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S.C. 4/2005

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

THE SIERRA LEONE ENTERPRISES LTD. - APPELLANT

A N D

1. THE ATTORNEY-GENERAL & MINISTER OF JUSTICE - DEFENDANT

2. THE MINISTER OF LANDS HOUSING &
THE ENVIRONMENT - DEFENDANT

CORAM:

HON. MS.JUSTICE U.H. TEJAN-JALLOH - Ag. C.J.

HON. MR.JUSTICE G.B. SEMEGA-JANNEH - J.S.C.

HON. MR. JUSTICE BODE RHODES-VIVOUR - J.S.C.

HON. MR.JUSTICE M.E.T. THOMPSON - J.S.C.

HON. MS. JUSTICE S. KOROMA - J.A.

SOLICITORS/COUNSEL

B. MACAULAY JNR. ESQ. FOR THE APPELLANT

L.M. FARMAH ESQ. FOR THE 1ST AND 2ND RESPONDENTS

O.I. KANU ESQ. WITH HIM

JUDGMENT DELIVERED ON THE 18TH DAY OF JULY, 2008 BY HON. MR. JUSTICE BODE
RHODES-VIVOUR.

JUDGMENT

By way of Originating Notice of Motion brought under Section 21, 28, 122 and 124(1) (a), of the Constitution, Part XVI Rules 89-98 of the Supreme Court Rules 1982, the Plaintiff seeks from this Court the interpretation of Section 21(1) of the Constitution, and Orders of this Court granting the following reliefs:

- (a) *A Declaration that the Plaintiff is the fee simple owner free from all incumbrances of the property at Fisher Lane, Kissy, Greater Freetown in the Western Area of the Republic of Sierra Leone.*
- (b) *That the Defendant vacates the property and deliver possession of same to the Plaintiff.*
- (c) *Damages to be paid by the Defendants jointly and severally for contravention of the Plaintiffs fundamental rights provided by Section 21 of the Constitution as from the 14th of October 2005 until possession of the property is delivered to the Plaintiff.*
- (d) *An injunction restraining the Defendants, and or severally, by themselves, their servants or agents or howsoever or otherwise from conveying, leasing, mortgaging, parting with possession or in any way whatsoever disposing of the property or part thereof.*
- (e) *Any further order or relief as this Honourable Court may deem fit and just.*

In support of the Originating Notice of Motion is an eight paragraph affidavit deposed to by Mr. Nabil Bahsoon, a director in the Plaintiff Company. Annexed to it are documents marked, Exhibits NB1A, NB1B, and NB2.

Berthan Macaulay (Jnr.) Esq., a legal practitioner deposed to an eight paragraph affidavit verifying statement of Plaintiff' case. Annexed to it are documents marked Exhibits BMJ1A and B respectively.

Mr. Nabil Bahsoon deposed to a further four paragraph affidavit verifying statement of Plaintiffs case.

There are series of correspondence between the parties marked as Exhibits. On being served with the Originating process in this suit O.I. Kanu Esq. State Counsel, entered conditional appearance for the Defendants and filed a three paragraph affidavit verifying statement of the 1st and 2nd Defendants case.

The facts in this case are simple and straightforward.

On the 15th of March 2000 the 2nd Defendant executed a Deed of Conveyance in favour of the Plaintiff. (See Exhibit NB²). By the said Deed of Conveyance the Plaintiff went into possession and remained therein i.e. on the subject matter of the case. A parcel of land situate lying and being at Fisher Lane, Kissy, Greater Freetown in the Western Area of the Republic of Sierra Leone.

On the 5th day of October 2004 the 2nd Defendant wrote to the Plaintiff informing it that the Government of Sierra Leone has instructed it to take possession of the land. Letters were exchanged by the Plaintiff and the 2nd Defendant, and on the 29th day of August 2005 the 1st Defendant gave the Plaintiff 7 days Notice to vacate the land and handover same to the 2nd Defendant. The Plaintiff complied and since 14th of October 2005 the 2nd Defendant has been in possession of the Plaintiffs land and is still in possession of the said land.

We heard learned Counsel for the Plaintiff, Mr. B. Macaulay Jnr., on 9/7/2008 and on 15/7/2008 he concluded his submissions. In his closing speech learned Counsel for the Plaintiff observed that the land was validly conveyed to the Plaintiff by the 2nd Defendant, and that it was wrong for the 2nd Defendant thereafter to compulsorily acquire the said land without complying with the provisions of *Cap 116, Laws of Sierra Leone 1960*. He submitted that the rights of the Plaintiff under *Section 21 of the Constitution* have been contravened. Relying on *Rockson v Agadzi Another 1979 G.L.R. P.106.* *State Insurance Corporation v Botchavay 1992-93 GBLR P.168.*

He urged us to grant all the reliefs sought.

After listening attentively to Mr. B. Macaulay Jnr's. Submissions, Mr. L.M. Farmer, learned counsel for the Defendants informed us that he was not contesting the case since the acquisition of the property was not properly done.

Before I go into the issues in this case I intend to comment on learned Counsel for the Plaintiffs oral application to amend one of the section under which this application was brought. As long ago as 1879 the Courts have held that a party is not bound to state under which Rule or Order he proposes to move. There is no hard and fast rule that the Order and Rule must be

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stated on the Motion paper although it is desirable that they be so stated. See Hall VC in Re Barkers Estate 1879 10ChD P.165 stating the Section, Rule, Order is to be regarded as a procedure to be taken but failure to take it does not, and ought not render such non compliance fatal.

I now turn to the substantive matter. Affidavit evidence of the Plaintiff has not been controverted. The position of the Law is that where material facts in support of an application have not been controverted by the Defendant, the facts contained in the said affidavit in support of the application are to be taken by the Court as true.

It has been clearly established by the Plaintiff that he is the owner of the parcel of land at Fisher Lane, Kissy, Freetown in the Western Area of the Republic of Sierra Leone and that the 2nd Defendant acquired the said land contrary to the provisions of *Section 3 of Cap 116 of the Laws of Sierra Leone 1960 and Section 21 of the Constitution*. The Plaintiffs case is very clear and credible since the Defendants Counsel concedes. When the adverse party concedes as is the case here, that means that there is no defense to the Plaintiffs case, and where there is no defense to the Plaintiffs case the Court is still entitled to be satisfied that the evidence adduced is credible and sufficient to sustain the claim. In this case the Plaintiff has supported his case with documentary evidence, to wit: Exhibit NB2 to show that he is the owner of the property, and Exhibit BMJ2⁹ the Defendants letter ordering the Plaintiff to vacate the land in clear contravention of *Section 3 of Cap 116 of Sierra Leone 1960 and Section 21 of the Constitution*. The well laid down position of the Law is that where documentary evidence supports oral or affidavit evidence such affidavit evidence becomes more credible. This is so because documentary evidence serves as a hanger from which to assess oral or affidavit evidence. The Exhibits supra lend more credence to the Plaintiffs case. *Section 28 of the Constitution* confers original jurisdiction on the Supreme Court to hear and determine matters pertaining to fundamental rights. In interpreting these fundamental rights and provisions of the Constitution the Courts use the technique of interpretation laid down by Hon. Justice Udo Udoma, Justice of the Supreme Court of Nigeria in *N. Rabiu v the State 1981 2 NCLR P.93*. The principles stated by Udo Udoma JSC were reaffirmed by the Privy Council Per Lord Diplock while interpreting the Constitutions of Gambia and Mauritius in *AG of the Gambia v Momodu Jobe 1984 AC P.689 at P.700*. His Lordship said *inter alia*.

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"..... Where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view, this Court should whenever possible, and in the response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the object and purposes of the Constitution....."

Lord Diplock said:

"That a Constitution and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the State are to be entitled, is to be given a generous and purposive construction."

To my mind and taking a guide from the above, the Constitution and the fundamental rights provisions should be given liberal interpretation. By so doing the true intention of the legislature would be achieved.

Section 21(1) of the constitution states that:

"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say –

- (a) the taking of possession or acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such manner as to promote the public benefit or the public welfare of citizens of Sierra Leone; and*
- (b) the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having any interest in or right over the property; and*

(c) provision is made by law applicable to that taking of possession or acquisition

(i) for the prompt payment of adequate compensation;

Black's law Dictionary (5th Edition) defines "Public Interest" as follows:

"Something in which the public, the community at large has some pecuniary interest, or some interest by which their loyal rights or liability are affected."

Subsection (a) of Section 21(1) are examples of public interest others are such as for the building of schools, housing estates, making land available for agricultural purposes.

The Constitution makes it mandatory that adequate compensation must be paid to the original owners of the land and payment must be prompt. See Ereku v The Gov. of Midwestern State 1974 10 SC P.59. Consequently a revocation/acquisition of land without compensation is null and void.

The position of the law is that the Government of Sierra Leone can acquire or revoke interest in land for the overriding public interest, but Notice must be given and adequate compensation paid.

By virtue of the provisions of Part I Section 3 to 20 of Cap 116 Laws of Sierra Leone (Public Lands) the Government of the Republic of Sierra Leone has power to acquire land for public purposes, and this can only be validly done after adequate compensation has been paid for the land.

In this case none of the provisions in Cap 116 supra were followed and that is why learned Counsel for the Defendants conceded to the Plaintiffs claim. For this reasons I hold that the parcel of land situate at Kissy was lawfully conveyed to the Plaintiff.

It is now time to examine the reliefs sought by the Plaintiff and I shall examine them *seriatim*.

(a) Declarations are granted when the party seeking it is confronted with a looming danger. The fact that the 2nd Defendant is on the Plaintiffs land illegally and remains there with no justification whatsoever entitles the Plaintiff to a declaration as prayed.

- (b) The Defendants being illegally on the Plaintiffs land are hereby ordered to vacate the land and deliver possession of same to the Plaintiff immediately.
- (c) The Plaintiff simply claims damages without specifically stating whether it is general or special damages. It is settled principle that if damages are special in nature credible evidence will have to be called in order that the amount pleaded may be proved. Without proof special damages can not be awarded. As regards general damages it need not be proved. It is the loss which flows naturally from the Defendants act. The way in which general damages is quantified is by relying on what would be the opinion and judgment of a reasonable person. See
Odulaja v Haddad 1973 11SC P.360.
Incar (Nig) Ltd. v Benson Transport Ltd. 1975 3 SC P.117.
Jaber v Basma 14 WACA P.140.
Oduro v Davis 14 WACA P.46.

The Plaintiff is entitled to general damages.

- (d) In *Marengo v Daily Sketch Ltd.* 19481 ALL E.R. P.406

"The House of Lords held the view that an injunction shall not be expressed to be granted against the Defendant, his servants, and agents.... for that would suggest that a direct order had been made against such servants and agents who were not parties to the case and could not therefore be bound by an injunction."

The Supreme Court of Sierra Leone is not bound by the decision of any Court in the world. Decisions of the House of Lords are only of persuasive authority on this Court.

My Lords I am persuaded by the view of the House of Lords in *Marengo v Daily Sketch Ltd. supra.*

This application succeeds. Accordingly

1. Declaration is granted as prayed.
2. The Defendants are hereby ordered to vacate the Plaintiffs land immediately.
3. Damages awarded to the Plaintiff is assessed as Le2,000,000 (Two Million Leones)
4. An injunction is granted restraining the Defendants from further interference with the Plaintiffs land.
5. The Plaintiff shall have costs which I assess as Le15,000,000/00 (Fifteen Million Leones).

B. Rhodes - Vivour

 HON. MR. JUSTICE BODE RHODES-VIVOUR - J.S.C.

I AGREE *U.H. Tejan-Jalloh*

 HON. MS. JUSTICE U.H. TEJAN-JALLOH - Ag. C.J.

I AGREE *G.B. Semega-Janneh*

 HON. MR. JUSTICE G.B. SEMEGA-JANNEH - J.S.C.

I AGREE *M.E.T. Thompson*

 HON. MR. JUSTICE M.E.T. THOMPSON - J.S.C.

I AGREE *S. Koroma*

 HON. MS. JUSTICE S. KOROMA - J.A.