property in 1986 and then another person purported to purchase the same property four years later in 1990, but action was only brought finally in 2005, could it be said that the Limitation period began to run in 1986 when the property was bought, or, subsequently, when action was taken against the alleged trespasser. This was the issue which this Court had to deal with in Civil App 23&28/2008 – GASSAMA v SAMA & ANOR. Of course, on the facts of this case, the Respondents are not claiming that they bought property which had been bought earlier by the Appellant: They are claiming that they have been in possession of the property all their respective lives, and that they had a right to ownership and/or possession of the same by virtue of their blood lines, linking them with the original owner, Ephraim Xenophon Williamson Thompson.
6. However, it seems to us that the person who seeks to claim ownership of land by adverse possession must be a person who is not otherwise entitled by right to the land in dispute: he must either be a trespasser, or, a squatter to use a colloquial expression, or, perhaps a tenant-at-will. The holder of the paper title must have been dispossessed by the trespasser of squatter, or, must have himself discontinued possession. We shall now turn to the facts of this case in order to find out what the real issues in dispute were, and whether the Learned Trial Judge, rightly decided these issues.

THE ORIGNATING SUMMONS

7. The action was begun by the Appellant by way of the Originating Summons issued on 9th June,2006 as stated in paragraph 3, supra. The reliefs sought, have also been summarised in that paragraph. In his affidavit in support of his case, deposed and sworn to on 9th June,2006, the Appellant had this to say: In 1986, he was working in the Philippines. Through a relative of his, he bought the property at 11 Old Railway Line, Tengbeh Town from Jane Beckley in 1986. A deed of conveyance was executed in his favour by the lady, and the same was duly registered. She also gave him a copy of her title deed, i.e., deed of conveyance dated 6th

June,1975 and duly registered as No. 510/75 at page 87 in volume 276 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown. The vendor took him to the property, and introduced him to the Respondents as the new owner. They were told that the occupants of the property would have to vacate the same. He left Sierra Leone thereafter. He returned in 1993. He was told by his late cousin Musa Bangura that the Respondents had refused to vacate the property. Mr Bangura told him he had instituted ejectment proceedings in the Magistrate's Court, but because of his illness, had been unable to attend Court. He, the Appellant returned finally to Sierra Leone in 1996. He found the Respondents still in occupation of the premises.

RESPONDENTS' AFFIDAVITS IN THE HIGH COURT

8. The Respondents filed three affidavits in opposition, in succession. The first one was deposed to by the 2nd Respondent, Eustace Thompson on 12th September,2006. He deposed that the 1st Respondent was his uncle, and was then seriously ill. He was informed by one of his grandparents, the late Ephraim Xenophon Thompson (hereafter " *the Testator*") that he was born in Nigeria by Priscilla Thompson, the Testator's daughter, and that she died shortly after his birth. He was brought to Freetown and lived with his grandparents who brought him up as their own child. They all lived together at 11 Old Railway Line, Tengbeh Town, and that he had always considered the property to be his home. By his Last will and testament, the Testator devised farmland situate at Congo Valley, Freetown, a part of which the No.11 property was built, to 1st Respondent, Jane Beckley, and himself as tenants-in-common. A copy of the will is exhibited to the affidavit as "A". In 1975 when the property at No. 11 was conveyed to Jane Beckley, he was living there, but did not give his consent to the conveyance. That conveyance was later, in paragraph 8 of the same affidavit, exhibited as "C." Now, this seems strange to us, and should have perhaps alerted the Learned Trial Judge that something was wrong here. In paragraph 3, the 2nd Respondent had deposed that he was born in 1950. So, in 1975 he was 25 years old, and therefore of full age, with capacity to lawfully execute legal instruments. He did not directly dispute his signature on the 1975 conveyance. So, for all purposes, that conveyance stands as his deed.
9. Now, in paragraph 6 of his affidavit, the 2nd Respondent deposed to facts which on any interpretation, showed that he was in fact claiming that the

property at No. 11 was in fact his, or, should belong to him, and not to Jane Beckley. He was there claiming that Jane Beckley had agreed by virtue of a 1961 deed to "*.....releasing and conveying to us her share in the undisposed of portion of the said farmland.....*" In her Judgment, the Learned Trial Judge at page 78 of the Record, rightly, in our view, refused to countenance such a claim. She concluded at page 79 of the Record that the property at No.11 had been conveyed to Jane Beckley by virtue of the 1975 deed, and that she, Jane Beckley had as well, by the Deed dated 15th December,1986, conveyed the same property to the Appellant. In other words, the 2nd Respondent did not have any legal or equitable claim to the property at No.11. He did not appeal against this finding. Nor, has he deposed that in any perceptible way or appropriate manner, he had ever challenged the right to ownership of Jane Beckley. We say this at this stage, because part of the Respondents' argument is that the Appellant did not challenge their right to possession in the ways recognised by the Law, as that of an owner asserting his ownership of property; that the actions instituted by the Appellant in both the Magistrate's Court and in the High Court against them for possession, did not amount to an assertion of the Appellant's right to ownership, as the outcome of these proceedings was inconclusive: and in any event, neither went on to judgment.

10. But in the next three paragraphs of his first affidavit, the 2nd Respondent appears to have set up a new claim to ownership: that he and the other Respondent had lived continuously on the property since 1986 and had never acknowledged the Appellant as owner of the property; that the Appellant's right to bring action was statute-barred as it had not first accrued within 12 years before the commencement of the action; that the Appellant's right and title to the property, if any, had been extinguished by virtue of Section 16 of the Limitation Act,1961. It seems to us that the 2nd Respondent is claiming ownership or entitlement to ownership, first, through the 1961 Deed, and Jane Beckley's refusal to convey certain property to him, and second, by way of adverse possession. The first method, as we have said, was rejected by the Learned Trial Judge. For the second method to be effective, the 2nd Respondent must, in the words of Section 11(1) of the Limitation Act,1961 be a person in whose favour the Limitation Period runs. Unless he is such a person, in our view, he cannot take advantage of the *action-barred* provisions of the statute. We have also borne in mind the fact that in 1975, the 2nd Respondent was

of full age, being then, 25 years old, and was one of the grantors of the property to Jane Beckley, the Appellant's predecessor-in-title. He willingly consented, as this has not been contradicted by him, to the conveyance of the property to her. It was only in 2006 in his affidavit deposed and sworn to on 12th September, 31 years after 1975, that he for the first time claimed that the property ought not to have been conveyed to her. Yet, he himself did nothing to cancel or annul the 1975 deed. The position then before the Learned Trial Judge was this: 2nd Respondent had not challenged Jane Beckley's title to the property at No. 11 for over 31 years. But, he was there challenging her successor-in-title's title to the same on the basis that he was in adverse possession of the same. In BRIGHT v BRIGHT'S EXECUTORS [1957-60] ALR SL 182 WACA, HEARNE Ag P had this to say at page 185 LL33 - 39: " *The other matter to which we should refer is involved in the argument that the respondents' alleged claim and right of action was barred by the Real Property Limitation Acts, 1833 and 1874. In the case of a 'statute-barred' defence, for time to run there should be adverse possession but the appellant in his defence in para. 5 stated quite explicitly that he was in possession since January,1911, the date of his marriage to the deceased, in her right and therefore not adversely to her....."* In other words, if you claim that you are entitled to possession of property as of right, you cannot at the same time claim you are entitled to possession, adversely. If the 2nd Respondent freely in 1975 acceded to the conveyance of the property at No 11 to Jane Beckley, it must be taken that between that year and 1986, he lived in the premises by the will of Jane Beckley and not independently by himself, nor adverse to Jane Beckley's ownership and right to possession, a point taken by FOSTER-SUTTON, P in TARAWALLI v SESAY [1950-56] ALR SL 248 WACA, at page 250 LL10 -17.

WHEN DID THE RIGHT OF ACTION ACCRUE? - THE LEARNED TRIAL JUDGE'S ANSWER

11. We must also remember that the 2nd Respondent has not claimed that he was ignorant or, unaware of the 1986 deed of conveyance to the Appellant. The question which then arises is this: when did the right of action accrue in favour of the Appellant? Was it as of the date of the 1986 deed, as found by the Learned Trial Judge, or, was it at a later date?. At page 79 of the Record, the Learned Trial Judge found as

follows: " *The evidence before the court reveals that the property was purchased on 12th September,1986 when the Plaintiff's right to recover the disputed land first accrued to him. That right under the provisions of the said Limitation Act 1961 expired on 16th September,1998. It is therefore necessary to see from the evidence what steps the Plaintiff made to recover the premises since his right accrued....*" At page 80 she said:"*.....It is therefore clear that the Plaintiff having failed to take action within the twelve year period after his right to recover the land accrued, such right is statute barred.....*" At page 82 of the Record, at the end of her Judgment, the Learned Trial Judge found: *"In the circumstances, the Defendants have satisfactorily proved their claim of adverse possession of land and premises No 11 Old Railway Line Tengbeh Town....*" If the Learned Trial Judge was right in her finding, then the right of action accrues when the title is obtained, and not when it is first challenged. In other words, as soon as one purchases property, time begins to run, even if no one has challenged one's title to it. As was pointed out by TEJAN,J in BAXTER v WILSON [1970-71] ALR SL 351 at p 359 H.C.: " *The general rule is that time begins to run against a Plaintiff only from the date on which the right of action accrued to him or to the person through whom he claims. But time does not begin to run from the specified dates unless there is some person in adverse possession of the land. It does not run merely because the land is vacant, and there must be both absence of possession by the plaintiff and actual possession by the defendant."*

THE LAW ON ADVERSE POSSESSION

12. We shall now turn our attention to the Law, both statute and case-law. As we said in GASSAMA v SAMA & ANOR! Sub-Section 5(3) of the Limitation Act,1961 provides that: "*No action shall be brought by any other person to recover land after the expiration of twelve years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.....". Sub-Section 6(1) of the same Act states that:" Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance." Sub-Sections 11(1) & (2) state as follows: "No right of action to recover land*

shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as "adverse possession") and where under the foregoing provisions of this Act any right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land. (2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to accrue unless and until the land is again taken into adverse possession." The question which arises, is whether the Learned Trial Judge, calculated the limitation period in accordance with these provisions; and whether she was right in adjudging that the Respondents' adverse possession of the land commenced in 1986. We think it would be a good idea to refer to the leading text on land law in Sierra Leone authored by Mr Johnson's one-time head of chambers and former Chief Justice, Hon Justice Renner-Thomas, LAND TENURE IN SIERRA LEONE (2010). At pages 127-128, this is what the Learned Author had to say:
"The first provision of importance is that which states that, where an owner of land is entitled to possession, time does not begin to run against him for the purposes of the Act unless he has been dispossessed or has discontinued his possession and adverse possession has been taken by some other person. What amounts to dispossession and discontinuance of possession as a basis for adverse possession was considered by BEOKU-BETTS,J in the case of PRATT v NICOL [1937-49] ALR SL 277 (not 377 as appears in the book) H.C. According to the Learned Judge at page 281:
"dispossession" suggests some active steps by the claimant to take possession from the owner or to drive him from possession.
"Discontinuance" on the other hand, implies that the owner has abandoned his possession and some other person has taken over possession. However, as BEOKU-BETTS,J emphasised in PRATT v NICOL, it is not sufficient that the owner goes out of physical occupation of the land. For discontinuance to be effective the intention to abandon must be clear and 'the evidence must show that it was complete and that the defendant after such discontinuance obtained exclusive possession for the statutory period'. .....Adverse possession, as used in section 11(1) of the Act, does not bear a technical meaning but has been construed to mean simply possession inconsistent with the possession of the owner."

In the case cited by Hon Justice Renner-Thomas, BEOKU-BETTS,J went on to say at page 281, LL22 et seq in dealing with the concept of discontinuance, "....It is not sufficient for the owner to go out of the physical possession of the premises. There must be evidence of the acts of the defendant inconsistent with the possession of the owner. If the defendant's acts are consonant with his recognition of the continued possession of the owner, he or she could not claim to have exclusive possession though in fact, he or she occupied the premises." At page 282 of his Judgment, BEOKU-BETTS, J said also that if the person claiming title by adverse possession was a tenant at will, time could not run in favour of that person so long as the tenancy existed."

WAS THE APPELLANT EVER IN POSSESSION?

14. On the facts of the instant case, it would seem that as of 1975, both Respondents lived in the premises by will of Jane Beckley, though it is not clear whether they continued to do so after 1986. But again, Sub-Section 10(1) of the Limitation Act,1961 provides as follows: "*A tenancy at will, shall for the purposes of this Act be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.*" So, even if the 2nd Respondent had been a tenant at will to Jane Beckley, that tenancy had expired on the sale of the property to the Appellant, and the right of action had at that point in time accrued to the Appellant.
15. The difficulty with the case presented by the Appellant at the trial, was that there was no evidence that he took possession of the property himself, or, by, or through some other person after he bought the same in 1986. This is not a case in which squatters have taken over property bought by someone else. This is a case in which the Appellant bought property from someone, and at the time of the purchase, there were persons living in it. The Appellant did not go into possession of the property, nor did he put anybody in possession of the same. Much as we sympathise with the plight in which the Appellant has found himself, we think that the blame lies on him. We are of the view that perhaps, bringing suit by way of writ of summons which would have led to a full scale trial, with witnesses giving evidence in-chief and being cross-examined on oath, would have perhaps elicited facts supportive of the

Appellant's case. We agree with Mr Thomas as he then was, when he submitted in his synopsis that there was no true legal challenge to the Respondents' possession of the property. Whether or not litigation was instituted in whichever Court, it certainly did not go on to conclusion; nor was there any cogent evidence that process was served on the Respondents. The Appellant was aware from the very beginning, through the affidavits in opposition filed, that the Respondents were contending that they were totally unaware of his claims to ownership of the property. Yet, he took no steps to provide evidence to counter this denial. Questions such as, was Jane Beckley alive or dead, and why she was not asked to testify on the Appellant's behalf come to mind. In cases where a buyer of property is deprived of possession of the same, his first remedy is against the seller. Why was she not pursued. Mr Manly-Spain's submission that it was for the Respondents to prove the negative of a positive, i.e. that the Respondents were not served with process at any time, is of course not true in law. How could the Respondents prove non-service, other than by a simple denial of the same? If service had been effected on them, it was for the party who effected service to prove this. He who affirms must prove. And in cases relating to ownership of land, the person claiming ownership must rely on the strength of his case rather than on the weakness of the Defendant's case. And as the two authorities cited by Mr Thomas, as he then was, state, the absence of a conclusion to the litigation commenced, deprives the true or paper-owner from successfully arguing that such litigation stopped time running in favour of the party claiming adverse possession, even though both cases were decided on the basis of legislation in force in the UK in 1988 and in 2001. This particular panel of Justices seldom decides cases on technicalities, and it is with much difficulty we have come to the conclusion that even though equity lies on the side of the Appellant, the state of the Law and of the evidence presented by him in the lower Court, prevents us from upholding his appeal.

CONCLUSION

16. In the premises, the Appellant's appeal filed on 15th June,2009 is dismissed with Costs to the 2nd Respondent only.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE E E ROBERTS
JUSTICE OF THE SUPREME COURT