

C.C. 236/08 2008 F. NO. 12
IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)

BETWEEN: -

PA. ALIMAMY FORNAH
 AMADU SESAY
 IDRISSE THORONKA
 AMARA SESAY

- PLAINTIFFS

AND

ALAHAJI OMAR SALAM
 TAYMOND MAX BANGURA
 GBASSAY KAMARA
 MUSA KARGBO

- 1ST DEFENDANT
 - 2ND DEFENDANT
 - 3RD DEFENDANT
 - 4TH DEFENDANT

D. G. Thompson Esq. for the Plaintiffs
A. Macauley Esq. for the Defendants

JUDGMENT DELIVERED THE 31ST DAY OF October 2011.

The Plaintiffs herein have issued a writ of summons dated the 17th June 2008 against the Defendants in which they seek the following reliefs:

1. A declaration of title of all that piece of parcel of land situate lying and being at Upper Kaningo Area Juba Hill Freetown in the Western Area of the Republic of Sierra Leone.
2. Recovery of possession of all that piece of land situate lying and being at Upper Kaningo Area Juba Hill Freetown.
3. Damages for trespass to the said land.

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4. An injunction to restrain the Defendants their servants, agents or privies from entering or remaining on the said land situate lying and being at Upper Kaningo Area, Juba Hill, Freetown.
5. Cancellation of any other conveyance or conveyances or documents of title to the said land.
6. Such further or other orders or relief that the court may consider just in the circumstances.
7. Costs.

In the particulars of claim the Plaintiffs averred that they are seised of and otherwise entitled to the piece of land situate at Upper Kaningo Area Juba Hill Freetown by virtue of a statutory declaration dated 30th May 2007 duly registered as No 45/2007 at page 146 in Volume 50 of the Books of Statutory Declarations kept in the office of the Registrar General Freetown. The said piece of land is delineated on survey plan LS 1513/95 dated 15th December 1995.

The Plaintiffs further averred that the Defendants have wrongly entered their land making claims to the said land and building makeshift structures thereon.

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That they have refused to vacate the said land inspite of several verbal demands and warnings made by the Plaintiffs for them to do so. That the Plaintiffs have reported the matter to the tribal heads of the area but the Defendants have resorted ^{to} violence ~~to~~ resulting in a number of criminal summonses being issued in the Magistrates courts in Freetown. That the Defendants have threatened to continue their acts of trespass on the land unless restrained by this court. The Plaintiffs consequently issued the writ of summons herein against the Defendants claiming the reliefs already mentioned.

The Defendants entered appearance and filed a defence and counterclaim in which the 1st Defendants claimed title to the land in issue by virtue of a Deed of Conveyance dated 17th April 1986 made between **FARRANT DAVIES** and **CLEMENTINA YAMBASU** as vendors and the 1st Defendant as Purchaser and registered as No 520/86 at page 110 in Volume 386 of the record Books of Conveyances kept in the office of the Registrar General Freetown. The 2nd, 3rd and 4th Defendants are on the land by leave of the said 1st Defendant. They claim to be lawfully on the land and deny having trespassed on the Plaintiff's land and having caused loss or damage.

The Defendants counterclaimed for a declaration of title of all that land situate lying and being at Marimbo Water, Kaningo Area Juba Hill Freetown described in the 1st Defendant's survey plan LS 3605/83; recovery of possession of the said portion occupied by the Plaintiff;

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and injunction restraining the Plaintiff's whether by themselves, their servants agents or privies from continuing to trespass thereon or from selling leasing disposing or in any other way from dealing with the said land; an order that the Statutory Declaration dated 30th April 2007 made by the Plaintiff's aforesaid be expunged from the records of the Registrar General, Freetown.

The Plaintiff's filed a Reply and Defence to the Counterclaim and denied that the 1st Defendant is the fee simple owner of the land in issue. They also denied trespassing on the said land as alleged.

Directions~~ess~~ were given for the conduct of the trial thereafter and the matter entered for trial after due compliance of the directions.

At the trial, the 1st Plaintiff, **ALIMAMY FORNAH** testified as PW1. He identified his statutory declaration Exh "B" and told the court that the land he is claiming was originally Water Works Forest Reserve and that they wrote to the Divisional Forest Officer, Western Area at Tower Hill for the land to be released to them for developmental purposes. He stated that they granted their request. He identified the letter from the Water Works Forest Reserve. Exh "A".

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The witness further told the court that prior to their request they had been on the land, farming and burning coal thereon and that after their request was granted they made a statutory declaration establishing their possessory title to the land. He stated that they are now claiming ownership of the land and he asked the court to grant the declaration prayed for. His witness statement was tendered in evidence as "E" to be used as his evidence in chief.

Under Cross-examination the witness PW1 said that they took the necessary action to have the lands released to them by the Ministry of Lands. He admitted that the Ministry of Lands did not give them any letter of allocation in respect of the land. He also admitted that he was a defendant in a matter in the Magistrate Court where he was convicted and sentenced to a term of imprisonment, but that the sentence was quashed in the High Court and the 1st Defendant ordered to pay compensation to them which he has not done.

The 2nd Plaintiff, **IDRISSA THORONKA** next testified and told the court the other Plaintiffs are his uncles and that they are the owners of the land in issue. He also identified the statutory declaration Exh "B" and he tendered his witness statement as Exh "F". It was very much along the same lines as the 1st Plaintiffs.

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He was cross-examined on his testimony.

The next witness was the 4th Plaintiff, **AMARA SESAY PW3** and his witness statement which was used as part of his evidence in chief told the same story as the other two Plaintiffs. He also was cross-examined and that ended the case for the Plaintiffs.

The 1st Defendant, **ALHAJI OMAR ADBUL SALAAM** testified on his own behalf and tendered his witness statement as Exh "H" which was used as his evidence in chief. He stated that he is the fee simple owner of the land in issue and he identified his title deeds - Exh "C" which is a deed of conveyance. He stated that between 2002 and 2004 the Plaintiffs started trespassing on his land inspite of repeated warnings for them to desist from their wrongful acts. He stated that he had to institute criminal proceedings against them for their trespass which led to them being convicted. He said that notwithstanding their conviction they continued their acts of trespass and he maintained that the suit land is his and he asked the court to grant the reliefs prayed for in his counterclaim.

The witness was cross-examined. He told the court that his predecessor in title was **SELENA PEARSON**.

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He admitted that he did not see his predecessor in title's title deeds but was only shown the Letters of Administration granted in respect of the estate of **CLARIS CLEMENTINA DAVIES** on 17th November 1980, Exh "J". He stated that he bought a total of 245 acres from them. He also admitted that he did not see any title deeds in the name of **CLARIS CLEMENTINA DAVIES** but that he was shown a survey plan of the whole property – Exh "K". He stated that it was based on the Letters of Administration and the survey plan that his conveyance was prepared.

That ended the case for the defendants.

Only counsel for the Plaintiff submitted written closing address.

The Plaintiffs claim is primarily for a declaration of title to certain land situate at Upper Kaningo Area, Juba Hill Freetown. It has been well established that in a case for a declaration of title the Plaintiff must succeed by the strength of his title and he must prove a valid title to the land. This principle was clearly laid down in the celebrated Supreme Court case of **Seymour Wilson vs. Musa Abess** (1981). The Learned Chief Justice, Mr. Justice Livesey Luke had this to say "So if the Plaintiff claim a fee simple title he must prove it to entitle him to a declaration of title".

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The Plaintiffs therefore in this case must prove a fee simple title to enable them to be granted the declaration they pray for. The evidence they rely on is a memorandum from the Divisional Forest Officer Western Area addressed to the Director of Surveys and Lands informing him that a piece of land situate at Malama in the Freetown Water Works Forest Reserve has been released to the 1st Plaintiff and another for development purposes. They are requested to take up the matter with authorities of Survey and Lands. It is apparent that the piece of land "released" to them is State Land. Now the procedure relating to the granting of State Lands is quite specific and provision therefor is laid down in the State Lands Act, No 19 of 1960. There is no evidence before the court that this procedure has been followed.

It is necessary to look at the Statutory declaration, Exh "B" on which the Plaintiffs rely as proof of their possessory title to the land. Let me quote the relevant recitals therein

- "2 That by letter dated 20th March 1995 land situate at Upper Kaningo Area Juba Hill enclosing an area of 19.3877 acres was released to us by the Government of Sierra Leone Forestry Division
- 3 That Ministry of Lands had allowed us to survey the said land and develop same which we have done as is evidence by survey plan LS 1513/95---

6. That we have heard of no adverse claim by any persons on the land which hitherto this declaration belonged to the Government of Sierra Leone”.

From the above recitals the Plaintiff themselves disclosed that the land they are claiming is State Lands. They have not produced one iota of evidence of how they obtained the fee simple of the said land. Surely it is not enough for them merely to have the land surveyed to acquire the fee simple of State Lands when there are statutory requirements provided to acquire same.

Further, no witness from the Ministry of Lands, the Department of Surveys and Lands or even a Surveyor has been called to testify how the area of 19.3877 acres marked in the Plaintiff's survey plan was arrived at or demarcated. No further correspondence from the Director of Surveys in response to the letter from the Divisional Forest Officer has been produced to prove that steps were taken by that Department to follow up the request.

Further the Plaintiffs have merely produced a statutory declaration sworn to by persons who have no connection with or authority in dealing with or disposing of State Lands. Indeed, it is trite law that a statutory declaration is not a document of title.

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It does not by itself establish the fact of a possessory title to entitle a person basing his claim thereon to a declaration of title. See **Bright vs. Roberts**, 1964-66 ALRSL 156 adopted by Renner Thomas, CJ. In **Sorie Tarawallie vs. Sorie Koroma** {2007} unreported Supreme Court decision.

In the circumstance the Plaintiffs have not proved that they are the fee simple owners of the land in dispute to enable them to obtain the declaration of title they seek.

Let me turn to the counterclaim by the 1st Defendant for a declaration of title to the suit land. He must himself succeed by the strength of his title. In his case the 1st Defendant has produced a deed of conveyance which disclose that he derived title from one **SELENA PEARSON** who died in 1963 seised of certain land situate at Kaningo Juba Hills Freetown which she devised in her last Will and Testament to **CLARIS CLEMENTINA DAVIES**. She died in 1979 and Letters of Administration in respect of her estate, Exh "J" were granted to **FARRANT DAVIES, ENID JONES** and **CLEMENTINA YAMBASU** her lawful children.

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ENID JONES died in 1984 leaving **FARRANT DAVIES** and **CLEMENTINA YAMBASU** who are the 1st Defendant's vendors. It is clear from this narration elicited from the 1st Defendant's title deeds that his predecessors in title have established that they have title to pass on to him. The 1st Defendant has therefore proved a better and valid title to the suit land than the Plaintiff. He is therefore entitled to the declaration of title he claims. The other Defendants have disclosed that they are on the land having been put there by the 1st Defendant. The 1st Defendant has succeeded in his claim for a declaration of title and judgment is given in his favour. The Plaintiffs' claims are therefore dismissed. I make the following Orders

1. A declaration that the 1st Defendant is the fee simple owner of all that land situate lying and being at Marimbo Water, Kaningo Area Juba Hills Freetown described in his Deeds of Conveyance and delineated on his survey plans LS3605/83 dated 6th January 1984 and LS 524/90 dated 12th April 1990 attached thereto.
2. Recovery of possession of the said portion occupied by the Plaintiffs.

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3. An injunction restraining the Plaintiffs whether by themselves, their servants, agents, privies or howsoever otherwise from continuing their trespass upon the said land or from leasing, selling, disposing or in any other way dealing with the said land.
4. That the Statutory Declaration dated 30th April 2007 and registered as No. 45/2007 at page 146 in Volume 50 of the record book of Statutory Declaration kept in the office of the Registrar general, Freetown be cancelled and expunged from the said records.
5. Costs of the action to the Defendants to be taxed if not agreed upon.

A. Showers

SIGNED: - A. SHOWERS

31/10/2011

JUSTICE OF COURT OF APPEAL