

CC 238/18
NO. 48

2018

K

IN THE HIGH COURT OF SIERRA LEONE
LAND AND PROPERTY DIVISION

BETWEEN:

HAJA MABINTY KOROMA - Plaintiff/Applicant
(Suing as Administratrix of the Estate
Of the Late Sorie Ibrahim Koroma)
2 TAYLOR WOODROW DRIVE
OFF SPUR LOOP
FREETOWN

AND

ISATU WATFA - 1ST
Defendant/Respondent
HABIB WATFA - 2ND
Defendant/Respondent
No. 2 SPUR ROAD
WILBERFORCE
FREETOWN

COUNSEL:

D. E. Taylor Esq. - Plaintiff/Applicant
N. Browne - Marke (Ms)

E. T. Koroma Esq. -
Defendants/Respondents

JUDGMENT DELIVERED ON THE 17TH DAY OF FEBRUARY
2020 BY THE HON. LADY JUSTICE F. BINTU ALHADI , J.

A. On the 28th day of February 2019 Counsel for the Plaintiff/Applicant made an application by Judges Summons dated the 21st day of November 2018 seeking the following Orders to wit:

1. that pursuant to Order 16, Rules 1 and 3 (1) of the High Court Rules 2007, final judgment be entered in favour of the Plaintiff/Applicant against the Defendants for the following :

- (a) a declaration of title to all that piece or parcel of land situate lying and being at No. 2 Spur Loop, Wilberforce, Freetown in the Western Area of the Republic of Sierra Leone;
- (b) an injunction restraining the Defendants whether by themselves, their servants, workmen, agents or howsoever from interfering by way of measuring the piece or parcel of land situate lying and being at No. 2 Spur Loop, Wilberforce, Freetown aforesaid in order to obtain a survey plan;
- (c) an Order for immediate possession of all that piece or parcel of land situate lying and being at No. 2 Spur Loop, Wilberforce, Freetown aforesaid;
- (d) an Order restraining the Defendants herein from further instituting any action in the Magistrate Court relating to all that piece or parcel of land situate lying and being at No. 2 Spur Loop, Wilberforce, Freetown aforesaid;

2. any further or other Order(s) that the Court may deem fit and just in the circumstances;

3. that the cost of this application and of this action be assessed by the Court and borne by the Defendants/Respondents;

The application was supported by the Affidavit of Drusil E. Taylor Esq sworn to on the 21st November 2018 with several exhibits attached thereto.

Submission to the Court by Counsel for the Plaintiff/Applicant

In his submission to the Court on the 28th of February 2019, Counsel for the Plaintiff/Applicant, Mr. Taylor, told the Court that pursuant to paragraph 13 of the said affidavit in support, the Defendants/Respondents were tenants at will and that his proposition is supported by the affidavit of Lansana Dumbuya Esq, Counsel who represented the Defendants/Respondents at an earlier matter instituted in the Magistrates Court in 2014. This was exhibited as “DET 6”. He explained that exhibit “DET 5” memorialises the title of the property to that held by the Late S. I. Koroma; and that when you reference it to exhibit “DET 6”, it solidifies the claim made by the defendants/respondents that they were put in possession of the property by the Plaintiff, the S. I. Koroma family. He came to the conclusion that the quality of the title of the Plaintiff/Applicant herein was therefore established.

He asserted that exhibit “DET 5” which is the conveyance to the husband of the Administratrix, show a solid root of title, since it went as far back as 1955, when the property was purchased by Compagnie Francoise De L’Afrique Occidentale and sold to the Hon. S. I. Koroma in 1978. That, in other words, the property has been in the ownership and was duly registered as No. 1165/78 in volume 305 at page 141 in the Book of Conveyances kept at the Office of the Administrator and Registrar-General.

Mr. Taylor said that in view of the submission made and based on the fact that the Defendants/Respondents did not file a Defence to the motion at the time of filing the summons, the application ought to succeed.

He also said that by way of a letter dated 28th November 2017 (exhibit DET 4), the Plaintiff/Applicant demanded that the Defendants/Respondents vacate the said property and hand over vacant possession; and that in an earlier ejectment proceeding in the Magistrate Court, the Defendants claimed that the land was a State Land that was offered on lease to them on the 21st of November 2017. He said that they produced a letter with the caption “Offer for Lease of State Land at Wilberforce, Freetown” from the Director of Surveys and Lands.

Counsel for the Plaintiff/Applicant, maintained that an earlier matter in the Magistrates’ Court in 2014 pertaining to the same piece of land herein, entitled Kekurah Bundu (Applicant) v Kadie Watfa, Isata Watfa and Others (Respondents), the 1st Respondent herein, who was the 2nd Respondent therein, stated that she was put in possession of the piece of land situated at No.2 Spur Loop by the S. I. Koroma family through one Alhaji Bakurr, a brother of the Late S. I. Koroma. Mr. Taylor exhibited “DET 6” which was the submission asserting same, and made by Counsel for the 1st Defendant/Respondent herein, Isata Watfa.

Mr. Taylor espoused that, even though the Ministry of Lands was subpoenaed and ordered to present the Director or a representative to provide evidence of the purported offer of a lease and ownership of the said land offered by the State, the Ministry and/or its representative failed and/or refused to provide such or the record books to show a map of State lands in the Wilberforce area in Freetown.

Furthermore, he submitted that the 1st Defendant/Respondent deliberately made an untrue statement in the Magistrates Court by stating that no

proceedings had ever been instituted against her for the said property in question and that she was put into possession of the said land by a lease obtained from the Ministry of Lands and not from the S. I. Koroma family. Extract of the Magistrates Court records shown as exhibit “DET 7”. Mr. Taylor therefore advocated that an offence of perjury had been committed and for which the 1st Defendant/Respondent ought to be tried.

Submission to the Court by Counsel for the Defendants/Respondents

In response to the said application made, Counsel for the Defendants/Respondents, Mr. E. T. Koroma, filed an Affidavit in Opposition on the 23rd of November 2018. It had two attachments thereto to wit: exhibit “ETK 1” which is the Judges Summons filed by the Plaintiff/Applicant dated 21st November 2018; and exhibit “ETK 2” a Defence and Counter-Claim, which has no evidence of a filing date and no receipt as evidence of payment for filing.

In his affidavit in opposition, Mr. Koroma stated that the matter is not a fit and proper matter to be dealt with under Order 16 of the High Court Rules of 2007. He said in paragraph 11 of the said affidavit, that the property was a government property leased to the Defendant and “which is exhibited as exhibit “ETK 5”. Mr. Koroma testified in his affidavit in opposition that the property claimed by the Plaintiff to be hers, is a government property that was leased to the 2nd Defendant. He said that the exhibit was marked “ETK 5”. He said that this crucial issue is ascertaining whether the property is private owned or belongs to the government, will only be sufficiently dealt with during trial.

He averred that the affidavit of search was misleading, since it purported to have been sworn to on the 9th of November 2018, when the search fee receipt is dated 15th November 2018; exhibit ETK 4 (1-2). He said that the said search fee should have been paid before a search was conducted and not the reverse.

He said that the Defendants currently in possession and occupation of the said property and that they have built structures on it.

Mr Koroma questioned the authenticity of the title deed on the Honourable S. I. Koroma and reasons for not producing it at the Magistrates Court. Counsel argued that because of this reason and because the issues would not be

sufficiently dealt with on questions of law, the matter should be taken to trial.

He maintained that the application was misconceived, the whole originating process was frivolous, malicious and vexatious and that it should be dismissed.

D. Decision of the Court

I have carefully considered the submissions of both counsel and note that a plethora of considerations need to be taken into account. These include considerations such as: what factors would the Court want to take into account in deciding on a declaration of title? What are the legal positions of the parties; and whether the Defendants/Respondents are correct to say that there are triable issues. Should an injunction be granted against the Defendants/Respondents?

In order to arrive at a fair decision, the Court may want to start by looking at what Order 16 Rule 1 of the High Court Rules of 2007 say. Order 16 Rule 1 seeks a summary judgment and says that: *“where in an action to which this rule applies a defendant has been served with a statement of claim and has entered appearance, the plaintiff may, on notice apply to the Court for judgment against the defendant on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of the claim except as to the amount of any damages claimed.”*

From the facts of the case, the Defendants were served with a statement of claim on the 1st of August 2018 and appearance was entered on 6th of September 2018. On the 21st of November 2018, the Plaintiff/Applicant filed a Judges Summons. I agree with Mr. Koroma’s submission that a search fee ought to be paid before a search is conducted. The reverse was done in this case and it was wrong. Counsel for the Plaintiff is hereby admonished to take procedural matters seriously and endeavour not to repeat it again.

However, this procedural omission does not negate the fact that no evidence was adduced by the defendants, and no stamp or receipt was shown to substantiate the claim that a defence was filed at the appropriate time. Counsel for the defence was not honest with the Court when he exhibited a Defence as exhibit ETK 2 (1-2) attached to his

affidavit in opposition, which he purportedly reported was filed. It is apparent that the said Defence was not filed, since it bore no registry stamp, no date and no receipt, as evidence of payment of the filing fee. I shall however, consider the said unfiled Defence in the interest of equity.

The next issue that arises is this: can the Court order a declaration of title?

At common law as applied in many Commonwealth countries, where questions of title to land arise in litigation, the court is concerned only with

the relative strengths of the title proved by the rival claimants. If party "A"

can prove a better title than party "B", he is entitled to succeed

notwithstanding that "C" may have a better title than "A", if "C" is neither a party to the action nor a person by whose authority "B" is in possession or occupation of the land. It follows that as against a defendant whose entry upon the land was made as a trespasser, a plaintiff who can prove any documentary title to the land is entitled to recover possession of the land; Ocean Estates Limited v Pinder (1969) 2 A.C.19 at pp 24 - 25 as per Lord Diplock.

Furthermore, in an unregistered system of land, title is evidenced by the title

deeds and the Purchaser is given details of the more recent title deeds, starting with the root of title and tracing the chain of ownership to the Vendor.

The question is: how far back should we go to find the root title? Thomas, M. 'Casebook On Land Law'[1992] Blackstone Press Limited at 24.

Section 1 of the Vendors and Purchasers Act 1874 provides that a vendor or owner of land should show the history of the ownership of the land for a period of at least 40 years; and that there should be evidence that the vendor/owner had been in possession of the land for at least 40 (forty) years. In other words, the very foundation on which the claim for trespass is made should exist; Re Cox and Nevo's Contract [1891] 2 Ch 109; Bangura v Bangura CA - Civ. App. 35 of 1977 as per Warne JA at p 151.

From the facts and evidence of the case, the Court is able to discern that the

Plaintiff has been able to show a good root of title by establishing that the said

property was sold to the Vendor, Compagnie Francaise De L'Afrique Occidentale by Francoise Bozon. That the Late S. I. Koroma then bought the said property from the vendor, Compagnie Francaise De L'Afrique Occidental

on the 13th day of December 1978. This shows a root of title that goes back as

far back as 16th December 1955 and properly registered. In other words, the root of title goes back as far as 65 years ago; and the property has been in the possession and occupation of the Koroma family for 42 years. What better title can the Plaintiff/Applicant get? It is apparent that the Administratrix inherited a

fee simple absolute in possession, free from encumbrances. The family possess a good root of title evidenced by exhibit "DET 5" attached to the affidavit of D E Taylor Esq sworn to on the 21st day of November 2018.

On the other hand, the Defendants/Respondents have not produced a single documentary proof of their right to the land they occupy and claim possession of. Even the said proof of Government ownership or permission by a relative of the Koroma family for them to occupy the said piece of land, referred to by Mr. Taylor, were not produced and tendered to this Court. Counsel for the Plaintiff/Applicant was also able to show the submissions made in an affidavit sworn to by Mr. Lansana Dumbuya, Counsel for the Defendants/Respondents herein in an earlier matter at the Magistrates Court in 2014; where counsel testified that the Defendants/Respondents herein, admitted not to own the said property. How can one therefore begin to make a comparison of titles? Throughout the proceedings, it was clear that the Plaintiff/Applicant was the fee simple owner and entitled to recover possession of the disputed land.

Furthermore, not only has the Plaintiff/Applicant been able to show her entitlement by the title deed of the property, she has been able to show details of the previous vendors; thereby tracing the chain of ownership to the vendor. As to the question of how far back they should go to find the root of title, they have gone back as far as 65 years and been in actual possession for 42 years. I therefore cannot adjudge that the Defendants/Respondents have established any proof of title; let alone a good root of title.

Additionally, in Wyse v Turay C. A. [1979]; 1 SLBALR [1974-82] at p 340, Mr. Justice Ken During said that, it would be incorrect to say that one could claim land on the basis that he/she has been in occupation for 20 years. He observed that there was no form of conveyance of the land to the respondent and that since no such evidence was produced; on that ground alone, the respondent failed to prove that he had a valid title from the vendor. He pointed out that even if he had been in possession of the land, it was not for a period of 40 years in accordance with the Vendors and Purchasers Act 1874.

Unfortunately for the Defendants they did not produce the offer letter for the lease of state land they claimed in the Magistrates Court. Looking at the survey plan, I see nowhere around the said property where it is stated that a State land exists. The Defendants/Respondents, have not been consistent in their defence to the Court; a conduct that the Court takes a dim view of. They have not been honest with the courts and it is clear that their conduct borders on perjury; for which they could be cited for a trial.

On the submission by Defence Counsel that the title deed of the Plaintiff/Applicant was not submitted to the Magistrates Court; I need not remind Counsel on the jurisdiction of the Magistrate Court and that of the High Court. Counsel ought to know that land issues pertaining to ownership are dealt with at the High Court and not the Magistrates Court.

Furthermore, I am in no doubt that the issues before this Court can be dealt with sufficiently on questions of law summarily; and I do not consider the application to be misconceived, frivolous, malicious and vexatious.

On the claim of trespass, a plaintiff has to prove a better right of possession than a defendant. One of the ways that he may do this is to prove that he has a better title to the land than the defendant. This means that, the Court is only concerned with the relative strengths of the titles or possession proved by the rival claimants; Dr. Seymour - Wilson v Musa Abess C.A. at p 82. From the facts and evidence before the Court, such as exhibit "DET 5", it is evident that the Plaintiff/Applicant is in a stronger position and can prove a stronger title to the property and is the fee simple absolute in possession owner of the said property.

Also, there is a clear distinction between a claim for trespass based on title to land and that based on possession of the land. If the claim based on title fails, the Court should proceed to examine the evidence regarding possession, if any. The standard of proof in a claim based on title to land, is

higher than that required in a claim based on possession; Bangura v Bangura (supra) at p 152. Again, the facts and evidence in this case, speak for themselves. I need not reiterate the point that, the Plaintiff/Applicant's title and possession to the property is stronger than that of the Defendants/Respondents.

Conclusion

I have carefully evaluated the facts and evidence before the Court; and I am satisfied that there is no question or issue which ought to be tried. This is because it is a clear case of a fee simple owner, exercising her right to her property. Also, the Defendants/Respondents have not shown any form of title/ownership to the said property; or any right to possess No. 2 Spur Loop, Wilberforce, which they are in occupation. As discussed above, mere occupation of land for even the statutory period of 40 years will not amount to long possession as contemplated by the said Vendor and Purchasers Act of 1874. I therefore see no reason why the Defendants/Respondents should succeed.

In view of the above stated, final judgment is entered in favour of the Plaintiff/Applicant herein, the said Haja Mabinty Koroma (suing as Administratrix of the Estate of the Late Sorie Ibrahim Koroma) of No. 2 Taylor Woodrow Drive, Off Spur Loop, Freetown. The Orders are as follow:

1. that the Plaintiff/Applicant, Haja Mabinty Koroma aforesaid, is and was at all material times, the fee simple owner of all the piece or parcel of land situate lying and being at No. 2 Spur Loop, Wilberforce, Freetown in the Western Area of the Republic of Sierra Leone;
2. that the Defendants/Respondents, Isatu Watfa and Habib Watfa both of No. 2 Spur Road, Wilberforce, Freetown aforesaid by themselves, their servants, workmen and agents or otherwise be forthwith restrained from interfering by way of measuring the piece or parcel of land hereinafter described in Order 1 above in order to obtain a survey plan;
3. that the Defendants/Respondents do give immediate possession of the the said property to the Plaintiff/Applicant;
4. that the Defendants/Respondents are hereby restrained from further instituting any action in the Magistrates Court relating to the above stated property;
5. that the Defendants/Respondents do pay the sum of Le 100,000,000 (One Hundred Million Leones) to the Plaintiff/Applicant being damages

for trespass and wrongful entry upon the said land described in Order 1 above;

6. that the Defendants/Respondents do pay the costs, which is assessed to be Le 100,000,000 (One Hundred Million Leones) occasioned by this action to the Plaintiff/Applicant herein.

Dated: _____

Hon. Lady Justice F. Bintu Alhadi J.