Civ Apps42 & 43/2009

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

JIMMY WILLIAMS (ADMINISTRATOR OF THE ESTATE OF DAISY ROBINSON (DECEASED) - 1ST APPELLANT

THE ADMINISTRATOR OF THE ESTATE OF JAMES A N COKER (DECEASED) - 2ND APPELLANT

AND

CHRISTIANA NICOLLS - RESPONDENT

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

COUNSEL:
J K LANSANA ESQ for the 1st Appellant
C F EDWARDS ESQ (Now deceased) for the 2nd Appellant
E PABS-GARNON ESQ for the Respondent

JUDGMENT DELIVERED THE 8th DAY OF JULY, 2019

BROWNE-MARKE, JSC

INTRODUCTION

1. Since Judgment was reserved in this Appeal, the 2nd Appellant, James Coker has passed away. As the Judgment of this Court, and any subsequent proceedings flowing from that Judgment, may affect his estate, this Court therefore at the outset, makes the following Orders: " *The Administrator of the Estate of the late James A N Coker, deceased, shall be substituted for the 2nd Appellant as of today's date, pursuant to Order 18 Rule 7 of the High Court Rules,2007. The Judgment shall therefore be served on the*

Administrator. Consequentially, the title in respect of the 2nd Appellant ant shall now read: 'The Administrator of the estate of James A N Coker, Deceased' ".

2. This Court does not have any specific rule to deal with the situation which has arisen, i.e, the death of an Appellant before judgment is delivered. Rule 38 of the Court of Appeal Rules, 1985 which provides for the residual powers of the Court in civil matters, states that where there is no such provision, the Court should go back to the rules, procedure and practice in force before Independence day, 1961. The practice and rules referred to were contained in the Courts (Appeals) Act, 1960 - Act No. 18 of 1960. Those rules were in fact repealed in 1973 by the Court of Appeal Rules, 1973. So, this Court has invoked the appropriate rule applicable in the Court below, to wit, Order 18 Rule 7 of the High Court Rules, 2007 in order to deal with the situation which has arisen.

THE APPEAL

3. The 1st Appellant in this appeal, is the son of Daisy Robinson who was the 1st Defendant in the Court below. He is the Administrator of her estate. She passed away during the course of the trial. I shall hereafter refer to her as the 1st Defendant, and to her son as 1st Respondent. Also, and sadly, Mr C F Edwards, who argued the appeal before us on behalf of the 2nd Respondent has also, passed away. Notice of the delivery of this judgment was however addressed to the Solicitors now running his chambers.
4. The appeal of the 1st Appellant, Jimmy Williams is at pages 242 - 244 of the Record. The grounds of appeal are at 242 & 243. That of the deceased 2nd Appellant is at pages 240 & 241 of the Record. The grounds of appeal are on page 240. None of these grounds raise important or intricate points of law. They are based on the Learned Trial Judge's assessment of the evidence. Having gone through the evidence as recorded by the Learned Trial Judge during the trial, and as we shall state in paragraph 6, infra, we do not disagree with her assessment of the evidence led by both sides to this appeal.
5. Oddly, Mr Edwards filed the appeal on behalf of both Appellants though, during the middle of the trial, he had ceased appearing for the 1st Appellant, who was thereafter represented as Solicitor and Counsel, by Mr Lansana.

However, he, Mr Edwards, was allowed to proceed on behalf of the 2nd Appellant only, as Mr Lansana was evidently, Solicitor and Counsel for the 1st Appellant. But, he, Mr Lanasana, in signing of on the Notice of Appeal - page 244 of the Record describes himself as 'Solicitor for the Appellant'. Since the appeals were filed separately and respectively on 18th November, 2009 for 2nd Appellant, and on 26th November, 2009, there is no uncertainty as to who is representing each Appellant. And at the oral hearing, it was clear that both Appellants were separately represented. I have referred to this question of representation here, because, during the trial, Mr Edwards had started off filing a defence, and appearing as Counsel on behalf of both Appellants when it was clear, he was only instructed on behalf of the 2nd Appellant. Changes had to be made later, after he appropriate Notices had been filed, but this caused some amount of delay in the proceedings.

6. This appeal is essentially about whether the Learned Trial Judge, SHOWERS, JSC(Ag) was right in the way she assessed the evidence given by the respective surveyors called by the opposing sides during the course of the trial. The Learned Trial Judge came to the conclusion, after an exhaustive examination of all the evidence led, that the Respondent's surveyor's testimony fitted the other evidence which had been led, showing that the Appellants had trespassed into the property which had been bought by the Respondent as far back as 1966. The duty of this Court is to determine whether she was right in reaching that conclusion.

FACTS IN ISSUE AT THE TRIAL

7. The facts presented by both sides at the trial were that the Respondent had paid for the piece of land in 1965, though the deed of conveyance to her was only executed in 1966. Her neighbor and cousin-in-law, PW4, Thomas E O Thorpe, bought the piece of land adjacent to the Respondent's in 1965, and they planted beacons next to each other's plot of land. He, Mr Thorpe, bought the piece of land from the Kaitells, just as the Respondent had done. Her husband also had a portion of land not far from hers, and they used to visit his piece of land at least six times a year. She had been visiting the land regularly since she purchased the same. In 1996, she found out that the Appellants had been trespassing on the land. Further, some of the pillars she had erected on the land, had been destroyed. She instituted eviction

proceedings in the Magistrate's Court against Mrs Robinson, the deceased 1st Defendant at the trial's son, Ebenezer Robinson, and one Kapri Conteh. The matter was abandoned after the civil war reached Freetown in January, 1999. After the war ended, she found out that the now deceased 2nd Appellant, had erected a "pan-body" structure on the land.

8. On the other hand, the case presented by the deceased 1st Appellant at the trial was that the land she was laying claim to, had been owned previously by her deceased father, Alfred Robinson. Her father used to live on the land, and her uncle, Sessie (Cecil, I believe) James, used to cultivate the same. She, and I suppose her siblings, used to sleep on the land, though she did not say exactly where, or whether they slept in a house or shelter, or, in the land, or, in the open air. In 1996, she sold portions of the land she was claiming to the now deceased 2nd Respondent, and to his brother. She relied on a Statutory Declaration sworn to by herself, and Cecil James and Alfred Robinson on 18th October, 1994 and duly registered. The Deed does not state whether, Alfred Robinson was the father she referred to in her evidence, nor whether the other Declarant, Cecil James, was the uncle she had referred to. No mention was made in the deed that the property had originally belonged to her father, nor, that the piece of land had been tended in the past by her uncle, Cecil James. The basis of her entitlement is recorded in paragraph 3 of the deed: *that the land had been in her family for over three generations.* She sold a portion of this land, as stated above, to the now deceased 2nd Appellant.
9. The case presented by the 2nd Appellant depended on the soundness of the titled claimed by the deceased 1st Appellant. His own witness, the licensed surveyor, Alexander Coker, testified that there was indeed an encroachment into the Respondent's property by as much as 20ft, but that the encroachment had been corrected by a previous surveyor, and that a wall had been built to demarcate the separate properties. This piece of evidence clearly contradicts the evidence of the Appellants' other witness, the licensed surveyor, James Bangura, who had testified that the land claimed by the Respondent was not the same claimed by the Appellants, and that both pieces of land were separate and distinct.
10. It seems to us, and this was the position taken by the Learned Trial Judge, that if, the Respondent had purchased the land in 1966, and had been

visiting the same regularly since then, and only discovered the acts of trespass in 1996, two years after the deceased 1st Appellant had sworn to her Statutory Declaration, it stood to reason that the contents of the deceased 1st Defendant could not have been true and/or correct. There was a 30 year span between the execution of both documents. It is most improbable that during that 30 year period, if, as the deceased 1st Defendant claimed, she had been living on that same piece of land, she had not encountered the Respondent, or, her caretaker. And there was credible evidence that as soon as the acts of trespass were discovered by the Respondent, she instituted Court proceedings in 1996. These were abandoned after the invasion of Freetown in January, 1999. This Court takes Judicial Notice of that notorious fact, and that many cases in Court were not proceeded with, either through the death of parties, or, the departure from the country of the parties, and/or their solicitors and/or counsel.

EVIDENCE OF THE SURVEYORS

11. The evidence given by all three surveyors at the trial, on the whole, tended to show that the land claimed by the both Appellants, was that of the Respondent's. Both Edward Eddy and James Bangura claimed that the respective properties claimed by both sides were separate and distinct. The deceased 1st Defendant's land is delineated on survey plan LS147/94 dated 17th August, 1994 - pages 201 - 204 of the Record. It depicts the Pipe Line Road at the bottom of the sketch. It stretches up to an access road 15ft wide. Neighbouring properties are not identified, save for being described as private property. As regards the 2nd Respondent's survey plan LS1678/96 dated 24th September, 1996, only one piece of property is identified, that of Donald Coker, sited to the right of 2nd Respondent's land. According to the evidence led at the trial, Donald Coker, deceased 2nd Appellant's brother, bought his property from the deceased 1st Defendant around the same time as the 2nd Respondent bought his. The Respondent's survey plan is LS734/66; it does not form part of the Record, but its contents are described in the schedule at page 210 of the Record. The same schedule is that used in the Statutory Declaration sworn to by the Respondent's vendors, the Kaitells, at page 213 of the Record. Edward Eddy's survey plan shows that the respective pieces of land claimed by the opposing sides,

overlap at certain points. The plan is at page 225 of the Record. This confirms that the land claimed by the Respondent, forms part of the same land claimed by the deceased 1st Defendant, and by the 2nd Respondent. Mr Coker says the same thing in his Report at page 228 of the Record. Mr Eddy did not testify as he was out of the jurisdiction at the time of the trial, but his report and sketch plan were admitted into evidence. Mr James Bangura's sketch plan and report, corresponds in the most important aspects with those of Mr Coker, and of Mr Eddy. But his conclusion is that the Respondent's property is separate and distinct, and do not overlap. His finding was that since the Respondent's plan had been prepared more than 43 years before, she may not have been aware of the true extent and demarcations of her land. He reached that conclusion on the second page of his report - page 238 of the Record. The Learned Trial Judge rightly, we believe, rejected this conclusion as it amounted to nothing more than mere conjecture.

1ST RESPONDENT'S EVIDENCE AT THE TRIAL

12. The present 1st Respondent gave evidence on behalf of his deceased mother. The purport of his evidence was that the Kaitells who had sold land to the Respondent, had grabbed the same from his mother. On the other hand, his deceased mother had given no such evidence before her demise. It turned out eventually that he was illiterate, and could not have been in a position to comprehend what was written on the documents which had been shown to him while giving evidence. Another brother of his, Ebenezer Mason also gave evidence for the defence. Since he agreed he was born in 1973, 7 years after the Respondent had purchased her property, he could hardly be expected to throw light on the true provenance of each party's title. The Respondents' last witness, Mohamed Thorlu Bangura testified that he had become caretaker for the deceased 1st Defendant in 1996. He could not therefore be in a position to say what the state of affairs on the land was between 1966 and 1996.
13. In her assessment of the merits of the respective cases presented by both sides, the Learned Trial Judge concluded that based on the principle enunciated by LIVESEY LUKE, CJ in SEYMOUR-WILSON v ABBESS, the Respondent had proved that she was the true owner of the land in dispute.

She had bought the land lawfully from the Kaitells in 1966, and had been in possession until the acts of trespass complained of. There was evidence coming from her neighbor, Mr Thorpe, that he too had bought an adjacent piece of land from the same vendors in 1966. The Appellants have not claimed that Mr Thorpe had property in the vicinity of that which they were claiming. His evidence of the location of his land was not challenged. The Learned Trial Judge was therefore right when she concluded at page 25 of her judgment - page 192 of the Record, that the Respondent had proved a good root of title going back more than 40 years. We hold that she acted, in this respect, in accordance with the known principles of law applicable to cases turning on title to real property. The evidence before her clearly showed that the Respondent had been able to prove her case on a balance of probabilities, and that she had not relied on the weakness of the title of both Appellants. It was not really for the Respondents to prove that they had title to the property each of them was claiming. The Learned Trial Judge appreciated this throughout her judgment. The conclusion she reached was that the Respondent's land had been properly demarcated, that she had lawfully bought the property from the Kaitells, and that she had been in occupation of the same until the acts of trespass began in 1996, just two years after the 1st Respondent had sworn to her statutory declaration. For a period of 30 years between 1966 and 1996, no acts of trespass were complained of. But when these acts commenced in 1996, the Respondent took steps to put an end to them. That the proceedings were inclusive, was not her fault, as we have pointed out above.

CONCLUSION

14. We hold therefore that the Learned Trial Judge was right in giving judgment for the Respondent. We have no reason to interfere with her finding of facts. In the result, the Appellants respective appeals are dismissed, with Costs, such Costs to be taxed if not agreed. We affirm the decision of SHOWERS, J given on 5th October, 2009.

ORDER OF COURT:

The appeals of the 1st and 2nd ~~Respondent~~ Appellant are dismissed with Costs. The Judgment of The Hon Mrs Justice Showers delivered on 5th October, 2009 is affirmed.

THE HON MR JUSTICE N C BROWNE-MARKE, JSC

THE HON MR JUSTICE E E ROBERTS, JSC