Civ. App 31/2015

In the Court of Appeal- Sierra Leone

Madam Lucinda Dassama Nee Davies - Appellant

vs.

Rokel Commercial Bank Ltd - Respondents
Ismail Sesay

Coram:
Desmond Babatunde Edwards CJ
Reginald Sydney Fynn JA
Eldred Frank Taylor-Camara JA

Counsel:
Charles Francis Margai Esq & R B Kowa Esq for the Appellant
A M Bangura for the Respondent

JUDGMENT DATED …….. 2020

Fynn JA

Background

1. This case has arrived at the Court of Appeal after a journey which had started at the Local Court, Kenema. Mrs Lucinda Dassama nee Davies had sued the Rokel Commercial Bank Ltd. Mrs Dassama's claim is that she is owner of the property at 15 Dama Road Kenema which is occupied by the bank. Mrs Dassama was not successful in her claim at the Local Court Kenema, so she appealed to the District Appeals Court Kenema. At the Districts Appeals Court, she was successful, and the Local Court decision against her was reversed. The Magistrate handed down a judgment in her favour, overturning the judgment of the Nongowa Local Court No 2 and in effect declaring her owner of the disputed property.
2. The Bank and its landlords not being satisfied with the decision of the District Appeals Court appealed against that decision to the Local Appeals Division of the High Court, Kenema. Judgment was given against Mrs. Dassama by The Local Appeals Division of the High Court, Kenema returning the property to the Bank and its landlords.
3. The appellant, Mrs. Dassama's case is that her father, Mr. Albert Edward Davies had acquired this property which the Bank is occupying through a grant dated 1913. The bank is not paying her rent and is therefore illegally occupying the property. In its defence the bank asserts that it is tenant to the Sesay family represented by Ishmail Sesay, the second respondent. The second respondent traces his family's ownership of the land through one Simon Aboud who had held a leasehold of the property and also through the land owning families. Several other material facts and nuances where raised during the several phases of the case and these will be referred to later in this judgment as they may be deemed necessary.
4. The present appeal is against the judgment of the Local Appeals Division of the High Court Kenema which was given in favour of the Bank and Ismail Sesay.

Counsel's Submissions

5. In all there are five grounds of appeal. The appellant is dissatisfied with the Judgment of the Local Appeals Division of the High Court, Kenema. The appeal is a mixture of fact and law. In the main it does complain that the Learned Presiding Judge (LPJ) had misconstrued several facts and misapplied the law.
6. The appellant's counsel submits that the LPJ was wrong to have treated the **Seymour Wilson & Musa Abbess** case as if its principles did not apply to land in the provinces. He urged that there are five applicable ways of proving title to land naming these as: a) traditional Evidence b) Documentary evidence c) Acts of Ownership d) Proof of possession of adjacent land and e) Acts of continuous possession. Counsel relied on and referred the court to Oyelola v Bannekan 203 9WRN.
7. The appellant argued further that being a non-citizen Simon Aboud was incapable of conveying freehold title to land in the provinces to anyone as he himself was incapable of owning freehold title to land. Counsel referred the court to S.2 of the Non Citizens Interest in Land Act and relied heavily on the doctrine of n*emo dat quod non habet*.
8. Relying on the case of Kateu & Others vs. Momoh Dowu the appellant has also complained that the LPJ had neither sat with Assessors when he delivered his judgment nor had he recorded the opinion of Assessors (if any) in the said judgment. For this and the other grounds mentioned the appellant seeks relief which will set aside the judgment below and substitute it with one in favour of the Appellant.
9. The respondent on his part has maintained steadfastly that the LPJ was correct in his judgment and that the court was properly constituted at all times. He insists that the appellant is claiming more land than that in the papers on which she relies. He has submitted also that statutory intervention, to wit the Local Courts Act of 2011 has made obsolete the weight of Kateu & Others vs. Momoh Dowu .
10. These in brief are the submissions of counsel and any other specific submissions which have proved necessary to the deliberations and conclusions reached will be raised as the judgment progresses.

Deliberations on The Grounds of Appeal

Ground One

11. In this ground it is alleged that contrary to Section 41 of the Local Courts Act No 10 of 2011, the Court below was not properly constituted when Judgment was delivered on March 11th 2017. The allegation is that there had been non-compliance with section 41(4) of Act No. 10 0f 2011 as only the Presiding Judge as Chairman had sat and delivered the judgment without the assessors being present.
12. The thrust of this ground if I have construed it properly is that on the day on which judgment was delivered the Presiding Judge as Chairman had sat alone. This is separate and distinct from the challenge in ground five of the appeal. In ground five the challenge goes to the purported failure of the Chairman Judge to have recorded the advice if any, which he had received from the assessors. The respondent points out that the appellant has not made submissions on this ground and I will agree that I have not found in the appellant's synopsis arguments which are specific to this ground. For completeness if not for any other reason however it is important that we rule upon it.
13. I have not seen any evidence to support the complaint that the Presiding Judge sat alone on the day he delivered his Judgment. In fact on the face of the Judgment itself the names

of the assessors with whom the Judge sat have been written in albeit by hand whilst the rest of the judgment is typed out.

14. The assessors in my opinion are not required to play any given role in the writing or the reading of the judgment. Their role is specific and it is to "advise the Judge on questions of customary law". One will expect that the Judge would have, if need be, sought the assessors advise on any questions of customary law before or whilst he considered his judgment. The Judgment it will be expected, will be the sum total of all the Judge's considerations and decisions including any advice he may have received from the assessors on customary law. It will not be expected that on the day the Judgment is being delivered the Judge will be requiring advice from the assessors on customary law. I do not here intend to suggest that Assessors need not attend the delivery of a judgment in the Local Appeals Division of the High Court: they need to be present for the court to be properly constituted. I have no reason to believe that they had been absent at the delivery of the Judgment. Furthermore I am satisfied in the absence of evidence to the contrary, that the appeal below was heard by the LPJ with Assessors in attendance and advising the learned Presiding Judge (LPJ), as and when they are required by law to do so.
15. It is worth noting that Section 41 (4) of the Local Courts Act No10 is also specific in its provision that *"the decision shall be vested exclusively in the Judge"*. This will suggest that the assessors, having given their advice, would have no role in the decision. I find that the Assessors were present when the Judgment was read. In my opinion whilst the Assessors are duty bound to be present and properly constitute the Court when Judgment is being delivered, I must opine further that they cannot, by being present or absent on that day, add anything to the substance of the decision. If at all, their contribution on the day that the Judgment is read, will go merely to form, and in the unfortunate circumstance where this occurs, I will not, in keeping with the spirit and intention of S.43(2) of the Local Courts Act 2011, on that alone, allow an appeal of this nature. An Order for the Judgment to be delivered in their presence would in those circumstances be the recommended cure.
16. Ground one will therefore not be allowed.

Ground Two

17. In ground two it is alleged that *"the Learned Judge in assessing and analysing the evidence adduced at the District Appeals Court misconstrued the evidence hence arriving at an erroneous decision."* The particulars of this ground go on to highlight three portions of the challenged Judgment. In these portions the LPJ analyses a number of exhibits and comes to respective conclusions each. We are invited by this ground to go back to those facts and see if the LPJ had come to unsustainable positions on the facts before him.
18. As a general rule, the Court of Appeal will not disturb the findings of facts made by the Court below; it is none the less within the mandate of the court when dealing with a ground of appeal based on the misconstruction of the evidence as is alleged here, for the court to reevaluate the evidence and where it deems it proper to do so and replace the conclusions reached by the court below with its own. (see Seymour Wilson v Musa Abess *SC Civ App 5/79* .) I will now take a closer look at the portions of the judgment that have been specifically challenged.
19. The first portion of the evidence highlighted by the appellant in this ground brings Exhibits B and C up for further scrutiny. These are letters found at pages 56 and 57 of the records. The letters are dated 25th July 1977 and 27th July 1977 respectively and are from the Senior District Officer to Paramount Chief Vangahun and the latter's reply thereto. Without a

doubt, both letters relate to Davies land situate at Dama Road and which was occupied by the Sierra Leone Produce Marketing Board. The crucial question would be whether these letters about the land which was occupied by the Sierra Leone Produce Marketing Board can provide evidence with respect to the land subject matter of this appeal. Relying on the letters, and just on these letters, they do not at all mention in their letter, any other occupant other than the Sierra Leone Produce Marketing Board. It would appear to me therefore that these letters cannot at all, without more, be used as evidence in respect of land occupied by Rokel Commercial Bank. No such connection is found in the letters or elsewhere at the time these letters were written ie 1977. What seems to emerge therefore, is a possibility that the land occupied by Sierra Leone Produce Marketing Board is separate from, and unconnected with, the land occupied by the respondents herein.

20. I can come to this conclusion relying also on the occupation history of the disputed portion as recounted first by the appellant (pages 4 and 5 of the records) and also by the respondents (pages 13 and 14 of the records) before the Local Court. They do not diverge from each other much except that each claims to be the party entitled to the freehold., They however, both agree that possession was first with Simon Aboud who took out a lease in 1948, then transferred possession to Alhaji Foday Sesay and then to Barclays Bank (now Rokel Commercial Bank). Neither of them mentions the Sierra Leone Produce Marketing Board. The Sierra Leone Produce Marketing Board, it can safely be deduced, was not ever in occupation of this disputed parcel of land.
21. Considering that the Sierra Leone Produce Marketing Board did not occupy the portion of land, the subject matter of this appeal, it is no surprise that the LPJ concluded that the two letters (Exhibits B & C) touching and concerning the land occupied by that Board ***"had nothing to do with the Petitioners/Appellants herein in relation to the said piece of land which is the subject matter of the action herein commenced in the Local Court".*** I cannot fault the LJP on this conclusion at all.
22. The next portion of the evidence alleged, in this ground, to have been misconstrued, relates to Exhibit H which is a record of the Magistrate Court at Kenema. This judgment is found at pages 72 & 139 of the records. A perusal of that judgment shows immediately that it deals with and concerns the parcel of land which was occupied by the Sierra Leone Produce Marketing Board. It relates to a parcel of land occupied by defendants named in that case (the respondent herein not being one of them). That judgment does not in anyway purport to bind the respondent in this appeal or the parcel of land which is the subject matter of this appeal. For these and the reasons recently stated once again I am unable to fault the LPJ for holding as he did that this particular magisterial judgment *"had absolutely nothing whatsoever to do with..."* the parties or the parcel of land which was subject matter of the dispute.
23. The third issue raised under this head has to do with a letter written by the appellant's Solicitor to the respondent. The letter is dated 2nd November 1991 (page 137 of the records). In that letter the appellant's Solicitor relays his instructions that the land which the bank is occupying belongs to the appellant. The solicitor then requests the respondent to enter into a lease failing which legal process will be instituted. The respondent's reply to that letter, found on the following page in the records and dated 13th February 1992 invites the appellant's solicitor *"to draw up a lease for our perusal"*.
24. Suffice it to say that this exchange of letters, do not in my opinion provide any proof of title to the disputed property. The respondent it may be said by her letter did assert her title to the parcel of land subject matter of the action, for the first time that such an assertion is

made and addressed to the occupiers of the land. This assertion cannot itself be proof of what it seeks to assert, some independent fact, document or other evidence must lend it credence and support. The issue of laches and delay which the LPJ refers to with respect to this letter will be more conveniently discussed later in the Judgment, for this ground, suffice it to say that on the forgoing deliberations and the reasons discussed, I am unable to allow ground two of the appeal. The LPJ cannot be faulted on his reasoning and the appreciation of the facts which this ground raises.

Grounds Three & Four

25. These two grounds possibly by some error in the presentation in the notice of appeal are conjoined in that four is sub-headed as the "particulars" of three. In any event in his synopsis counsel for the appellant had argued grounds 2, 3 & 4 together. In grounds three and four the challenge is that *"The LPJ applied wrong principles of law in respect of ownership to land in the provinces"* particularly when he stated in his judgment that "*The 2nd Petitioner/Appellant's father the said Alhaji Foday Sesay then acquired the fee simple from the Chiefdom Authorities and the said land owners' disregarding the fact that there is a judgment against the Chiefdom authorities (see Exhibit H)"*
26. The parcel of Land in dispute being situate in the provinces, the parties had deemed it proper to have commenced this action in the Local Court. As it turned out, issues touching the general principles of law arose and had to be used to reach a decision. Section 15(5) of the Local Courts Act 2011 envisages this possibility and appropriately provides that *"and where there is no provision of customary law, the general law shall apply".* I agree with counsel for the appellant therefore that the principles in *Seymour Wilson vs. Musa Abess* are not confined in their application to land in the Western Area. Those principles and indeed the five accepted principles set out in *Oyelola vs Bannekan* when properly applied, can certainly assist a court to establish the true owner of property or in the very least, point at who has a better claim of two rival claimants.
27. I have not been able to find in the evidence which has been adduced in all the courts, any *"traditional evidence"* to support the appellants claim to this land. No chiefs or elders have come forward to say that their memory supports the claim that the respondents land includes this particular portion of land. On the contrary the rival claim has the chiefs and elders supporting its root, they being parties to the original lease and subsequent purchase on which the respondent's title is anchored.
28. Contrary to the appellant's assertion in her letter to His Excellency the President of the Republic dated 8th July 1985, there appears to be an acute dearth of *"documentary evidence"* to support her claim to the disputed parcel of land. In that letter the appellant states that *"I have documentary evidence to support **all** that I have written and also my fathers plan and lease dating as far back as 1913"*. The antiquity of the documents which the respondent alleges to have, demand immediate veneration. However those documents which are found at pages 100-104 of the records and which were used successfully to recover lands from Audit Sierra Leone, J T Chanri and the Chiefdom authorities lack efficacy to cover any more ground than that demanded and already recovered. Especially so considering the plan attached to the grant.
29. It is my opinion that those documents which I have had the benefit of perusing appear to relate only to a parcel of land approximately 160ft x 200ft (page 104). It is only the survey plan of more recent origin, the encroachment plan dated 25th June 2009 (at page 99 of the records) that now purports that the appellant's land is in excess of 1.9 acres. The older

document carries more weight in my estimation, and my appreciation of it, is that it will not support a claim that allows the appellant to claim land in excess of the dimensions 160ft by 200ft squared.

30. The respondent's documented relationship to this portion of land on the other hand appears traceable to the land holding family beginning with a lease followed by continuous and unbroken occupation since 1948 (see copy of lease at page 91 of the records). If one were to contrast the appellant's documentary position in respect of the land with that of the respondents, the appellant's position appears to be the weaker one. The appellant has no document which directly relates to the land and no actual or physical connection whatsoever until she first made a claim upon the land in her 1985 letter to the President.
31. It is important that I state here that I do appreciate that the dicta in *Seymour Wilson* recognizes that a person may have documents of title to land but may not necessarily have a better right to possession compared to a person who has no documentary title but who can demonstrate through occupation, dealings with the land: that he or she is not only entitled to possession, but also possibly, to ownership. The paper title (as found in Deeds etc), may not therefore be the be all and end all in registration, possession and ownership of land. Whilst *Seymour Wilson* was decided in the context of the registration of instruments with respect to land in the Western Area, it is my considered opinion that where the question of land ownership, registration of title and priority of title to land in the provinces depends on issues other than those peculiarly governed by customary law, the principles laid down in *Seymour Wilson* may prove as good as any.
32. Whilst the above stated position may be reflective of the current status of the law, the evidence required to impeach the documented title must be very strong, clear, and unequivocal. The party who seeks to impeach the story told by the document(s) must have at least evidence showing a connection with the land predating the documents which the other party relies on, have believable and supportive testimonies of the locals whose memories and conduct have not been compromised and or some evidence of the claiming party's actual control and or possession of the land be it in the distant or recent past. These are no less than that which was required for success in *Oyelola vs Bannekan* to which the appellant has referred us. I have not found the appellant satisfying this test.
33. Assuming that the disputed portion of land is part of the appellant's 1913 grant, I have found that the first claim that the appellant made in respect of this land or at all was in the 1985 letter to the President. Prior to that and indeed after there, is no evidence of activity on the land by her or her predecessor-in-title, no rent paying tenants, no building projects, no plants farming or gardening and no mention of this portion in a successful case to recover other land in the neighborhood. No long term actual possession or any other act of ownership has been found on the record in the appellant's favour.
34. I have also found and it is important to note that even if the 1913 lease had covered this particular portion of land that lease clearly was for 50 years and no more. It therefore ought ordinarily to have expired in 1963 and so cannot possibly sustain the appellant's claim a day later, the reversion would have returned to the landowning family who had first created this lease. In our view, the appellant cannot rely on her expired lease to assert a claim to the land in question, or any other land, unless that lease had been renewed or extended to cover the timeframe within which the appellant was asserting her claim against the Respondents. No such renewal or new lease was at any time or stage of these proceedings produced in evidence, and accordingly, it is our view that the appellant has failed to prove she has any legal title or claim to the land,

35. On the other hand the respondent's throughout the time for which they claim ownership, have been able to show between them, a Landlord-Tenant relationship, rent being paid and received, continuous possession, purchase of the leasehold as well as recognition by the landowning family of the ultimate purchase of the reversionary freehold. All of these activities and relationships being executed during the life time of the appellant's predecessor in title with no objection at all being raised by him or her. LPJ invoke of laches in my opinion was proper and rightly so within this context. Even if this were the appellant's land, I will agree that the circumstances are such that a court will not be just to allow the owner to reassert his ownership. It is my opinion that the LPJs reliance on the Gold Coast case of **Bokitsi (1902)** was appropriate and was a correct application of the law in the circumstances of this case.
36. I note counsel's resort to the provisions in the Interpretation Act 1971, especially so to the definition of the term "Native". I have also noted that counsel on the opposite side also obliquely relies on this definition. The former seeks to use it to establish that Simon Aboud a non-Native, cannot own land in the provinces nor pass freehold title to same. The latter in a double edged use of the definition, argues that if the appellant's father is a native she ought not to have taken out Letters of Administration of his estate thus divesting her of *locus standi*, alternatively counsel postulates that if the appellant's father were a non - native then it is submitted that he could not own land in the Provinces resulting in a similar outcome of her being incapable of owning the land.
37. This definition of native and the distinction from "non-native" no doubt remains the law but not without controversy. Its result in the present day has continued to present a duality in the land tenure system practiced in the country. Its critics argue that it results in discrimination which tends to allow some citizens to have a right to acquire freehold land in more places within the country than others can legally hold. There have been calls in the past worth re-reiterating by Livesy Luke CJ in *Seymour Wilson* and re-echoed by Renner Thomas CJ in his book **"Land Tenure in Sierra Leone"** that: Urgent reform of Sierra Leone's land law and land tenure maybe long overdue.
38. Returning to the submissions of the parties I do not intend to address the respondent's submissions which seek to divest the appellant of *locus standi* and also her father of the right to own property in the provinces. Whilst these submissions point clearly at the far reaching and possibly unsatisfactory outcomes that the present definition of "native" may result in, they also invite us to make a pronouncement that could very well affect persons who are not before us. It is also my opinion that the respondent's counsel cannot at this late hour of the day, raise an issue that had been accepted by all parties, throughout the proceedings without question.
39. With respect to the appellant's submissions in this regard I have had to return to the question of the source of the title claimed by the 2nd defendant. Is the 2nd defendant tracing his fee simple freehold to Simon Aboud who is a "non native"? The evidence shows that Simon Aboud had a leasehold and that he had sold to the 2nd respondent's father (see pages 115-118). The appellant's counsel is correct that when Simon Aboud sold he was incapable of selling anything other than the leasehold which he had. In fact the indenture (at page 110) and the certificate prepared at the time by Cyrus Rogers Wright and dated 5th August 1970 is clear that what had been created was a "sub-lease of premises situate at 8 Dama Road, Kenema between Mr. Simon Aboud and Mr. Usman Sesay". However the matter did not end there as the 2nd respondent urges that his father also purchased the

freehold reversionary interest from the land owning family in whom it had remained vested all the while the lease and sub-lease subsisting.

40. It has made a significant impression on my mind that Simon Aboud openly held a registered leasehold from the land owning family which if it had run its course and the full options permissible under S. 4 of the Protectorate Land Act (ie 50 years plus 21 years) it would have had the potential to continue up unto 2019. This lease has not ever been challenged by any one. The landowning family's right to grant a lease has not been questioned. It will suggest to me that the landowning family were entitled to deal with this parcel of land which was their property, as they deemed fit. They could have sold it to the 2nd respondent's father free of the present challenges and claims of the appellant. But did they do so?
41. It is in the Paramount Chiefs certificate that the transfer of the freehold to the Sesays is first mentioned. Possibly it is in fact the only instrument that declares ***"that the said landed property now becomes freehold property of Usman Sesay, Native of Nongowa"***. It has not been lost on me that this document referred to first set off merely to indicate that the chiefdom authorities approve of the transfer or assignment of the unexpired portion of a lease. Whilst I find it sudden that it was transformed into a conveying instrument I have no evidence before me to denounce this as a proper mode of conveyancing consistent with the usages of that time. The Paramount Chiefs had the power to convey, and on the face of the instrument that is exactly what they had done. The LPJ was satisfied with this metamorphosis and held that the freehold title to the disputed portion of land had thereby been effectively conveyed. I have no reason to depart from his finding in this regard.
42. Even if there had not been an effective conveyance of the land as I have found, the result will then be that Simon Aboud being a "non-native" could not pass freehold title to the 2nd Respondent's father, but then he did not purport to do so, nor do the respondents assert that he did so. The respondents trace their title's root to the Ngombulango Landowning family. This family are not parties to this action but I note that in the earlier stages of the action at least one member of that family testified in support of the respondent's claim (see the testimony of Saffa Sherriff Lawrence Ngombulango at pages 52-53 of the records). The expiration of the lease would merely have returned the land to this family who as far as they are concerned believe the land to belong to the Sesays.
43. All the circumstances of the case being considered, and with specific reference to the issues recently raised, it is my opinion that the LPJ was not wrong to have found that the appellant had not provided on a balance of probabilities, sufficient evidence to support her claim to the disputed property or to impeach the occupation, control and documentary evidence which the respondents had in their favour in respect of the portion of land in dispute. It is worth noting and with approval, the point made in the court below, that taken at its very best, the appellant's case will only cause the land to return to the land holding families in whose holding the respondent's claim has its root and anchor. The result would then be the same; that is to say, the appellant had not acquired title to the disputed parcel of land whilst the respondent in the worst case scenario, would through the land holding family acquire title to same, even if only an equitable title. It is for these reasons and the preceding discussions that I will refuse grounds three and four.

Ground Five

44. In ground five the appellant alleges that the LPJ failed to record *"the views of the Assessors assuming he sat with them"*. I have already found that the LPJ sat with Assessors and that the court was properly constituted. I have therefore moved on in consideration of this

ground to ask whether any questions of customary law had arisen in this dispute since its inception and through its journey to us. To assist me in that enquiry I have reminded myself that customary law has been defined in S.1 of the Local Courts Act 2011 as;

> *"..any rule other than a rule of general law, having the force of law in any Chiefdom in the provinces whereby rights and correlative duties are acquired or imposed in conformity with natural justice and equity and not incompatible either directly or indirectly, with any enactment applying to the provinces and includes any amendment of customary law made in accordance with the provisions of any enactment"*

45. I have not found any issue in this case, which relies solely on customary law or even partly so. Counsel in their submissions and arguments before us and in the courts below have not also raised any questions relating to customary law. Throughout this case, my reading of the various issues raised has been that they have all depended on the appreciation of facts and evidence as well as the interpretation and application of various statutes.
46. Though no questions on customary law have arisen in the case this is not to say that the application of S.41(1) of the Local Courts Act 2011 which provides for hearing the appeal with Assessors is ousted. This is certainly not the case. A contrast with S. 40(2) of the same Act which allows a Magistrate in the District Appeals Court to sit without Assessors when *"it appears that no question of customary law will arise"* is demonstrative of this. There is no identical provision in the Local Division of the High Court. The appeal must be heard with Assessors and this admits to no compromise whatsoever.
47. I have earlier mentioned herein that the purpose for sitting with Assessors is clear and specific and that it is for that purpose only that the Assessors are present which is "to advise the Judge on questions of customary law". It would follow therefore that if no questions of customary law arise in the course of a case the Judge will have no need for resort to the Assessors with whom he sits for an opinion. Where the Judge has not had the need to ask for an opinion can he now have an opinion from the Assessors to record? The answer to this question is obvious and needs little further demonstration. I will however reproduce a portion of the quotation graciously provided by the appellants counsel on this issue from the unreported case of Chief Samuka Kateu & Others vs. Momoh Dowu (1981); *"Admittedly, on the face of it S.29 (1) of the Local courts Act 1963 does not oblige an appellate court to accept the advise of the Assessors. Nevertheless it is our view that it is virtually necessary and indeed desirable that their opinion, **if any be recorded.**"*
48. I have highlighted and emphasized the phrase "if any be recorded". The court had not demanded in that case that every judgment from a court sitting with Assessors must have included in the judgment opinions from the Assessors. Opinions can only be recorded if they had in fact been given. That must be the correct and logical interpretation of the law. I am therefore unable to fault the LPJ for not recording the opinion of the Assessors in a case in which no customary law questions had arisen and no opinion had been sought and got from the Assessors. Had the case turned on some question of customary law my position would have been the complete opposite. This ground too must fail.
49. The opportunity should not be missed though, to stress the important need for recording the opinion of the Assessors in an appropriate case. A failure to so record those opinions will fatally deprive an appellate court of a ready access to those opinions. The court will consequently be unable to properly inquire into whether the LPJ had misconstrued the Assessors opinion or have plainly ignored it, rightly or wrongly, or may have simply erroneously misapplied it.

50. Similarly, it is worth recommending that, even if no question of customary law may have arisen, it surely will aid completeness if every tribunal or court that sits with Assessors would have in its judgment at the very least a paragraph dedicated to "the Assessors". In such a paragraph the process of selecting the Assessors, their names, their role and their contribution if any as well as any other significant matter including whether or not customary law issues arose and any other concern, that touches the participation of the Assessors in the proceedings will therein be mentioned. In our opinion such a practice would minimise the number of future appeals on this ground. For the avoidance of doubt, I repeat that this is but a recommendation to aid completeness.

Conclusion

51. I am satisfied that the Local Appeals Division of the High Court, Kenema was properly constituted to hear the appeal before it and give its judgment which is the subject of this appeal. The LPJ had sat and heard the appeal with two named assessors as provided for by law. Similarly I have found that the LPJ was not obliged to record opinions from the Assessors with whom he had sat, where no questions of customary law had arisen, and so the Assessors could not have been asked for, nor would they have given any opinion on non-arising questions on customary law.
52. Further, I have opined that to succeed in a claim such as this, the appellant must rely on the strength of her title. However, Mrs Dassama has not been able to demonstrate sufficient connection to this particular parcel of land. Her 1913 lease is not long enough to support her claims to all the portions of land she is now claiming. Further still, the respondent's continuous occupation connection and development of the disputed portion of land for a period in excess of forty years before Mrs. Dassama first made a claim, would make it inequitable for the court to allow her to sustain her claim, even if it were well founded (which I have not found it to be).
53. The logical conclusion that I am bound to arrive at therefore, is that this appeal will be entirely disallowed. The findings and the conclusions of the Hon. Mr. Justice Allan Bhami Halloway JA (as he then was) will remain completely undisturbed.

    The Respondents will have the costs of this Appeal. Such costs to be agreed upon by the parties, failing which costs are to be taxed.

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REGISTRAR OF THE COURT OF APPEAL