

C.C. 50/09

2009 T. NO. 5

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

BETWEEN: -

MADAM HAJA FATMATA TEJAN JALLOH
(Suing by her Attorney ADAMA RUGIATU CONTEH)

- PLAINTIFF

AND

MATHEW SHEKU SOWA

- DEFENDANT

O. Jalloh Esq. for the Plaintiff

A. E. Manly Spain Esq. for the Defendant.

JUDGMENT DELIVERED THE 28th DAY OF Sept. 2012

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

1. A declaration that the Plaintiff is the fee simple owner of all that piece or parcel of land situate lying and being at Baoma Road, Adonkia Freetown in the Western Area of the Republic of Sierra Leone demarcated on survey plan LS 1792/82 and covering an area of approximately 27.723 acres.
2. Recovery of possession of the portion of the said piece of land in the possession or occupation of the Defendant.
3. Damages for trespass to the Plaintiff's said piece of land.

/2

4. An injunction restraining the Defendant whether by himself, his servants, agents, privies or howsoever otherwise from selling leasing or otherwise disposing of the said piece or parcel of land and/or from entering upon, trespassing or remaining on the Plaintiff's said land.
5. All necessary and consequential directions thereof.
6. Further or other relief.
7. Costs.

The above reliefs were claimed by writ of summons dated 18th February 2009 issued by the Plaintiff against the said Defendant. In her particulars of claim set out therein the Plaintiff alleged that the action is being brought by her Attorney by virtue of a Power of Attorney dated 30th August 2008 and registered as No. 35/2008 at page 70 of volume 90 in the Books of Power of Attorney kept in the office of the Registrar General Freetown.

The Plaintiff further alleged that by a Deed of Conveyance dated 17th June 1983 made between **LAURETTA COLE** as vendor of the one part and herself as purchaser of the other part all that piece or parcel of land situate lying and being at Baoma Road, Adonkia Freetown demarcated on survey plan LS 1792/82 covering approximately

/3

27. 723 acres was conveyed to the said Plaintiff in fee simple absolute in possession. The said deed of conveyance is registered as No. 872/83 at page 26 in volume 352 of the Books of Conveyances kept in the office of the Administrator and Registrar General Freetown.

It was averred by the Plaintiff that sometime in 2005, the Defendant, his servants, agents and or privies wrongfully entered and or trespassed on the said piece of land and still continue to trespass and remain on the same. She alleged that the Defendant intends and threatens to continue the same unless restrained by this court as he has been laying claim to the said land. Furthermore she averred that despite several requests and demands, the Defendant has failed, neglected and or refused to desist from trespassing thereon. By reason of the said trespass, the Plaintiff averred that she has been deprived of the use and enjoyment of the said portion of land and has thereby suffered loss and damages. She therefore instituted the present action against the said Defendant claiming the reliefs already mentioned.

The Defendant entered appearance and filed a defence in which he denied trespassing on the Plaintiff's said land and laying claim to the same. He averred that he is in possession of land vested on him by a Vesting Deed dated 2nd November 2006 registered at page 25 of volume 613 of the Books of Conveyances kept in the office of the Registrar General, Freetown. He denied depriving the Plaintiff of the use of her land and causing her loss and damages.

I should mention that this matter has a chequered history as it was heard by two Judges before it was assigned to me. Evidence had been given by three witnesses for the Plaintiff and the third witness was to be cross-examined before the matter came before me. I therefore have to rely on the records of proceedings in respect of the testimony of the said witnesses.

The first witness for the Plaintiff was **ABDUL KARIM CONTEH** who described himself as a student. He tendered his witness statement which was used as part of his evidence-in-chief. He stated therein that he was conversant with the Plaintiff's land since he was 12 years old as the Plaintiff used to take him round the land whenever she visited it. He described the land which is situate at Baoma Road, off Peninsular Road Adonkia as on a rocky and hilly terrain with some flat areas but that most of it is sloppy. He stated that there is a seasonal stream flowing from east to west on the said land.

He further stated that the Plaintiff showed him her deed of conveyance dated 17th June 1983, Exh B made between **MADAM LAURETTA COLE** as Vendor and the Plaintiff as purchaser and said that before she left for the United States of America, the Plaintiff gave him a copy of the said deed of conveyance which he had always kept in his custody.

The witness PW1 further stated that in 1999 the Plaintiff made arrangements for the entire piece of land to be cleared on a yearly basis and that in 2004 she had the land surveyed to make provision for access roads on to the land. He said that upon the completion of the survey, she constructed 9 C. I. Sheet structures at various locations on the said land and also installed concrete pillars thereon for which she expended the sum of Le36,000,000.

He said that she put four people on the land as caretakers, two of whom had since left. He recalled that later on officials of the Ministry of Lands asked her for her title deeds which she handed over to them and they carried out a survey of lands in the Adonkia area including that of the Plaintiff and confirmed that the land on her survey plan belonged to her.

He stated that it was whilst the officials of the Ministry of Lands were carrying out the survey that the Defendant started laying claim to the Plaintiff's land. He claimed to own 15 acres of the Plaintiff's land and notwithstanding repeated warnings and protests the Defendant continued to lay claim to the said land and went ahead to construct 2 C. I. Sheet structures thereon. He said that the Defendant and his agents have been trespassing on the land ever since and have destroyed three C. I. sheet structures constructed by the Plaintiff, the concrete pillars and even beacons erected by the Plaintiff.

The witness stated that no one other than the Defendant has ever challenged the Plaintiff's ownership of the said land.

Under cross-examination the witness confirmed that he was familiar with the Plaintiff's land which is about 27 acres and that the officials of the Ministry of Lands confirmed that the said land belonged to the Plaintiff. He went on further to state that the Minister of Lands, the Permanent Secretary and the Director of Surveys signed a confirmation document of title to the land which they gave to the Plaintiff. He told the court that the nine C.I. sheet buildings are no longer on the land and that the Defendant destroyed three of them. He said the other six were destroyed by the officials of the Ministry of Lands.

The second witness for the Plaintiff was **MR. ALEXANDER MACARVORAY COKER PW2** a Licensed Surveyor. He stated that he knows the land in dispute and recalled that he prepared a report and composite plan relating to an investigation of encroachment between the lands of both parties herein. He identified the report and composite plan as Exh E 1-3.

The witness PW2 was a witness of the court who had been ordered to investigate the allegation of encroachment between the two lands. He was then cross-examined by Mr. O. Jalloh, counsel for the Plaintiff and Mr. A. E. Manly Spain, counsel for the Defendant respectively on the contents of his report and composite plan.

The third witness for the Plaintiff was MR. **MAMUDU MULAGA JALLOH PW3**, a Surveyor attached to the Ministry of Lands. He identified a letter dated 28th January 2011 from solicitors for the Plaintiff addressed to the Director of Surveys of Lands requesting confirmation of the status of the survey plans of both parties, Exh C. He stated that the Director handed to him the two survey plans for him to carry out the exercise.

The witness explained that they maintain two Registers, namely incoming and outgoing Registers. He said he checked both registers for the survey plans of the said parties and discovered that the survey plan of the Plaintiff LS 1792/82 is listed in both registers as belonging to **HAJA FATMATA TEJAN JALLOH**, the Plaintiff but that when he checked the Registers for the Defendant's survey plan LS 965/80 he discovered that that plan was registered in the name of one **AMADU BANGURA** and that its location is off Main Motor Road Kola Tree Calaba Town, and this was the same record in both Registers. He then proceeded to testify about the process for the recording of survey plans in the two Registers and explained that the said entries are made in yearly Registers.

The witness testified that he visited the properties at Baoma Road, Adonkia and took along the survey plans of both parties and a GPS which he explained gives a co-ordination of a location.

He stated that using the GPS to find the exact location of the lands he found out that the Plaintiff's land falls in the exact location claimed by her and that of the Defendant falls in a location off Main Motor Road Kola Tree in the eastern part of Freetown.

Under cross-examination the witness PW3 disclosed that he is not a licensed surveyor. He identified his report on the status of the two survey plans, Exh D2-3 and stated that at the time he wrote the report he was a Charting Officer. He further explained the use of the GPS in carrying out surveys.

He admitted that he used the GPS in surveying the land in issue but that he did not go with the Defendant when he carried out the exercise. He stated that he surveyed the whole of the Plaintiff's land and that after the survey they demarcated her said land. He disclosed that physically there is no encroachment and that he did not know the Defendant's land, physically but knows that one of the lands adjacent to the Plaintiff's is owned by the Government and that it is located north west of the Plaintiff's property.

The witness admitted further that he did not find any of the beacons on the land. He further stated that in 1982 the survey of the Plaintiff's land was done by theodolite and steel band survey and admitted that he did not check the land using the same instruments as was used in 1982 but that they found the same land using the GPS as was found using the theodolite and steel band.

The witness further confirmed that the LS number in the Defendant's plan took him to Kola Tree and that he went to Kola Tree but did not know the land the Defendant was claiming there.

He admitted that he had not read **MR. ALEXANDER COKER's** report, Exh E1-3 and stated that he carried out his investigation as a result of the Plaintiff's solicitor's letter, Exh C and told the court that as a Charting Officer he is authorised to write reports on surveys. He stated that he carried out the investigation in February 2011.

That ended the case for the Plaintiff.

The Defendant testified on his own behalf as DW1. He tendered his witness statement as Exh H which was used as part of his evidence-in-chief. He stated therein that he knows the Plaintiff as the former owner of a plot of land next to his. He disclosed that he acquired the said piece of land after the death of his aunt, **MADAM SALLY THORPE** and had it surveyed in 1980.

He further stated that the land was 15 acres and that the Plaintiff surveyed hers in 1982 having bought it from his aunt's sister. He further revealed that both parcels of land were owned by the said two sisters, his aunt and her sister. He said the two lands were demarcated and he placed beacons and planted trees along his boundaries. He said that it was in 2005 that the Plaintiff started encroaching on his land and he immediately told her to stop but ^{she} ~~se~~ refused to do so.

He stated that he consulted his lawyer and tried to settle the matter amicably to no avail before he was served with the writ of summons herein. He identified his title deed, a vesting deed, Exh G, dated 2nd November 2006.

The witness DW1 told the court that he had known the land since 1979 and recounted that when the matter originally came before Mr. Justice D. B. Edwards for hearing his Lordship ordered that the parties secure an independent surveyor to investigate the allegation of encroachment and that both parties had selected **MR.. ALEXANDER COKER** who had carried out the work and produced a report and composite plan.

The witness DW1 identified the said report and composite plan as Exh E1-3. He told the court that he accepted the findings of the report.

Under cross-examination, the Defendant DW1 stated that he was given the land as a gift and identified Exh G as his deed of gift. He told the court that his aunt died on 27th July 1997 and that his title deed was prepared by his solicitor on his instructions. He stated that he took out Letters of Administration in respect of his aunt's estate and that he vested her estate in himself.

The witness admitted that his aunt **SALLY THORPE** was chief Haroun of Adonkia's mother but denied that he had sworn in an affidavit in the Letters of Administration that **SALLY THORPE** had no issue. He further told the court that the survey plan in his vesting deed Exh G is dated 18th September 1980 but that he vested the property in himself in 2006.

He admitted that he knew **LAURETTA COLE** and that she owned a piece of land at Baoma Road Adonkia which she conveyed to the Plaintiff.

That ended the case for the Defendant.

The court was able to visit the locus in quo and the Registrar of the court, Mr. Yambasu prepared a report of the visit which he read to the court. He was cross-examined by both counsel.

The Plaintiff's claim is principally for a declaration of title to all that piece of land situate at Baoma Road, Adonkia delineated on her survey plan LS 1792/82, and covering an area of 27 acres or thereabout. In support of her claim to entitlement to the said piece of land, the Plaintiff has produced her deed of conveyance, Exh B.

It is well established that in a case for a declaration of title the Plaintiff must succeed by the strength of his title and prove a valid title to the land.

There are a number of authorities on this principle – See the celebrated 1981 unreported Supreme Court judgment **Seymour Wilson vs. Musa Abess**, and 2004 unreported Supreme Court judgment **Sorie Tarawalli vs. Sorie Koroma**.

There is clear evidence here that the Plaintiff bought her land from **MADAM LAURETTA COLE**, the Defendant's aunt. He himself testified that to his knowledge the Plaintiff's predecessor in title had good title to the land which she passed on to the Plaintiff. The Plaintiff has therefore succeeded in establishing valid title to the piece of land at Baoma Road, Adonkia claimed by her.

The Plaintiff's complaint is that the Defendant has encroached on a portion of the said land. The Defendant denies this allegation and in his defence claims that he is the owner of all that piece of land delineated on his survey plan LS 965/80 attached to his Vesting Deed, Exh G. There is a lot of controversy about the Defendant's land. There are two divergent reports before the court relating to the Defendant's land. In the first place there is the report of the Licensed Surveyor, **MR. ALEXANDER COKER** Exh E1-3 who was ordered by the court to investigate the encroachments in respect of the two pieces of land. His conclusion is that the Plaintiff's survey plan LS 1792/82 has overlapped or encroached into LS 965/80. He stated that "on paper there is about 90% overlap between the two properties but physically on the ground there is overlapping of 4.6 acres."

There is another report Exh D submitted by **MR. MAMUDU JALLOH** who was instructed to investigate the status of the parties survey plans. He stated, *inter alia* that

“Plan submitted bearing the name of Mathew S. Sowa with LS 965/80 of land situate lying and being off Adonkia – Baoma Road, Adonkia covering an area of 15.3245 acres is a fake plan, as our incoming LS Register shows that LS 965/80 was originally surveyed for Mr. Amadu Bangura of land situate lying and being off Main Motor Road, Kola Tree.”

His recommendation based on his findings is that the Plaintiff **FATMATA TEJAN JALLOH** is the legal owner of the parcel of land situate at Adonkia and that **MR. MATHEW SOWA**'s plan is a fake plan. Faced with these two opposing reports, it is necessary to look at other evidence available before the court and also have regard to the principles specified to establish a claim for a declaration of title.

Counsel for the Plaintiff has relied on the case of **Frederick Max Carew vs. Dr. P. K. Lavahun**, 2010 unreported judgment of the Supreme Court which dealt *inter alia* with the identity of property in a claim for declaration of title.

Mrs. Justice V. A. D. Wright, JSC had this to say on this issue:

“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 acceptable plan of the land see **KWAD Z0 v 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 surveyor's plan is necessary. ---

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 terms there is nothing on which the claims are based.”

In this case the Plaintiff has established the identity of her property. It is the identity of the Defendant's property that is being questioned. The witness PW3 in his report, Exh D2 maintained that by the Defendant's survey plan LS 965/80

/15

his land is located at Kola Tree, Calaba Town in the eastern part of Freetown. He concluded that his survey plan is fake.

Counsel for the Defendant contended that the Plaintiff's claim against the Defendant is purely and simply that the Defendant has trespassed and or occupied a portion of the Plaintiff's land situate at Baoma Road Adonkia and prays for a declaration that she is owner of 27.723 acres of the said land. He argued that there is no claim that the Defendant does not own land there.

With all due respect to counsel for the Defendant, if the Plaintiff claims that the Defendant has encroached on her land it means that the Defendant does not own that portion of the land claimed by the Plaintiff. The court needs to look into the ownership of the land claimed by the Defendant. In that regard the report submitted by PW3 has to be considered in evaluating the evidence of the Defendant.

The Defendant alleged that he acquired the property he claims from his aunt, **MADAM SALLY THORPE** who died on 27th July 1997. He obtained a grant of Letters of Administration in 2004 and declared additional assets belonging to the estate of the said aunt in 2006. He made a deed dated 2nd November 2006 vesting the property forming his said aunt's estate in himself. The Defendant was emphatic in his testimony that he did not buy the said land from his aunt, but acquired it after her death.

/16

Counsel for the Plaintiff has drawn the court's attention to the fact that the Defendant's survey plan is dated 18th September 1980, a date well before the aunt's death. As counsel pointed out the Defendant has not been able to explain this anomaly and he submitted that this supports the conclusion of PW3 that the survey plan, relied upon by the Defendant is a fake plan. I agree. The identity of the Defendant's land is therefore clearly in doubt.

The Plaintiff also claimed damages for trespass. It is well established that in an action for trespass the important issue is who has proved a better right to possession. One of the ways that a Plaintiff may do this is to prove that he has a better title to the land than the Defendant. This the Plaintiff has successfully done in this case. She has definitely proved that she has a valid and better title to the land than the Defendant.

Counsel for the Defendant has stressed that the Plaintiff has failed to show that the Defendant has trespassed on her land or to show the extent of the encroachment she complained about. He maintained that the only evidence that deals with this question and which assists the court is the evidence of PW2, his report and composite plan Exh E1-3.

From the evidence the Plaintiff erected nine C I Sheet structures on her land as well as concrete pillars. There is evidence that the Defendant destroyed three of these C I. sheet structures and that he and his agents have been going on the land on a regular basis.

/17

These pieces of evidence have not been controverted. They show unjustifiable intrusion on the Plaintiff's land by the Defendant.

Counsel for the Defendant referred to the court's visit to the locus in quo and pointed out that at the said visit it was established that the Plaintiff's land is located at Baoma Road, Adonkia and the Defendant's land is off Baoma Road and that he does not claim any land at Baoma Road. He further maintained that at some point the lands claimed by the parties overlap each other but the extent of the overlap cannot be found in any piece of evidence led by the Plaintiff.

It is my view that the claim is one of trespass and the extent of the encroachment is not an essential proof in the said claim. It is well settled that in a claim for trespass the court is concerned only with the relative strengths of the titles or possession proved by the rival claimants. The party who proves a better title or better right to possession succeeds. See the case of **Seymour Wilson vs. Musa Abess** (supra) where the learned Chief Justice Livesey Luke cited the cases of **England vs. Mope Palmer** 14 WACA 659 and the case of **Bristow vs. Carmican** (1878) 3 App. Cas. 641 H.L. where Lord Hatherly said inter alia at 652:

"There can be no doubt whatever that mere possession is sufficient against a person invading that possession without himself having any title whatever, as a mere stranger,

that is to say, it is sufficient as against a wrong doer. The slightest amount of possession would be sufficient to entitle the person who is so in possession, or claims under those who have been or are in such possession to recover as against a mere trespasser."

I believe the Plaintiff has shown that she has exercised several acts of possession on the land since she acquired it. Her agents confronted the Defendant as soon as he started to lay claim to a portion of the said land. The officials of the Ministry of Lands confirmed her ownership of the said land. In all those circumstances the Plaintiff in my judgment has proved a better right to possession which has been invaded by the Defendant. The Defendant is therefore liable to the Plaintiff in trespass and she is entitled to judgment having proved her case on a balance of probabilities. I make the following Orders

1. That the Plaintiff is the fee simple owner of all that piece or parcel of land situate lying and being at Baoma Road, Adonkia Freetown in the Western Area of the Republic of Sierra Leone demarcated on survey plan LS 1792/82 and covering an area of approximately 27.723 acres.
2. That the Plaintiff recovers possession of the portion of the said piece of land in the possession and or occupation of the Defendant.

/19

3. That damages for trespass are awarded the Plaintiff in the sum of Le 10 million.
4. That an injunction is granted restraining the Defendant whether by himself, his servants, agents, privies or howsoever otherwise from selling, leasing or otherwise disposing of the said piece or parcel of land and or from entering upon, trespassing or remaining on the Plaintiff's said land.
5. That the Defendant bears the costs of the action to be taxed if not agreed upon.

A. Showers
SIGNED: - A. SHOWERS 28/9/2012
JUSTICE OF COURT OF APPEAL