

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:-

BAI BANGURA

APPELLANT

AND

MAMADU JALLOH

RESPONDENT

CORAM:-

HON. MR JUSTICE VALESIUS V. THO/MAS, JSC

HON. MR JUSTICE N. C. BROWNE-MARKE, JSC

HON. MS JUSTICE V. M. SOLOMON, JSC

HON. MR JUSTICE P. O. HAMILTON

HON. MRS JUSTICE N. F. MATTURI-JONES

COUNSEL:-

MISS W. S. SERRY-KAMAL. for the Appellant

No representation for the Respondent.

JUDGMENT DELIVERED ON THE 10th DAY OF November 2015.

Thomas, J.S.C.

This is a civil appeal from the Court of Appeal to this Court. The Notice of Appeal against the judgment of the Court of Appeal filed on behalf of the Appellant is dated 27th October 2009 filed by Serry-Kamal & Co. The grounds of appeal are as follows:

1. That the learned Appellate Justices misdirected themselves or erred in law in holding that the irregularity in this case is not so fatal as to render the proceedings void. Also that the action was entered for trial though not in strict compliance with the provisions of Order 25. (Reference is made thereunder to several paragraphs of the Judgment of the Court of Appeal for particulars of misdirection or error).

2. The Learned Appellate Justices misdirected themselves or erred in law in holding that the proceedings were entered. *erroneously?*

PARTICULARS OF MISDIRECTION OR ERROR IN LAW.

The irregularity in this case is not so fatal as to render the proceedings void. We find that the action was entered for trial though not in strict compliance with the provisions (of) Order 25.

3. Alternatively, the Appellant will contend that their Lordships arrived at an erroneous conclusion in law and in fact in holding that there was enough evidence before the Court to justify the conclusions reached by the Trial Judge that on a balance of probability the Appellant failed to establish that he is the owner of the land situate lying and being Off Regent Road Lumley Freetown and he was right in awarding a declaration of title to the Respondent notwithstanding the evidence of the appellant about the payment of One Million and Six Hundred Thousand Leones to the vendor, Yorroh Bah, the signing of the Appellant's conveyance; the visit of the Respondent in the company of one Mr Bah and asked the Appellant whether the land was pledged to him or not. The Appellant's reply to the respondent. The subsequent eviction of the caretaker - Isatu. The Appellant also said after evicting Isatu he later found the Respondent and Amadu on his land after we had already been in possession of the said same piece of land. The court of first instance completely ignored the evidence of DW3 Alpha Kanu. This evidence was to the effect that there was a complete sale and the appellant was put in possession by the vendor in 1993.

4. That there was evidence which clearly showed that the defendant was not a purchaser for value without notice. He met the defendant and tried to purchase the property from the defendant.

5. The defendant failed to conduct a proper investigation of the vendor's title. The maxim is 'Caveat Emptor'.

6. The whole trial was a nullity because the action was never properly entered for trial.

7. That the matter was heard prematurely.

8. The plaintiff did not file a reply and defence to the counterclaim. The pleadings had thus not closed.

9. The decision is against the weight of the evidence.

The reliefs sought by the Appellant are essentially to set aside the judgments of both the High Court and the Court of Appeal and to give judgment for the Appellant and declare him the fee simple owner of the property in issue between the parties. The Appellant filed his case dated the 20th September 2011 in which his Solicitor of Serry-Kamal & Co made a number of submissions after stating what he said was the applicable law under the 1960 High Court Rules. Miss Serry-Kamal appeared as counsel for the appellant on May 15, 2015 and stated that she relies on the Case filed and dated September 20

2011 and has nothing further to say. The Respondent did not file his Case in answer to the Appellant's Case and he neither appeared in person nor did anyone appear as counsel on his behalf.

Appellant's case in this appeal.

Essentially the Appellant's case is grounded on 2 issues, namely:

1. That the case in the High Court was never properly entered for trial relying on provisions in Orders 24 and 25 of the 1960 High Court Rules.
2. That the Court of Appeal reached a wrong conclusion when it held that there was enough evidence to justify the conclusions reached by the Trial Judge to the effect that the Appellant failed to establish his ownership of the land in dispute which had been conveyed to the Respondent. The Appellant contends that at the time the "common vendor" sold and conveyed the said property to the Respondent, the vendor was "already contractually bound (to sell) to the Appellant".

On the issue of compliance with Orders 24 and 25 of the 1960 High Court Rules, the Appellant contends that the irregularity disclosed by the Respondent's papers is fatal and rendered the proceedings void as they were never entered for trial. The argument of counsel for the Appellant is that the action was not properly entered for trial in accordance with the High Court Rules, 1960, and not that it was never entered for trial. In *Osman Thomas Sons and Brothers Ltd. v Bastone & Firminger (Export) Ltd* S.C. Civ. App. 7/81 (Judgment delivered on the 28th April 1983) this Court held that where an action was never entered for trial, that action was not ripe for hearing. This is not the situation here where the complaint is that the action was not properly entered for trial in the sense that the form of the Notice and Entry for Trial did not comply with the requirements of Order 25 of the High Court Rules, 1960. The Court of Appeal dealt with this objection at pages 74 and 75 of the records and concluded as follows:

"We agree with the submissions of Learned Counsel for the Respondent. The irregularity in this case is not so fatal as to render the proceedings void. We find that the action was entered for trial though not in strict compliance with the provisions of Order 25 and it does not matter that the pleadings were not closed before the purported entry of trial; the important issue is that notice of trial was given. In the circumstances, we will dismiss Grounds 4 and 5 of the appeal."

The said Grounds 4 and 5 are essentially the same as Grounds 1, 2, 6, 7 and 8 of the appeal to this Court. I agree with the conclusions reached by the Court of Appeal as cited above and would consequently dismiss the said Grounds 1, 2, 6, 7 and 8 of the appeal.

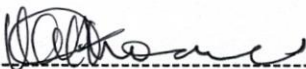
The rest of the grounds of appeal, namely 3, 4 and 5 deal with the issue summarized above, namely that the Court of Appeal reached a wrong conclusion when it held that the Appellant failed to establish his ownership of the land in dispute. The questions for determination at this stage are whether the Appellant proved on a balance of probabilities that he is the owner of the land in dispute and whether the Court of Appeal was wrong in its conclusions on this issue.

At page 76 ff. of the Records and page 11 ff. of the judgment of the Court of Appeal, the Court said as follows:

“Therefore even if it is conceded that the Appellant paid for the disputed land (in) 1993 as stated in Exh. “C”, the transaction between the Appellant and the Vendor was not completed until 29th October 1998, when the Vendor signed his Conveyance evidencing the sale; by this time the Vendor had already completed the sale of the land had executed the Respondent’s Conveyance and he had registered it and gone into possession before the transaction with the Appellant was concluded. There is no evidence to suggest that the Respondent knew that the transaction between the Vendor and the Appellant was completed when the Vendor executed his Conveyance on 4th May 1998.It is therefore clear that the Appellant’s claim for a declaration was not supported by the oral evidence or by the documentary evidence. The Law is that the onus is on the party claiming for a declaration to satisfy the court that he is entitled to such a declaration on the strength of his own title and not on the weakness of the other’s title; if that onus is not discharged the weakness of the other’s title will not help him”.

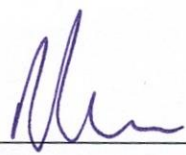
I agree with the reasoning of the Court and go further to say that the Appellant’s position is made worse by the fact that when he allegedly paid a deposit for the land in dispute in 1993 and therefore entered into a contract with the common vendor to purchase the said land, he failed to register his alleged contract as an estate contract in the Office of the Registrar-General. Such registration would have given notice to the Respondent of the contractual relationship between the Vendor and the Appellant in respect of the said land which was subsequently conveyed to the Respondent. Thus it is correct to conclude as the trial judge did that the Respondent was a purchaser for value without notice and acquired a better title to the land when his Conveyance was executed and he took possession of the land.

In the premises, and for the several reasons advanced *supra*, the appeal is without merit and is accordingly dismissed. No order as to costs.



HON. MR JUSTICE V. V. THOMAS.
Acting Chief Justice.

I agree



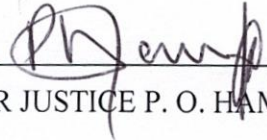
HON. MR JUSTICE N. C. BROWNE-MARKE, JSC.

I agree



HON. MS JUSTICE V. M. SOLOMON, JSC

I agree



HON. MR JUSTICE P. O. HAMILTON

I agree



HON. MRS JUSTICE N. F. MATTURI-JONES