

CIV. APP. 35/2019

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

IDRISSA TURAY
SULLAY TURAY
SALLAY TURAY
MOHAMED SEMBU TURAY
HAJA NYEMA TURAY
(For and on behalf of the beneficiaries
of the Estate of Pa Brima Turay)

- APPELLANTS

AND

ISSA TURAY
7 Turay Street
Makeni

- 1ST RESPONDENT

UMARU TURAY
Stadium Bye Pass road
Makeni

- 2ND RESPONDENT

ALIE MUNU
Mens Road
Makeni

- 3RD RESPONDENT

CORAM:

HON. JUSTICE ANSUMANA IVAN SESAY – JA PRESIDING
HON. JUSTICE SULAIMAN A. BAH - JA
HON. JUSTICE MOMOH-JAH STEVENS - JA

SOLICITORS:

B.S. Kamara Esq. for the Appellants
Ibrahim Sorie Esq for the Respondents

JUDGMENT DELIVERED ON THE 3RD DAY OF AUGUST 2021.

BACKGROUND FACTS:

An Originating Notice of Motion was filed in the High Court of Sierra Leone, holden in Makeni, Bombali District in the Northern Province of the Republic of Sierra Leone, by the Appellants herein (*therein described as "Plaintiffs/Applicants"*), seeking for the determination of certain questions on points of law relating to property situate lying and being at 3 Rogbanch Road, Makeni aforesaid. The questions were:

- “1. Whether the 1st and 2nd Defendant beneficiaries to the estate of Pa Brima Turay (deceased) situate and being at No. 3 Rogbaneh Road, Makeni have the right to sell the said estate without the consent of the Plaintiffs/Applicants who are also beneficiaries to the said estate.
2. Whether the 3rd Defendant has assumed both legal and equitable rights over the said estate by purchasing same from the 1st and 2nd Defendants even after several protests against the sale or purchase having been made by the Applicant beneficiaries not to purchase the estate aforesaid.
3. That if the answer to both questions is no, that the court makes an order estopping the 3rd Defendant whether by himself, his servants, agents, workmen, privies, or howsoever called from entering upon and or remaining on, leasing, renting, selling or mortgaging the said piece or parcel of land and hereditament situate lying and being at no. 3 Rogbaneh Road, Makeni in the Northern Province of the Republic of Sierra Leone.
4. That the court make an order resting the sale or conveyance or execution of any deed of conveyance to the 3rd Defendant or any other purchaser.
5. That this court grants an order for the cancellation of any document or deed of conveyance executed by the 1st and 2nd Defendants in favour of the 3rd Defendant or any other purchaser or beneficiary.
6. Any further or other orders this Honourable Court may deem fit and just.
7. That the cost of this application be borne by the Defendants.”

On the 15th day of July, 2019, the Learned Judge (LJ) Justice I M Koroma (now retired), ruled in favour of the Respondents. And on the 20th day of May, 2019, the Appellants being dissatisfied with the said Ruling filed their Notice of Appeal containing five (5) grounds. These said grounds were later amended pursuant to the order of this court, and they are:

“ 1. The Learned Trial Judge erred in law and in fact by not considering the factual matters placed before him and disregarded settled legal principle in regards a sale of land in the province for which a conveyance is executed, and by relying on the Provision of Section 170 of the 1991 Constitution of Sierra Leone and by failing to avert his mind to the Provision of Section 1 of the Local Court Act No. 1 of 2011.

PARTICULARS

The Learned Trial Judge noted in his Judgement noted that the sale of the Estate of Pa Brima Turay (deceased) situate at No. 3 Rogbaneh Road, Makeni is legal under the themne customs because Obomi Turay conducted the sale with some other members of the family disregarding the fact that the applicable law in a sale of land/property in the province where a conveyance is executed is not the themne Customary Law.

2. That the Learned Trial Judge erred in law by holding that Section 15(3)(a) [of the Local Court Act 2011,] Act No. 10 of 2011 grant jurisdiction to the Local Court to hear and determine an application by way of an Originating Notice of Motion for the determination of certain question in point of law. That the Learned Trial Judge noted at page 87 of his judgment that the action of Obomi Turay is in all fours with the definition of Customary Law in 1991 Constitution of Sierra Leone.

PARTICULARS

The Learned Trial Judge noted in his Judgement that as a result of the provision of Section 15(3)(a) [of the Local Court Act 2011,] Act No. 10 of 2011 he fully support that the Local Court has jurisdiction in the determination of civil matters govern by Customary Law involving also a question of title to land without averting his mind to the fact that the issue before him is not for the determination of title to land but for the determination of question on point of law.

3. The Learned Trial Judge misdirected himself in holding that the 1st Plaintiff/Applicant did not pay house rate to council for the property in question because his name is not in the receipt exhibited.

PARTICULARS

The Learned Trial Judge held that exhibit IT1 has the name of the deceased Brima Turay and not the name of the 1st Appellant, not averting his mind to the fact that the name of the deceased Brima Turay who is the father of the 1st Plaintiff is still in the books of the council as no change of ownership has been done.

4. That the Learned Trial Judge erred in law or misdirected himself when he considered in his judgment a Deed exhibited as exhibit "A1" even though same has not bearing to the subject matter as the said Deed touches and concerned a different subject matter altogether.

PARTICULARS

The Learned Trial Judge noted in his Judgement that in this case we have in the Deed exhibited and marked as "A1" went on to hold that same has been signed by Pa Yamba Missiri together with others including Ansumana Turay, Abdul Kamara, Kapri Soya and Kapri Wusum.

5. That the Learned Trial Judge erred in law and in fact by not considering the factual materials placed before him and disregarded settle legal principles in regard the equitable doctrine bonafedi purchaser with notice and went on to concluded that the 3rd has no notice or an equitable interfere even though a letter speaking to the fact of notice was exhibited.

PARTICULARS

The Learned Trial Judge noted in his Judgement that having regard to the false statement disposed by the 1st Plaintiff/Applicant in his Affidavit in Support that he was

head of the Turay family nobody would believe that indeed the 3rd defendant had notice before the purchase of the said property."

THE APPELLANTS CASE:

Counsel for the Appellants B S Kamara Esq., commenced by submitting that the Learned Judge's (LJ's) Ruling that the sale of property at 3 Rogbaneh Road, Makeni aforesaid, by Alie Obomie Turay - being the eldest surviving son of the late Pa Yamba Missiri - in consultation with the 1st and 2nd Respondents is valid under Temne Customary law, was wrong, when as a matter of fact the consent of the other beneficiaries of that Estate ought to have been sought. In support of his submission, he referred to Section 21(1) of the Administration of Estate Act (Cap 45) of the Laws of Sierra Leone 1960. He further submitted that the LJ Judge in considering customary law, should have taken into account the principle of natural justice and equity. He referred to the case of Fullah VS Kondowa (1970 – 71) ALRS 306.

Counsel for the Appellant contended that the Local court has no jurisdiction to determine questions on points of law raised in the said Originating Notice of Motion, as the questions were purely within the jurisdiction of the High Court. He further submitted that the LJ was wrong to have held that Section 15(3)(a) of the Local Court Act, 2011 was applicable.

Also, Counsel did submit that the LJ misdirected himself when he held at page 27 of his Ruling that it was doubtful whether it was the 1st Appellant who effected the payment as contained in Exhibit IT 1 at pages 12, 13 & 14 of the Court Records. Furthermore, Counsel submitted that what is of importance is that payment was made by the 1st Appellant and it matters not whether the receipt bear the name of the 1st Appellant, because Pa Brima Turay is deceased. Counsel continued to submit that the LJ considered irrelevant material that was not germane to the matter.

Counsel also submitted that the 3rd Respondent was never a bonafide purchaser for value without notice, because he the said 3rd Respondent had imputed notice of the equitable interests of the Appellants. He referred to a Letter of complaint against the sale of the property at 3 Rogbaneh Road Makeni aforesaid, dated the 12th October, 2015, and found at page 6 of the Records. According to him, both the 3rd Respondent and his solicitor - the Customary Law Officer doubling as state Counsel in the North - who prepared the Deed of Conveyance had notice of the said letter advising the 3rd Respondent not to buy the said property. He referred to the Case of **BERWICK & CO. VS PRINCE (1905) CH G 32 at Pages 639-640.**

RESPONDENTS CASE:

In response, Ibrahim Sorie Esq., Counsel for the Respondents commenced by submitting that the property in question situate at No.3 Rogbaneh Road, Makeni aforesaid, never belonged to the Estate of Pa Brima Turay. Counsel further submitted that the deceased just like several other family members, only had a beneficial interest in that property. Also, Counsel submitted that the Appellant's contention that under Temne Customary law, the consent of all

beneficiaries must be sought cannot hold, otherwise, such a purported requirement is patently inaccurate and wrong, as the consent of all will frustrate the purpose.

Furthermore, Counsel did submit that the High Court does not have original jurisdiction to determine issues of title or dispute to land in the Provinces which is subject to Customary Law and as such the action instituted by the Applicants ought not to have been instituted in the High Court. He referred to

- Section 21(1) of Cap 45;
- Section 29(3) of the Sierra Leone Citizenship Act 1973;
- Section 4(i) of the Interpretation Act, 1971; and,
- Section 15 of the Local Courts Act 2011.

Counsel also referred to Halsbury's Law of England 4th Edition re-issue Vol. 44(1) paragraph 1436 at Page 875.

Counsel further submitted that the Deed of lease dated 25th October, 1949 duly registered as No. 602/1949 at Page 147 in Volume 34 was considered by the LJ, as the Court could not turn a blind eye to it, because it was very crucial in determining the disputed issues before the Court.

Furthermore, Counsel concluded by stating that the 3rd Respondent made necessary enquires and dealt with the Head of the Turay family, Pa Alie Obomie Turay as well as the eldest son of Pa Santigie Turay and Pa Brima Turay and by doing so did fulfill his Customary Legal duty in line with Dr. Ade Renner Thomas view in his book titled THE LAW, DUALISM AND THE MAKING OF LAND POLICY IN SIERRA LEONE at Page 203.

DETERMINATION OF THE APPEAL:

The issue for determination in this appeal is: whether the High Court is vested with original jurisdiction to determine questions of law touching and concerning issues relating to title to property situate at No. 3 Rogbane Road, Makeni, Bombali District in the Northern Province of the Republic of Sierra Leone, either directly or otherwise, other than a leasehold interest.

This Court note the submission of Counsel for the Respondents, that the High Court does not have original jurisdiction to determine issues of title to land in the Provinces which is subject to Customary Law and as such the action instituted by the Applicants ought not to have been instituted in the High Court. In support of this submission Counsel referred to section 21 of the Courts Act 1965, Act No 31 of 1965, which states:

“ Nothing in this Act shall be deemed to invest the High Court with jurisdiction in regard to –

(a) any action or original proceedings -

(i) to determine the title to land situated in the provinces other than title to a leasehold granted under the Provinces Land act;

(ii) ”

It should be noted that the issue of the High Court lacking jurisdiction pursuant to section 21 of the Courts Act 1965, was first raised in this court by Counsel for the Respondents, who was not Counsel at the High Court. That notwithstanding, this Court is alive to the principle of law that jurisdictional challenge could be raised at this stage and “ can be properly entertained in spite of the fact that it was not raised in the [High court] below”. This view is fortified by the Judgment of the Supreme Court in the case of **DANIEL E CAULKER VS KOMBA KANGAMA (CIVIL APPEAL NO 2/74) - delivered by C O E Cole,,Chief Justice on the 18th June 1975 - where the Learned Chief justice had this to say:**

“ ..., in my considered view jurisdiction is not only the legal authority but it is also the extent of the power of the court or judge to entertain an action, petition or other proceeding. Due consideration ought to be given to it at any stage – particularly so where that jurisdiction is conferred or taken away by statute.”

Also, the Court took note of the submission of Counsel for the Appellants, that matter was instituted in the High Court for the determination of certain questions on point of law and not for the determination of title to land, on the basis that, the Local Court is not vested with jurisdiction to determine such questions of law relating to beneficial interests in land in the provinces.

Noting the aforementioned submissions and considering the records, it is clearly evident from the said records, that all the parties – the Appellants and the Respondents - save the 3rd Respondent, are all relations and members of the Turay family of Rogbane, Makeni aforesaid. It is also evident from the said records that the property situate at No 3 Rogbane Road, Makeni aforesaid - the subject matter of this appeal - is indeed provincial land. Furthermore, the records disclose a consensual fact that the said subject matter belonged to the Turay family, and therefore, all the Appellants together with the Respondents with the exception of the 3rd Respondent, had a “joint/common claim” of ownership/title/beneficial interests to the said subject matter.

Additionally, it is also evident from the records that there has been an alienation of the said subject matter other than by way of a leasehold granted under the Provinces Land Act Cap 122. The affidavit of the 1st Appellant, deposed to on the 18th October 2017, in support of the Originating Notice of Motion for the determination of the questions of law, confirms the alienation of the said subject matter to the said 3rd Respondent in the manner set out as follows:

“ 16. That before the sale my younger brother i.e the 2nd Applicant (the 2nd Appellant herein) approached the said Alie Munu the 3rd Defendant (the 3rd Appellant herein) not to purchase same as the family is not interested in selling the said property.

17. That after the sale we the Turay family wrote a protest letter dated the 12th day of October 2015 against the selling of the said property to the then Customary Law Officer Northern Region who instituted investigation as to ascertain the rightful owners of the said property. A copy of the letter is hereby produced shown to me and marked exhibit IT 2.

18. That he went ahead and purchased same regardless of the caution from our part.

19. That on several occasions I protested against the sale through the Paramount Chief aforesaid who promised me that he would put a hold on the sale transaction until he call together the entire Turay family.

20. That after the sale of the said property to Alie Munu the 3rd Defendant (the 3rd Appellant herein), he attempted to enter into occupation but he was restrained by my younger brothers, an event which entered in confrontation and invites the intervention of the police.”

Also, worthy of note, is the submission of Counsel for the Appellants that the property at 3 Rogbaneh Road, Makeni aforesaid was sold to the 3rd Respondent without the consent of some members of the Turay family as provided for by Temne Customary Law.

Having considered section 21 of the Courts Act 1965 as quoted above, and, together with the evidence as disclosed in the Affidavits as well as the submissions of both Counsel, entertaining the submission of Counsel for the Appellants that the High Court is clothed with jurisdiction to determine the said questions of law which has the combined effects of determining the alienation and acquisition of title to the said property situate at No 3 Rogbane Road, Makeni aforesaid, would be tantamount to circumventing the said provision of law.

That said, this court holds the view that the parties interests all relates to or touches and concerns the issue of title to property situate at No 3 Rogbane Road, Makeni City, in the Northern Province of Sierra Leone, and therefore, the High Court of Sierra Leone holden at Makeni, lacked jurisdiction, and consequently, the proceedings before Justice I M Koroma and the said Ruling dated the 15th May 2019 and the orders granted, were a nullity. This position is reinforced by the decision of our apex court – The Supreme Court of Sierra Leone, in the aforementioned case of DANIEL E CAULKER VS KOMBA KANGAMA supra, where the Court in interpreting section 21 (a)(i) of the Courts Act 1965, held that:

“ ... where in any action any question arises for the determination relating to title to land situated in the provinces, unless, of course, the question relates to a leasehold granted under the Provincial land Act (Cap 122) the jurisdiction of the Court is ousted.”

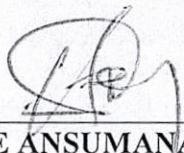
It should be recalled that Counsel for the Appellants had submitted that the action was initiated in the High Court for the determination of certain questions of law and not in the Local Courts which lacks jurisdiction to determine such questions of law. This Court has emphatically dismissed this submission relying on the strength of section 21 of the Courts Act 1965 and as confirmed in the aforementioned case of **Daniel e Caulker Vs Komba Kangama**. That notwithstanding, this Court took note of the several assertions and submissions by the said Counsel that the matter was instituted pursuant to Order 17 of the High Court Rules 2007, Constitutional Instrument No 8 of 2007. It should be noted that an Originating Notice of

Motion was employed to commence the said action in the High Court. To that end, this Court, is of the view that an action for the determination or disposal of cases on points of law pursuant to the said Order 17 of the High Court Rules 2007 presupposes a subsisting or pending action or proceeding; and therefore, it could only be employed as an application for the determination or disposal of cases on points of law only after an action or proceeding has begun or commenced.

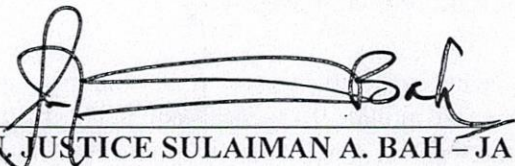
This Court, having determined that the High Court lacked jurisdiction, and consequently, the proceedings before Justice I M Koroma and the said Ruling dated the 15th May 2019 and orders made were a nullity, it is therefore unnecessary to consider the grounds of appeal.

In the circumstance therefore, this Court orders:

- (1) the setting aside of the ruling and orders of the High Court dated the 15th May 2019
(2) the refund of the cost awarded against the Appellants (then Plaintiffs/Applicants) if already paid; and, in this connection liberty to apply is hereby granted; and,
(3) each party bears its own costs.

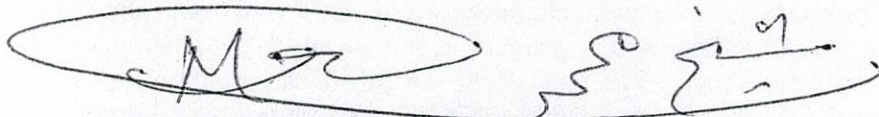


HON. JUSTICE ANSUMANA IVAN SESAY – JA PRESIDING



HON. JUSTICE SULAIMAN A. BAH – JA

I AGREE



HON. JUSTICE MOMOH-JAH STEVENS – JA

I AGREE