

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

ALFORD HUGGINS-WILSON - PLAINTIFF

AND

ABDUL HAMID KARGBO - DEFENDANT

COUNSEL:

A MANLY-SPAIN ESQ for the Plaintiff

S JAMIRU ESQ and J FORNA-SESAY ESQ for the Defendant

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT

JUDGMENT DELIVERED THE 6 DAY OF DECEMBER, 2021

THE ACTION

1. The action herein was commenced by way of writ of summons issued by the Plaintiff on 31st October, 2005. In it, the Plaintiff claimed for a declaration that a plot of land situate off Lumley Road, Wilberforce, is an access road leading to various properties including the Plaintiff's own property, situate and known as 64A Lumley Road, Wilberforce; a declaration that the Plaintiff is entitled to use this access road; and injunction restraining the Defendant from building a house on this access road; general damages, and the Costs of the action.
2. The Plaintiff is the owner of property situate at, and known as 64A Lumley Road, Wilberforce. He became owner by virtue of a deed of conveyance dated 19th April, 1979 and duly registered. His property measuring 0.2095 acre was delineated on survey plan LS608/79 drawn and attached to the said deed. This survey plan was extracted from another one which had been done on 28 March, 1949 but unnumbered, and which was in the name of Plaintiff's predecessor-in-title, one Emile Francis Wilson. At the time of the purchase of the land, E F Wilson had provided an access road measuring 12 feet in width leading from land retained by E F Wilson, to Plaintiff's own land where the house numbered 64A was eventually built. Later, the vendor, E F Wilson sold other portions of the property which he had still retained to other persons,

with the access road remaining intact. In 2004, the Defendant purchased land in the vicinity. The land he had acquired purportedly included a portion of the access road leading to Plaintiff's property. The Defendant, the Plaintiff alleges, proceeded to erect a house on it. The Plaintiff's complaint is that the house erected by the Defendant has blocked his access to the main road, Lumley Road. He therefore seeks a declaration that part of the property claimed by the Defendant is in truth the very access road which he had been using since he made the purchase in 1979. He has also prayed for a declaration that he is entitled to use the road; an Injunction, and general damages.

APPEARANCE ENTERED AND DEFENCE FILED

3. On 24th November, 2005, Appearance was entered on behalf of the Defendant by the then firm of Roberts & Partners. On 5th December, 2005, the said Solicitors filed a defence and counter claim on behalf of the Defendant. The main thrust of the defence is that the access road to Plaintiff's property begins at Old Railway Line, Wilberforce, and not at Lumley Road; and that is the access road being used by other purchasers of land from the said E F Wilson. In his Counterclaim, the Defendant avers that the Plaintiff has been obstructing his construction work. He therefore counterclaims for a declaration that no access road runs through his property to Plaintiff's property.

CHANGE OF SOLICITORS

4. On 16th December, 2005, Defendant changed Solicitors by way of notice. Mustapha Turay was appointed Solicitor in place of Roberts & Partners.

REPLY AND DEFENCE TO COUNTERCLAIM FILED; ACTION ENTERED FOR TRIAL

5. On 1 February, 2006, the Plaintiff filed a Reply and Defence to Defendant's Counterclaim. In his Reply, Plaintiff joined issue with the Defendant. And in his defence to counterclaim, the Plaintiff avers that he has not trespassed on land belonging to the Defendant. The action was entered for trial under the pre-2007 High Court Rules. On 19 April, 2006.

INTERLOCUTORY INJUNCTION GRANTED

6. Prior to the action being entered for trial, there had been an exchange of letters between Solicitors acting for both sides. The correspondence was exhibited to the affidavit of the Plaintiff in an Application filed on 1st March, 2007 and which came before me on 7 March, 2007 soon after I became a Judge. On 13 March, 2007, I granted the Plaintiff an injunction restraining the Defendant from continuing with the construction of a wall along the road which the Plaintiff claimed, gave him access to his property. I also ordered that both parties should ensure that each party's rights to access to and from each other's property, should be respected until the final determination of the action, or, until further Order. On 21 May, 2007, I gave directions for the future conduct of the action.
7. Nearly a year went by without any proceedings being taken. By way of Notice of Motion dated 13 March, 2008, the Defendant applied to the Court for a discharge of the injunction. I observed at page 8 of my minutes, that instead of asking for a discharge of the injunction granted, the Defendant should have taken steps himself, with Plaintiff failing to do so, to expedite the matter. The application was not pursued further, and on 4th April, 2008, I struck it out.

OTHER INTEROCUTORY APPLICATIONS AND LOCUS IN QUO

8. Another application dated 16 May, 2008 was filed by the Plaintiff. It turned out it was not served on the Defendant as he was then living outside the jurisdiction. On 20th May, 2008, I ordered that the application be served at the Defendant's address for service.
9. At a later hearing on 28th May, 2008, Counsel on both sides, Mr Mohamed Mansaray for the Plaintiff, and Mr James Forna Sesay for the Defendant, intimated the Court that talks were on-going for a settlement of the dispute. Evidently, things did not work out because on 19 June, 2008, Mr Manly-Spain, lead Counsel for the Plaintiff requested a locus in quo. The locus in quo was eventually held on 21 July, 2008. As the vacation had started, and a locus in quo forming part of the trial, Counsel on both sides gave their respective consent for it to go ahead.
10. At the locus, Plaintiff and his lead Counsel, Mr Manly-Spain were present. The Defendant was absent, but his Counsel Mr J F Sesay was present, and so also was his brother. Measurements were taken in my presence. My observation at the locus is recorded on page 13 of my minutes. I had

formed the view that the dispute relates to whether the property the Defendant has built on is located within the confines of the property owned by his predecessor-in-title, or, by someone else. I noted also that I advised the parties to prepare for trial.

THE TRIAL

11. The trial commenced on 25 November, 2008 with the Plaintiff giving evidence as PW1. He tendered in evidence his deed of conveyance dated 19 April, 1979 as exhibit A; as exhibit B, the deed of conveyance between the Registrar-General and S C O Wilson jnr; as exhibit C, the report prepared and signed by the Licensed Surveyor Shamun Hamid; and as exhibit D, a deed of conveyance dated 27 February, 2003 between Emile Wilson and the Defendant. Mr Manly-Spain then asked for an adjournment in order to give time to him to file and serve several documents. Several adjournments were taken thereafter due to the absence of one Counsel or the other, and due to the participation of Mr Manly-Spain in the criminal trial over which I was also presiding at the same time. As such, no proceedings were taken until 12 June, 2009 when the Plaintiff tendered in evidence 3 additional deeds of conveyances, exhibited as E, F and G; and a Consent order exhibited as H. Thereafter, several adjournments had to be taken because of the absence of Counsel for one reason or the other - see pages 23 and 24 of my minutes.
12. The Plaintiff continued his testimony on 8 October, 2009. He said: *"I bought the land on 19 April, 1979. And the other piece on 20 February, 1986. My house is built on that bought in 1979. At the time I bought the land, on the right side going towards my house, there was a dilapidated building on it. At the back of this building there was a house built by the vendor, Francis Adjaie Wilson. The dilapidated house was owned by Francis Wilson, my vendor. At that time, I was using the access road, the same my cousin was using. I noticed the encroachment in 2005/2006. The house was built, first. Later, a wall was built which encroached into the piece of land I bought in 1986. I consulted my Solicitor, and I went to the Ministry of Lands. My Solicitor wrote a letter to Defendant through his solicitor. I sought the services of Hamid a surveyor. I see exhibit C - Mr Hamid's survey report. Notwithstanding my lawyer's letter to him, Defendant continued building the wall. Lawyer issued a writ of summons and later obtained an injunction against the Defendant sometime in*

March, 2007. I gave an undertaking. Defendant did not stop construction of the wall fence. He ordered his workmen to continue the work. The wall has been completed. If you go to the site, the access road is completely blocked. I use the adjoining piece of land as an access road to get to my house. I am asking the Court for the prayers in the writ of summons."

13. I have recounted earlier, that though the Plaintiff had obtained an interlocutory injunction, and though he had applied for the Defendant's committal for contempt of that injunction, the latter application was not proceeded with, as talks were supposed to have been held to settle the dispute. This, of course, did not happen.
14. The Plaintiff was cross-examined by Mr Forna Sesay, Counsel for the Defendant. The cross-examination is recorded at pages 26 & 27 of my minutes. He said, in answer to questions put to him by Mr Forna Sesay: "I recall saying I bought a piece of land in 1979. The land is not at Old Railway Line, but off Old Railway Line, Wilberforce. I see exhibit A. It is a photocopy of the land I bought in 1979. There is nothing which says it is at Lumley Road, Wilberforce. I see exhibit C. It is a Report of a Licensed Surveyor I gave the duty of preparing a composite plan. It concerns the land which is the subject matter of this case. I did not supply the Licensed Surveyor with a copy of the Defendant's survey plan. The Defendant and another surveyor were on the site. I supplied him with certain documents. He has listed them in the Report. The Report does not include Defendant's survey plan. I have neighbours. Defendant's house is located at Lumley Road. His access is through Lumley Road. My house is further down the access road. There was an access road where the Defendant built his house. The land I am claiming has an access road in it. It appears in Mrs Tipson's survey plan. I bought it in 1986. I did not ask the Defendant to allow me access through my two plots of land. I am not misleading this Court." That is how the Plaintiff's testimony ended.
15. PW2 was Mr Shamun Hamid, the Licensed Surveyor who testified some months later in January, 2010. He testified that in July, 2005 he was instructed by the Plaintiff to check on the access road which led from Lumley Road, to Plaintiff's house. Several documents were given to him, to enable him to enable him to carry out his assignment. At the end of the exercise he prepared a report dated 1 August, 2005, which he tendered as exhibit C. Attached to exhibit C, is an encroachment plan. He confirmed that he was present at the locus in quo, and that at that point

- in time, the wall which the Court saw, had been constructed. When he had visited the site in 2005, only the house had been erected.
16. Under cross-examination, PW2 admitted that he was not in possession of the Defendant's survey plan when he inspected the site in 2005. At the close of PW2's testimony, the Plaintiff closed his case.

DEFENCE CASE

17. The Defence opened its case two months later on 22 March, 2021. DW1 was Sulaiman Issa Turay. He tendered in evidence his witness statement as exhibit "J", and he adopted it as his evidence in chief. On behalf of the Defendant who was then, and was during the length of the trial, resident abroad, he had engaged the services of the Licensed Surveyor, J M Bangura, to act on the Defendant's behalf. He tendered Mr Bangura's report as exhibit M. He also tendered the Defendant's building permit. In his witness statement, he recounted his interactions with the Plaintiff. At one stage, the police were called in by the Plaintiff, but after a cursory look around, they advised both sides to refer the matter to the Ministry of Lands. After these officials had examined the documents submitted by both sides, the Defendant was given the go-ahead to proceed with the construction he had embarked upon.
18. DW2 was the Licensed Surveyor, James Morlai Bangura. He tendered his witness statement as exhibit O. He said, on behalf of the Defendant, he had carried out a resurvey of the land in dispute, and identified exhibit M, as his report containing the composite plan he had drawn. Due to Mr Manly-Spain's absence, cross-examination had to be deferred. Another witness was interposed.
19. DW3 was Alusine Jalloh. He described himself as brother to the Defendant. He tendered his witness statement as exhibit P. Cross-examination of this witness was also deferred due to Plaintiff's Counsel's absence.
20. On 28 April, 2010, Mr Manly-Spain finally cross-examined DW2 and DW3. Under cross-examination, DW2, Mr Bangura said that he had properly depicted Plaintiff's property on exhibit M. It was shaded brown. He said also that Plaintiff's access road was at Old Railway Line, and not Lumley Road. DW3 was also cross-examined the same day by Plaintiff's Counsel.
21. At the end of the Defendant's case, Mr Jamiru addressed the Court orally, on behalf of the Defendant. He submitted, inter alia, that the

Plaintiff's complaint concerned an easement, and not his property. The access road which the Plaintiff was complaining about, was also used by other landowners in the vicinity. He argued further that the Plaintiff's two conveyances did not depict an access road leading to his property.

22. Mr Manly-Spain submitted a written address. His contention was that the Defendant had built on land which was not his, and that by doing so, he had deprived the Plaintiff of adequate access for the purpose of driving his vehicle towards Lumley, Road.

ASSESSMENT

23. This case, based on the pleadings filed by both sides, is not about the ownership of land. It is about whether the Plaintiff can properly claim, for instance, a right to an easement, a right to use the access road leading from his house to Lumley Road, Wilberforce. At the locus in quo, it was observed that the Plaintiff could actually drive through to his residence, but that the space had been reduced by the Defendant's wall. He was not deprived of total access. The case therefore, is not about whether the Plaintiff is the owner of the piece of land constituting the access road. It is whether the Defendant has restricted his use of the piece of land to the extent that, vehicular traffic is hampered, or, restricted.
24. Exhibit A, is Plaintiff's deed of conveyance. The plan attached to the deed is LS608/79 dated 18 April, 1979. In the schedule attached to the deed, Plaintiff's land is described as situate, lying and being off Old Railway Line, Wilberforce. The adjoining properties are not stated in the schedule. But the survey plan shows that there were surrounding properties: properties owned by Victor During, Mr E F Wilson, the Plaintiff's vendor, Mr Lincoln Robbin (not Robert) - Coker, and James During, respectively. Also depicted in the survey plan, is an access road leading to Old Railway Line, and another one, heading in a southerly direction measuring 12ft wide. The plan does not show where this access road terminates. I cannot, for obvious reasons assume that this second access road is the one in dispute. No evidence was led supporting such a conclusion.
25. Exhibit B, is the vesting assent dated 2 February, 2001 and duly registered, in favour of Samuel Christopher Olufemi Wilson, jnr. His portion of land is described as plot 2 in the survey plan. Plot 1, is said to

be the property of Emile Francis Adjaie Wilson (jnr) the son of Plaintiff's vendor. Plot 1 stretches on to Lumley Road, Wilberforce.

26. Exhibit C, is the composite plan drawn by PW2, Mr Hamid. But it is not as helpful as one would have wished. What it should have depicted was the lay out in 1949 when Mr Emile Wilson purchased the land, and what it had become in 1979, when Mr Emile Wilson sold a portion of it to the Plaintiff. The survey plans used as reference points therein are respectively: LS2769/2000, 2980/85, 1004/63 and 1301/03. LS1004/63 is the survey plan in Audrey Tipson's conveyance. According to PW2, Mr Hamid, it seems to be located on the right side of the Defendant's property, if one is looking down the access road in contention while standing on Lumley Road. But according to DW2, it is on the left of Defendant's property.
27. Exhibit E, is not helpful either. It is a deed of conveyance between Dionysious Warburton and Jonathan Dowu Bodkin. It has only two recitals: the first one, reciting the demise of Francis Adjaie Emile Wilson on 19 December, 1979; and the second one, the Consent Order made by the High Court on 17 December, 1987. Nothing about the history of the land is otherwise recorded in the deed. It could not therefore assist the Court in determining whether there was a wider access road in that area when Plaintiff bought his property.
28. Exhibit F, is a deed dated 6 December, 1963, duly registered and made between Vivian Thomas and Audrey Bola Tipson. The survey plan LS1004/63 depicts the land Ms Tipson bought, and shows that the property is bound on one side by a private road; on another side by Lumley Road; on the third side, by property belonging to Mr I C During; and on the fourth side, property belonging to Mr A Wilson.
29. Exhibit G, is a copy of the conveyance dated 25 August, 1947 between Elfrida Parker, and Plaintiff's Vendor, Emile Wilson. Though not done with a theodolite and steel band survey, as was the case in those early years, it shows the full extent of Mr Emile Wilson's property, extending from the boundary with Mr S Beckley's property, and narrowing as it gets to Lumley Road.
30. The Plaintiff has said he bought another portion of land on 20 February, 1986. There appears to be no controversy about this portion of land, as the deed of conveyance in respect of the same has not been tendered in evidence, though references were made to it in the composite plans drawn

by the two surveyors representing the opposite sides to the litigation. It was also exhibited to an affidavit deposed and sworn to by the Plaintiff on 28 February, 2007 during the course of his application for the granting of an interlocutory injunction against the Defendant. The survey plan, dated 13 February, 1986 attached to that deed, merely depicts the name of the owner of one of the adjacent portions of land, namely, Mr I C During. But it also delineates on the right of the plan, a private road. It also shows that the property abuts Lumley Road. But again, I must stress, this deed was not tendered in evidence during the trial.

THE LAW

31. I have adverted to the fact above, that what the Plaintiff is probably claiming is an easement: the right to use an access road which he claims, has been encroached upon by the Defendant. He is not seeking a declaration of title to the land in question. According to the Learned Editors of MEGARRY'S THE LAW OF REAL PROPERTY, 6th edition, para 18-042, *"an easement is either a right to do something, or a right to prevent something. In order to explain what rights can and cannot exist as easements, we must examine - (a) the essentials of an easement, and (b) the distinction between easements and certain analogous rights. It is now settled that four essentials must be satisfied before there can be easement. First, there must be a dominant and servient tenement. Secondly, the easement must confer a benefit on or, accommodate the dominant tenement. Thirdly, the dominant and servient tenements must not be owned or occupied by the same person. Fourthly, the easement must be capable of forming the subject-matter of a grant."*
32. As far as the first essential is concerned, the evidence does not show that Plaintiff's vendor had conferred the right to use the access road he is now claiming. The evidence discloses that the Plaintiff was using that particular access road without opposition from anyone. It was not a right conferred by his vendor. It seems, that whoever had been the owner of the road which Plaintiff was using for access to Lumley Road, had merely granted him a Licence to use it as such. This leads me to the third essential. The dominant tenement must not be owned and occupied by the same person. As the Learned Authors of the above work put it, at page 1081: *"An easement is essentially a right in alieno solo (in the soil of another). A man cannot have an easement over his own land."* Therefore,

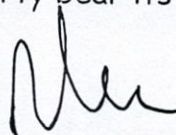
if the Plaintiff is claiming the land in question as his, in the sense that he has an exclusive right to use it as he wishes, he cannot, at the same time claim that he has an easement over it.

33. It seems to me that the Plaintiff's claim sounds more in the nature of a public right, than of an easement. A public right, is one exercisable by anyone, whether he owns land or not, merely by virtue of the general law. Between the years 1979 and up to about 2005, the Plaintiff, it would appear, had been using the road for access to Lumley Road. He was no longer able to do so after the Defendant began construction of his wall. Mrs Tipson had been the owner of the land, prior to the same being purchased by the Defendant, and it seems also, she had allowed the Plaintiff to use it as such. The Defendant has contended that the Plaintiff's access road is at the other end of the access road in contention, and leads to Old Railway Line. For one reason or the other, he had been using this particular road leading to Lumley Road for access without any interruption by the Defendant's predecessor-in-title. The period during which he had been doing so, was nearly 25 years, between 1979 and 2004/2005. It seems to me that length of time of the user of the road entitled him to continue to do so.
34. In conclusion, I hold that the Plaintiff had acquired a public right to use the access road for the purpose of driving through from his residence, unto Lumley Road. That the erection of the wall may have narrowed the access road, may have been the fault of the Director of Surveys and Lands, and the Director of Housing. Both gave their approval for the erection of Defendant's house and external wall. It was open to the Plaintiff to sue both officials for allegedly wrongful approval of Defendant's building plan, as such plan may have contravened the provisions of the Freetown Improvement Act, Chapter 66 of the Laws of Sierra Leone, 1960 as amended and the Rules made thereunder; and also the Building Lines Act, Chapter 129 of the Laws of Sierra Leone, 1960 as amended. Alternatively, and in theory, Plaintiff could also have come to Court for a Judicial review of such approval.
35. Notwithstanding what I have said in paragraph 34, supra, I hold the view at the same time, that this was a matter which could have been settled without the necessity for prolonged litigation. The Plaintiff appeared to be uncompromising. According to the Defendant's witness, DW1, moves to have the matter settled came to nought because of the obduracy of the

Plaintiff. It follows, that I am unable to find that the Defendant's wall should be pulled down. I believe the Plaintiff will be suitable and adequately compensated by way of damages.

36. IT IS THEREFORE ADJUDGED AND ORDERED as follows:

- (1) This Honourable Court grants a declaration to the Plaintiff that he is entitled to use the road leading directly from his property, unto Lumley Road, Wilberforce, Freetown as an access road with sufficient space to allow his vehicle to go through without the vehicle suffering any damage.
- (2) The Plaintiff has not pleaded special damages, nor, has he proved any. But he is entitled to general damages though I still hold the view that litigation was unnecessary. The Plaintiff is awarded the sum of Le15million for the inconvenience he has suffered.
- (3) This Honourable Court, having held that litigation was unnecessary Orders that each party bear its own Costs.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT