

Civ. App 6/2019

In The Court of Appeal Sierra Leone

Zubairu Kamara

- **Appellant**

v.

Saidu Sesay

- **Respondent**

Counsel:

Emmanuel Teddy Koroma Esq *for the Appellant*
Brima Koroma Esq *for the Respondent*

CORAM : Hon. Justice Reginald Sydney Fynn JA
Hon. Justice John Bosco Allieu JA
Hon. Justice Sulaiman Ahmad Bah JA

Fynn JA

Judgment dated 25th January 2024

Background

1. The facts of the case disclose that sometime in 2014 the Appellant Zubairu Kamara had sold land at Ogoo Farm to the Respondent Saidu Sesay. The Respondent paid a total of \$ 9,000 for the land. The land at Ogoo Farm was encumbered and Saidu Sesay was unable to take immediate possession and to use the land. He was chased off by rival claimants. A report was made to the Police and Zubairu Kamara was arrested and detained. Whilst in custody the appellant offered his other property at Peninsula Road Goderich as collateral for the sum paid to him.
2. At some point the respondent indicated that he wanted his money refunded. The appellant then raised Le 30, 000,000 which he offered as part satisfaction of the debt but the respondent refused to accept this amount. The Appellant later received from the respondent's solicitors notice to quit his property at Peninsula Road Goderich. The Appellant denies selling or conveying this property to anyone.

1 | Page

3. The respondent however relied on a Deed of Conveyance dated 31st December 2014 purported to have been made between Zubairu Kamara and Saidu Sesay in which the property at Peninsula Goderich is conveyed to the Respondent.
4. The Appellant took out a Writ of Summons in which he sought among other orders the cancellation of the Conveyance recently mentioned pleading it was not his act. The respondent filed a defence and counter claim asserting that he is entitled to possession of the property in the 31st December 2014 conveyance.
5. During the hearing of the action and after the testimony of the Appellant (who was plaintiff below) a motion was filed by the Appellant under order 34 of the High Court Rules 2007. The motion sought final judgment averring that during his testimony the Appellant (then Plaintiff) had made material admissions which made the respondent (then defendant) entitled to judgment upon his counter claim.
6. The motion was successful. The Judge ruled that there was no need for a full trial and that the admissions made by the appellant were enough to form the basis of judgment in favor of the respondent. Judgment was therefore entered giving the respondent (then defendant) possession of the property at Peninsula Road Goderich.

The Appeal

7. The Appellant being dissatisfied with the Learned Trial Judges's (LTJ) judgment has come to us on 6 grounds of Appeal as amended and filed on 7th May 2021. The grounds of appeal are as follows:
 - a. The Trial Judge allowed herself to have been misled in misconstruing the applicability of O34 R 3(1) & (2) of the High Court Rules
 - b. That the Learned Trial Judge (LTJ) was wrong in her judgment as she had ignored the pleadings in the matter absolutely
 - c. That the learned trial Judge failed to appreciate that the law of evidence demands that he who asserts must prove
 - d. That the Judgment is unreasonable as it ignores the pleadings and the evidence
 - e. That the judgment lacks legal reasoning
 - f. That the judgment is against the weight of the evidence.
8. The counsel on either side have filed synopsis and they also addressed the court orally.

The Arguments

Appellant

9. The appellant argues that this case is not one that is suitable to be decided under the rule dealing with admissions. He contends that even if there was an

admission it was not unequivocal and clear as is envisaged by the rules. He referred the court to several cases on this issues the majority of them being from foreign jurisdictions and some coming from first instant Judges with single Judge panels (including Markan v Markan & Others Delhi 70,97(2002, Raj kumar Chawla v. Lucas Indian Services AIR 2006 Delhi 266, Himani Alloys Ltd v Tata Steel Ltd (2011))). In the main they have been received with great respect but with persuasive effect only.

10. The appellant maintains that the conveyance of the property having been denied by the appellant there cannot truly be an admission on which the court could have proceeded to give judgment without a trial. He contends that the pleadings disclose sufficiently that there was a defence to the counter claim.
11. In furtherance of his impugning of the judgment the appellant also contends that the contract relied on in which the appellant allegedly provided his conveyance for property at Peninsula Road, Goderich as collateral for his agreement to sell land at Ogoo farm was a contract procured by force. Consent was not voluntarily given and the appellant should be entitled to extricate himself from any obligations under the purported guarantee/ collateral agreement.

Respondent

12. For his part counsel for the respondent's thrust is that the admission is that the money was received and that despite time to make good the appellant has failed to do so. He urged that the purpose of R34 of the High Court Rules is for circumstances like this when the issue is clear and the party has admitted his own liability or facts which disclose that liability without doubt. He submits that the rule is there to save court time. To avoid a long and expensive trial in situations where the court can conclude there is no need for a trial.
13. The respondent agreed further that an admission need not only be in pleadings. Relying on Ellis v. Allen 1Ch 104 pg 904, counsel submitted that the admission may be found elsewhere than in the pleadings. He urged that in the present case the appellant's testimony together with the undertaking and the conveyance a clear and definite picture can be seen which justifies the judgment now impugned.

Deliberations

14. Order 34 of the High Court Rules 2007 is intended to be used in circumstances where a full blown trial is not needed due to the fact that one party has made a material admission. The parties do not dispute this proposition at all. It is the nature of the qualifying admission that is vibrantly disputed by the parties.
15. Re Beeny (1894) 1Ch 449 quoted in the Supreme Court Practice 1999 at page 520 suggests quite clearly that the admission may be made orally. Whilst it is doubtful that admissions about a thing during oral testimony in other

proceedings will become actionable, (British Thompson –Houston Co v. British Insulated & Helsby Cables (1924) 2Ch 160), no such doubt is cast on admissions which are made in the cause of proceedings for and about the matter which is admitted.

16. Admissions may be made in pleadings "or otherwise". The reference to "otherwise" in the Order 34 suggests that the possibilities in which admissions may be made are not limited to pleadings. It is our opinion that the rule grants the court discretion to decide whether the admissions are such that judgment may be based upon them reflective of the Justice of the dispute between the parties.

17. In this case the admission is allegedly found

- i) in court testimony in which the appellant admits that he received \$9,000 from the respondent for land which was not received
- ii) pleadings which disclose that the money was received for the said purpose and that there was a complete failure in return consideration
- iii) acknowledgement that a document was signed which promised to substitute land at Goderich in the failure to refund the money received and in

18. In each of these the appellant explains the admission away. He suggests he had told the respondent that the land was encumbered. He also insists that he only signed the collateral agreement to secure his own release from detention. He does not deny receiving the money and would want the court to think that he wanted to be released but had no intention to provide security for the respondents' money.

19. The appellant argues that the main documents relied on by the respondent were not freely and voluntarily executed. He insists that duress was present especially at the police station and this would make invalid any documents of guarantee signed at that time. He cited several cases in this regard.

20. It is trite law that where consent is not genuine its value is diminished greatly. Its absence when required usually leads to a document being voidable or void. Even in criminal law where consent is a required element but is found to be lacking or counterfeited the case begins to crumble. Counsel reminded us that:

"...duress that is said to invalidate gifts contracts or deeds made or entered under such duress is either actual or threatened violence to the person or the threat of imprisonment or such moral coercion as a threat of dishonour or violence to a husband or wife or child"

21. It should be noted however that in civil cases there is a constant weighing of probabilities. Also the burden of factual proof keeps swinging between the parties. Even though consent is found to be lacking this may not necessarily

conclude the whole of the dispute between the parties. It is important for the court to be aware as to whether there are other matters of importance in the case and upon which a proper judgment could be found the consent notwithstanding. Put differently will the resolution of other matters affect the swing of the pendulum?

22. One has to ask in the present circumstances what truly the pith of this dispute is. Is it the house at Goderich or is it the Appellant's failure to deliver on the land purchase transaction? If it is the latter should it then not be expected that the appellant ought to have been given a genuine guarantee for this obligation? Should the seller be allowed to give a guarantee and be allowed to withdraw it without a fitting replacement?
23. The accuracy of the consent in the guarantee cannot be the be all and end all in this case. Even though the Appellants may be correct on this issue of consent their sincerity or the lack thereof with respect to their obligations to the other side, as disclosed in the pleadings, has not failed to make an impression on the court.
24. The Appellant's have also drawn the court's attention to the huge disparity in value that exists between the value of money which they received for the purchase of land as compared to the value of the property at Goderich which the respondents now have in lieu of the amount of money they paid over. Counsel has submitted that his client's Peninsula Road Goderich property is far, far more valuable than \$9,000 which is the amount that they had received.
25. This court is of the opinion that the price which one should pay for dishonest and insincere conduct in the property landscape in Sierra Leone must be made very high and unpleasant if that space is to be stabilized at all. That notwithstanding the Court is very mindful that it has to do justice to all manner of persons regardless of their failings. We will therefore not allow ourselves to blindly enforce one set of legal principles without taking cognizance of the whole of the circumstances of a case.
26. The court has had to ask itself, whether a clear admission has been made. The admission as far as it relates to the \$9,000 and the purpose for which the money was paid and received is very clear. It is expressed not implied. The defendant has explained his attempts to make refund in part (Le 50,000,000) through a solicitor who no longer works for the respondent. It should be noted that the Solicitors receipt is clear that he only accepted the money conditional to the instructions which he would receive later. The court has to conclude from the matters which followed that no instructions were given to that Solicitor to receive the money. This leaves us with the admission remaining intact.

Conclusion

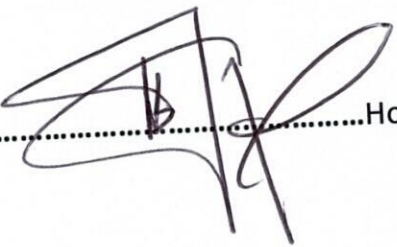
27. The courts and principles of law should not be abused and or adapted to become vehicles or shields for fraudulent or questionable conduct. Courts should be alert and are expected to take those steps which will achieve the overarching purpose of law which is the delivery of justice.
28. This court hears appeals by way of rehearing (see Rs 9& 31 of The Court of Appeal Rules 1985). It needs to be stressed that the court's primary duty is to deliver a just outcome in every given case. The court is therefore empowered in Rule 32 amongst others to give any judgment as it may deem just in the circumstances notwithstanding the specifics of what the parties may have requested of the court. This rule gives the court latitude to sufficiently evaluate the facts of the case and come to its own conclusions always being mindful that the trial court's findings of fact should not be done away with lightly.
29. The various affidavits in the several motions below, which now form part of our records as well as the various submissions of counsel on either side, provide us with a fuller picture of the dispute between the parties as already discussed. We have no doubt that money is owed for landed property which property has not been conveyed to the respondent. The court very strongly deprecates the conduct of selling encumbered land to unsuspecting purchasers. The court has no evidence before it, on which it can rely for the proposition that the seller of the Ogoo Farm property had disclosed its encumbered state. The court does not believe that the seller now appellant had made that material disclosure.
30. The court is left to ponder whether the Appellant should not by now have returned the plaintiff's money with interest? It is ~~my~~ ^{the court's} opinion that a reasonable person would have taken significant steps to return the other party's money which is with him. This should have been a more just and peaceable endeavour than the present action which has led to this appeal. The Appellant fails to impress the court as an innocent party in these circumstances; he has not come to us with clean hands.
31. Too much time has passed since the money was paid for the land. This court is of the opinion that it has sufficient facts before it to enable it to make conclusive orders based on its findings in this dispute and on the grounds of appeal as follows:
- The Court disagrees that the Trial Judge allowed herself to be misled in misconstruing the applicability of O34 R 3(1) & (2) of the High Court Rules
 - The court holds that the Learned Trial Judge (LTJ) had not ignored the pleadings relying however on the admissions of the appellant which made further enquiries academic .

32. The other grounds of appeal must fail and the court finds for the Respondent and will order that the Appellant should restore in full the amount received plus interest failing which the collateral shall be forfeited.

The Court orders therefore that:

The Judgment of the Court below is hereby reversed and is wholly replaced with the following:

- a. The Appellant shall no later than 20th February 2024 pay to the Respondent:
 - i. the sum of USD9, 000
 - ii. Interest on the USD9,000 at the rate of 45% per annum from the 9th October 2014
 - iii. damages in the sum of USD 1,500
- b. The Respondent upon receipt of the payments above shall immediately vacate and give up possession of property at Peninsula Road, Goderich Village subject matter of this action
- c. Upon the Appellant failing to comply with (a) above, the appellant shall forfeit property at Peninsula Road, Goderich Village and the Master and Registrar shall forthwith convey that property to the Respondent
- d. Liberty to apply
- e. Costs of the action below and of this appeal are awarded to the Respondent to be taxed if not agreed


.....Hon. Justice Reginald Sydney Fynn JA

I Agree:

Hon. Justice John Bosco Allieu JA.....

I Agree:

Hon. Justice Sulaiman Ahmad Bah JA.....