

C.C.5/06 2006 J. NO. 1

IN THE HIGH COURT OF SIERRA LEONE
(CIVIL JURISDICTION)

BETWEEN: -

MADAM SALAMATU JALLOH -PLAINTIFF

AND

SULAIMAN BAH -DEFENDANT

C. F. Edwards Esq. for the Plaintiff
M. M. Mansaray Esq. for the Defendant

JUDGMENT DELIVERED THE 18th DAY OF December 2012.

The Plaintiff's claims against the Defendant are for the following reliefs:

1. Damages for malicious damage to property, to wit, two toilet structures.
2. An Order that the Defendant do forthwith pull down and remove so much of the concrete floor constructed by him which hangs over the boundary line between the Plaintiff's freehold property at 10 Williams Street, Grassfield, Kissy, Freetown.
3. A declaration that the Defendant is not entitled to keep the said concrete floor in such a manner as to cause rain water falling thereon onto the compound of the Plaintiff's premises.

4. Damages for trespass.
5. Damages for nuisance.
6. Any other Order that this Hon. Court may deem just.
7. Costs.

The Plaintiff issued a writ of Summons dated 29th December 2005 against the said Defendant in which he prayed for the above mentioned reliefs. In his particulars of claim the Plaintiff alleged that she is the fee simple owner of all that piece of land and premises situate at No. 10 Williams Street, Grassfield, Kissy by virtue of her Deed of Conveyance dated 2nd July 1999 made between **MARIE BUNDU** as vendor of the one part and herself as Purchaser of the other part and registered at page 31 of Volume 521 of the Book of Conveyances kept in the office of the Registrar General, Freetown.

She further averred that she shares a common boundary with the premises belonging to the Defendant whose said premises are numbered 12 Williams Street Kissy as aforesaid. On or about 2003 the Plaintiff alleged that the Defendant by himself his servants agents and privies unlawfully entered her land and damaged her two toilets thereon,

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erected a wall fence 10feet into the Plaintiff's land and caused a concrete slab to be erected overhanging the Plaintiff's compound and causing rain water to fall into her compound. The Defendant was notified of this trespass and nuisance by letter dated 30th April 2003 from the Plaintiff's solicitor and was requested to demolish the said slab but he failed to do so. The Plaintiff therefore alleged that she has by this conduct suffered loss and damage and consequently instituted the present action claiming the reliefs set out above.

The Defendant entered Appearance and filed a defence in which he denied the several allegations made against him. He averred that the said toilets were proved by the Plaintiff's surveyor to be on his land and the Plaintiff therefore requested that they be demolished. Further that it was with the Plaintiff's consent and in her presence that he erected the wall fence leaving a distance of two feet between his and the Plaintiff's land and therefore left a reasonable distance for the concrete slab.

The Defendant recalled that personnel from the Ministry of Lands, inspected the concrete slab complained of and advised him to chisel a portion thereof but that the Plaintiff did not allow his workmen to do so as she insisted that not a grain of sand should fall on her land whilst they were carrying out the exercise. Since this was impractical he could not proceed with the work. He denied that the Plaintiff has suffered any loss and damage.

I should at this stage explain that the trial was commenced before another Judge who heard the testimonies of the witnesses. The matter was assigned to me when it was very much part heard and I had to depend on the court records with regard those testimonies.

The Plaintiff was the first to testify on her own behalf. She reiterated the facts as set out in her particulars of claim. She told the court that there were two toilets on her land, one was already on the land when she bought the property and the other was built by her in front of the old one. She recalled that sometime in 2003 the Defendant told her that he owned the portion of the land where the toilets were located and that he wanted to demolish them. She said that she advised him to wait until she had established the ownership of the said portion of land from her vendor, but that he refused to wait and went ahead and demolished the said toilets. She added that he then erected a wall on the area where the toilets had been and caused the concrete slab to overhang her land.

The Plaintiff testified that she then consulted her solicitor who wrote a letter of complaint to the Defendant but the situation continued and the solicitor had to write a second letter to the Defendant.

She further testified that she then consulted a firm of surveyors, GEO Resources S.L. Ltd who investigated her complaint and prepared a composite plan and report in which they found that the Defendant's wall fence was constructed over an old septic tank and that it had an over hang of one foot into the Plaintiff's compound.

In addition to hiring the services of the firm of surveyors, the Plaintiff also hired a photographer who took photographs of the relevant areas of the property and she stated that the photographs were clear proof of the complaint she made against the Defendant entitling her to judgment.

The Plaintiff was cross-examined on her testimony.

The next witness for the Plaintiff was **MARIE BUNDU**, her vendor. She confirmed that she sold the land to the Plaintiff and that she also knows the Defendant. She told the court that before she sold the said land she had constructed a temporary toilet on the land for the use of her workmen. She said she visited the land after she had sold it and observed that the Defendant had built a concrete fence between his land and that of the Plaintiff and has also made drainage for water from his compound. She further observed a concrete slab overhanging the Plaintiff's property but she told the court that she did not observe water running from the concrete slab onto the Plaintiff's property as it was not raining at the time of her visit.

The witness PW2 stated that she only built one toilet on the land and that the Plaintiff constructed the other one on the same portion of land next to the toilet she had built.

At this stage of the trial, counsel for the Plaintiff applied to interpose a witness, the Plaintiff's surveyor and his application was granted.

MR. SHAMUN A. HAMID, a licensed surveyor was then called as the Plaintiff's third witness, PW3. He told the court that he was hired by the Plaintiff to resurvey her land which he did and he prepared a plan showing the Defendant's property in relation to the Plaintiff's. The plan was tendered in evidence as Exh A. He also prepared a report of his findings dated 26th February 2006 which was tendered as Exh B.

The witness went on to testify that he was given a survey plan showing both properties and he testified at length about measurements he took of the lands of both parties and about his findings. He however confirmed that there was a 1ft wall overhanging the Plaintiff's compound. The witness PW3 was cross-examined on his testimony.

The Plaintiff's fourth witness was **ALI MANSARAY**, PW4, a photographer. He testified that he was hired by the Plaintiff to take photographs of her land and premises. He tendered in evidence the negatives and photographs as Exh E1-7. He told the court that the photographs were taken at different times and under cross-examination explained that it was the Plaintiff who indicated the areas he was to photograph and that the first time he took the photos was four years earlier.

The fifth witness for the Plaintiff was **ALHAJI IBRAHIM KAMARA**. He told the court that he knows both the Plaintiff and the Defendant and that he was aware of the dispute between the parties relating to a toilet between their two properties.

He recounted that the Plaintiff asked him to appeal to the Defendant not to demolish the toilets as the area where the toilets were erected was her land. He stated that he and his friend, **MR. IDRIS COLE** now deceased made the said representation to the Defendant to no avail and he refused to await the arrival of **MADAM MARIE BUNDU**, the Plaintiff's vendor who was then out of the country to confirm the area she had sold to the Plaintiff. He related the effort made by him and other relations of both parties together with **MADAM MARIE BUNDU** to resolve the dispute all without success. He stated that the parties ended the matter in court by the Plaintiff taking the Defendant to the Magistrate Court for malicious damage and trespass.

The sixth witness for the Plaintiff was **MR. SAMUEL SAWYER**, a Clerk at the Administrator and Registrar General's Office who tendered in evidence the title deeds of **MARIE BUNDU**, the Plaintiff's vendor as Exh F and that of the Defendant's vendor as Exh G. He also tendered as Exh H, the Defendant's title deeds dated 14th September 1992.

At this stage of the trial, the witness **MARIE BUNDU**, PW2 was recalled and she confirmed that she sold the land to the Plaintiff and that she had shared a common boundary with one **IYE SESAY** who was the Defendant's predecessor-in-title. She also confirmed that she had built a temporary toilet on the bottom of her land and also that the Plaintiff had built another toilet at the said land. She further stated that the area where the two toilets were built now has a fence built by the Defendant.

The said witness PW2 was not cross-examined on her testimony and that ended the case for the Plaintiff.

The Defendant testified on his own behalf. He too confirmed that he shares a common boundary with the Plaintiff and that he had bought his land from one **IYE SESAY**. He said that no one challenged him when he had the land surveyed and when he bought it. He told the court that the Plaintiff had already built on her piece of land and was living on the ground floor of her three storey building.

The Defendant recalled that there was a toilet on the land and when he enquired about it he was told that it was erected by one **MARIE BUNDU**. He stated that the said toilet was then full and whenever it rained it overflowed into his kitchen. He said he first went to the Plaintiff to complain and later went to **MARIE BUNDU** also to complain.

He further told the court that both the Plaintiff and **MARIE BUNDU** later came to him and asked his permission to erect another toilet near the existing toilet so that the Plaintiff's tenants would be able to use it. He said he granted them the said permission and they dug a hole and emptied the old pit toilet there and continued to use the old toilet.

The Defendant further recounted that sometime later he was invited to the Ministry of Lands together with the Plaintiff and **MARIE BUNDU** and there he was informed that the Plaintiff had complained that he had demolished her toilet. He stated that the Ministry Officials tried to resolve the problem and promised to visit the land but they never did.

He stated that he next learnt that the Plaintiff had engaged the services of another surveyor to re-survey the land. He said the resurvey was done in his absence but that his brother-in-law **MR. IDIRSS COLE** was present. On his return he was informed by his brother-in-law, **MARIE BUNDU** and some neighbours that the Plaintiff had got proof that the toilet was built on his land. He stated that she then asked him to sell the portion of the land where the toilet was located to her but he refused and told her that he had only allowed them to use the land for the toilet as a favour. He said she continued to appeal to him but he did not accede and later asked her to give up the said portion of land and she promised to do so when she returned from a trip abroad. He stated that when she returned he renewed his request for the said land but she made no move to accede and so he went again to complain to **MARIE BUNDU**.

He went on to say that the Plaintiff then gave them a deadline on which she would demolish the toilet and when it expired it was she herself who demolished it. He stated that the toilet was made of concrete blocks and iron rods.

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The Defendant further recounted that after sometime **MARIE BUNDU** came to tell him that the Plaintiff wanted to erect a fence, he then told her that to avoid a problem arising between the Plaintiff and himself, he would erect the said fence to which the Plaintiff agreed. He stated that the Plaintiff was present when the workmen constructed the fence. Later he said the Plaintiff complained that a concrete slab was overhanging her land, and asked for it to be demolished. He said he later received a letter from the Plaintiff's solicitor warning him that if in the process of demolishing the slabs any debris should fall in her land she would institute court action against him. He said consequently he did not proceed to demolish the said slab.

He further testified that the Plaintiff went again to complain to the Ministry of Lands about the overhanging slab and he was again invited to their office. The Ministry officials came to the land and took some measurements and informed her that there was no overhanging slab. It was after that he said, that he received the writ of Summons issued herein.

He denied that the concrete slab allows water to flow into her compound. He stated that it was built in such a way as to allow the water to flow into his land. He also denied trespassing on the Plaintiff's land and maintained that the fence he erected is on his portion of land.

The Defendant was cross-examined on his testimony.

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I should mention that it was at this stage that I took over the trial of the matter.

The Defendant's second witness was **JOSIE NEIL GORDON**, a business man. He told the court that it was his mother, **IYE SESAY** who sold the land to the Defendant, and that the person who sold the land to the Plaintiff was his aunt, **MARIE BUNDU**. He confirmed that the two pieces of land are adjacent to each other. He further testified that ^{at} one time his mother complained that **MARIE BUNDU** was constructing a toilet on her land and she asked him to investigate. He said he went to the said land and discovered that **MARIE BUNDU** had built the toilet partly on her land and partly on his mother's land. He said that he then told **MARIE BUNDU** that his mother wanted her to demolish the toilet she had built on her land but that after that he travelled to Kono and on his return observed that the toilet had been demolished.

The witness DW 2 was cross-examined on his testimony.

The third witness for the Defendant was **ABDULAI KAMARA**, a mason. He told the court that he was hired by the Defendant in 2003 to erect a fence. He said that when he was doing the layout of the fence the Plaintiff asked him to reduce the boundary. When he reported this to the Defendant he told him to do as she asked in order to avoid confrontation with her. He stated that he took four days to do the work and during that period the Plaintiff was around and no one complained to him.

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The witness was cross-examined on his testimony.

It was agreed that the court would visit the *locus in quo* and the visit to the locus in quo took place on 21st January 2012. The surveyors of both parties were present and it was decided that each surveyor should do a re-survey of his client's land and present a report to the court.

The Plaintiff's surveyor was **MR. JAMES BANGURA**, a licensed surveyor. He tendered his report and composite plan as Exh J1-3. His finding is that the Defendant demolished the pit toilet and septic tank which had been in use in the Plaintiff's land for over 15 years and constructed a concrete fence in the said area which he now used as a garage. The total area of encroachment into the Plaintiff's property he discovered is 350 square feet, that is 7 feet wide by 50 feet long.

The Defendant's surveyor **MR. ERIC FORSTER**, licensed surveyor also presented his report and composite plan which were tendered in evidence as Exh K1-7. His conclusion is that the Plaintiff first occupied her plot and established her boundary which tallied with her survey plan. That the Defendant when he occupied his plot met the toilet already built and used by the Plaintiff's workers. He complained and the Plaintiff demolished the said toilet. He then commenced his building. He confirmed the 7 feet buffer zone between the two properties.

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After these testimonies the Defendant closed his case. Only counsel for the Plaintiff submitted his closing address.

The Plaintiff's claim is principally damages for malicious damage to property, namely two toilets that she alleged the Defendant demolished on her land and constructed a concrete fence over the said space.

Having reviewed the evidence, it seems to me that there are conflicting testimonies firstly about the location of the toilets and secondly about who actually demolished them.

The Plaintiff alleged that she met one toilet on the land she bought which was built by her predecessor-in-title **MARIE BUNDU**, and that she constructed another one. This testimony was confirmed by the said **MARIE BUNDU, PW2**.

Let us now examine the Defendant's testimony. It is clear from the evidence that the Plaintiff first occupied her land. The testimony of the Defendant is that when he entered his land there was a pit toilet on the said land which was used by the tenants of the Plaintiff. This piece of evidence therefore corroborates that given by the Plaintiff and her witness **MARIE BUNDU**.

The issue seems to be whether the said toilet was erected on the Plaintiff's land or the Defendant's. I believe that to determine this issue, it is now necessary to look at the evidence given by the surveyors.

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The evidence is that the Plaintiff first hired a surveyor **MR. SHAMUN HAMID** in 2006 to look into her boundary with the Defendant. He reported as follows: See Exh A

“From our survey on the ground, we noticed that

- (i) a wall fence was constructed about 4.0 feet after Miss Jalloh’s house over an area where a septic tank has been in existence for a long period. The relics of this septic tank is seen on the ground as indicated on the plan prepared.”

MR. BANGURA, the Plaintiff’s other surveyor’s observation in his report Exh J2 is as follows:

“Marie Bundu my client’s vendor was the first to start a building on her plot. During construction a pit toilet and septic tank were built. Just by the boundary to Iye Sesay now Sulaiman Bah. It had been in use for over fifteen years before Mr. Sulaiman bought his plot from Iye Sesay in 1992.

My client Salamatu Jalloh inherited what formally belonged to Marie Bundu including the house, the pit toilet and a septic tank”

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Mr. Eric Fosters, the Defendant's surveyor's conclusions are as follows –
Exh J

“The Plaintiff was the first person to occupy her plot and she established her boundaries which were measured and proved to tally with that shown on her plan LS 2661/96. When the Defendant occupied the plot next door he met a toilet building that was built and used by the workers of the Plaintiff which he complained and this was demolished by her (Plaintiff).”

Having set out the above findings, it seems clear that the Plaintiff's predecessor-in-title **MARIE BUNDU** constructed the toilet first. It is apparent that she must have done so on her land. When **MARIE BUNDU** was recalled she confirmed that she had constructed the toilet at the bottom part of her land. The Defendant's surveyor also confirmed that the Plaintiff when she entered the land established her boundaries which tallied with her survey plan. If she had established her boundaries then she would not have proceeded to build the second toilet on the Defendant's land. Her surveyor's report stated that she “inherited what formally belonged to **MARIE BUNDU** including the house, the pit toilet and a septic tank.”

It is my view that from the preponderance of evidence the pit toilet and septic tank were already on the Plaintiff's land when the Defendant came to occupy his land.

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The question now is who demolished the said toilet? Here too, there are conflicting testimonies. The Plaintiff and her witnesses allege that it was the Defendant who demolished it and the Defendant and his witnesses state that it was the Plaintiff herself who demolished it.

Having reviewed the evidence, it is apparent that the Plaintiff was very concerned about the Defendant's activities on the land. She complained twice to officials of the Ministry of Lands of the Defendant's demolition of her toilet and the overhanging slab. She had the land surveyed twice to establish the boundaries and possible encroachment. She complained several times to her predecessor-in-title, **MARIE BUNDU**. She instituted an action against the Defendant in the Magistrates Court and eventually instituted the present action. These all go to show that it was the Plaintiff who suffered from the activities of the Defendant complained of.

I therefore accept the testimonies of the Plaintiff and her witnesses that it was the Defendant who demolished the toilet and constructed the concrete fence over the said septic tank and the area where the toilet was located. He is therefore liable to the Plaintiff for malicious damage to her toilet.

Having said that I must point out that there is no evidence before the court of the cost of the said toilet.

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There is evidence that it was constructed of concrete and iron rods but no indication has been given of the loss in monetary terms suffered by the Plaintiff as a result of the demolition of the said toilet. I would in the circumstance assess general damages at Le 5 million.

The Plaintiff has also prayed for damages for trespass. The Plaintiff alleges that the Defendant has encroached into her land. From the evidence of both parties surveyors, the Plaintiff's plot of land was correctly established as set out on her survey plan. All the surveyors found that there should be a buffer zone of 7 feet between the two properties. However there is clear evidence that this buffer zone of 7 feet has been utilized by the Defendant.

Let me refer to the finding of the Defendant's surveyor – Exh J, where he states that “with regards to the buffer zone of 7ft this could be added to the bottom access road making it 22ft wide.” It should be noted that the evidence is that the Defendant had utilized the access road on the east and put a container thereon. He has also utilized the 7feet buffer zone. The question is, is the utilization of the 7feet buffer zone by the Defendant an encroachment of the Plaintiff's land? The two surveyor's are in conflict regarding this issue. In **MR. ERIC FORSTER's** the Defendant's surveyor's oral testimony he concluded that there is no encroachment by the Defendant. He had in his report stated that the Defendant had added the 7feet buffer zone to the access road.

The Plaintiff's surveyor, **MR. JAMES BANGURA** in his report stated that "the total area of encroachment into the Plaintiff's property is 350 square feet, i.e., 7feet wide by 50 feet long," which is clearly the buffer zone.

In the earlier Surveyor's report submitted by **MR. SHAMUN HAMID**, Exh C, he stated as follows: "There should be a buffer zone of 7.0 feet which was not accounted for, where **MRS. SALAMATU JALLOH**'s toilet was situated. This toilet was demolished by **MR. BAH** and a wall built over it."

In my view from the findings of all three surveyors and the court's observation on the visit to the locus, the Defendant has utilized the buffer zone. I therefore accept **MR. BANGURA**'s the Plaintiff's surveyor's report that the Defendant has encroached into the Plaintiff's property by 7 feet. He is therefore liable to the Plaintiff in trespass. I assess damages for trespass at Le5 million.

With regards the complaint of the slab overhanging the Plaintiff's property the Defendant admitted that there is indeed a slab constructed by him overhanging the Plaintiff's land. He testified that he refrained from demolishing the said slab because of the Plaintiff threats to take action against him if debris from the wall should fall into her land.

The surveyor **MR. SHAMUN'S HAMID** report is clear that there is a 1 foot overhanging slab into the Plaintiff's compound. The photographs Exh E1-7 are further proof of the Plaintiff's claim.

In those circumstances I shall grant the Plaintiff the reliefs she prays for in respect of the piece of concrete hanging over her land. No damages for nuisance will be awarded as none has been proved.

The Plaintiff has therefore proved her claim against the Defendant on a balance of probabilities and judgment is given in her favour. I make the following Orders.

1. Damages for malicious damages to the Plaintiff's two toilet structures are assessed at Le 5, 000,000 (five million Leones).
2. An Order that the Defendant do forthwith pull down and remove the one foot of concrete slab overhanging the boundary line between his property ^{and} the Plaintiff's freehold property at 10 Williams Street, Kissy Grassfield, Freetown.
3. Damages for trespass assessed at Le 5, 000,000 (five million Leones)

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4. No damages for nuisance is awarded.
5. Costs of the action to the Plaintiff to be taxed if not agreed upon.

A. Showers
18/12/2012
SIGNED: - A. SHOWERS
JUSTICE OF COURT OF APPEAL