

CIV.APP.17/2015

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

AUGUSTINE A. LUSENI AND FAMILY
BO

- APPELLANTS

AND

DR. MOMODU YILLAH
BO

- RESPONDENT

CORAM:

HON. JUSTICE ALUSINE SESAY

- JSC - PRESIDING

HON. JUSTICE MIATTA M. SAMBA

- JA

HON. JUSTICE KOMBA KAMANDA

- J

Counsel:

J.M. JENGO ESQ FOR THE PETITIONERS/APPELLANTS

I.S. YILLAH ESQ FOR THE RESPONDENT

JUDGMENT DELIVERED ON THE 12TH DAY OF MARCH 2020

1. This is an appeal against the Judgment of the Honourable Mr. Justice D.B Edwards, J as he then was, sitting in the High Court in Bo delivered on the 12th day of March 2015.

2. The Petitioners/Appellants being dissatisfied with the said Judgment appealed to the Court of Appeal on the following grounds as outlined at page 414 of the Records of Appeal.

- i. The Presiding Judge erred in fact and in law by failing to take into consideration the Plaintiff's case in its entirety and as such reached wrong conclusions with regard the Petitioners' claim of ownership of the land in dispute.
- ii. The Presiding Judge completely ignored the evidence that all the purported usufruct owners in Exhibit S, the Title Deed of the Respondent herein, had all died before the said Exhibit S was executed and thus reached an erroneous conclusion with regards the legal effect of the said Exhibit S, one which would have considerably been different had he taken that fact into consideration.
- iii. That the Customary Law Officer erred in fact when he discountenanced or failed to take into consideration evidence of key witnesses of the Petitioner and thus reached an erroneous conclusion in the matter, one which would not have been reached had he carefully considered the evidence in its entirety.
- iv. The decision is not supported by the weight of the evidence. The Appellants are seeking a reversal of the Judgment of the Presiding Judge, the Hon. Mr. Justice D.B Edwards, J, as he then was dated the 12th day of March 2015 and that in its stead, this Honourable Court grants Judgment

in favour of the Petitioners herein and that the cost of the appeal be borne by the Respondent herein including any further relief that this Court may deem fit.

Background

3. In 2010, this matter commenced at the Local Court of Tikonko Chiefdom in the Southern Province by the Petitioners claiming ownership of the land, the subject matter of the appeal. By Notice of Motion dated the 13th day of August 2010, this matter was transferred to the District Appeal Court in Bo and on the 6th day of March 2012 the Presiding Magistrate of the District Appeals Court, A.S Fidawi gave a decision in the matter in favour of the Respondent. The Petitioners, being dissatisfied with the said decision appealed to the Local Appeals Division of the High Court in Bo by way of a Petition dated the 10th day of April 2010. The Appeal was heard before the late Justice DG Thompson, J, who on the 17th day of May 2013 allowed the appeal and set aside the Judgment of the District Appeals Court.

4. The Respondent however being dissatisfied with the Judgment of the Hon. Mr. Justice D.G Thompson, J, by way of a Notice of Additional Grounds of Appeal dated the 18th day of July 2013 appealed to the Court of Appeal in Freetown. By Judgment dated 24th day of April 2014, the Honourable Mrs. Justice Matturi Jones, J, as she then was set aside the Judgment of Hon. Mr. Justice DG Thompson J and remitted the matter for re-hearing by a properly constituted Local Appeals Division of the High Court in Bo. The said Appeal was re-heard with the Hon. Mr. Justice DB Edwards presiding and on the 12th day of March, 2015, disallowed the appeal and found in favour of the Respondent. It is against that Judgment that the Petitioners have appealed.

Scope of the Appeal

5. Rule 32 of the Court of Appeal Rules Public Notice No. 29 of 1985 provides thus:-

"The Court shall have power to give any Judgment and make any Order that ought to have been made and to make any such further or other Orders as the case may require including any Order as to cost. These powers may be exercised by the Court notwithstanding that the Appellant may have asked that part only of the decision be reversed or varied and may also be exercised in favour of all or any of the Respondents".

6. I shall now proceed at this juncture to consider the grounds of appeal in this matter.

7. The subject matter is a piece of land, situate, lying and being at Torwama Village along the Torwama Road, Tikonko Chiefdom, Bo District in the Southern Province of Sierra Leone. The said property was a subject matter of a Lease Agreement for a term of 50 years, between the Chiefdom Authorities/Council in Tikonko and one J. Matter & Co, which said Lease Agreement was tendered as Exhibit R. The parties to the Lease Agreement are clearly stated thereon as the Tenant, J Matter & Co and the Paramount Chief, J.K Macavory III, the Principal,

Chiefdom Speaker, H.M Sandi Moiba, Section Chief Charles Mewah and Town Chiefs John Boma and Siatta Feigbo, Mr. Bayoh and Tommy Bundo as Principal Members of the land owning families (usufruct owners). The signatories to the Lease were as follows:

a. Paramount Chief	-	M.K Jiba II
b. Chiefdom Speaker	-	Sulaiman
c. Tribal Authority	-	PP Kamanda
d. Tribal Authority	-	Siafa Feigbo
e. Tribal Authority	-	Mbayo Amoh
f. Tribal Authority	-	Ngegba Ngelegla
g. Tribal Authority	-	Tommy Bundo
h. Tenant	-	Messrs J. Mattar & Co

8. By a Deed of Surrender dated the 28th March 2004, the Tenant, J Mattar & Co. surrendered the said Lease to the Paramount Chief and the usufruct owners of the said land. By a Deed of Conveyance dated the 28th March 2004, the same parties in Exhibit R, (the usufruct owners) conveyed to Dr. Momodu Yillah as Purchaser for value without Notice an area of 52.1502 of land surrendered by Messrs J. Mattar & Co.

9. The gravamen of the submission of Counsel for the Appellants evolves around the validity and effect of Exhibits R and S, the Lease Agreement and the Deed of Surrender. Counsel for the Appellant contend that one of the parties to Exhibit R was already deceased when Exhibit R was executed; he allege fraud. Counsel submits that the Purchaser in the Deed of Sale was never a *bona fide* Purchaser for value without notice. He referred the Court to Exhibit O, a letter dated the 12th day of February 2003 written by one M.T Ngobeh, the then Solicitor of the Luseni family, which according to Counsel, gave a warning to the Respondent, Dr. Yillah not to do business with Joseph Bundo, a witness for the Respondent. He further submits that they had warned that the said Lease Agreement should not be assigned to another Construction Company and that the family is not keen on renewing the Lease upon its expiration. Notwithstanding the warning, the Respondent went ahead and bought the said land from the individuals mentioned in Exhibit S.

10. We are of the view that Counsel for the Appellants has failed to bring out facts to show that the Respondent acquired the said piece of land fraudulently. The only argument presented by Counsel for the Appellants in this regard is about the signature of a deceased party. This argument fails in every sphere. The Appellant firstly, did not at any time, during trial of the case in the Court below allege fraud which requires strict proof. We shall refer Counsel to Order 8 Rule 1 of the High Court Rules, 2007.

11. Having gleaned Exhibits R and S, we observe that the parties on both documents are the same. The Appellants' Counsel has only complained about one of the signature on the Lease and has not done so in respect of the Deed of Surrender. The acreage on Exhibit R, the Lease Agreement is the same as the acreage of the land on the Deed of Surrender as in Exhibit S.

12. It should be noted that the grounds of appeal and the issues raised in this appeal were also the same grounds argued before the Honourable Mr. Justice DB Edwards by way of appeal against the decision of the District Appeals Court dated the 24th February 2012, delivered on the 6th March 2012. The Learned Hon. Justice DB Edwards at page 270 of the Records of appeal had this to say regarding Exhibit O:

"Counsel forewarns the Defendant/Respondent not to transact business with the individuals he wanted to do business with as they were not the fit and proper persons to do business with in respect of the land business".

13. He further argues that the existence of the letter, the service thereof on the Respondent was not controverted. The Learned Judge further says at page 271 thus:

"Secondly, there is no need to controvert the service of the letter as suggested. He who asserts must prove; there is proof of the existence of this letter as seen in Exhibit O but there is no proof of service before me. Dr. Yillah never testified and there is no weigh book of service or any proof of service. Clearly, with the address of the letter so confusing, you cannot with certainty say that Dr. Yillah was actually served as alleged. What is OC? If you say it means Officer in Charge, it is out of context. Even if you assume it is a mistake and say it should have been C/O, "in care of", it will still be out of context and mean the letter was for J. Mattar & Co instead of Dr. Yillah, the Respondent, herein".

14. Obviously, the effect of Exhibit O on the Respondents' Title is of no moment. We can only conclude that the Respondent was a *bona fide* Purchaser for value without notice.

15. Assuming that there were irregularities regarding the transfer of ownership of the said land to the Respondent, we hold that such irregularities were adequately dealt with by the Learned Judge. The argument by Counsel for the Appellants must fail and falls on the wayside.

16. The next ground of appeal is that the Presiding Judge erred in law and in fact by failing to take into consideration the Petitioners' case in its entirety and as such reached a wrong conclusion with regards the Petitioners' claim of ownership.

17. Counsel for the Appellants has argued that throughout the Judgment of the Hon. Mr. Justice DB Edwards, J, he seemed to be of the opinion that the only proof of ownership one could proffer to lead especially if the land had been in existence since 1963 should be documentary in nature. He must have drawn that conclusion aided by Exhibit V, the Locus Report of the Regional Surveyor who also seemed to be of the view that since the Petitioners' witness Augustine Luseni did not produce any plans, he is bereft of any claim to the land. Counsel further submits that it is trite principle of customary law that majority of landed

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property in the provinces are undocumented. With respect to Jengo Esq, the above proposition of law is erroneous and misleading.

18. rely on the strength of his own Title. The Respondent produced documentary evidence including plans according to the Regional Surveyor who testified in this matter. The Learned Trial Judge extensively considered and valued the evidence of both Appellants and the Respondent (who did not testify) and the witnesses. The Learned Judge at page 273 of the Records clearly stated the legal question which in our opinion is completely misconceived by the Appellants' Counsel. He stated thus:

" Under Cap 122 'All lands in the Provinces are under the custody of the Tribal Authority constituted by the Paramount Chief and his Principal Men. Except there were strong documentary proof made available to the contrary via registered documents, the Defendant was entitled to treat the Chiefs and Principal Men and usufruct owners as persons who knew the owners of the land to be sold to him as correct".

19. The Learned Judge, further to the above, made reference to the testimony of the Honourable Paramount Chief at page 276 of the Records. He stated he knew the Luseni family is part of the Feigbo family but that the Luseni family did not sign on Exhibit S. DW3 confirmed in examination in chief that the Kanju family owned land at Torwama. DW3 stated in cross examination that there was no protest from any of the family members that the function was illegal. In conclusion, the assertion that the Learned Trial Judge did not consider the evidence of the Appellants is incorrect. This ground therefore fails. The Learned Trial Judge extensively evaluated the testimony of the witnesses for the Appellants and Petitioners.

20. Counsel for the Appellants have also appealed on the grounds that the decision is not supported by the weight of the evidence.

21. What is the evidence that was adduced by the Respondent? Did the Learned Trial Judge evaluate the evidence adduced in this matter? To answer the above questions, this Court will refer Counsel to page 278 of the Records. At page 276, the Learned Trial Judge referred to the evidence of DW3 in the person of the Honourable Paramount Chief of Tikonko Chiefdom, PC Joe Macavory III. The Paramount Chief had this to say: "I recognize Exhibit S which is the Deed of Conveyance of the Respondent herein dated the 28th March 2004". According to DW3, DW1, John Bundu was the Head of the Siaffa Feigbo family when Exhibit S was signed; present also were the other Heads of his family who transferred the said business with the Respondent. DW3 confirmed in examination in chief that he knows the Kanju family owned land in Torwama. DW3 said he received Exhibit E. in cross examination, DW3 reiterated that there was no protest from any of the family members that the transaction was illegal or fraudulent.

22. DW2 concluded his testimony by stating that he was quite sure that some of the family members were present during the transaction for the subject matter.

The evidence of there being a transaction with the Respondent by the usufruct owners remains uncontroverted.

23. The Respondent also produced a Plan dated 11th March 2004 measuring 127.03 acres surrounded by J. Mattar & Co to the Chiefdom Council. There was no documentary evidence produced by the Appellants who were Plaintiffs though the action was brought by the Plaintiffs. There was an investigation by the Ministry of Lands and Surveys and the investigations revealed that the 52.1502 acres of land in the name of the Respondent is a sub division Plan of the 127.103 which J. Mattar & Co surrendered to the Chiefdom Council. The burden was on the Appellants, formerly Plaintiffs to establish his boundaries with certainty.

24. There is also no evidence that the consent of the usufruct owners were not sought by the Respondent. I fail to accept the arguments of Counsel for the Appellants that the Lease and the outright disposition and transfer was signed by a person purportedly deceased. Relying on the case of *Koromoh V Coosah and Lamin* (1960) 1 SLLR 66-88 at page 68, Cole J, as he then was accepted evidence that according to Mende Customary Law, "The prior consent of all the relatives was necessary before there could be an outright transfer of a house built on family land".


25. In the present appeal, there is no evidence from the Records as to whether the prior consent of the family members were not sought. As said, Exhibits R and S contain the names of the same parties and their signatures. The signatories were those of the family and other Principal Members of the family, the various heads of the family and Tribal Authorities. What more context was required in the circumstance? The answer certainly is that it suffices.

26. In conclusion, it is erroneous to submit that the decision is against the weight of the evidence. We hold that there is overwhelming evidence both documentary and oral testimonies to support the claim of the Respondent. Relying on the strength of the Title Deed of the Respondent, we are of the view that the appeal lacks merit and is dismissed accordingly.

This Honorable Court therefore orders as follows:

1. That the 52.1502 acres or thereabout as constituted by Exhibit S as from Exhibit R is hereby declared as owned by the Respondent herein, Dr. Momodu Yillah.
2. That in view of the above, an injunction is hereby granted against the Appellants, restraining them whether by themselves or agents from entering, doing anything or remaining on the now declared Respondent, Dr. Yillah's land constituted by Exhibit S and from Exhibit R formerly owned by J. Matter & Co.
3. That the structure constructed or otherwise part of or finding itself within the said 52.1502 acres as constituted in Exhibit S be removed from the premises failing which the Respondent shall have the power to demolish same.

4. That the Respondent is entitled to recover possession of the entire land covering an area of 52.1502 acres or thereabout.
5. That the Respondent shall have the costs of the appeal, if not agreed to be taxed.



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Hon. Mr. Justice Alusine Sesay, JSC
(Presiding)



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Hon. Ms. Justice Miatta Maria Samba, J.A

I agree



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Honourable Mr. Justice Komba Kamanda, J

I agree