

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

BETWEEN:

MS. EJATU DAMAE JALLOH - PLAINTIFF/APPLICANT
(By Her Attorney ALFRED ABDUL KARIM KAMARA)
No. 8 Samsamana Drive
IMAAT
Freetown.

AND

1. EL HAJJ MAMADOU BAH - DEFENDANT/RESPONDENTS

2. THE OCCUPANT(S)
Plot 8, Seydia Estate
IMATT
Hill Station
Freetown.

COUNSEL:

L. JENKINS - JOHNSTON ESQ. - PLAINTIFF/APPLICANT

L. DUMBUYA ESQ. - 2ND & 3RD
DEFENDANTS/RESPONDENTS

E. T. KOROMA ESQ. - (INTENDED
DEFENDANT/RESPONDENT)

BEFORE THE HON. MS. JUSTICE F. BINTU ALHADI J.
JUDGMENT DELIVERED ON THE 28TH DAY OF JANUARY 2019

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- A. This is an action that commenced by a Writ of Summons dated the 18th day of September 2017 taken out by Jenkins - Johnston and Co. on behalf of the Plaintiff, Ejatu Damae Jalloh (through her lawful attorney Alfred Abdul Karim Kamara).
- B. Following this, a notice of motion was filed on the 5th day of October 2017 on behalf of the Plaintiff/Applicant asking for an Order that the said writ of summons be served by substituted service on the 1st Defendant after several unsuccessful attempts.
- C. On the 6th day of November 2017, an Order was granted for the substituted service as prayed for.
- D. On the 22nd day of November 2017, appearance was entered for an Alhaji Abu Sesay (an occupant) and as the 2nd Defendant of the address at Plot 8 Seydia Estate, IMATT, Hill Station, Freetown by Counsel, Lansana Dumbuya Esq.
- E. On the 23rd of November 2017, Counsel for the Plaintiff/Applicant filed an Ex-Parte Notice of Motion asking for the following Orders to wit:
1. That judgment be entered for the plaintiff/applicant against the defendant(s) as per claims in the writ of summons dated the 18th day of September 2017 :-
 - Immediate recovery of possession of premises situate, lying and being at Plot 8, Seydia Estate, IMAAT, Hill Station, Freetown in the Western Area of the Republic of Sierra Leone;
 - Mesne Profits at the rate of US\$ 30,000 per annum from December 2014 until delivery of possession;
 - Damages for breach of contract;
 - Costs. For failure to enter an appearance as per the provisions of the High Court Rules 2007. "in the alternative."
 2. That summary judgment be entered for the Plaintiff against the Defendant(s) as per the provisions of Order 16 of the High Court Rules 2007 on the grounds that the Defendants have no Defence to the claims in the writ of summons herein.
 3. Damages for breach of contract to be assessed.

4. Interest to be assessed.
5. Cost of this action to be assessed.
- F. On the 14th day of December 2017, a notice of motion was filed by a 3rd intended defendant/applicant asking for :
 1. An interim stay of proceedings of this action pending the hearing and determination of this application;
 2. An Order adding the 3rd intended defendant/applicant to this action;
 3. An Order consolidating the matters intituled FTCC 220/16 2016 G. No. 49 between Seidya Group (represented by Mr. Alimu Barrie) v. Ejartu Damae Jalloh and CC 302/17 2017 J. No.21 between Ms Ejatu Damae Jalloh (by her lawful attorney Alfred A. K. Kamara) V. El Hajj M. Bah and the Occupants;
 4. An Order be given for the said Seidya Group to be served with the Amended Writ of Summons pursuant to which this action commenced so as to afford the intended 3rd Defendant/Applicant an opportunity to file an appearance and all relevant documents to defend this action;
 5. Any further Order(s) that the court may deem fit and just in the circumstances;
 6. That the cost of this application be cost in the cause.

SUBMISSIONS BY COUNSEL

- G. On the 25th day of January 2018, Counsel for the 2nd Defendant, Lansana Dumbuya Esq, filed a Defence and Counterclaim on behalf of the 2nd Defendant, Alhaji Abu Sesay. He stated that the 2nd Defendant resides at the said property as an owner and not a tenant. That he bought the property from Sierra Leone Commercial Bank through Seidya Development Company Limited.
- H. On the 5th day of February 2018, Mr Dumbuya aforementioned, entered an appearance for a 3rd Defendant (Occupant), Mena Sesay. He also filed an affidavit in opposition on the same date on behalf of the 2nd Defendant and the 3rd Defendant. In the affidavit in opposition sworn to by the 2nd Defendant, Alhaji Abu Sesay, he deposed to the fact that the 3rd Defendant was his sister and that the 3rd Defendant is the fee simple owner of the said property. In the same vein, he also said that he bought the property for his sister.

- I. On the 13th day of February 2018, Counsel for the Plaintiff/Applicant filed an affidavit in reply to the affidavit in opposition of the 5th day of February 2018.
- J. After hearing arguments from both counsel on the application/notice of motion filed on the 14th of December 2017 to add a 3rd intended defendant, the Court dismissed the application on the 1st of October 2018 on the ground that it was untenable.
- K. Although Mr. Dumbuya filed his papers on behalf of the 3rd Defendant/Occupant, Mena Sesay, he did not argue on his submissions in Court and he was absent from the proceedings from Monday 28th May 2018 till its conclusion on the 1st of October 2018.

L. DECISION

Having enumerated the above stated facts, what is the position of the law?

1. Immediate Recovery of Possession

- M. The Plaintiff/Applicant has prayed for an immediate possession of the property situate at Plot 8 Seidya Estate, IMAAT, Hill Station, Freetown. Is the Plaintiff/Applicant entitled to immediate recovery under summary proceedings? Is there any real defence? Are the Defendants/Occupants tenants or are they holding without a license? Does the affidavit in support contain statements of information or belief with the sources and grounds thereof? Does the affidavit in opposition show cause against the application to the satisfaction of the court?
- N. Is the application suitable for determination without a full trial of the action? And will the determination finally determine the entire matter? Have the parties been given an opportunity of being heard on the issues? I am satisfied that the Affidavit in support of the application does contain statements of information with the sources and grounds and the affidavit in opposition does not show any cause against the application to the satisfaction of the court.
- O. The law is that summary proceedings for the possession of land are only appropriate in cases where there is no real defence; Sime, S. 'A Practical Approach to Civil Procedure' [1995] 2nd ed. Blackstone Press Limited Publishers at 171. A purported defence based on evidence which is rejected by the court does not prevent the use of the procedure; Filemart Limited v Avery [1989] CA. The procedure can be

used where land is alleged to be occupied solely by a person(s) (not being a tenant or tenant holding over after the termination of the tenancy) who entered into or remained in occupation without license or consent or that of any predecessor in title of her; Sime (supra) at 171.

- P. No acknowledgment of service is required in the High Court. An affidavit in support is required setting out the Plaintiff's interest in the land, the circumstances in which the adverse occupation arose, the nature of the claim to possession and that all known occupiers have been named in the originating process; Order 16 rules of the High Court Rules of 2007.
- Q. I have perused Exhibit AAKK 1, which is the conveyance, attached to the Affidavit in Support sworn to on the 22nd day of November 2017, made between the Applicant herein (as the Purchaser) and one Seidya Development Company Limited. I note that the Applicant, Ejatu D. Jalloh purchased the fee simple absolute in possession of Plot 8 Seidya Estate aforesaid on the 30th of December 2010. It is instructive to note that I see no irregularity in the transaction and it is evident that Plot 8 of the estate of Seidya Development Company Limited was properly conveyed to Ejatu Jalloh and that the survey plan was properly executed with L. S. No. 4433/09.
- R. I also note Exhibit AAKK3 of the said affidavit in support, which is a tenancy agreement between the Plaintiff/Applicant as the 'landlord' and the 1st Respondent/Defendant, El Hajj Mamadou Bah as the 'tenant'; although the signature says "A. Bah" and not "M. Bah" as would have been expected. Nevertheless, it was a tenancy agreement and if it was not "M. Bah" it was a representative on his behalf; because the evidence points to the fact that the Plaintiff/Applicant was in communication with El Hajj Mamadou Bah and she knew him. I note that it was agreed that all rentals to be paid by the tenant, (the Respondent herein), are to be paid to the mortgage bank of the Applicants.
- S. Furthermore, Exhibit AAKK 4 and 5 are receipts issued by Seidya Group Limited and Alimu Barrie respectively expressing that the amounts are rentals of the same Plot 8 Leicester Peak Road, Hill Station; a property which the said Seidya Development Company Limited, presumably a subsidiary of Seidya Group Limited, sold and conveyed to the Applicant herein in 2010. I find this aspect of the case very misleading.
- T. There is documentary evidence, Exhibit AAKK7, to show that the Applicant mortgaged the said property to HFC Mortgage and Savings (SL) Limited; and for which she has been using the rentals of the house to re-pay the mortgage; and for which she is now in default because

the 1st Defendant/Respondent has failed to keep to his commitment; and is at risk of losing the house.

- U. It is noteworthy that the 1st Defendant/Respondent has not been defended in this action; even though service was made by pasting the Writ of Summons on the said property. From the facts as presented in Court and the documents filed, it appears that there were multiple occupants in the said property, which is the subject matter of this case.
- V. In considering the Statement of Defence and the Affidavit in Opposition sworn to on the 5th of February 2018 by the 2nd Defendant, Alhaji Abu Sesay, I observe that both documents are full of contradiction and misrepresentation. Both the 1st and 2nd Defendants are deluding themselves as to the true ownership of the demised property. It appears that they may have each paid some money to Seidya Development Company Limited at different times, in the absence of each other, with the mistaken view that they were being sold, individually/separately, the freehold interest; whilst the property was still owned by the Sierra Leone Commercial Bank. In other words, Seidya Development Company was misrepresenting to the public, to be the freehold owners of the said estate free of encumbrances.
- W. I note that the 2nd Defendant failed to exhibit a legitimate conveyance of the said property to him. Instead, he exhibited a re-conveyance of the said property between the Sierra Leone Commercial Bank and Seidya Development Company Limited in Exhibit ABS 1. This was clearly not evidence of conveyance to him the 2nd Defendant; and which ultimately defeats his argument of having freehold ownership.
- X. From the totality of the facts and evidence, it is clear that not only is the Plaintiff/Applicant the rightful owner and is in possession of a conveyance of the freehold to her, but that the Defendants/Respondents do not have any defence. That she then signed a tenancy agreement with the 1st Defendant or most probably a representative of the 1st Defendant, since the signature says "A. Bah" instead of "M. Bah;" but that notwithstanding, even if El Hajj Mamodu is not in occupation, other occupants are; and they are living there without the owner's consent. As such, they are to vacate the premises and give immediate possession to the Plaintiff/Applicant, Ejatu Jalloh.

2. Mesne Profits

- Y. Mesne profits refers to the profits of an estate received by a tenant in wrongful possession between two dates; Black's Law Dictionary 9th Edition. It would therefore mean in this instance, from the date the

tenancy determined up to the present occupation by the Defendant/Respondent.

The mesne profits has been assessed at US\$ 30,000 per annum from December 2014 up until delivery up of possession. It is my view that the Plaintiff/Applicant is entitled to the mesne profits that has been accumulated up to this point in time; which amounts to US\$ 120,000 or its equivalent in Leones.

3. Damages

- Z. There is no doubt that the Plaintiff/Applicant has suffered loss and will have to be indemnified notwithstanding her default payments on the mortgage she took out. There has been a breach of tenancy agreement and the Defendant/Respondent has to compensate the Plaintiff/Applicant for the loss incurred. The principle is that the injured party should be put as nearly as possible in the same position, so far as money can do it, as if she had not been injured. The measure of damages is assessed at US\$ 90,000 (Ninety Thousand United States Dollars) or its equivalent in Leones.

CONCLUSION

- AA. I am satisfied that the application is suitable for determination without a full trial of the action; and that I see no reason why this determination should not be final. All the parties have been represented by Counsel, except for the 1st Defendant who was properly served. As such, all of the parties have been given an opportunity of being heard on the issues.

In the circumstance, the Plaintiff/Applicant has succeeded in her application against the 1st Defendant and all the occupants and judgment is given in her favour. The 1st, 2nd, 3rd Defendants and all other occupants are not entitled to occupy the said property.

Judgment is therefore given as follows:-

1. Immediate recovery of possession by the Plaintiff/Applicant of the premises situate, lying and being at Plot 8 Seidya Estate, IMAAT, Hill Station, Freetown described in her Deed of Conveyance dated the 30th day of December 2010 registered as No 2408/2010 at page 98 of volume 670 of the Books of Conveyances kept in the Office of the

Administrator and Registrar-General's Office in Freetown and delineated on survey plan L. S. No 4433/09 dated 15th January 2010.

2. The Defendants/Occupants are not entitled to occupy the said premises aforementioned.
3. Mesne profits at the rate of US\$ 30,000 per annum or its equivalent in Leones from December 2014 until delivery up of possession. Which amounts to US\$ 120,000 or the equivalent in Leones.
4. Damages for breach of contract and occupation without consent is assessed at US\$ 90,000 (Ninety Thousand United States Dollars) or its equivalent in Leones to be paid jointly and severally.
5. Interest at the rate of 35% from 5th October 2017 until delivery up of possession.
6. Costs to the Plaintiff/Applicant against the 1st, 2nd, 3rd Defendants and other occupants to be taxed if not agreed upon.

Hon. Ms. Justice F. Bintu Alhadi J.