

CC208/2023 2023 B NO. 14

IN THE HIGH COURT OF SIERRA LEONE

(LAND & PROPERTY DIVISION)

BETWEEN

ALHAJI MOHAMED BORBOR BAH - PLAINTIFF

AND

MR. S.K.- KAMARA – DEFENDANT

D. Barrie Esq for the Plaintiff

S. Sankoh Esq for the Defendant

RULING DELIVERED ON THE 8TH DAY OF APRIL, 2024

This application herein is filed by the plaintiff/applicant by way of Judges Summons dated the 21st day of July, 2023 in which he seeks leave to enter final judgement against the defendant/respondent pursuant to Order 16 of the High Court Rules of 2007. He prayed for the following reliefs:

1. A Declaration that the plaintiff/applicant is the person entitled to possession of all that property situate lying and being at 18 and 18A Goderich Road, Lumley in the Western Area of the Republic of Sierra Leone as shown on Survey Plan numbered LS 226/16.
2. Recovery of possession of all that piece or parcel of land situate, lying and being at No. 18 and 18A Goderich Road, Lumley in the Western Area of the Republic of Sierra Leone as delineated on Survey Plan numbered LS 226/16.
3. Damages for trespass
4. An injunction to restrain the defendants/respondent whether by himself or his servants, agents, privies or howsoever called from trespassing upon or remaining on the plaintiff's land.
5. Any further or other order(s) that this Honourable Court may deem fit and just
6. Costs.

in support of the application is the affidavit of Alhaji Mohamed Borbor Bah sworn to on the 21st day of July, 2023. He deposed he is a plaintiff in this action and all facts deposed to are within his knowledge and he is duly authorized to depose to same.

That upon his instructions to his solicitors, a Writ of Summons was instituted on his behalf against the defendant/respondent commencing this action.

He further deposed that solicitor representing the defendant/respondent entered appearance for and on behalf of the defendant to this action.

That he was informed by his solicitors and verily believe that a search was conducted to ascertain whether the defendant/respondent has filed a defence to the said Writ of Summons

that was served on him and the search revealed that no defence was filed with respect to the matter.

That he was informed by his solicitors herein, and verily believe that a defence and counter claim was filed dated the 10th day of July, 2023 was served out of time on his solicitors.

That he verily believes that the defendant/respondent do not have any meritorious defence to the action herein to lay claim to the portion of his land he is illegally occupying and that the defence filed sham and a calculated ploy to deprive the plaintiff/applicant of his legal interest in the disputed portion thereby defeating the end of justice, and wasting the precious time of this court.

The defendant opposed the application and filed an affidavit in opposition sworn to on the 4th day of July, 2023. He deposed that the defence discloses triable issues, which ought to be heard on full blown trial.

The issue before for the court is to determine is whether or not the defence shows merit and contains issues which ought to go to trial.

The defendant claim that he has been on the property in dispute for well over 12 years prior to the commencement of this action and have exercise ownership of same and accordingly the plaintiff action is statute barred.

He further claims that the land in question belongs to government and is in the process of acquiring same from government.

In the affidavit in reply to plaintiff averred that the land in question is not government owned but a private property of the plaintiff. See exhibit MMB1 a copy of the plaintiff's conveyance.

The defence seem to rest on the fact that he has been in occupation of the land for 12 years, though that claim was disputed by the plaintiff in that the defendant trespassed on the land sometimes last year when he built a tin shelter on the land and was verbally warn by the plaintiff to stop.

He further claims that the land is government owned and that he was in the process of acquiring same, he deposed that he had applied to government for leasehold but yet did not exhibit the said application and there has been no offer from government to him in respect of the property in question.

Counsel for the plaintiff/applicant has relied on the case of **AMINATA CONTEH vs APC 2005 unreported decision of the supreme court of Sierra Leone**. The Court held:

The object of the Order id to ensure a speedy conclusion of the Matters or cases where the plaintiff can establish clearly that the Defendant has no defence or triable issues. This draconian power of the court in preventing the defendant from putting his case before the court must be used judiciously.

Let me at this stage examine the defence in detail filed by the defendant to ascertain whether there are any issues raised therein to warrant this matter to go to trial.

Some of the relevant averments are as follows:

That sometimes in 2003, he started developing the said land by doing farming on same when in 204 he constructed a structure on same and stated living on the land in 2005. That he has been in possession of the land for well over 12 years prior to the commencement of this action. Accordingly, the plaintiff is statute barred.

That in 2004 he applied to the Government of Sierra Leone through the Ministry of Lands, Country Planning and the Environment to lease the said land and he eventually got shortlisted on the 27th February, 2004 in the Sierra Leone gazette.

He is engaged with the Ministry of Land to regularize his document with respect to the said land.


It very clear there are no triable issues here, with regards his undisturbed use of the land, he admitted in paragraph 8 of his defence that himself and the agents/ privies of the plaintiff have had confrontation in respect of his occupation of the land, he can't now claim to have been undisturbed occupation of same.

It appears to me that the defendant having trespassed on the land belonging to the plaintiff was trying to justify his state on the land. He said he applied in 2004, though he has nothing to show and yet in 2024 he was yet to get an offer from government for a land he claimed belongs to government. There is no issue here to warrant this court to consider that this matter should go to trial.

That plaintiff has prayed for immediate possession for the portion of his land occupied by the defendant which forms part of his land.

By reason of the above, I hereby grant the application and make the following orders:

1. Final judgement is hereby given to the plaintiff against the defendant for recovery of possession of property at 18 and 18A Goderich Road, Lumley in the Western Area of the Republic of Sierra Leone.
2. Damages to be assessed at NLe 15,000 (Fifteen Thousand Leones)
3. Cost of this action to be taxed if not agreed upon.


SIGNED. ALFRED A.T. GANDA
8/4/24
(JUSTICE OF THE HIGH COURT)