

IN THE SUPREME COURT OF SIERRA LEONE

C O R A M:

HON. MR. JUSTICE S. BECCLES DAVIES

- JSC

HON. MRS. A. AWUNOR-RENNER

- JSC

HON. MR. JUSTICE S.C.E. WARNE

- JSC

HON. MR. JUSTICE M. O. ADOPHY

- JA

HON. MR. JUSTICE A.B. TIMBO

- JA.

BETWEEN:-

AUGUSTA KAIMUNA

- APPELLANT

A N D

JLAH BRODEH GRANT

- 1ST RESPONDENT

A N D

MR. ADAMA

- 2ND RESPONDENT

DR. W.S. MARCUS-JONES FOR APPELLANT

G. S. WILLIAMS ESQ., FOR DEFENDANTS

JUDGMENT DELIVERED THIS 4 DAY OF December 2002WARNE J.S.C.

This is an Appeal against the Judgment of the Court of Appeal, made up of NAVO, TURAY AND WILLIAMS JJA. delivered on Thursday 22nd day of January, 1987

THE GROUNDS OF APPEAL ARE:

1. The Court of Appeal misdirected itself in law by failing to appreciate the "Order to recover possession of 13, Nana Kroo Street Freetown meant and could only be reasonably interpreted to mean so much of 13 Nana Kroo Street as was in the actual possession or occupation of the Second Defendant, a tenant in the said premises and by construing that Order to mean recovering "more relief" than was claimed.
2. The Court of Appeal erred in Law in not making an Order dismissing the Counterclaim.

FACTS: The facts of the case are that appellant is the owner of and in possession and control of property No. 13 Nana Kroo Street. This property she let to three tenants. These tenants paid rent to her until one of the tenants defaulted whom she evicted. This tenant ^{one} ~~are~~ James Lewis vacated the room and put in possession the 1st Respondent. The 1st Respondent vacated the room and put in possession, the 2nd Respondent. The Appellant sought to remove the 2nd Respondent but the 1st Respondent

opposed her action. Both Respondents were then sued in the High Court for the possession of the room. On the 14th October 1982, the High Court gave Judgment in favour of Appellant granting her the reliefs sought. In the proceedings in the High Court, four witnesses testified for Appellant and five witnesses testified for the Defendants. At the end of the testimony both Counsel addressed the Court. Johnson J, reviewed the evidence for the Appellant and for the Respondents and had this to say- "I accepted the whole evidence of the Plaintiff and her witnesses. I do not believe or accept the evidence of the 1st Defendant and that of the witnesses for the Defendant. I find as a fact, that Abigail Samson was in possession of premises 13, Nana Kroo Street and that she validly disposed of the premises to the Plaintiff, in accordance with Kroo Customary Law. In this regard, I accept the evidence of P.W. 4. I do not find P.W. 4 to be an interested party. I find that Abigail Samson has a better right to possession of premises 13, Nana Kroo Street. I do not accept the evidence that the 1st Defendant's father was the owner of the premises. I find that the Plaintiff in all the circumstances, has a better right to possession of the premises than the 1st Defendant herein."

It is an established principle of law that an Appellate Court will not readily disturb the findings of facts of the Trial Court, but where the facts do not support the findings of the Trial Court or the findings have violently contravened a principle of law, or the findings are contrary to the facts or the facts have not been evaluated, the Appellate Court can interfere with such findings of facts.

In my view, the Trial Judge did not evaluate the facts adequately before making his findings. To compound the flaw in the findings the Trial Judge did not consider the Counterclaim to enable him make any findings whatsoever.

In any case the Court of Appeal has a right of rehearing the whole case which they did.

In fairness to Counsel for Appellant he gave several reasons why the Appeal should succeed. I will repeat them.

- "(1) Because the Second Respondent was a tenant having no beneficial interest in the premises and led no evidence in defence of the claim against him.
- (2) Because the High Court was right in finding that the Appellant

had a better right to possession of the premises than the 1st Respondent.

- (3) Because the Appellant was not merely owner in accordance with Kroo Customary Law but was at all material times in undisturbed possession of the premises.
- (4) Because the 1st Respondent failed to establish her right to a Declaration of Title, damages and an injunction.
- (5) Because at no time was the property vested in the 1st Respondent nor was she ever in possession of the same.
- (6) Because on the totality of the evidence the Judgment of the High Court was correct and ought to be upheld and the Court of Appeal was one sided in reversing it."

Having said this, I will consider the proceedings in the Court of Appeal

Both parties were represented in the Court of Appeal and made their submissions.

The Court of Appeal having heard the submissions had this to say: "her claim was for recovery of possession of only a portion of the said premises, yet the Court Below ordered that the Respondent "do recover possession of 13, Nana Kroo Street, Freetown from the Second Defendant".

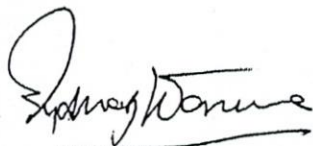
This Court found to be Contrary to Law. On a closer examination of the evidence and on a proper evaluation the court found that the property the Appellant was claiming was clearly defined and there was no documentary ^{evidence} to substantiate her claim. On the evidence before the court, there is evidence that the Respondent acquired the property, by Kroo Customary Law. The Trial Judge accepted the evidence on Kroo Customary Law as evidence of fact. But the Court of Appeal has referred to Kroo Customary Law as a question of Law. The Court of Appeal referred ^{to} Cap. 127 Laws of Sierra Leone and determined that the property in dispute is within the Kroo Reservation Area as defined in Cap. 127. In ^{determining} ~~determining~~ the acquisition of 13 Nana Kroo Street by the Appellant, The Court of Appeal found that "The effect of the Kroo Reservation (Chapter 127) is not to make Kroo Laws and Customs prevail over the General Common Law except in the specified case of succession on Intestary spelt out in Rule 2 Schedule B of Kroo Reservation Act to be found at Page 942 Volume vii of the Laws of Sierra Leone". I agree with the finding of the Court of Appeal. The Court of Appeal also found that the disposal of the property No. 13 Nana Kroo Street by Abigail Sampson is not valid according to Law. I find no fault with such finding. She had neither prescriptive right to dispose of the property nor legal or equitable right.

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It is unfortunate that this case has dragged on for over ~~20~~ years. The Learned Trial Judge did not make any finding on the Counterclaim not did the Court of Appeal make a finding as well. What is the option open to this Court?. In my view it is to remit the Counterclaim to the High Court for rehearing. However, what purpose will that serve. It is the duty of the Court to ensure that justice is done to litigants who come to our Courts. Since this Court can make any order vested in the High Court, I will proceed to review the case for the Respondents more particularly that of the 1st Respondent. I have reviewed the whole evidence carefully and I hold that on a balance of probability the 1st Respondent has failed to establish that she is the owner of property No. 13 Nana Kroo Street, Freeto I will dismiss the Counterclaim and I grant liberty to apply.

In view of what I have said supra I hold that there is no merit in Ground I of the Grounds of Appeal and it is dismissed and Ground II of the Grounds of Appeal succeeds.

No costs awarded.


SYDNEY WARNE
JUSTICE OF THE SUPREME COURT