

KABGBAE v. KOFA

SUPREME COURT (Kingsley, J.): June 3rd, 1950  
(Civil Case No. 125/49)

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[1] Land Use Planning—building regulations—building permits—permit granted under Kroo Reservation Ordinance (cap. 115), r.5—holder put into sufficient constructive possession to support trespass action: In an action for trespass to land, the person who normally has a right to sue is the person who was, or is deemed to have been, in possession at the time of the alleged trespass; and a person who is granted a valid building permit under r.5 of Schedule B to the Kroo Reservation Ordinance (cap. 115) is thereby put into such constructive possession of the land as to support an action in trespass (page 51, lines 32–41; page 53, lines 26–29).

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[2] Tort—damages—aggravation—trespass to land—exemplary damages awarded if aggravating circumstances: Where a trespass to land is accompanied by aggravating circumstances, the plaintiff is entitled to recover exemplary damages (page 53, lines 33–34).

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[3] Tort—damages—measure of damages—trespass to land—damages must be sufficient to compensate for actual loss: In an action for trespass to land, the plaintiff is entitled to recover such an amount as will recompense him for any actual damage or loss the trespass may have caused him (page 53, lines 34–36).

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[4] Tort—damages—trespass to land—damages recoverable even though no actual loss suffered: Once trespass to land is proved the plaintiff is entitled to recover even though he has not suffered any actual loss (page 53, lines 30–33).

[5] Tort — trespass — trespass to land — damages — exemplary damages awarded if aggravating circumstances: See [2] above.

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[6] Tort—trespass—trespass to land—damages—must be sufficient to compensate for actual loss: See [3] above.

[7] Tort—trespass—trespass to land—damages recoverable even though no actual loss suffered: See [4] above.

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[8] Tort—trespass—trespass to land—possession supports action—holder of building permit under Kroo Reservation Ordinance (cap. 115), r.5 put into sufficient constructive possession: See [1] above.

The plaintiff brought an action against the defendant to recover damages for trespass to his land and an injunction to restrain the defendant from repeating the alleged trespass.

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Under Schedule B to the Kroo Reservation Ordinance (cap. 115), the plaintiff obtained a permit to build a house on a plot of land

within the Kroo Reservation. The plans were prepared and the plaintiff began work by fixing some sticks on the land; but he was unable to begin building operations because the defendant, in defiance of the tribal authority, built a house on the plot. The plaintiff brought the present action to recover damages for trespass and sought an injunction to restrain the defendant from continuing the trespass. 5

The plaintiff contended that the grant of the building permit put him into constructive possession, and that entitled him to maintain an action in trespass against the defendant. 10

The defendant maintained that the plaintiff could not be the owner of the land since, under s.2 of the Kroo Reservation Ordinance, all land in the Reservation was Crown land. The plaintiff's claim to possession was therefore wrongful and could not support an action in trespass against her (the defendant's) actual and rightful possession. 15

#### Legislation construed:

Kroo Reservation Ordinance (Laws of Sierra Leone, 1946, *cap.* 115), s.2(1): 20

"All that portion of land described in schedule A hereto and hereafter referred to as the Kroo Reservation shall . . . be . . . declared to be . . . Crown land."

Schedule B, r.4: "The Tribal Authority shall permit applicants to build houses on vacant lots and shall receive for such permission the customary fees." 25

Schedule B, r.5: "When a house has remained unoccupied and no claim has been made thereto for a space of six months, the same shall be sold and the proceeds vested in the Tribal Authority to be expended for the benefit of the tribe under the provisions of the Tribal Administration (Colony) Ordinance." 30

*R.W. Beoku-Betts* for the plaintiff;  
*Edmondson* for the defendant.

KINGSLEY, J.: 35

On January 27th, 1948, the plaintiff, who is a seaman, obtained from the Kroo Tribal Authority a permit to build a dwelling-house on a plot of land situate at Nana Kroo Street in the Kroo Reservation.

This permit, which forms Exhibit A to these proceedings, was granted under rr.4 and 5 of Schedule B to the Kroo Reservation Ordinance (*cap.* 115), and following this the plaintiff had a plan 40

prepared which forms Exhibit B to these proceedings. Then on March 16th, 1948 he obtained the necessary permit from the Public Works Department to go on with the proposed building. This latter permit forms Exhibit C to these proceedings. He has however  
 5 never been able to build, because, so he alleges, in defiance of the Kroo Tribal Authority the defendant has herself put up a house on the said plot of land. Whether this house is fully completed or not is not quite clear. By her defence the defendant says that the  
 10 plaintiff, contrary to the plea in the statement of claim, is not and never has been the owner of the disputed land, and that she rightfully entered the land and is rightfully in possession of it. The plaintiff now claims damages for his being deprived of the use of the said land, and he asks for an injunction to restrain the defendant from continuing and repeating the alleged trespass.

15 Now, dealing first with the defendant's plea of possession, possession can of course be of two kinds, constructive or physical. While one person may be in constructive possession of land, another may be in physical possession of the same land. In this case at the  
 20 material time the defendant was and indeed still is in physical possession of the land, whether lawfully or otherwise I shall indicate later. For the moment, I propose to assume that it is physical possession alone which counts, and thus to put the burden on the  
 25 plaintiff, if he is to recover, to do so on the strength of his own title. Whilst the statement of claim does not expressly state in so many words that the claim is for possession, I think this must be implied in the claim for an injunction which seeks to restrain the  
 30 continuance of a trespass which allegedly consists of the defendant having put up a building on the disputed land. As I understand the statement of claim, not a model of careful pleading, the plaintiff in effect seeks a mandatory injunction to compel the defendant to remove the said building.

Before I deal with the actual merits of the plaintiff's claim, I think I ought to say a word about a submission made by learned  
 35 counsel for the defendant at the close of the case for the plaintiff. Mr. Edmondson submitted that there was no case to answer as the plaintiff had alleged in his statement of claim that he was the owner of the disputed land, a claim which could not be sustained, he said, in view of the express provision in s.2 of the Kroo Reservation Ordinance (*cap.* 115) that all the land in the Kroo Reservation was  
 40 Crown land. Mr. Beoku-Betts, who had not himself settled the statement of claim, suggested that the word "owner" was obviously, as



he put it, a misuse of language by learned counsel who settled the pleading, and that it must mean possessor by virtue of the wording in the particular paragraph having regard to the provisions of the Ordinance regarding ownership. As the Kroo Reservation Ordinance (*cap.* 115) was something new to me, I announced that I would adjourn to consider the point, whereupon Mr. Edmondson said that in the circumstances he preferred to go on with his defence. I have to confess that I myself construed this as meaning that he withdrew his submission, but Mr. Edmondson in his final address said that all he intended to mean was that he reserved the point, as he was of course perfectly entitled to do, and he repeated the submission. In fairness to the defendant, I have decided to give her counsel the benefit of the doubt. 5 10

I have come to the conclusion, however, that the point is of no substance. While it is literally correct of course that the plaintiff is not the owner of the land in question, the real issue here in my view is whether he had a right, no matter how he was described in the statement of claim, to bring this particular action, and on the facts of the case I answer that question in the affirmative. Whether his permit (Exhibit A) was correctly or incorrectly granted by the Kroo Tribal Authority is for the moment beside the point. It is sufficient to say that it gave him a right to immediate possession of the land, and he commenced to exercise that right by fixing some sticks in the land (it is not in dispute, or at any rate it was not challenged in cross-examination, that the defendant removed these sticks), and to suggest that because the plaintiff has been mistakenly described in the statement of claim as the owner of the land, therefore his case must *ipso facto* fail, is to my mind an argument quite devoid of substance. It would have been different of course if an action of this kind could only have been brought by the absolute owners of the land. But in trespass to land the law is quite different. The person who normally and properly has the right to sue is the person who was or is deemed to have been in possession at the time of the trespass; and if the permit (Exhibit A) was validly granted by the Kroo Tribal Authority (and I will deal with this point presently) it is clear that the plaintiff was entitled to possession, indeed by virtue of his having affixed his sticks had taken possession, and, having been deprived of that possession, he is entitled to bring his action. As I have indicated, the fact that he was wrongly described in the statement of claim as owner is a matter of no moment. 15 20 25 30 35 40

Now on what is the plaintiff's claim to the land based? Under r.4 of Schedule B to the Kroo Reservation Ordinance (*cap.* 115) the Kroo Tribal Authority can grant permits to members of the Kroo tribe to build houses on vacant plots of land within the Kroo Reservation area. It is not in dispute that the land in question in this case is in the Kroo Reservation. The plaintiff made his application, presumably verbally, according to the custom, and was granted his permit (Exhibit A). One is glad to note that there has been no suggestion of *mala fides* on the part of the tribal authority. I also note, not without regret, that all its members are apparently illiterate. On Exhibit A, for example, all including the headman himself made their marks. The only signature is that of the tribal secretary who signed in his official capacity and as witness to the marks. It does not need much imagination to see how a tribal secretary could very easily abuse his position, and I am particularly glad therefore to note that here again there is no suggestion of *mala fides* on the part of Mr. Russel, the young tribal secretary.

[The learned judge reviewed the evidence on both sides as to whether the disputed land was vacant at the time the permit was granted. He then continued:]

And now to answer the question as to whether the Kroo Tribal Authority acted properly under its statutory powers in granting the permit, it is clear I think beyond question that for many years before the permit was granted there had been no house on the land in the ordinary sense of the word "house." When the permit was granted, there was at the most some sort of stonework showing that a building of some kind had once been there. No claim has been made in respect of this stonework. It obviously could not have been very much because the Public Works Department building inspector, one Alexander Davies, an independent witness, apparently did not see it. In March 1948, when the plaintiff made his application to the Public Works Department, Davies went out to inspect the land and saw neither building nor vegetation of any kind. The land, he said, was quite vacant. As I have already rejected the defendant's story of cassava planting—I make no finding as to whether this in itself would have entitled her to retain the use of the land as against the tribal authority—I have no hesitation in finding that when they granted the permit (Exhibit A) to the plaintiff the Kroo Tribal Authority acted perfectly correctly and within the powers conferred upon them by the Ordinance.

That really is the end of the case. The defendant herself has

never received any permit from the tribal authority to build on the disputed land, and as regards the Public Works Department permit to build it is clear from the evidence of Mr. Davies, the building inspector, that the plaintiff received his before the defendant applied for hers. The plaintiff received his on March 16th, 1948. On the following day the defendant applied for hers, but her application was turned down because of some irregularity in her plans. It was however subsequently granted on February 15th, 1949, despite the previous issue of the permit to the plaintiff. The Public Works Department, incredible to relate, apparently keeps no check on the building permits which it issues. Thus it is clear from the defendant's own evidence that, after being told that the tribal authority had granted its permit (Exhibit A) to the plaintiff, she deliberately, if in genuine ignorance of the law under which that permit had been granted, defied the authority and went ahead with her own plans. Her story of having amassed building materials during the war years, when she said they were hard to get, is made nonsense of by the evidence of the building inspector to which I have already referred. He inspected the site when both the plaintiff and the defendant applied for their permits. On both occasions the land was quite vacant, he said.

The defendant, I am bound to hold, in the light of the above findings, is quite clearly a trespasser, in that with full knowledge of the grant of the permit to the plaintiff she went on to the land covered by this permit, uprooted the plaintiff's sticks, and commenced to build. The moment he was granted this permit, the plaintiff in my view was put into constructive possession of the land in dispute and still remains so. He is therefore, I hold, entitled to both damages and the injunction for which he asks.

Now on the question of damages, it is well-established law that, in trespass, once the trespass to land is proved the plaintiff is entitled to recover damages even though he has not suffered any actual loss. If the trespass is accompanied by aggravating circumstances he is entitled to recover exemplary damages. In any event he is entitled to recover such an amount as will recompense him for any actual damage or loss the trespass may have caused him. In this case I can see no evidence of actual loss by the plaintiff except the somewhat scanty, if unchallenged, evidence about the loss of his sticks, which he said the defendant had uprooted. He valued these, he said, at 3/—, but he apparently made no attempt to get them back as he said he did not want any trouble.

5 In my view there were no aggravating circumstances. Indeed  
I am not entirely without sympathy for the defendant. The more  
I think over the evidence in this case the more I am disturbed at  
the position in the Kroo Reservation. The land there is under the  
10 "charge and management" of the tribal authority, an almost completely  
illiterate body, the sole repository of any literacy being a young  
tribal secretary. As far as I can see it is clear that for all practical  
purposes he runs the tribal authority. Its members, as far as I  
have seen them, and I say this without any disrespect, are not  
15 impressive and one gathers that the members of the tribe are like-  
wise not impressed by them. One member of the tribal authority,  
Mr. John Pearce, said this: "If anybody objects to the Kroo Tribal  
Authority's ruling, we fight in the streets. Sometimes the authority  
gives way."

15 However my sympathy with the defendant must not be allowed  
to deprive the plaintiff of his lawful rights. In the circumstances of  
this case I think that justice would be met as far as damages are  
concerned by an award of nominal damages only, and accordingly  
20 I award the plaintiff 40/-. He is, as I have already indicated,  
entitled to his injunction, and I so order. In the exercise however  
of my inherent jurisdiction in these matters, I grant a stay of  
execution of this injunction for two months (or such earlier period  
as may suffice on notice by the defendant to the tribal authority) to  
25 enable the defendant to take down and remove the building which  
she has erected. The plaintiff must have the costs of this action.

*Judgment for the plaintiff.*