

CC: 77/14

2014

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NO.9

IN THE HIGH COURT OF SIERRA LEONE

(LAND AND PROPERTY DIVISION)

BETWEEN: SIERRA FISHING COMPANY - PLAINTIFF/APPLICANT

KISSY DOCKYARD

KISSY

FREETOWN

AND

ALHAJI KABBA

-1<sup>ST</sup> DEFENDANT/RESPONDENT

MR. HASSAN

-2<sup>ND</sup> DEFENDANT

MR. SAVAGE

-3<sup>RD</sup> DEFENDANT/RESPONDENT

WOMEN IN CRISIS

-4<sup>TH</sup> DEFENDANT

ALL OF BACKWIND ROAD

KISSY DOCKYARD

KISSY

MR. SHEKA BANGURA

-5<sup>TH</sup> DEFENDANT

MR. MOHAMED SACCOH

-6<sup>TH</sup> DEFENDANT

MS. HAWA BANGURA

-7<sup>TH</sup> DEFENDANT

MR. SORIE SHIEK

-8<sup>TH</sup> DEFENDANT

MR. J.S. KElfALA

-9<sup>TH</sup> DEFENDANT/RESPONDENT

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JAMES MOMODU FORNAH-SESAY ESQ. AND A.SHOWERS ESQ. FOR THE  
PLAINTIFF/APPLICANT

A. GOODING-AJAX, C.O.M.LABOUR AND M.NICOL-WILSON FOR THE 3<sup>RD</sup>  
DEFENDANT/RESPONDENT

E.A HALLOWAY ESQ. AND M.CHARLIE ESQ. FOR THE 9<sup>TH</sup>  
DEFENDANT/RESPONDENT

RULING DELIVERED THE 10<sup>TH</sup> DAY OF JULY 2017

The Plaintiff/Applicant herein has filed a Notice of Motion dated the 26<sup>th</sup> day of March 2015 seeking an order for this Court to determine the questions of Law set out in the Pleadings of the Plaintiff and Defendants without a full trial pursuant to Order 17 Rule 1 of the High Court Rules 2007. The questions of Law raised by the Plaintiff are whether the State can have any interest to a land sold to the Plaintiff/Applicant herein, lying and being at Back Wind Road and Hospital Road Kissy Dockyard Freetown, and secondly whether the State can pass title to the Defendants after the said Land had been sold to the Plaintiff. The Plaintiff then requests for final Judgment if the questions of Law are determined in its favour by this Court.

In support is the Affidavit sworn to by Bassem Mohamed dated the 26<sup>th</sup> day of March 2015. Mohamed Bassem deposed that he is the Managing Director of the Plaintiff /Applicant herein and that the Plaintiff/Applicant is the owner of the subject matter of dispute by virtue of a Deed of Conveyance dated the 31<sup>st</sup> day of August 1983 made between the Government of Sierra Leone in favour of the Plaintiff registered as No. 1258/83 in volume 354 at page 112 of the Record Books of Conveyance kept in the Office of the Administrator General in Freetown.

Bassem Mohamed deposed further that prior to the Plaintiff acquiring legal possession of the Land in issue; the Plaintiff had held a Lease since 26<sup>th</sup> April 1957.

According to Bassem Mohamed in the said Affidavit dated the 26<sup>th</sup> day of March 2015, that upon discovery that the Defendants herein had trespassed on the Land



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in issue, the Plaintiff herein consulted the services of a Licensed Surveyor who in turn conducted a thorough investigation on the said piece and parcel of land and submitted a report thereof, and in consequence the Plaintiff made a peaceful move to remove the Defendants but to no avail. So the plaintiff herein was left with no option but to consult a Solicitor who wrote warning letters to the Defendants to desist from the act of illegality by way of occupying the property of the Plaintiff herein but the Defendants herein did not pay heed and as such it resulted in an action in Law. The Deponent further stated that Solicitors for the 1<sup>st</sup>, 3<sup>rd</sup>, 8<sup>th</sup>, and 9<sup>th</sup> Defendant entered Appearance to the action but it was mainly the 1<sup>st</sup>, 3<sup>rd</sup> and 9<sup>th</sup> filed their Defence. The Deponent disagreed with the Defences filed as the Defences of the 1<sup>st</sup>, 3<sup>rd</sup>, and 9<sup>th</sup> Defendants/Respondents are based on a common root of title from the State.

In moving the Notice of Motion dated the 26<sup>th</sup> day of March 2015, Counsel for the Plaintiff herein, A. Showers Esq. canvassed this Honourable Court that he relied on the entire content of the Affidavit in support. Counsel for the Plaintiff further submitted that the 1<sup>st</sup> Defendant is claiming right of possession by virtue of a Lease Agreement made between the Government of Sierra Leone and Rablatulai Co. Ltd dated the 11<sup>th</sup> July 2013 registered in volume 110 at page 46 of the Book of Leases. As regards the 3<sup>rd</sup> Defendant/Respondent, Counsel for the Plaintiff stated he has mainly averred that he is lawfully occupying Government Quarters since he has been put in possession by the Government of Sierra Leone and a similar position averred by the 9<sup>th</sup> Defendant/Respondent herein that he has purchased the Freehold Land from the State in July 2001. But the position of the Counsel of Plaintiff is that Freehold property had been conveyed by the Government of Sierra Leone to the Plaintiff and as such the Government has no interest whether legal or equitable to pass to the defendants. Counsel for the Plaintiff relied on the case of Seymour Wilson Vs Musa Abess Civ App 5/799 (unreported). Plaintiff's Counsel further reference BM1 in the Affidavit in support which is the Conveyance made between the Government and Plaintiff/ Applicant herein and as such the Government cannot pass title to third parties. Counsel for the Plaintiff/Applicant relied on Order 17 Rule 1 of the High Court Rules 2007.



Lead Counsel for the 3<sup>rd</sup> Defendant/Respondent, O. Gooding-Ajax replied to the submission made by Counsel for the Plaintiff and maintained that the Affidavit in Opposition contested the application for a final judgment without trial in its entirety as their Client has been wrongly sued since judgment cannot be obtained without the necessary party and a reference in aid made to the case of Society Ltd Vs. London Theatre of Varieties Ltd 1924 AC1 HL Q14 and paragraphs 4 and 5 of the Affidavit in Opposition of the 3<sup>rd</sup> Defendant/Respondent. Lead Counsel for the 3<sup>rd</sup> Defendant stated that the property occupied by their Client is a State Land and Counsel relied on Section 2 of the State Land Act No.19 of 1960 and the unreported case of Seymour Wilson. O. Gooding Ajax further discountenanced the entire Affidavit in Support as it has no bearing to the subject matter of dispute since the premise which is occupied by the 3<sup>rd</sup> Defendant/Respondent is a Government Quarter which falls under the purview of the Ministry of Works, Housing and Infrastructure and there is no evidence that that the said property has been ceded to the Ministry of Lands. Further legal authorities such as Section 4 of Cap 256 and Section 18 of the State Proceedings Act 2000 were also cited and canvassed by the Lead Counsel for the 3<sup>rd</sup> Defendant/Respondent.

In his reply Lead Counsel for the 9<sup>th</sup> Defendant/Respondent, E.A. Halloway Esq. submitted that the question of Law raised on the Notice of Motion dated the 26<sup>th</sup> day of March 2015, supported by the Affidavit of Bassem Mohamed also dated the 26<sup>th</sup> March 2015, is a question of Fact and not of Law and hence amount to an abuse of process. According to the E. A. Halloway Esq. the property of his client is separate and distinct from that of the Plaintiff/Applicant herein, citing the Affidavit in Opposition dated the 17<sup>th</sup> June 2015 deposed to by Buawah Jobo Samba. Lead Counsel for the 9<sup>th</sup> Defendant further stated that his client had been in long possession for over twenty years.

In Answer to the reply by both Lead Counsels of the 3<sup>rd</sup> and 9<sup>th</sup> Defendants/Respondents, Counsel for the Plaintiff/Applicant reiterated that they are all deriving their title to a common vendor which is the State. A. Showers further pointed out that the 3<sup>rd</sup> Defendant/Respondent relied on a Letter dated the 1<sup>st</sup> February 2010 from the Ministry of Works, Housing and Infrastructure and said Letter is coming twenty Years after the State had conveyed the property in



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issue to his client. In the case of the 9<sup>th</sup> Defendant, Counsel for the Plaintiff maintained that the 9<sup>th</sup> Defendant has only exhibited a Letter for the purchase of State property but Counsel opined that this does not amount to the conveying of property as it is contrary to Sections 3 and 4 of the State Lands Act 1960. A. Showers Esq. concluded by saying that none of the Defendants contested the Conveyance of his client in any of their pleadings.

The onus on the Court is to determine whether the State can transfer Land to another party after same had already been sold.

In the case of Seymour Wilson vs. Musa Abess SC Civ. App. 5/79(reported) it was held inter alia that in a case for the Declaration of Title a Party to a dispute must rely on the strength of his title and not on the weakness of the other side. It is very unambiguous, plain and ordinary to me that the Conveyance made between the Government of Sierra Leone on the one hand and that of the Plaintiff/Applicant on the other hand, is valid and genuine dating back to the 31<sup>st</sup> day of August 1983, as evidenced on the Affidavit made in Support of the Notice of Motion dated the 26<sup>th</sup> day of March 2015 and marked as BM1. No doubt Governments operate in perpetuity therefore what obtained in 1983 hold sway over any other subsequent activity touching the same. I humbly submit that this is trait law and consistent with section 171(15) of the 1991 Constitution of Sierra Leone.

In this regard the Letter possessed by the 3<sup>rd</sup> Defendant/ Respondent marked as Exhibit A is of no moment because the Plaintiff/Applicant is already in possession of a legal Title Deed from the same Government of Sierra Leone.

On the same token, for the 9<sup>th</sup> Defendant/Respondent to rely on a work carried out by a specialist on Land matters at the subject matter of dispute and have as his conclusion ' the Land of the Plaintiff is separate and distinct' is unfounded, misleading and far from the truth. A careful perusal of the Title Deeds of the Plaintiff/Applicant is inclusive of same, nothing separate and distinct. Besides, for the 9<sup>th</sup> Defendant/Respondent to argue that he has been in possession of land for over twenty years serve no purpose as there was an existing Title Deed in possession of the Plaintiff/Applicant superseding such possession.

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By virtue of Section 4 of the Registration of Instruments Cap 256 1960

' Every deed, contract, or conveyance , executed after the ninth day of February, eighteen hundred and fifty seven, so far as regards any land to be thereby affected, shall take effect, as against other deeds affecting the same land, from the date of the registration'.

I humbly submit, the Plaintiff/ Applicant is in compliance with the Registration as seen in Exhibit BM1 deposed to Bassem Mohamed on the 26<sup>th</sup> day of March 2015 in the Affidavit in Support paragraph 1 thereof. Any other occupant of the same land, no matter how long the stay, is of no relevance in our jurisprudence.

In this regard I ruled that the State cannot transfer the interest of the Plaintiff/Applicant to that of any of the Defendants in this action as the Land in issue had already passed and I submit humbly that this declaratory order of this Court is consistent with Section 18 (1) b of the State Proceedings Act No.14, 2000 because it was a lawful transaction executed between the State and the Plaintiff/Applicant herein on the 31<sup>st</sup> day of August 1983.

For above reasons it is this day ordered as follows:

- 1- Final Judgment is entered in favour of the Plaintiff/Applicant herein as the bona fide owner and person entitled to possession of all those pieces or parcels of Land and hereditaments, situate lying and being at Backwind Road Kissy Dockyard and Hospital Road Kissy Dockyard Freetown in the Western Area of the Republic of Sierra Leone in accordance with Order 17 Rule 1 of the High Court Rules 2007.
- 2- Costs to be borne by the Defendants in this action.

M.A.J. Stevens

High Court Judge



10-7-2017