

C.C. 530/2000 2000 M. NO. 27
IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: -

DR. MOHAMED A. MANSOUR

- PLAINTIFF

AND

MADAM JUE JALLOH
 CHIEF SORIE SANKOH
 CHIEF ALIMAMY KARGBO
 REV. A. A. BANGURA
 SERRY KAMARA
 ALLIEU SANKOH

- 1ST DEFENDANT
 - 2ND DEFENDANT
 - 3RD DEFENDANT
 - 4TH DEFENDANT
 - 5TH DEFENDANT
 - 6TH DEFENDANT

E. A. Halloway Esq. for the Plaintiff
 Miss M. J. Tucker for the Defendants

JUDGMENT DELIVERED THE 31ST DAY OF October 2011.

I should commence the judgment herein by stating that this matter was assigned to me for hearing after it had been very much part heard by Mr. Justice J. E. Massally now deceased. Four witnesses for the Plaintiff had already testified before Mr. Justice Massally. It was therefore decided that the records of the action before the said learned Judge would be adopted and the matter would proceed rather than recommence *de novo*.

The action was commenced by writ of summons dated 21st August 2000 seeking against the Defendants jointly and severally declaration that the Plaintiff is the fee simple owner of all those pieces of parcels of land situate off Main Motor Road, Calaba Town Wellington enclosing an area of 1.474 acre and 1.017 acre respectively, recovery of possession of the said pieces of land, damages for trespass,

Injunction restraining the Defendant by themselves their servants or agents from remaining on or continuing in occupation or possession or trespassing upon the said lands and costs.

In his particulars of claim the Plaintiff averred that he is the fee simple owner of the said lands as described in his Deed of Conveyance dated 19th July 1990 and duly registered as No. 972 at page 19 in volume 140 of the Books of Conveyances kept in the office the of Registrar General Freetown and as delineated on Survey Plan LS 1476/90 as plot "A" and plot "B".

He further averred that after the purchase of the said pieces of land he put a caretaker, one **EDWARD KARGBO** on the land and the said **EDWARD KARGBO** and his brother **SAIDU F. KARGBO** lived on the said land until the death of the said caretaker in 1998. The said caretaker and brother lived on the said land without any disturbance or interruption and even after the death of **EDWARD KARGBO** his brother **SAIDU F. KARGBO** continued in occupation thereof until the rebels invaded Freetown in January 1999 when he had to flee from Freetown.

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The said **SAIDU F. KARGBO** returned to the land in April 1999 and discovered certain beacons on the land. He reported this discovery to the Plaintiff's solicitor by letters dated 3rd November 1999 and 9th February 2000. The 2nd and 3rd Defendants through one **A. K. KAMARA**, Secretary to the Calaba Town Tribal Chief's and Elders Committee wrote a letter dated 10th May 1999 to the Plaintiff's solicitor requesting permission for the Plaintiff's land to be used to provide shelter for some residents in Calaba Town during the rainy season. Sometime thereafter between 1st February 2000 and 19th June 2000 the Defendants by themselves, their servants or agents jointly and severally were said to have wrongfully entered upon the Plaintiff's land and took possession of same erecting structures thereon. The Plaintiff's solicitor wrote the Defendants letters dated 22nd February 2000 and 27th June 2000 respectively informing them that the said lands are the bona fide property of the Plaintiff and warning them to desist from trespassing thereon but the Defendants still continued their trespass on the Plaintiff's land. Consequently he instituted the present action against them.

The Defendants entered appearance and filed a defence and counterclaim in which they denied that the Plaintiff is the fee simple owner of the said land described in his statement of claim.

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They averred that the 2nd Defendant is the fee simple owner of the said piece of land by virtue of his statutory declaration dated 18th January 1977 registered as No 2/77 in volume 13 at page 110 of the Books of Statutory Declarations in the office of the Registrar General, Freetown. They further pleaded that the other Defendants are on the land by virtue of having purchased their lands from the 1st Defendant, the owner of the said land. They averred that the 1st Defendant has always been in possession of the said land since 1977. They denied placing new beacons on the said land and averred that the beacons thereon had been fixed since 1976 when the survey plan LS 224/76 was signed by the Director of Surveys and Lands. They further denied ever requesting from the Plaintiff the use of the land as they had no need to since the land belonged to the 1st Defendant. They further denied wrongfully entering the Plaintiff land.

The Defendant counter claimed that the Plaintiff wrongfully and unlawfully entered the Defendant's land, brushed the land and destroyed live fruit trees and beacons erected thereon. They claimed special damages for the loss they allegedly suffered, damages for malicious damage, damages for trespass and injunction restraining the Plaintiff by himself his servants or agents from further trespassing on the said land.

The Plaintiff filed a reply and defence to the counterclaim in which the allegations contained in the counterclaim were denied.

At the trial the first witness for the Plaintiff was **MR. EKUNDAYO PRATT**, a clerk at the office of the Administrator and Registrar General who tendered in evidence the Plaintiff's Deed of Conveyance dated 19th July 1990 between **ALIMAMY T. B. SAAD ADAMS** as Vendor and the Plaintiff as purchaser. The Deed of Conveyance was tendered as Exh "A". He also tendered as Exh "B", Deed of Conveyance dated 3rd February 1975 between **ALHAJI BABA ALLIE**, as Vendor and **MOHAMED ABASS ALIE** as purchaser and Exh "C", Deed of Conveyance dated 5th February 1975 between **MOHAMED ABASS ALLIE** and **ALIMAMY T. B. SAAD ADAMS**.

A second witness from the office of the Administrator and Registrar General, **ROLAND BRIMA SAMURA** tendered in evidence as Exh 'D' the statutory declaration of one of the Plaintiff's predecessors in title **ALHAJI IBRAHIM MOMODU ALIE** sworn to on 20th June 1968. The witness also tendered in evidence the statutory declaration of the 2nd Defendant **SORIE SANKOH** sworn to on 25th January 1977 as Exh "E".

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The Plaintiff's surveyor, **MR. ERIC C. A. FORSTER PW2** next gave evidence on his behalf. He testified that he was given Exh. "A" – Exh "E" and the survey plan of the 1st Defendant **MADAM JUE JALLOH** to carry out the investigation of any encroachment on the Plaintiff's land by the Defendants. He said he went to the land and was able to identify all the respective plots of land and their positions in the exhibits given to him. He reduced his findings in writing in a report which he submitted to the Plaintiff. He stated that the three properties concerned are separate and distinct. He stated that he saw only two beacons Q88/75 and Q 87/75 and they formed the western boundary and that on the eastern side of the Plaintiff's property is a wall and that a panbody structure was already erected on the property. He continued that the properties in Exh "A" to Exh "D" are all in the same area but that in Exh "E", the 2nd Defendant's statutory declaration is a distance of 3000 feet south westerly from the properties in Exhs "A, B, C and D".

The witness PW2 was cross-examined on his evidence and he replied when questioned that the site plan in Exh "A" stated that the land was off Main Motor Road Calaba Town Wellington and that the site plans in Exh "B" and Exh "C" carry the same LS number, LS 176/75 and date 30th January 1975.

The third witness for the Plaintiff was **JOHN NATHANIEL ARISTOBULUS COKER**. He was a Surveyor attached to the Department of Surveys and Lands and he told the court that he was assigned by the Director of Surveys to investigate an alleged trespass on the Plaintiff's land which is situate off Main Motor Road Calaba Town Wellington. He stated that he set up a team of three surveyors and he questioned the Plaintiff and the 1st and 2nd Defendants on the site. He said he had with him the site plans of the parties and he tendered the file he kept relating to the investigation as Exh "G1-"G9. He told the court that the beacons on the land were found on the Plaintiff's plan LS 1476/90 and he identified Exh "A and Exh "G1 as the same. He stated further that the beacon nos in question are Q 87/75, Q 88/75, Q 371/74 and he observed that they were broken. He did not see the other beacons on the ground. He stated that he measured the distances on the ground and found them to confirm with those on the plan in Exh "G1". He said he then asked the Defendants to show him land marks to identify their own but they were not able to do so but he was shown an unfinished building in the centre of the Plaintiff's land by the 1st Defendant.

He went on to state that he later plotted the three plans Exh "G1", the Plaintiff's plan, Exh "G2" the 2nd Defendant's statutory declaration and Exh. "3", the 1st Defendant's site plan and according to his findings LS2244/76 is 1100 feet away from LS 2476/90 and the 1st Defendant plan LS 2365/99 is a subdivision of LS 2244/76.

He stated that using the co-ordinates LS2365/99 falls outside LS 2244/76.

The witness referred to Exh "G6" which is a memorandum dated 6th July 2000 from the Director of Surveys and Lands to the Director of CID and is a report on the alleged trespass on Plaintiff's land. He stated that the findings in the report substantially confirmed his report. When cross-examined the witness admitted that his report was not before the court as he had failed to produce it.

SAIDU F. KARGBO, the Plaintiff's caretaker was the next witness. He told the court that he came to know the Plaintiff when he lived with his late brother, **EDWARD SANTIGIE KARGBO** at a piece of land situate at Old Blackhall Road, Calaba Town by Foamaco Factory. He stated that his late brother was the Plaintiff's caretaker in respect of the said land. He further stated that he also came to know the Defendant after his brother died and he succeeded him as the Plaintiff's caretaker. He told the court that in May 2000 he took some men to clear the bushes on the land and he discovered some new beacons in the middle of the land and he reported this discovery to the Plaintiff and he also made a report to the chief at Calaba Town.

The matter was adjourned at this stage of the proceedings and there followed a series of adjournments when no work was done until the trial Judge Mr. Justice J. E. Massally sadly passed away.

The Plaintiff thereafter filed a Notice of Motion dated 25th February 2005 praying for the Defendants to be committed to prison for their contempt of court in failing to comply with an interim injunction restraining them from remaining or continuing in occupation or possession or trespassing on the said land. The said application was assigned to me for hearing and after hearing counsels submissions, the application was refused and it was ordered that proceedings before the previous Judge be adopted and for the Plaintiff to proceed with his case.

The Plaintiff was then called to testify. He told the court that he knew the Defendants as the people who encroached on his land. He recalled that he was informed of the encroachment on his land by his caretaker, **SAIDU KARGBO** who had earlier testified before the court and that as a result of that information he made a report at the Kissy Police Station. He said he was asked to make a statement together with his caretaker and that the Defendants were also invited to attend at the Police Station which they did. He told the court that the Police then addressed a letter to the Director of Surveys and Lands asking him to investigate the alleged trespass on the Plaintiff's land and report his findings. He said the Director then sent a team of three Surveyors to investigate.

He stated that the team consisted of **MR. JOHN ARISTOBULUS COKER**, **MR. BOB LUCAS** and **MR. JOHNSON**. He identified Exh "G6 as the report of the survey carried out. He also identified his Deed of Conveyance, Exh "A" and he told the court that after he had purchased the land from his vendor, **MR. ALIMAMY A. T. SAAD ADAMS** in July 1990 he put a caretaker thereon and for the period 1990 to 1999 no one challenged his ownership of the land. He also identified his predecessor in title Deed of Conveyance Exh "D1" and observed that the survey plans in his predecessor in title conveyance and the survey plan in his own conveyance Exh "A1" are the same. He concluded that his predecessors in title and himself have been on the land for a period of about 50 years.

The witness further testified that when he visited the land he observed that the Defendants have encroached on his land. He noticed that his beacons had been broken; his panbody structure destroyed and notice to trespassers removed. He said he also saw a panbody structure belonging to the 6th Defendant **ALLIEU SANKOH** as well as a concrete building under construction belonging to the 1st Defendant on the land.

Further in his testimony the Plaintiff referred to the report made by the team of three surveyors, Exh. "G10" and told the court that the contents of the report were brought to the notice of the Defendants but they did not cease their acts of trespass on his land.

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He disclosed that he instituted proceedings against them in the Magistrates Court for malicious damage and trespass but these proceedings were stayed because of the present High Court matter. He told the court that he hired the services of a Licensed Surveyor, **MR. E. C. A. FORSTER** to investigate any encroachment on his land. He stated the Surveyor prepared a report which had been tendered as Exh "F". He said that he then instructed his solicitor to write to the 2nd Defendant warning him to cease his trespass on the land. The letter was tendered as Exh "G11". He stated that the Defendants continued their trespass on his land and he is now asking the court to grant the reliefs prayed for in his writ of summons.

The witness was cross-examined on his testimony. He maintained that the land described in his predecessors in title conveyances is the same as the land described in his conveyance notwithstanding that the land in his site plan is described as situate off Main Motor Road Calaba Town and that in his predecessors site plan is described as situate at Main Motor Road Calaba Town. He denied selling any portion of his land to anyone and admitted holding meetings with the Defendants with a view to settling the issue amicably. He stated that no negotiations took place at the meetings.

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At this stage of the proceedings the licensed surveyor, **MR. E. C. A FORSTER PW2** was recalled to testify and clear some doubts which arose from the cross-examination of the Plaintiff. He confirmed that the lands described in the Plaintiff predecessors in title deeds and the Plaintiff's own title deeds as the same and maintained that the location is the same notwithstanding it is described as being situate at Main Motor Road Calaba Town in one title deed and described as being situate off Main Motor Road Calaba Town in the other. He confirmed that the Plaintiff's land is the same as the land in the estate of the late **MOMODU ALIE**.

That ended the case for the Plaintiff.

The 2nd Defendant, **CHIEF SORIE SANKOH DW1** was the first witness on behalf of the Defendants. He testified that he knew the Plaintiff, **DR. MOHAMED MANSOUR**. He also told the court that he owned land situate off Main Motor Road Calaba Town and that the land was left to him by his father. He stated that he was born on the land and it was his father's farm land where they grew cassava and groundnuts even from his childhood days. He said that before his father died he handed over the land to him and told him that the land now belonged to him and he set about preparing statutory declaration in 1976 and had it registered in 1977.

He stated that he built a panbody structure on the land where he has lived and no one challenged his ownership of the land until the Plaintiff entered the land and later instituted court actions against him.

The witness further told the court that he sold portions of the land and the 1st Defendant was the first person to whom he had sold the land and that he had sold portions to some of the other Defendants. He stated that the Plaintiff demolished all the structures he found on the land. He stated that there are presently over 10 houses which are all permanent structures. He mentioned a church, school and several other houses all over the land. He told the court that the 4th Defendant, **REV. KARGBO** owns the church and the school and that it was the Plaintiff who has sold portions of the land to the various persons who have built on the said land.

He further told the court that moves were made to settle the matter out of court and that one **ALHIAJI ADAMA** had tried to negotiate the settlement and had suggested that they should divide up the land and they had indeed divided it but after the division of the land, the Plaintiff built on his own portion and then went onto the witness' own portion so that he took over the whole land. He said that in 2004 the witness solicitor, Mr. Serry Kamal wrote a letter in that regard to the Plaintiff which he tendered as Exh "H".

The witness DW1 was cross-examined on his testimony and he confirmed that the land he is claiming is situate off Main Motor Road Calaba Town and that he prepared a statutory declaration to establish ownership of the land. He stated that it was the Plaintiff who had encroached on his land.

The cross-examination of the 2nd Defendant was adjourned but the witness failed to turn up to conclude his testimony and his cross-examination was deemed closed.

That ended the case for the Defendants.

Both counsel submitted written closing submissions. The Plaintiff's claim is primarily for a declaration that he is the fee simple owner of the piece of land described in his deed of conveyance. It is well established that in an action for a declaration of title the Plaintiff must succeed by the strength of his title. He must prove a valid title to the land. In this case the Plaintiff has produced the title deeds of his predecessors in title and himself. In the celebrated 1981 Supreme Court decision in the case **Seymour Wilson vs. Musa Abess**, Mr. Justice Livesey Luke C. J stated as follows

"But in a case for a declaration of title the Plaintiff must succeed by the strength of his title. He must prove a valid title to the land. So if he claims a fee simple title he must prove it to entitle him to a declaration of title. The mere production in evidence of a conveyance in fee simple is not proof of a fee simple title.

The document may be worthless. As a general rule the Plaintiff must go further and prove that his predecessor in title had title to pass to him".

The question therefore which arises is whether the Plaintiff has successfully proved that his predecessors in title had title to pass on to him. The evidence is that the Plaintiff bought the land in 1990 from **ALIMAMY ADAMA SAAD ADAMS** who in turn had bought the land from **ABASS MOHAMED ALLIE** in 1975. **ABASS MOHAMED ALLIE** had himself bought the land from **ALHAJI BABA ALLIE** also in 1975. There is in evidence a statutory declaration sworn to by the said **ALHAJI IBRAHIM ALLIE** on 20th June 1968. The said **ALHAJI IBRAHIM ALLIE** swore in the said statutory declaration that he had been in undisturbed possession of the land described therein since March 1954. The plaintiff has therefore shown evidence that his predecessor in title had been in undisturbed possession of the land in issue since 1954. There is clearly evidence that he had title to the land which he passed on to the Plaintiff.

The Defendant on his part produced his statutory declaration dated January 1977 in which he declared that the land originally belonged to his father who had been in possession thereof since 1910 and occupied it up to his death in 1976.

Counsel for the Defendant has submitted that an important issue for determination is whether the land claimed by the Plaintiff and the land he claims the Defendants encroached on are one and the same. She submitted that from the evidence adduced the Plaintiff and his licensed surveyor have failed to establish that it is one and the same land. Her reason for this submission is that the location of the land in the Plaintiff's site plans and those of his predecessors in title is stated to be *at* Main Road Calaba Town whereas the location in the site plan in the Defendants statutory declaration is said to be *off* Main Road Calaba Town. Counsel for the Defendants therefore concluded that the words *off* and *at* used to describe the lands cannot be referring to the same land. She went on to submit that a piece of land *at* Main Road Calaba Town and a piece of land situate *off* Main Road Calaba Town cannot refer to the same piece of land.

In contrast to this submission which is based on semantics the Plaintiff's Licensed Surveyor who went on the land and from his evidence confirmed that the land described in the conveyances is the same notwithstanding that it is described in the title deeds differently. Let me quote the relevant portion of the Licensed Surveyor, **MR. FOSTER'S** report Exh. "F".

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The report which is addressed to the Plaintiff is headed as follows:

**ENCROACHMENT REPORT ON YOUR PROPERTY
SITUATED OFF MAIN MOTOR ROAD, CALABA
TOWN WELLINGTON.**

I am pleased to submit to you this **REPORT** on the encroachment of your property situated off Main Motor Road Calaba Town Wellington.

Report proved that your property as shown by LS 1476/90 covering an area of 2.491 acres is in the Estate of **ALHAJI IBRAHIM MOMODU ALLIE** (Decd) in Calaba Town Wellington ---"

It is my view that the report of the licensed surveyor and his oral testimony clearly establish the identity of the Plaintiff's property. He visited the land and was able to see at least two beacons on the ground namely Q 88/75 and Q 87/75 which appear on the Plaintiff's site plan. His conclusion after carrying out his investigation is that there has been an encroachment of the Plaintiff's land by the Defendants.

I must say that the Defendants have failed to produce any evidence contradicting the findings of the Plaintiff's surveyor. In the case of **Frederick Max Carew vs. Dr. P. K. Lavahun** an unreported decision of the Supreme Court in 2010, Mrs. Justice V. A. D. Wright, JSC stated as follows

“In a claim for a declaration of title, it is of vital significance that there is certainty of the land in question. The onus, and it is a heavy one of establishing the identity of the suit land is on the person making the claim. There are various ways of doing this. It can be done by a clear description of the land, including salient features of the land so that any surveyor acting on the description should be able to produce an acceptance plan of the suit land see **KWADZO VS. ADJEI** {1944} 10 WACA 274. Where the parties in dispute know and are at ad idem as regards the identity of the land in dispute, there is certainty, as to the suit land and no surveyors plan is necessary --- However, perhaps a preferable and better way of proving the identity is by filing a surveyor's plan of the area claimed”.

Where the Defendants are disputing the identity of the land in issue it is therefore incumbent on them to produce a surveyor's plan of the area claimed to be encroached upon. This they have failed to do. The Defendants have counterclaimed for a declaration of title.

The onus is equally on them to establish the identity of the property particularly where their main contention is that the Plaintiff is claiming land which was not sold to him by his predecessor in title. The Defendants must discharge the burden of proving the identity of the suit land. Let me again refer to the **Frederick Max Carew** case (supra) where Mrs. Justice Wright states as follows:

“Once the identity of the land being claimed by the Plaintiff is in doubt the claim for a declaration of title and trespass of the land in question must necessarily fail since in real term there is nothing on which the claims are based.”

The Defendants in their counterclaim have put in doubt the identity of the land in question and have failed to provide a surveyor's plan of the area they claimed has been encroached by the Plaintiff. Their claim for a declaration of title and trespass to the land must fail. Their counterclaim therefore fails and is accordingly dismissed. The Plaintiff has proved his case on a balance of probabilities and judgment is given in his favour. I make the following Orders.

1. A declaration that the Plaintiff is the fee simple owner of all those pieces of land situate lying and being off Main Motor Road Calaba Town Wellington described in his Deed of Conveyance dated 19th July 1990 made between **ALIMAMY A. T. S. ADAMS** and **DR. MOHAMED A. MANSOUR** registered

at page 19 of Volume 440 in the Books of Conveyances kept in the office of the Registrar General Freetown and described in his survey plan LS 1476/90 attached thereto.

2. Recovery of possession of the said lands by the Plaintiff.
3. Damages for trespass assessed at L.e 5 million.
4. An injunction restraining the Defendants jointly and severally whether by themselves their Servants, agents or otherwise howsoever from remaining on or continuing in occupation or possession or trespassing upon the Plaintiff's respective lands.
5. Costs of the action to the Plaintiff to be taxed if not agreed upon.

A. Showers
3/10/2011
SIGNED: - A. SHOWERS
JUSTICE OF COURT OF APPEAL