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Deeds

Civ App 56/ 2008

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

UNISA BANGURA - APPELLANT

AND

PETER BAI BANGURA - RESPONDENT

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:

M A BELOKU SESAY ESQ for the Appellant
A E MANLY-SPAIN ESQ and G K THOLLEY ESQ for the Respondent

JUDGMENT DELIVERED THE 13 DAY OF MARCH, 2019

BROWNE-MARKE, JSC

THE APPEAL

1. This is an appeal against the Judgment of the High Court, SHOWERS, J, (later, Ag JSC) Presiding, delivered on 29th September, 2008. The Notice of Appeal was filed on 14th October, 2008, and is at pages 165 & 166 of the Record. There are 4 Grounds of Appeal and they are to be found at the said pages of the Record. The first ground relates to whether the Learned Trial Judge applied the rules of equity correctly to the issue of a re-survey done by the Appellant of the Respondent's portion of land. The second ground is a mixture of both fact and law: the Appellant contends that the Learned Trial Judge's decision on the applicability of the Statute of Frauds, 1677 to the

absence of receipts showing that the Appellant had purchased building materials, was wrong. Lastly, that the Judgment was against the weight of the evidence.

2. During the course of the hearing of the appeal in 2010, Mr Beloku Sesay, now deceased, filed an application for leave to adduce additional evidence in the form of receipts which he claimed had been issued to the Appellant, as evidence of the Appellant's purchase of building materials for the erection of the pan-body. We directed him to bring to Court the originals of these receipts, which were supposedly in the possession of the Appellant at the time, as the copies which had been exhibited to the application were unclear, and in some parts, completely indecipherable. We did so, even though it was obvious that these so-called documents must have been available at the time of trial. The Appellant's excuse for not producing them at the trial was deposed to by him in an affidavit sworn to on 3rd May, 2010. His lame excuse was that he had misplaced them. He however, failed to provide the Court with these documents. The hearing dragged on for another two years, until in January, 2012, it was adjourned for judgment. No synopsis was filed on behalf of the Appellant, but Mr Tholley filed one on behalf of the Respondent.

THE RESPONDENT'S CASE IN THE HIGH COURT

3. The case which went before SHOWERS, J was a claim for a declaration of title that the Respondent, a brother to the Appellant, was the owner of land situate at Simiria Town, Off Hill Cot Road, Freetown. The Respondent's land was delineated and demarcated in survey plan SLS62/92 dated 3rd May, 1995. By deed of conveyance dated 19th September, 1995, and which was duly registered, the said land was sold to him by the then Secretary of State for Lands, Dr Mohamed Samura, on behalf of the Government of Sierra Leone. This is exhibit B at pages 168 - 174 of the Record. The Respondent also prayed for recovery of possession of the said land, and for the cancellation of any existing survey plan and any other legal document purporting to transfer ownership of the land demarcated in the said survey plan, to the Appellant. He averred in his statement of claim, pages 1 - 4 of the Record, that he had allowed his brother, the Appellant, to use a portion of his land, because he, the Appellant, on leaving Kono after the rebel

attack, had first relocated to Bumbuna with his family, but could not settle down properly with them. He had therefore come to him, i.e. the Respondent, seeking accommodation. The Respondent erected a zinc structure on his land to provide accommodation for the Appellant and his family. The Appellant did not pay him any rent for such accommodation. In 2002, quarrels erupted between the two families. He therefore decided to ask the Appellant to leave his property; the Appellant refused to do so, and instead, began laying claim to the portion of the land on which the zinc structure which he and his family had been occupying, had been erected.

THE APPELLANT'S DEFENCE AT THE TRIAL

4. In his defence, the Appellant claimed that the said land had been sold to him by the Respondent, and that for that reason, he had commissioned a survey plan LS2371/96 which was signed by the Director of Surveys and Lands, in 1996. No receipt evidencing such payment was tendered during the trial. The Appellant's excuse for its absence was that the Appellant had refused to issue one to him. He averred also that he had constructed a pan-body structure on that land. At some point in time, he had asked the Respondent to execute a conveyance in his favour, but the Respondent had refused to do so. But surprisingly, and without any such conveyance, he prayed that the Court below make a declaration in his favour. The Learned Trial Judge clearly disbelieved the Appellant and his witness, Sallu Koroma, and gave judgment, we think, rightly so, for the Respondent.

FINDINGS

5. Contrary to the position taken by the Appellant's Counsel, both in his address to the Court below, and in the formulation of the grounds of appeal, the case was not decided, nor ought to have been decided on whether or not the Learned Trial Judge accepted or believed the evidence of Mr Hunter, the licensed surveyor commissioned by the Appellant. It was clearly accepted by both sides that the land on which the Appellant and his family were living, was that delineated in the Respondent's survey plan drawn in 1992 when he obtained the Lease of the land from the Government. The issue before the Court below was whether the Respondent had sold a portion of that land to the Appellant. There was no evidence of part performance.

There was credible evidence which the Court below accepted and believed, from the Respondent's wife, PW4, at page 121 of the Record; and from Mohamed Koroma, PW3 at page 120 of the Record, that the Respondent merely gave a Licence to the Appellant to occupy a piece of his land on the understanding that his stay would be of a temporary nature, and that he would be returning to Kono as soon as it was safe to go there.

6. The fact that the Appellant had, to force the issue, commissioned the preparation of a deed of conveyance in his favour was, and is not evidence of an agreement to sell between himself and the Respondent. He may have done it merely to re-enforce his claim to the Respondent's land. It was merely self-serving. The draft of the conveyance is at pages 181 - 183 of the Record. It bears the year 2003. No date is on it. But the survey plan attached to it is purported to have been duly signed on 14th November, 1996. There is a period of 7 years between the two documents. One cannot escape drawing the inference that it may have been prepared after litigation commenced in March, 2003. Of importance too, is the fact, noted by the Learned Trial Judge in her judgment - see page 77 of the Record, that it was merely tendered for identification, and not as an exhibit in the case. It seems therefore, that Mr Sesay may have had good reason not to tender it as an exhibit, as considerable doubts would have been raised about its provenance, and its authenticity.
7. The issuing of a writ of summons by the Appellant, seeking specific performance of the purported sale, may have been for the same purpose. That writ is at pages 175 - 178 of the Record. It was issued on 7th July, 2003. On the other hand, the Respondent's writ of summons was issued on 10th March, 2003, four months before. The Appellant allowed judgment to be taken in default against him on 11th January, 2006. He never pursued his own action. Perhaps, it was instituted merely to deflect the Respondent's attention, and/or to sow confusion in the Courts. And to buttress this point, one need only go through the record to see that between 3rd January, 2005 when hearing commenced before SHOWERS, J at page 113 of the Record, unto 17th November, 2005 when judgment was first delivered by SHOWERS, J, both Appellant and his Counsel were absent together, or, individually at most of the hearings. This is what resulted in Judgment being delivered in their joint and individual absence on 11th January, 2006 - pages 122 - 123 of

the Record. That judgment was eventually set aside on the application of the Appellant on 6th April, 2006 - pages 128 - 131 of the Record, and the Appellant was allowed to present his case.

CONCLUSION

8. We have read the judgment of the Learned Trial Judge, and we agree with her that the point of importance in the case before her, was whether there was evidence of performance, or, of part performance coming from the Appellant. There was merely his say-so, and that of his witness, and neither of them were believed by the Learned Trial Judge. She saw and heard them, and we have no reason to question her assessment of their veracity individually. And on the law, she was quite correct: The Law cannot enforce a parol contract for the sale of land. Section 4 of the Statute of Frauds, 1677 is still law in Sierra Leone. A draft conveyance merely identified in Court, and seemingly made seven years after the alleged agreement to sell, cannot constitute a memorandum in writing supportive of such an agreement to sell. Equity cannot perfect an imperfect gift, nor can it support a one sided and self-serving document such as the draft conveyance. In the result, the Appellant's appeal is dismissed with Costs to the Respondent. The Respondent shall also have the Costs of the action in the Court below.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

HONOURABLE MR JUSTICE E E ROBERTS