

IN THE COURT OF APPEAL- SIERRA LEONE

HOLINESS PENTECOSTAL CHURCH - **APPELLANT**

vs.

ALTHEA OLADUNI MORGAN (NEE FRASER) - **RESPONDENT**
(Suing By Her Attorney Samuel Williams)

Coram:

Hon. Justice Desmond Babatude Edwards CJ
Hon. Justice Reginald Sydney Fynn JA
Hon. Justice John Bosco Allieu JA

Counsel:

Macauley, Bangura & Co for the Appellant
Tejan Yillah & Bangura for the Respondent

JUDGMENT DATED January 2021

Fynn JA

Background

1. The orders granted by the High Court included a declaration that the plaintiff is owner and entitled to the disputed property situate at 40B Water Street Congo Town, damages for trespass, immediate possession of the disputed property and a perpetual injunction restraining the now appellants.
2. The facts of the case in brief (see the writ of Summons on pages 36-39 and the Defence page 174-177) are that Madam Seraphina Dowridge, a business woman had made a Deed of Settlement, to which is attached a survey plan with several plots delineated thereon and with names assigned to each plot. One of the plots, Plot 3 has the grantors name against it whilst, in the deed itself, the settlor/grantor also names ten Grantees.
3. Madam Dowridge had built a church on this plot, Plot 3, which she used to run herself but later she had let it out to tenants. The appellants had been tenants on these premises before buying it from Rev S Dowridge Williams. The appellant then, defendants have since developed the property significantly.

4. During the grantor's lifetime, Rev. S Dowridge-Williams, her ward, had fraudulently attempted to transfer the settled property to himself and his children. He was found out. Madam Dowridge approached the Courts for relief and Justice Omerie Golley J. had cancelled and expunged the deeds that the said Rev. S Dowridge-Williams had contrived.
5. After the demise of Madam Dowridge, Rev S Dowridge-Williams, the ward recently mentioned, by statutory declaration asserted his title to plot 3 and proceeded to convey a portion of it to his son (who was 1st defendant below) and another portion he conveyed to Holiness Pentecostal Church who were 3rd Defendants below and are now the Appellants.
6. The 3rd Defendant (now appellant) has since pulled down the church which was built by Madam Dowridge and has built a new structure in which they conduct services and worship.

The Appeal

7. The Appellant being dissatisfied with the Judgment filed an appeal dated 15th October 2014 on five grounds. The appellant argues that the Learned Trial Judge (LTJ) was wrong to have held that the Power of Attorney relied on to bring the case did not cover the disputed property. The Appellant argues that the Power of Attorney could only have been made with respect to Plots 1, 2, and 5 of the Deed of Settlement and cannot be used in respect of Plot 3 which is the disputed property in the case.
8. In ground 2 (two) the appellant argues that plot 3 being clearly marked in the Deed of Settlement as property of Madam Dowridge, whilst the other plots belonging to the respondents plots 2 and 5 were also clearly marked, the LTJ was wrong to have declared plot 3 as being the property of the respondent.
9. In ground 3 the appellant contends that the LTJ was wrong to have ordered the appellant and all persons in occupation of the premises and Church situate at 40B Water Street to give up immediate possession of those premises to the plaintiff now respondent.
10. Ground 4 asserts that the LTJ had wrongly construed the Deed of Settlement and even if her construction were correct she could not properly conclude that the property at Plot 3 belonged to the respondents alone to the exclusion of the other person's named as parties.
11. Ground 5 is a "catch all" ground which contends that the judgment is against "all established principles of law" the LTJ having " failed to take into consideration the issues and questions of law ...and submissions and legal authorities raised and relied on by the parties"

The Submissions and deliberations

Grounds 1,2 & 4

12. In my opinion all the grounds raised in this appeal are closely interconnected and the whole would be greatly impacted by the outcome of grounds 1, 2 and ground 4. It will be appropriate therefore to first decide whether the LTJ had properly construed the Deed of Settlement. This is the object of grounds 2 and 4. Was the LTJ wrong when she found that *“the Grantor therein conveyed the said piece or parcel of land to the three grantees namely the Rev. Abayomi Cole, Mrs Elizabeth Lucinda Dowridge Dinzy Innis and Miss Oladuni Frazer-Leigh”*?
13. The appellant submits that the LTJ had misconstrued the deed. The appellant argues that plot 3 had been given to Seraphina Dowridge ie the Grantor herself and that the other grantees had nothing to do with it whatsoever. If the plaintiff (now respondent) truly has no interest in Plot 3 as the appellant submits then her very standing in the case would be shaken and in all likelihood she may be left bereft of locus *standi* to have brought this matter at all.
14. There is no denying that the deed subject of this appeal is not the best crafted instrument that has been brought to our attention. Two disquieting issues in the deed, which are crucially significant, are that the draughtsman was economical with the recitals and so we do not have a full narrative of the history and purposes which the Deed sets out to achieve. Also the term “grantee” is used in respect of two sets of names leading to some confusion as to whether all those so named are of the same category. There are other issues of concern within the deed but these two are seminal in any resulting vagueness.
15. The short comings of this deed however should not be allowed to defeat the intentions of the grantor, if that intention can safely be ascertained. In **The Construction of Deeds and Statutes**, Charles E Odgers, puts it this way quoting from Gwyn v Neath Canal Co (1865) LR 3Ex 209,

“The result of all the authorities is that when a court of law can clearly collect from the language within the four walls of the deed or instrument in writing the real intention of the parties, they are bound to give effect to it by supplying anything necessarily to be inferred from the terms used and by rejecting as superfluous whatever is repugnant to the intention discerned”.

The intention of this deed is clear as will now be shown:

16. The parties to the Deed are described as “the grantor of the one part” and “the grantees of the other part” then the deed proceeds to later state “*whereas the Grantor doth hereby name the ten **grantees** with their addresses as follows*”. The second use of the term “grantee” does raise the following question; are the ten “grantees” named also parties to the Deed considering that when naming the parties only three names are listed and referred to as “the grantees”?
17. In my opinion the answer to that question must necessarily be in the negative. As a wholesome construction of the Deed, taking into consideration the usual purpose of a deed such as this one, whilst at the same time applying a construction that does not lead to a complete absurdity; will produce a construction that the ten so called “grantees” are not parties to the Deed but rather that they are “beneficiaries”. One is led to this conclusion primarily because of three significant pointers. First, the Deed begins by proclaiming itself to be a “Deed of Settlement”. Deeds of Settlement usually establish a Trust which would have “a Grantor”, “a Grantee” and “a Beneficiary”. Of course it is possible in such a deed for one individual to be in more than one role and possibly even in all the roles. As would be the case when a person settles property on himself for his own benefit.
18. Another pointer resides in the fact that one of the persons named as a party “grantee” the Rev. Abayomi Cole is not seen to have any other interests whatsoever in the various plots. He is named as a Grantee and nothing else. This suggests strongly that the second class of “Grantees” (who I hold are beneficiaries) have a separate and distinct role from that of the first who are also parties. As a named party and grantee, the deed is made in his favour but he is not named among the “ten grantees”. It would appear that the Rev Abayomi Cole as a party only holds the legal interest but not the beneficial interest; he must certainly be a Trustee and I so hold.
19. The Appellant mentions in his filed submissions the presence of the name of Rev. Abayomi Cole in the Deed and the possible interest which Rev Abayomi Cole may have had. Even though the appellant does not concede that grantees became the owners of plot 3 clearly the appellant recognizes that the name could not have been put in the deed together with the other grantees “of the other part” for no reason at all, the appellant however entertains the possibility that the grantees; ie the parties may have become joint owners by virtue of this deed.
20. A third pointer as to the true nature of the deed is the inclusion of the covenant which if not included is usually implied in Deeds of settlements (see *The Construction of Deeds and Statutes*, Charles E Odgers 4th Ed at pg 125). In the present deed, the covenant is clearly included that “*at the request and costs of*

the grantee..... for further and better assuring all or any of the premises unto and to the use of the Grantees in the manner aforesaid as by them shall be reasonably required". If this were not a trust I doubt there would be the need for any such further assurance of this kind or the need for the future perfection of a Deed which ought otherwise would have been complete needing no further action.

21. In my considered opinion the whole of the property settled in the deed which is subject of this appeal was conveyed by that deed to the "Grantees" who were named as being of "the other part" for them to hold the same for and unto the use of the beneficiaries who were wrongly described in the deed as the "ten grantees". It is my opinion and I hold that in this deed it is only plot 3 that is being conveyed. Whilst the attached survey plan is intended to and does provide a clear guide on what specific portion other parties may be entitled to it is only plot 3 that is described in detail in the schedule to the deed. This underscores the point that this deed is solely in respect of Plot 3 which is the property of the Trustees in trust for the named beneficiaries.
22. I have already mentioned that "a settlor" otherwise called "the grantor" (as is the case in this deed, can at the same time designate himself as one of "the grantees" and may yet still be a beneficiary; all in the same deed. In such a situation the "Settlor" or grantor does not divest himself of the legal title to the property. What he does in such a situation is to change the nature in which he now holds the property. The Grantor may thereby become a trustee holding the legal estate for himself and others or as the Deed may out line. In the present deed the "grantor" completely divested herself of the legal title. Her name only appears as "Grantor". She is not a "Grantee of the other part" nor is she named in the list of "ten grantees" that I hold are beneficiaries.
23. Title, it must be noted, usually moves from "grantor" to "grantee" and if it is intended for the grantor to retain the legal title then it is allowable for the "Grantor's" name to be mentioned in "the other part". In the present case "the grantor's" name does not appear as being in "the other part". One can conclude therefore that the grantor did not pass the title to the property to herself and there is nothing to suggest that she intended to do so.
24. Similarly the Grantor's name does not appear amongst the ten beneficiaries listed. This, of course, is not an uncommon occurrence where the grantor is completely divesting herself of the title; legal as well as equitable. I have already mentioned that the grantor can create a Trust in her own favour, transferring the property to another but for that other to hold the property for the benefit of the grantor herself, but this is not what happens in this instance. The legal estate for Plot 3 which is marked out but bears the Grantor's name was conveyed to and

vested in the three grantees/trustees named. It is my opinion and I hold that until the legal estate was conveyed to the listed beneficiaries', title to property in Plot 3 was conveyed by this deed to and remains vested in *Rev. Abayomi Cole, Mrs Elizabeth Lucinda Dowridge Dinzy Innis and Miss Oladuni Frazer-Leigh*.

25. A careful reading of the deed reveals that not all of the ten persons named "as grantees" who I hold to be truly 'beneficiaries' have their names appearing on the survey plan as being interested or being owners of any plot. The following;

No. 1 Miss Ibidunni Frazer Leigh,

No.3 Mrs. Omoboni Kamara-Cole,

No. 5 Mr. Ronald Frazer Williams,

No.6 Miss Linda Dowridge- Williams,

No.7 Mr. Victor Dowridge- Williams and

No. 8 Master Charles Dinzy Innis

do not have their names on the survey plan whilst they are clearly named in deed. I hold that their mention in the deed is as beneficiaries. As I also hold that the deed relates only to Plot 3, it necessarily follows that they and the others were named in the deed as the beneficial owners of plot 3.

26. It is not lost on me that on the survey plan attached to the Deed, the Grantor's name appears against plot 3. The appellant has raised this matter specifically as an indication that the Grantor retained this plot for herself. This position is not tenable in the face of the foregoing deliberations. It may have been for convenience that Plot 3 on the plan retained the name of the Grantor and does not have the names of all ten beneficiaries, or the names of the trustees (which would have been the more appropriate path). Notwithstanding this further opacity, it is well known that it is the literature, the words in the deed that control and give efficacy to the instrument over and above the survey plan. Retaining the name of the Grantor against plot 3 does not detract in any way from the overall purpose of the deed which is still discernable on a careful reading.

27. I am unable to come to any other practicable construction of this deed dated 13th July 1979 (page 270 of the Records) and I hold the above to be the correct and intended construction. The Grantor, Seraphina Dowridge, intended to and had in fact settled land at 40B Congo Town on three grantees to hold same on trust for ten (10) beneficiaries. The settled parcel of land is the same as the plot bearing the grantor's name on the survey plan attached to the deed; plot 3, the same which is the subject matter of this action.

28. Having construed the deed of settlement, one can now give attention to the concern brought up in ground one. This is whether the respondent can properly grant a power of attorney in respect of plot 3 and whether the power of attorney granted did in fact extend to and include powers relating to plot 3.
29. Had my recent construction of the deed excluded the respondent from plot 3, this ground would have had instant success. However, since I have found that the respondent and the other trustees hold the whole of the legal estate to the property in the deed, the issue in ground one remains a viable enquiry but one that is now in my opinion easily resolvable.
30. Having held that plot 3 was conveyed to *Rev. Abayomi Cole, Mrs Elizabeth Lucinda Dowridge Dinzy Innis and Miss Oladuni Frazer-Leigh* jointly (as there is no mention of a contrary co-ownership) it would follow that each of them becomes liable for the protection of the property whether jointly or severally.
31. It is trite that each of joint owners is equally entitled to the possession of the whole of the property. The evidence discloses that the respondent Althea Oladuni Morgan is one and the same person as Miss Oladuni Frazer Leigh who is named amongst the three grantees of the other part - the trustees. She thereby becomes entitled by virtue of the Deed of Settlement and her trusteeship to take steps which will protect the trust property. I hold therefore that she was in a position to give a power attorney to someone else, in this case Mr. Samuel Williams to act for and on her behalf with respect to the Trust property.
32. The other question advanced under this ground is whether the Power of Attorney granted conveyed powers wide enough to cover Plot 3. On this the appellant submits that each of *"the grantees of the said settlement deed was to have executed a power of attorney appointing Sammy Williams or some other person to act as their Attorney in respect of their various plots"*. The appellant further submits referring to Halsbury's Laws of England, that *"the power conferred by the power of Attorney must be adhered to strictly etc"*
33. I have carefully considered the terms of the Power of Attorney granted and they appear to be specifically granted in respect of the interests conveyed to the trustees in this particular deed. The intention and purpose for which the power is granted is for the attorney to *"take all necessary steps to secure the recovery of the said property for the benefit of the rightful owner"*. It does not appear at all that the party ie the plaintiff (now respondent) is claiming to be beneficially entitled. The party is granting these powers so as to secure the property not for herself but for *"the rightful owners"*. In my opinion having read the Power of Attorney and the various pleadings, this action is geared towards ensuring that

the ultimate wishes of the settlor-grantor is achieved which is that the ten listed grantees- beneficiaries enjoy the beneficial interest in plot 3.

34. The appellant's submission that "the grantees" who I hold are "beneficiaries" should have each granted a power of attorney to the attorney whilst a possibility as far as the beneficial interest is concerned does not and cannot preclude the individual holders of the legal title "the grantee" parties to the deed who I hold are properly trustees from taking action to protect the trust property. In fact and in law, it is a primary duty of trustees such as these to protect the trust property and they can do so acting collectively or individually.

35. Commenting on the duties of Trustees *Phillip H. Pettite* has said in his **Equity and the Laws of Trust** (seventh edition) that

"the duty of the Trustee is properly to preserve the trust fund (in this case property) and to pay it to the beneficiaries".

In the same work the learned author also suggests that

"a Trustee cannot be compelled to accept the Office of Trustee but having once accepted it ...he must discharge its duties.." (see page 356). (Emphasis mine)

In this case, it appears that the Trustee being out of the jurisdiction concluded that the only way that she could execute her duty to preserve the property was through an attorney. I hold that the power of attorney is not flawed. I hold further that even if it were flawed this will only affect the legal processes in the action and not the title to the property or its root.

36. The appellant also contends that as the respondent is the owner of other plots indicated on the survey plan, the respondent could only give powers to bring an action with respect to those plots. In my opinion the Deed in question is not in respect of those other plots nor is the respondent's ownership of those other plots inconsistent with her co-ownership of plot 3 as a trustee. I find that the survey plan does suggest that the respondent owns other properties at Congo Town but it is similarly clear that the deed in question makes her a joint owner-trustee in respect of plot 3. These are two separate and distinct matters but and by virtue of the latter the respondent is capable of granting the power of attorney to bring the action as she has done.

37. In the circumstances, ground one of the appeal is unsustainable. I hold that even if the LTJ had considered this issue which she correctly did not as it had not been part of the original pleadings, it would not have affected the use of the Power of Attorney. The LTJ had correctly pointed out that the parties are bound by their pleadings. The appellants have not contended that they had raised this issue in

their pleadings nor have we in our reading of the records found it in their pleadings at all.

Grounds 3 and 5

38. I had mentioned at the outset that grounds 1, 2 and 4 are crucial to the outcome of the other grounds and indeed of the whole appeal. Having found and do hold that the respondent is a co-owner trustee of the disputed property and that she had properly given power of attorney to commence this action for the recovery of possession it is not too great a leap to establish whether she is entitled to immediate possession (which is the enquiry in ground 3).
39. It is now trite that a party laying claim to land must rely on the strength of his title and not rely on the weakness of the other party's title. The strength of the respondent's title being such as discussed above it follows necessarily that the respondent and her co-owners also become entitled to possession unless the present occupier (the appellant) can demonstrate that they have an interest validly created such as will suspend if not defeat the respondent's right to immediate possession. To assess the appellant's right, it becomes necessary to consider the facts and root of the claim which they have advanced.
40. **A word on the defendant's title.** The defendant cannot have a title which is any better than that which his predecessor in title has passed on to him. The Hon. Mr. Justice Omerie Golley (pages 22 to 30 of the Court Record) had found in 1980 that Rev. S Dowridge Williams had exercised "*undue influence*" on Seraphina Dowridge and that he had taken "*hideous advantage*" of "*the old blind and infirm woman*". The Honourable Judge went on to say that the Rev S Dowridge Williams gave "*false misleading and deceitful*" advise to Madam Seraphina Dowridge. Before expunging the deeds that the said Rev. S Dowridge Williams had made in respect of this property and others, the Hon Judge concluded that the Reverend gentleman had "*clearly told lies*" and made up conveyances which were declared "*a monstrous forgery*".
41. All of this was said by a Judge who had seen and listened to Madam Seraphina Dowridge in person and under oath with respect to her property including the one now before us. And the Judge's adverse findings were about the man who had attempted to steal this property from Madam Dowridge in her life time and who on her demise went on to declare in the conveyance to the defendants in 1999 (see pages 245 of the records) that he had been "*in full free undisturbed and uninterrupted possession*" of that same property which in 1980 Madam Seraphina Dowridge had gone to court, to wrest out of his "*deceitful*" grip. Are we now to ignore this part of the evidence and the fact that all of this had happened, and move on in myopia to conclude that this property was actually owned by Rev S.

Dowridge Williams? Or that he has owned it for over forty years prior to 1999? Can this be tenable in the face of evidence that in 1980 Madam Dowridge caused conveyances in favour of this same Rev S. Dowridge Williams to be cancelled and expunged?

42. I am unable to accept the possibility that suddenly this property had once belonged to Rev S Dowridge Williams. I cannot believe a word from Rev. S. Dowridge Williams especially with respect to the properties of Madam Seraphina Dowridge. Not after the unchallenged findings and the judgment of the Hon. Mr. Justice Omerie Golley. The Rev. S Dowridge Williams' "deceit" which was challenged and proved by Madam Seraphina Dowridge remains a stain so ingrain; extending on to the root he claims in the Conveyance dated 10th September 1999 which he made in favour of the appellants. This conveyance certainly cannot compete with a Deed of Settlement made by Madam Dowridge herself in respect of the same property which all the witnesses agree she owned up to her demise which demise occurred in 1987 (see page 182 of the record). When, then did Rev. S Dowridge Williams' forty years of possession begin for it to be ripe in 1999 when he conveyed to the appellant?
43. In all likelihood and on a balance of probabilities this claim of "forty years possession" as well as the conveyance from Rev S. Dowridge Williams to the defendants are like his former dealings with this property, nothing but trickery, falsehood and deceit and I so hold.
44. I hold further that whilst the appellant may not have been a party to the Rev. S Dowridge Williams' deceitful conduct, they have had sufficient time in which, aided by reasonable diligence and fair-minded legal advice, they ought to have discovered the deceit and trickery of their predecessor-in-title so as to have enabled them to have taken steps to mitigate their loss.
45. I have seen and carefully perused the utility bills and demand notes in respect of the property which bear the appellant's name. I note in particular the good work and philanthropy which the appellant's pleadings set out, that the appellant has done and continues to do on that property and in the environs. These good works and bills are however lacking in the potency to pass title or to cure the stain that marks the origin of the appellant's claim to title. As long as the Appellant claims through the Conveyance made by Rev. S. Dowridge Williams, the same in which he claims falsely to have had this property "*for forty years in open free and un disturbed possession*" their claim will always be blemished especially as against the respondent's. I hold therefore that the appellant cannot successfully have, hold or assert an interest clothed in garments woven from Rev. Seraphin

Dowridge Williams' declaration made in the shadow of previous lies and deception. Ground 3 cannot in the circumstances succeed.

46. Ground 5 is the omnibus ground and it suggests that the judgment is against the weight of the evidence. Having discussed the evidence as I have done above, it must be apparent that this ground cannot hold sway at all. It must follow the fate of the other preceding four grounds.

Conclusion

47. Nothing further remains except to reiterate that; using a Deed of Settlement, Madam Dowridge gave her property at 40B Water Street Congo Town Freetown to trustees to hold in trust for specific beneficiaries. And also to state that the conveyance of Rev S Dowridge Williams coming as it does after the Deed of Settlement could not have had any efficacy at all nor can its contents be believed for the reasons already stated. The Respondent being one of the named trustees is certainly duty bound to bring this action to protect the trust property so as to enable the trustees to fulfill their duties under the trust which includes; that this property ultimately benefits the ten named and intended beneficiaries. Grounds 1 to 5 of the appeal and each of them are therefore unsuccessful.
48. This appeal is disallowed entirely. We shall not in any way disturb the findings of the LTJ. We will however vary her orders slightly with the following **additional order** to make them more reflective of the true outcome of the case:

The respondent herein is declared to hold the legal estate of property situate at 40B Water Street Congo Town Freetown and all the benefits of the judgment below (save costs) together with her co-owner-trustees; Rev. Abayomi Cole and Mrs. Elizabeth Lucinda Dowridge Dinzy Innis or their heirs and or successors in title in trust for the beneficiaries named in the Deed of Settlement made by Seraphina Dowridge and dated 13th July 1979.

The Respondent will have the costs of this appeal, same to be taxed, if not agreed.

*...**SIGNED**.....Hon. Justice Reginald Sydney Fynn JA*

*Hon. Justice Desmond Babatunde Edwards CJ.....I Agree (**SIGNED**)...*

*Hon. Justice John Bosco Allieu JA.....I agree... (**SIGNED**).....*