

C.C. 49/10

2010

C No. 3

IN THE HIGH COURT OF SIERRA LEONE
LAND AND PROPERTY DIVISION

BETWEEN:

MRS JUNE COLLIER

- PLAINTIFF

AND

MR ALFRED CHAMBERS

- DEFENDANT

COUNSEL:

TAMBA KELLIE ESQ for the Plaintiff

A K A BARBER ESQ for the Defendant

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE,
JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 25th DAY OF MAY, 2012.

1. The Plaintiff instituted the action herein by way of writ of summons issued on 23 February, 2010. In this writ, she prayed for a Declaration of title to all that piece or parcel of land situate lying and being at Marjay Town, Goderich in the Western Area of the Republic of Sierra Leone delineated in survey plan LS670/92 dated 20 March, 1992 and therein edged red, drawn and attached to deed of conveyance dated 5 July, 1993 and duly registered as No. 550/93 at page 25 in volume 470 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown.
2. According to the particulars of claim in the writ, the Defendant began trespassing on Plaintiff's land in 2004, and despite several warnings to desist from such unlawful acts, the Defendant persisted in the same. As a consequence of such acts of trespass, the Defendant had removed quantities of building materials which the Plaintiff had stored on the land. These materials, and their individual cost, are itemised in the particulars of special damages set out in the writ. Also set out therein, is the cost of replacing three drums of water, which drums were destroyed by the Plaintiff.
3. On 11 May, 2010 A K A Barber esq entered appearance for and on behalf of the Defendant, and gave Notice of the same to Plaintiff's Solicitors that same day.

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- 4. By Notice of Motion dated 23 February, 2011, the Plaintiff applied to this Court for several Orders. The Motion had to be amended to insert the date of hearing, by kind permission of the Court. Still, Plaintiff's Counsel did not quite understand that when leave is given to amend a document filed, the amendment should be limited to that for which leave is given. Mr Kellie, erroneously dated the amended motion, 5 April, 2011. The date of the motion should have remained 23 February, 2011, and ought not to have been changed to 5 April, 2011. The absurdity in the change of date becomes more apparent when the date of hearing is still stated to be 24 March, 2011, a date falling 12 days before the date of the motion. But as much time had elapsed, and notwithstanding the error, I allowed Mr Kellie to move the Plaintiff's motion so as to avoid delay, and in the interests of justice.
- 5. In this Application, the Plaintiff seeks final judgment on her claim on the ground that the Defendant has admitted in his defence dated 3 February, 2011 that he is not the owner of the land being claimed by Plaintiff. She is also asking for immediate recovery of possession of the land. The third Order prayed for is incomplete. It is asking for the expunging from the Record Books kept in the office of the Registrar-General, Freetown, registered documents which have been omitted. On previous occasions, I had warned Mr Kellie to be more careful in how he prepared his documents for the Court, but he seems not to have heeded my warning. The fourth Order prayed for, is for an Injunction to restrain the Defendant from, in effect, doing anything whatsoever, with the land. She is also asking for any further or other Order, and for the Costs of the action.
- 6. The Application is supported by the affidavit of the Plaintiff herself, deposed and sworn to on 5 April, 2011. She deposes to the following matters: That she had applied to this Court for Liberty to enter judgment against the Defendant because the Defendant had not a filed a defence to her claim, but that Application was dismissed, and the Defendant was given leave to file a defence out of time by the Court. The Defendant filed a defence dated 3 February, 2011 in which he admitted he was not the owner of the land, the subject matter of the action herein. As such, she was the owner of the property, and was therefore

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entitled to possession of the same. She was therefore, also entitled to be granted liberty to enter final judgment against the Defendant.

7. Exhibited to her affidavit, are the following documents:
 - i. JOC1 is a copy of the writ of summons.
 - ii. JOC2 is a copy of an affidavit deposed and sworn to by the Defendant on 17 May, 2010 together with the documents exhibited thereto
 - iii. JOC3 is a copy of the statement of defence dated 3 February, 2011 filed by the Defendant.
 - iv. JOC4 is a copy of the deed of conveyance dated 5 July, 1993 and duly registered
8. The Plaintiff has based her Application on Order 34 Rule 3(1) of the High Court Rules, 2007. It reads: "*Where admission of facts or part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any party to the cause or matter may apply to the Court for such judgment or order as upon the admission he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may give such judgment or make such order on the application as it thinks just.*"
9. Order 27 Rule 3 of the English Supreme Court Rules, 1999 is ipsissima verba our own Rule. The notes to that Rule in the 1999 White Book state at para 27/3/2: "*Such admissions may be express or implied, but they must be clear.*" Para 27/3/4 states that: "*Such admissions may be made expressly in a defence or in a defence in a counterclaim, or, they may be admissions by virtue of the rules, as where a defendant fails to traverse an allegation of fact in a statement of claim.*" Para 27/3/7 states that: "*The jurisdiction of the Court is discretionary, but in the absence of reason to the contrary the order is made so as to save time and costs.*" Mr Kellie also referred the Court to Order 21 of our Rules, but without elaborating on the same. However, I do not think it is necessary for the purposes of this decision to refer to that particular rule.
10. Mr Barber's short response to the Plaintiff's claim was that the Defendant had never said the property was his, and that he had never been there. Defendant is Administrator of the estate of Thomas William Borbor Chambers as is evident on a perusal of exhibit JOC2, Defendant's affidavit of 17 May, 2010. He also said the Defendant was here repeating his defence, and that plaintiff and Defendant were not talking about the

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same property. The Defendant's Defence is exhibit JOC3. It avers that the Defendant "...is not the owner of the property the subject matter of the action, neither has he employed or deployed any agent or servant thereon." The Defendant also avers the general traverse.

11. What this Court has to decide, is whether both the affidavit deposed and sworn to by the Defendant on 17 May, 2010, and the defence filed on his behalf on 3 February, 2012 together, constitute such an admission of the Plaintiff's claim, that should entitle her to Judgment, without going through the rigours of a full-scale trial. The totality of the evidence presented by both sides shows that the land claimed by Plaintiff is not owned by Defendant. Exhibit JOC2 is composed of not only the Defendant's affidavit, but also a copy of writ of summons issued by the Defendant, against the Plaintiff, on 31 March, 2006. The Defendant instituted those proceedings in his capacity as Administrator of the estate of the late Thomas William Borbor Chambers, who was said to have died seised of property measuring 187.67 acres situate, lying and being at Kebbie Loko Village, Goderich, the boundaries and area whereof are delineated on a survey plan apparently drawn in 1950. Some inscriptions on the plan indicate that the plan may have formed part of a deed which was registered in the Registrar-General's Office, Freetown. The stamp of the Department appears in the left of that document. But, inexplicably, no mention of a deed is made in the writ. And, as the Defendant himself has explained in his affidavit, the action commenced by him against the Plaintiff, which was pending before MRS BASH-TAQI, then JA, now JSC, has been adjourned sine die. No attempt has been made by him to resuscitate that matter. It may have been that that action was instituted by the Defendant as a ruse to distract and confuse the Plaintiff. Whatever may be the case, in these proceedings, the Defendant has not contended that the land claimed by the Plaintiff belongs to a third party, though in an earlier Application before me, in respect of which his affidavit of 17 May, 2010 was filed, he had deposed that he holds the same on, or in trust, as an Administrator. In the present proceedings he simply says that he is not the owner of the land. I must of course bear in mind that the proceedings are brought against him in his personal capacity, and not in a representative capacity. So, any judgment given against him, will inure against him personally, and not against the estate

of which he is Administrator. It follows, that if the Defendant has admitted in his pleading that he is not the owner of the land Plaintiff is claiming, such admission could constitute solid grounds for giving Judgment in favour of the Plaintiff. But before so deciding, I would have to consider whether the Plaintiff has proved on a balance of probabilities that she is the owner of the land she is claiming.

12. I have carefully studied the deed dated 5 June, 1993 which is the Plaintiff's proof of title to the property at Goderich. The survey plan in it, LS 670/92 signed by the Director of Surveys and Lands on 20 March, 1992, shows that she owns land bounded on four sides by properties owned respectively by Mr G B Cole, Col Sam King and Brigadier Momoh, and by an access road. The land measures 0.2575 acre. The root of title goes back as far as 1958, when, it is recorded, Iscandri Gibril Cole sold the same to George Beresford Cole, who in turn, in 1974 sold the same to Francis Bamikole Rosenior, Plaintiff's immediate predecessor-in-title. This shows that Plaintiff's root of title goes back at least 54 years as of now. I believe that this constitutes a good root of title, and that it should entitle the Plaintiff to a declaration that she is the owner of the property.
13. I find that on a balance of probabilities, Plaintiff has proved that she is the owner of the land drawn and demarcated in survey plan LS670/92. In paragraph 3 of exhibit JOC1, Plaintiff's writ of summons, she avers that since 2004, the Defendant and his agents or servants, have been trespassing on her land, and notwithstanding being warned off, the Defendant has continued with his acts of trespass. I believe that he is the person, and not another, who has been trespassing on Plaintiff's land. I hold also that by expressly admitting in paragraph 1 of his Defence that he is not the owner of the land claimed by the Plaintiff in her writ of summons, he has tacitly admitted a material averment in Plaintiff's claim, which renders nugatory the general traverse in his Defence. In the exercise of the Court's discretion conferred on it by Order 34 Rule 3(1) of the High Court Rules, 2007 I hold that Plaintiff is entitled to Judgment on the basis of such admission.
14. As to the special damages claimed in the writ of summons, the Plaintiff has not proffered any proof. Special Damages must be specifically pleaded, and specifically proved. I cannot therefore make an award under

that head. She is only entitled to *General Damages*, which could be presumed by the Court on account of the fact that she has been deprived of the full use of her property for some time now, because of the acts of trespass of the Defendant, and of his agents or servants. There shall therefore be Judgment for the Plaintiff in the following terms:

- i. This Honourable Court Declares that the Plaintiff is the fee simple owner of all that piece or parcel of land measuring 0.2575 acre, situate, lying and being at Marjay Town, Goderich in the Western Area of the Republic of Sierra Leone which property is delineated on survey plan LS 670/92 dated 20 March, ¹⁹⁹² ~~2012~~ attached to Deed of Conveyance dated 5 July, 1993 duly registered as No. 550/93 at page 25 in volume 470 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown and expressed to be made between Francis Bamikole Rosenior, therein described of the one part, and the Plaintiff herein, Mrs June Collier, therein described of the other part.
- ii. This Honourable Court Orders that the Plaintiff do immediately recover possession of the said land from the Defendant and his servants or agents.
- iii. This Honourable Court grants the Plaintiff an Injunction Restraining the Defendant and/or his servants or agents, or howsoever otherwise, from trespassing on, or in any way interfering with, or from selling or otherwise disposing of Plaintiff's said land. Disobedience of this Order shall be punishable by Committal for Contempt.
- iv. This Honourable awards the Plaintiff *General Damages* assessed at Le2,000,000.
- v. This Honourable Court awards the Plaintiff the Costs of the action, such Costs assessed at Le2,500,000.

N C Browne-Marke

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL.