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No. 1

IN THE HIGH COURT OF SIERRA LEONE

LAND AND PROPERTY DIVISION

BETWEEN:

BERNARD MOMOH

-PLAINTIFF

(ADMINISTRATOR OF THE ESTATE)

OF ALBERT JEROME ALPHONSO MOMOH

AND

MR. MOHAMED BANGURA

-DEFENDANT

COUNSEL:

S.S. THOMAS ESQ FOR THE PLAINTIFF

C.F. EDWARDS FOR THE DEFENDANT

BEFORE THE HONOURABLE MR. JUSTICE ALHAJI
MOMOH-JAH STEVENS J

JUDGMENT DELIVERED ON THE 1ST DAY OF JUNE
2016.

JUDGMENT

By Writ of Summons dated the 21st day of January 2011, the Plaintiff claims against the Defendant as follows:

1. A declaration that all that piece or parcel of land situate, lying and being at Kelsey Road, Kissy Dockyard, Kissy Freetown in the Western Area of the Republic of Sierra Leone as delineated on Survey Plan No. LOA 8347 dated 6th November 2008 and attached to Conveyance dated 17th November 2008 registered as No. 1403/2008 at page 5 in volume 646 forms part of the estate of Albert Jerome Alphonso Momoh(deceased)Intestate and that Bernard Momoh is its administrator
2. Recovery of possession of the said piece and parcel of land
3. Damages for Malicious Damage
4. Damages for Trespass
5. A perpetual injunction

6. Any further or other relief

7. Costs

PARTICULARS OF CLAIM

In his Particulars of Claim, the Plaintiff avers that he is Administrator of the estate of Albert Jerome Alphonso Momoh (deceased) Intestate and by a Memorandum dated 17th October 1963 the said deceased intestate during his lifetime the Government of Sierra Leone granted a building lease for a period of three years within which he was required to build a house on the subject matter of this action so as for him to be entitled to purchase of the freehold of same. That the said deceased intestate was able to develop the said land by constructing a dwelling house and requested a sale of same to the Plaintiff, but died on the 18th day of January 1967 before a conveyance could be executed. The Plaintiff as administrator of the estate of the said deceased pursued the agreement between the deceased and

the Government of Sierra Leone and by a conveyance dated the 17th November 2008 the said property was conveyed to him as administrator of the deceased.

The Plaintiff further averred that since the death of the Albert Jerome Alphonso Momoh, the Defendant has been laying claims to the said property and has even evicted tenants put on part of the property by him as administrator and has taken possession of same. The Plaintiff prayed for a declaration by this Court since he has suffered loss and damage.

The Reply to Defence to Counter-Claim dated the 15th February 2011 filed by the Defendant, the Defendant put the Plaintiff to strict proof of his averment on the Particulars of Claim and instead Counter-Claim that he is the Leasehold owner of all that piece or parcel of Land situate, lying and being at Kelsey Road, Kissy Dockyard Kissy Freetown, the

boundaries and dimensions of which are delineated in survey plan LOA 3784 dated the 25th day of April 2000, and that he became seized and possessed the said land as a result of an offer of a Lease dated the 16th day of August 1999 from the Government of Sierra Leone and acceptance of same dated the 17th August, 1999.

But the Plaintiff also filed Reply and Defence to Counter-Claim and consist of the general traverse seriatim.

On the 3rd march 2011 Direction were given by the Court before the Hon. Mrs. Justice C.L.Taylor and Court Bundles were filed.

On the 18th day of May 2012, before the Hon. Mrs. Justice A, Showers, the Exhibits were marked and the Court appointed the 28th day of May for the commencement of the trial.

TRIAL

The trial commenced before the Hon. Mrs. Justice A Showers, (now Ag. JSC), on the 15th day of June 2012.

The PW1, the Plaintiff, Bernard Momoh, testified he knew the Defendant before the court. The witness statement of the PW1 was produced in Court and leave sought for same to be tendered. The Court granted Leave and the witness statement was tendered as Exhibit O. The PW1 further testified that Letters of Administration were granted to him in respect of his father's estate and same tendered as Exhibit A. The PW1 also referred to Conveyance from the Government of Sierra Leone and to himself and tendered as Exhibit B.

In Cross Examination, the PW1 testified that he took out the Letters of Administration long after the Lease had been given to the Defendant by the Government. According to the PW1, his father had the lease in 1963 and he took out a Conveyance in the year 2008 and that his father had not disposed

of the Land to anyone. The PW1 went further, inter alia, that he sold a portion of the land to one Madam Alimah Koroma and in fact an action was instituted by the said Alimah Koroma against the Defendant herein and he knew that Judgment was given in favour of Alimah Koroma and she has since taken possession of that portion of the land he sold. The portion of Land according to the PW1 is an offspring of the entire land that was leased to his father by the Government of Sierra Leone in 1963.

On the 11th day of December 2013, before the Hon. Mrs. Justice V.M. Solomon, (now JSC), a ruling was delivered. An interlocutory injunction restraining the Defendant or howsoever called from going to, working on remaining or selling leasing or creating a charge or dealing with the subject matter pending the hearing and determination of the subject matter. Also the must Plaintiff filed an undertaking in damages in the event it turns out that the injunction ought not to be granted. Cost in the

cause. This was thereafter adjourned for the PW2 to testify.

PW2- John Nathaniel A Coker also testified before Hon. Justice V. M. Solomon (JSC) on the 9th May 2014. The PW2 told the Court he is a Civil Servant attached to the Ministry of Lands. The PW2 produced and tendered in Court his witness statement and the same was marked as Exhibit P.

In Cross, the PW2 identified both the Plaintiff and defendant in Court but said he never participated in the Survey of the subject matter for neither of the parties. PW2 further said he went to the Land and found structure on same.

PW3- Victoria Sesay testified in Court that she did make a witness statement. By an application by the learned Counsel which was not objected the said statement was tendered as Exhibit A18.

In Cross Examination the PW3 testified that the Defendant had constructed structure on the subject matter which belongs to her father.

DEFENCE COMMENCE

Dw1- THE Defendant herein, who referred to himself as Mahmoud Bangura testified that he is the owner of the subject matter by virtue of a Lease he secured from the Government of Sierra Leone and identified Exhibit E and stated on the 17th August 1999 as instructive in that regard. The Defendant admitted that he has built a structure on the subject of dispute. The Defendant went further to testify that he knew the Plaintiff and that the Land of the Plaintiff is separate and distinct from his land. The Defendant admitted he made a witness statement and the said statement by an application was tendered as Exhibit B12.

In Cross, the defendant maintained that he has no dispute with the plaintiff since his land is not the same as the Plaintiff. The Defendant told the Court

he knew one Halima Koroma but the land between them had been settled.

The Defendant was the only person who testified in his Defence. On the 13th April 2015, before the Hon. Justice D. G. Thompson (now deceased) the filed was withdrawn for judgment on an application granted.

The LAW

The Defendant averred that his land is separate and distinct from that of the Plaintiff but that is not stated in his Defence and Counter-Claim nor did he depose to same in his Affidavit in Opposition. The case in this Court is at the suit of the Plaintiff, therefore the Law enjoins the Plaintiff to make a strict proof of his averments. In the case of Seymour Wilson v. Musa Abess Civ.App 5/79 (unreported), the Court held among other things that the 'registration of an instrument does not confer title on the purchaser, lessee or mortgagee etc. neither does it rendered the title of the purchaser

indefeasible. What confers title is the instrument itself not the registration thereof, and that the fact that the conveyance is registered does not ipso facto mean the purchaser thereby has a good title to the land conveyed.'

The Defendant by his averment he told the Court that the Land is separate and distinct from that of the Plaintiff Land. From this averment of the Defendant as to the distinct nature of the land , it clearly appears to me that the Defendant intended to mislead the Court. The root of title established by the plaintiff is clear from the dictum cited in the Seymour Wilson's case (supra). The Plaintiff was able to establish that he father secured the Lease from the Government of Sierra Leone in 1963 and following the demise of his dad he took out conveyance of the subject matter in 2008 and there has not been any evidence that the said lease was ever cancelled by the Government of Sierra Leone.

On the balance of probabilities, I hereby enter judgment for the Plaintiff on the following terms:

1. That all that piece and parcel of land situate, lying and being at Kelsey Road, Kissy Dockyard, Freetown in the Western Area of the republic of Sierra Leone as delineated on Survey Plan No. LOA 8347 dated 6th November 2008 and attached to Conveyance dated 17th November 2008 registered as No. 1403/2008 at page 5 volume 646 farms part of the estate of Albert Jerome Alphonso Momoh (deceased) Intestate and that Bernard Momoh is its administrator.
2. This Honorable Court the Plaintiff the right to immediate recovery of possession of the said piece and parcel of land
3. This Court the Plaintiff General Damages in the sum of Twenty Five million Leones (Le25,000,000.00)
4. A perpetual injunction is granted by this Honourable Court restraining the Defendant

whether by himself, his agents, servants, privies or howsoever called from entering and or remaining on the Plaintiff's land or any portion thereof from interfering with the Plaintiff's use and enjoyment of the said land from disposing of the said land whether by sale, gift, mortgage, barter, lease or whatsoever form of disposition.

5. Costs is awarded to the Plaintiff same is to be taxed if not agreed upon.

M. 15

1-6-2016
Stevens-J.