

C.C.176/04 2004 S. NO. 22

IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)

BETWEEN: -
KENEWA AUGUSTINE SAMBA - PLAINTIFF

AND

DAVID J. B. CAULKER - DEFENDANT

A. Y Brewah Esq. for the Plaintiff
R. B. Kowa Esq. for the Defendant

JUDGMENT DELIVERED THE 4th DAY OF October 2012

The Plaintiff's claim against the Defendant is for the following reliefs:

1. A declaration of title in respect of all that piece or parcel of land situate off Allen Town Diversion Road, Allen Town in the Western Area of the Republic of Sierra Leone.
2. Recovery of possession of that part of the aforesaid land trespassed upon by the Defendant.
3. Damages for trespass to the said land.
4. An injunction restraining the Defendant whether by himself, his servants, workmen or agents from trespassing and interfering with the said land.
5. Any further orders.

6. Costs.

By writ of summons dated 11th February 2004, the Plaintiff instituted the said action against the Defendant for the said reliefs. In his particulars of claim, the Plaintiff alleged that he is the owner and entitled to possession of the piece of land situate off Allen Town Diversion Road Allen Town by virtue of his deed of conveyance dated 31st January 1995 delineated on survey plan LS935/94 dated 8th July 1994. He averred that his predecessor in title acquired the said land by deed of gift dated 17th October 1989. He further alleged that the Defendant by himself and through his servants and agents on diverse dates unlawfully entered and trespassed on his land and has started the construction of a dwelling house thereon. He claimed that by reason of the matters aforesaid he has been deprived of the use and enjoyment of the land and has thereby suffered loss and damage.

The Defendant entered appearance and filed a defence in which he denied that the Plaintiff is the owner of the land in issue and averred that he is the owner thereof by virtue of his deed of conveyance dated 2nd November 1991 made between **FRANCIS ARUNA KOROMA**, his vendor and himself and registered as No 1553/91 at page 103 of volume 455 of the Book of conveyances kept in the office of the Registrar General in Freetown.

He further averred that his title is derived from a deed of conveyance dated 17th October 1989 made between one **ABEOSEH JOHN** and **FRANCIS ARUNA KOROMA** his predecessor in title and duly registered as No. 207/89 at page 58 in volume 75 of the Book of Conveyances kept in the office of the Registrar General Freetown. He denied trespassing on the Plaintiff's land but admitted commencing the construction of a building on his land in April 2003.

The Plaintiff filed a Reply and the matter was thereafter entered for trial.

The first witness for the Plaintiff was **EKUNDAYO PRATT**, a clerk in the office of the Administrator and Registrar General, Freetown who tendered in evidence as Exh A, the Plaintiff's deed of conveyance dated 31st January 1995 made between **SANTIGIE DUMBUYA** and **GIDEON M. DUMBUYA** as Vendors and the Plaintiff as purchaser and duly registered as No. 172/95 at page 3 in volume 483 of the Record Books of Conveyances kept in the office of the Registrar General, Freetown. The witness also tendered in evidence as Exh B, a deed of gift dated 17th October 1989 made between **ABEOSEH JOHN** as Donor and the said **SANTIGIE DUMBUYA** and **GIDEON DUMBUYA** as Donees and registered as No. 207/89 at page 58 in volume 75 of the Record Books of Voluntary Conveyances kept in the office of the Registrar General, Freetown.

The second witness for the Plaintiff PW2 was the Plaintiff himself. He testified that he owns the piece of land situate at Allen Town Diversion Road, Allen Town and he identified Exh A as his deed of conveyance and Exh B as his Vendor's title deeds. He told the court that sometime in 2001; the Defendant **MR. DAVID J. B. CAULKER** introduced himself to him as the owner of the piece of land claimed by the Plaintiff. He stated that the Defendant then commenced building a structure on the said land.

The Plaintiff testified that he thereupon made a complaint in writing of the alleged trespass to the Permanent Secretary, Ministry of Lands, and he tendered in evidence as Exh C, a copy of his letter of complaint. He stated that he also hired the services of a licensed surveyor to investigate whether the Defendant was encroaching on his land. The said surveyor by the name of **FODAY J. ANTHONY** carried out a resurvey and made a report of his findings.

I should mention that after the Plaintiff's evidence in chief, several adjournments were taken due to the absence of counsel for the Defendant to cross-examine the Plaintiff. Eventually counsel for the Plaintiff applied for the evidence of his second witness to be taken and his application was granted.

The second witness for the Plaintiff was **FODAY JIEBA ANTHONY**, his surveyor.

He testified that the Plaintiff hired him to carry out an encroachment survey of his land situate off Allen Town Diversion Road, Allen Town which he did. He tendered the survey report as Exh C1-4. He stated that he did the survey using the survey plans of the Plaintiff and the Defendant as well as the Plaintiff's predecessor in title. His findings he told the court were that the Plaintiff's land and the Defendant's land were far apart and that the land in issue belonged to the Plaintiff.

After his evidence in chief several adjournments were taken for him to be cross-examined by counsel for the Defendant but the latter failed to turn up. Eventually judgment was given in favour of the Plaintiff on the reliefs set out in his writ of summons.

By Notice of Motion dated 20th July 2007, the Defendant applied for the said Judgment to be set aside and that the matter be heard on its merits. He further prayed that the proceedings be restored for hearing. The court being satisfied with the reason given by the Defendant granted his application and the judgment was accordingly set aside and the matter restored for hearing. Directions were then given for the conduct of the matter.

The Plaintiff PW1 was cross-examined on his testimony. He stated that he asked his surveyor, **MR. ANTHONY** to conduct an investigation of the vendor's title which he did. He further stated that the Defendant commenced the construction on the land in 2004.

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He confirmed that he had seen the Defendant's conveyance and that he bought the land in 1991 and the Plaintiff bought his in 1995. He stated that the two lands are separate and distinct.

The second witness for the Plaintiff could not attend to be cross-examined and the court was informed that he was ill and bedridden. His testimony was therefore not tested by cross-examination.

The third witness for the Plaintiff was **GIDEON MAGNUS DUMBUYA**, one of the Plaintiff's vendor. He stated that he and his father sold the land at Allen Town Diversion Road to the Plaintiff and he identified the deed of conveyance, Exh A. He told the court that they gave a piece of land to a **FRANCIS ARUNA KOROMA**, their surveyor but that the piece of land they gave to him was in a different location from the one sold to the Plaintiff. He stressed that the land given to **MR. KOROMA** is on the lower part of their land and the one sold to the Plaintiff is on the upper part. He admitted that he did not execute a conveyance in Mr. Koroma's favour.

The witness PW3 further told the court that he has observed a structure being constructed on the land they sold to the Plaintiff which he was informed belonged to the Defendant. He asserted that the land where the Defendant is constructing his building is not the piece of land given to Mr. Koroma and that the said building is located on the land sold to the Plaintiff.

The witness PW3 was cross-examined on his testimony and he confirmed that they had sold the piece of land to the Plaintiff. He confirmed that Mr. Koroma was their surveyor but denied knowing Mr. Anthony or knowing that Mr. Koroma worked with him. He further told the court that they could not afford to pay Mr. Koroma's bill so they gave him a portion of land as payment for his services. He stated that they accused Mr. Koroma of taking more land than they had given him but admitted that they did not take any action against Mr. Koroma.

He stated that the land they gave to Mr. Koroma is different from that sold to the Plaintiff. He denied that he is testifying against Mr. Koroma, the surveyor because they are annoyed with him for taking more land than he was given.

That ended the case for the Plaintiff.

The Defendant was the first to testify on his own behalf. He tendered his witness statement as Exh F which was used as part of his evidence-in-chief. He stated therein that **MR. FRANCIS ARUNA** sold a piece of land situate at Allen Town to him and that he got a Surveyor, **MR. ANTHONY** to survey the land which he did and prepared a survey plan LS 2883/91. The said survey plan covered an area of 0.2784 and was attached to his deed of conveyance dated 2nd November 1991 registered as No. 1553/91 at page 103 of volume 455

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in the Books of conveyances kept in the office of the Registrar General, Freetown.

The Defendant further stated that he started constructing a building on the said land when a **MR. SANTIGIE DUMBUYA** confronted him and told him that he had sold that piece of land to the Plaintiff as **MR. FRANCIS ARUNA KOROMA** had stolen his land ^{when} ~~as~~ he had taken more land than was given to him. He stated that he reported the matter to the police and the Plaintiff and **MR. SANTIGIE DUMBUYA** were invited to the police. He further stated that later they constructed a zinc structure on the land and that he continued with the construction of his building on the rest of the land.

The Defendant went on to testify that the Plaintiff went on the land and damage^d part of his structure and the matter was reported to the police who warned the Plaintiff. He stated that they went to the Ministry of Lands and he was advised to continue with his building which he did and he later moved into the premises. He stated that he retired from the Military because of ill health and had to go to the Provinces for medical treatment. When he returned he learnt that there was a court order in pursuance of which he was evicted from the premises by bailiffs. He stated that the Plaintiff is not the owner of the land in issue as he was the owner.

Under cross-examination the Defendant admitted that the Dumbuya's, the Plaintiff's vendor had challenged his ownership of the land.

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He confirmed that **MR. FRANCIS ARUNA KORMA** was his vendor and that Mr. Koroma did not show him his title deeds but only told him that he had land to sell.

The second witness for the Defendant was **MR. FRANCIS ARUNA KOROMA, DW2**. He testified that he is a surveyor attached to the Ministry of Lands and he tendered his witness statement as Exh G which was used as part of his evidence-in-chief. He testified that he sold a piece of land to the Defendant and executed a deed of conveyance in his favour.

The witness DW2 went on to state that he purchased the land from a **MADAM ABEOSEH JOHN** and that **MR. GIDEON DUMBUYA** and **MR. SANTIGIE DUMBUYA**, agents of the said **MADAM ABEOSEH JOHN** contracted his services to survey her land situate at Allen Town Diversion Road. He said at the material time he was working with **MR. F. J. ANTHONY** and that the said **MADAM ABEOSEH JOHN** was unable to pay his fees she and decided to give him a portion of the land as consideration for his services.

He stated that he surveyed the portion given to him and sold part of it to the Defendant. Later he said he was informed by the Defendant that the Plaintiff was laying claim to the land. He said he assured the Defendant that the Plaintiff's land does not fall within the Defendant's land as he did the survey work and is well acquainted with the entire

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area. He further stated that he approached **MR.SANTIGIE DUMBUYA** and explained to him the situation but Mr. Dumbuya's response was that he, the witness had taken more land than what was given to him by **MADAM ABEOSEH JOHN** and that was the reason why he had sold part of the Defendant's land to the Plaintiff.

Under cross-examination, the witness DW3 confirmed that he was given a portion of land by the Plaintiff's vendors as consideration for his surveying the land. He admitted that at the time he was a pupil surveyor attached to **MR. F. J. ANTHONY** who was a licensed surveyor. He also admitted that he used the money paid by the Defendant for the portion of land sold to him to do the documentation in respect of the land. He said he prepared a statutory declaration for the Plaintiff's vendor and he took possession of his own portion of land and that was how he got title to the land. He produced his site plan of the land he claimed and tendered it as Exh H. He admitted that apart from the survey plan he had no other document transferring the property to him.

The third witness for the Defendant was **ALHAJI MOHAMED LAMIN ABDULLA**, a licensed surveyor. He informed the court that he knew the Defendant and that he did some work for him in respect of his land at Allen Town. He tendered in evidence the report of the survey work he carried out on his behalf as Exh J1-J7.

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He stated that his findings were that the properties of both parties herein are far apart from each other about 360 feet apart. He stated that the Defendant's property is on the northern side of the land and the Plaintiff's is on the southern side. He proceeded to identify the various survey plans attached to his report.

The witness was cross-examined on his testimony and he admitted that he did not know that **MR. FRANCIS ARUNA KOROMA** is claiming his land from the Dumbuya's and that the Plaintiff is also claiming his land from the Dumbuya's.

That ended the case for the Defendant.

Only counsel for the Defendant submitted a written closing address.

In this case the Plaintiff is claiming principally a declaration of title to his land situate at Allen Town Diversion Road, Allen Town. It is well established that in an action for a declaration of title the Plaintiff must succeed on the strength of his title and not on the weakness of the Defendant's title. See **Kodilinye vs. Odu** {1935} 2 WACA 338 cited with approval in the celebrated unreported Supreme Court case of **Seymour Wilson vs. Musa Abess**.

It has also been established that the onus lies on the Plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title.

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It is therefore necessary to look at the evidence brought by the Plaintiff to establish whether he has discharged the burden that he has proved that he is the fee simple owner of the land in dispute.

The Plaintiff relies on his document of title which is his deed of conveyance, Exh A. His title deeds disclose that he derived title from his predecessors in title, the Dumbuyas who also have produced their title deeds Exh B. From the documentary evidence it is clear that the Plaintiff derived title from **MADAM ABEOSEH JOHN**. There has been no evidence controverting **MADAM ABEOSEH JOHN's** title to the land.

In the **Seymour Wilson** case (*supra*), the learned Chief Justice Livesey Luke 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.”

It is my view that the Plaintiff has established that he obtained a valid title to the land sold to him by the Dumbuyas.

Now the Defendant is claiming that the land conveyed to him belongs to him and denied that it belongs to the Plaintiff.

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The question is are the parties claiming the same land? The evidence is that the Defendant derived title from **MR. FRANCIS ARUNA KOROMA**. He has produced his deed of conveyance, Exh D as proof of his entitlement to the said piece of land. Is the said deed of conveyance sufficient to entitle him to a fee simple title to the land? In the Seymour Wilson case (supra) Mr. Justice Livesey Luke, C. J. stated as follows:

“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.”

I believe the Plaintiff has sufficiently proved that his predecessors in title had title to pass on to him and has thereby discharged the burden cast on him. Has the Defendant provided evidence that he is entitled to the piece of land claimed by him? The evidence in his own case is that he derived title to the land he claims from **MR. FRANCIS ARUNA KOROMA** who in turn obtained title from the Dumbuyas, the Plaintiffs' vendors. There is evidence that the Dumbuyas have challenged **MR. FRANCIS KOROMA's** claim to the piece of land delineated in his survey plan. **MR. GIDEON DUMBUYA PW3** confirmed that **MR. FRANCIS KOROMA** was given land as payment for his surveying services but he alleged that he took more

land than he was given. **MR. FRANCIS KOROMA** himself as DW2 testified to this. He made no effort to controvert this allegation or to disprove the testimony. In the circumstance can he say that he has a valid title to the land he claims, a portion of which he sold to the Defendant? It is my view that no effort was made by him to establish the actual area to which he is entitled and whether the portion of land sold to the Defendant fell within the portion given to him by the Dumbuyas.

Having said that, it is necessary to look at the surveyor's reports before the court. Rather unfortunately, the Plaintiff's licensed surveyor, **MR. F. J. ANTHONY**'s testimony has not been tested by cross-examination. Nevertheless the evidence is clear that the properties of both parties are clear and distinct and fall far apart. In the report submitted by **MR. ABDULLA DW3**, the Defendant's surveyor he confirmed that the properties are 360 feet apart from each other. He concluded that the Defendants' property did not encroach on the Plaintiff's property. The issue therefore is whether the parties are certain about the location of their respective properties.

Counsel for the Defendant has submitted that it is the Plaintiff who is uncertain as to the location of his land. He contended that the Defendant has been in possession of the land since 1991 and constructed a building thereon since 2003 in which he has been living

since 1991. He relied on the maxim "**possession is nine-tenth of the law**" quoted by the learned Chief Justice Renner Thomas in the case **Sorie Tarawally vs. Sorie Koroma** a 2007 unreported decision of the Supreme Court.

It is my view that the Defendant's ownership of the land was challenged by the Plaintiff's vendors when he went on the land. The Defendant himself testified that part of his structure was demolished by them. The Plaintiff therefore did not sit idly by and allow the Defendant to enter the land. He made representation to his vendors and there is evidence that the Defendant was evicted following a court action. In this case from the evidence it is the identification of the land belonging to the Defendant's predecessor in title Mr. Koroma that is in question. He is alleged to have taken more land than was given to him. Consequently his boundaries have been challenged.

In the case **Frederick Max Carew vs. Dr. P.K. Lavahun** 2010 unreported decision of the Supreme Court, 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."

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In my judgment the Plaintiff has discharged the onus of establishing the identity of his land. His vendors and surveyors have all confirmed that the lands belonging to both parties are separate and apart. The Plaintiff has identified with certainty the land sold to him and delineated on his survey plan LS 935/94. It is the boundary of the Defendant's predecessor in title which has been challenged by his donors and therefore the location of the land he sold to the Defendant is uncertain.

The Plaintiff has also claimed damages for trespass. It has also been established that in a case of trespass, what the Plaintiff has to prove is a better right of possession than the Defendant. One of the ways that he may do this is to prove that he has a better title to the land than the Defendant. See **Seymour Wilson vs. Musa Abess** (supra). The court is concerned only with the relative strengths of the titles or possession proved by the rival claimants, and the party who proves a better title or better right to possession succeeds.

Counsel for the Defendant has stressed that the Defendant has been in possession since 1991. That may well be, but there is evidence that he has been evicted from the premises pursuant to an order of the court. He has therefore been dispossessed of the land legally. In the circumstance the Plaintiff has proved a better right to possession than the Defendant and the Defendant is therefore liable to the Plaintiff in trespass.

In the light of all the above judgment is given in favour of the Plaintiff. I make the following Orders.

1. A declaration that the Plaintiff is the fee simple owner of all that piece or parcel of land situate off Allen Town Diversion Road, Allen Town in the Western Area of the Republic of Sierra Leone delineated on his survey plan LS 935/94 attached to his deed of conveyance dated 31st January 1995 and duly registered as No. 122/95 at page 3 of volume 483 of the Books of Conveyances kept in the office of the Registrar General, Freetown.
2. Recovery of possession of that part of the aforesaid land trespassed upon by the Defendant.
3. Damages for trespass to the said land assessed at Le 5 million.
4. An injunction restraining the Defendant whether by himself, his servants, workmen or agents from trespassing and interfering with the said land.
5. Costs to the Plaintiff to be taxed if not agreed upon.

A. Showers

SIGNED: - A. SHOWERS 4/10/2012
JUSTICE OF COURT OF APPEAL