

IN THE HIGH COURT OF SIERRA LEONE
GENERAL CIVIL DIVISION

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BETWEEN:

THERESA ABU - PLAINTIFF

AND

JANET WILLIAMS - DEFENDANT

CORAM:

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

COUNSEL:

M GARBER ESQ & D BEOKU-BETTS ESQ for the Plaintiffs

A M KAMARA ESQ for the Defendant

JUDGMENT DELIVERED THE 15th DAY OF SEPTEMBER, 2020

THE PLAINTIFF'S CLAIM

1. This is an action brought by the Plaintiff against the Defendant for a declaration of title to land at Juba Hill, and for other reliefs. On 26th May, 2009, the Plaintiff issued the writ of summons herein against the Defendant. In it, she claimed a declaration of title to land situate lying and being off Yumkella Road, Juba Hill, Freetown. The land is delineated in survey plan LS592/02 dated 29th April, 2002, drawn and attached to deed of conveyance dated 18th June, 2003 and duly registered as No. 503/03 at page 121 in volume 563 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown. She is also asking for a recovery of possession of the said land, and Injunction, Damages for Trespass and for wrongful entry upon the land; all necessary and consequential directions; further or other Relief and Costs.
2. In particular, the Plaintiff claims that is the owner of, and the person entitled to possession of the land described in the said conveyance. The Defendant has committed acts of trespass on the land. At the time, the Defendant was also in the process of constructing a structure (sic) on the land. Letters were addressed to the Defendant by Plaintiff's Solicitors on

28th January, 2007 and on 25th March, 2009, respectively requesting that she and her servants or agents cease all acts of trespass, but to no avail. This action was there brought.

THE DEFENDANT'S DEFENCE

3. The defendant entered appearance on 5th June, 2009 and gave notice of the same that same day, and on 22 June, 2009, filed a defence and counterclaim. The Defence consists of bald denials, and vague and insubstantial admissions. The Counterclaim is equally vague and evasive. The land counterclaimed for, is not described, nor defined. No deed is pleaded as supporting the Defendant's claim to ownership of the vaguely described land.
4. On 23 October, 2009, the Plaintiff filed a Reply and defence to Counterclaim. In it, the Plaintiff re-asserts her claim to the property described in the writ of summons. She also repeats the prayers in her writ of summons.

PRE-TRIAL PROCEEDINGS

5. Before the commencement of the trial, the Plaintiff had cause to apply to this Court for an Interlocutory Injunction to restrain the Defendant from trespassing on the land in dispute, and from continuing with construction work on the same. The Court granted the Injunction. Notwithstanding that, the Defendant continued with construction work. Directions for the future conduct of the action were given by KONOYIMA, J on 1 December, 2009. The action was entered for trial on 26 March, 2013. The Defendant filed a motion on 5 February, 2014 asking for her defence and counterclaim to be amended. Specifically, she wished to amend paragraph 3 of her defence, so as to include the following words in lines 3 and 4 thereof: "The defendant further avers that her land is separate and distinct from the Plaintiff's land".
6. On 27 March, 2014, the Defendant filed another motion, this time seeking to re-open the Court Bundle so as to include therein, a deed of conveyance dated 19th June, 2009 and supposedly, duly registered; and encroachment plan accompanied by a report; and the witness statements of the Defendant herself and of Ansu Kaikai and Reginald Alex King. The survey plan enclosed with the deed, is LS712/07 dated 7th May, 2007.
7. Again, by way of Notice of Motion dated 17th November, 2014 but filed on 19 November, 2014, the Defendant applied once to the Court for leave to

re-open the Court Bundle so as to include statements made by Moses Kamara and Eric Forster, respectively, and also a re-survey plan drawn up by Mr Forster, together with Mr Forster's report and his witness statement. This was during the course of the trial. It is important to bear in mind that all of these applications were made by the Defendant subsequent to the date, 1 December, 2009 that KONOYIMA, J had given directions for the future conduct of the action.

8. The case file was thereafter transferred to C L TAYLOR, J for trial. On 3 May, 2010, she granted the Plaintiff an interim injunction to the Plaintiff. However, the trial did not proceed. The case file was re-assigned to me for trial finally on 10 May, 2012. Two Applications were filed by the Plaintiff thereafter; the first was withdrawn; the second was granted. That was the Judge's Summons dated 21 September, 2012, asking for leave to re-open the Court Bundle for the purpose of including therein a Power of Attorney granted to Allieu Musa. That application was granted on 4th October, 2012. Much time was spent in correcting the draft order before the same was finally approved by me on 18 October, 2012 - see pages 3&4 of my minutes. The trial should have commenced on 22 October, 2013, but again, this could not be done, as the Plaintiff's Solicitors had not filed the papers ordered to be filed by the Court. The trial finally commenced before me on Thursday 21 November, 2013.

THE TRIAL

PW1 - ALIEU MUSA

9. PW1 was the Plaintiff's Attorney, her cousin and caretaker, Alieu Musa. He took possession of the land in dispute on Plaintiff's behalf in 2003. He tendered in evidence the Court Bundle as exhibit A, pages 1 - 53. The Power of Attorney given to him by the Plaintiff is at pages 50 -53. His evidence was that in 2006, a group of people went onto Plaintiff's land, and began demolishing the pillars and the pan-body structure which had been erected on it. He tried to stop the trespassers, and one Alfred, who was his predecessor as caretaker, but was deceased at the time of the trial, also tried to stop them. The attackers were led by one 'Junior' was said to be the son of the 'mammy.' He later commissioned the Licensed Surveyor, James Bangura to inspect the land and to prepare a composite plan, and a report based on his findings. The Report is at pages 35&36; the composite plan is at page 37; pictures taken at the scene are at pages 33&34. At the time of this incident, the Plaintiff was in the USA. He

ended by saying that the Defendant had constructed a one-storey building on Plaintiff's land. His cross-examination had to be deferred because of the absence of Defendant's Counsel. Mr Garber who was Counsel on this occasion sought leave to interpose another witness. Leave was granted.

PW2 JAMES BANGURA - LICENSED SURVEYOR

10. PW2 was the Licensed Surveyor, James Bangura. In 2010, he was commissioned by the Plaintiff to carry out a re-survey of her property at Yumkella Road, Juba, and to prepare a report on the re-survey and to also do an encroachment plan. She gave him a brief history of how she got the land. He carried out the re-survey. He testified as to his observations at the location, and he took the necessary measurements. He discovered that a concrete building was being constructed on the land which fell within the boundaries of Plaintiff's property. It encroached for about 65 feet into Plaintiff's property. He identified his composite plan and report which had already been tendered as pages 35 - 37 of the Court Bundle. Cross-examination was also deferred to await the return of Defendant's Counsel to Court. Mr Alhaji Kamara finally turned up in Court on 29 January, 2014 but was unable to proceed as he indicated his intention to seek an amendment of the Defendant's defence. The relevant application was eventually made to the Court on 24 February, 2014, and it was granted the same day. My Ruling is at pages 12 & 13 of my minutes.

11. There was much further delay in the continuation of the trial.

Defendant's Solicitor and Counsel, Mr Kamara took much time in finally getting right how he should proceed when he wishes to add documents to the Court Bundle which has been filed. Counsel should realise that the days of 'ambush' tactics are truly over. Whichever document a party intends to use at the trial, must first be disclosed to the other side, before it could be filed. Surprises are no longer permitted in civil proceedings conducted under the High Court Rules, 2007. As a result of the considerable delay caused by Mr Kamara's failure to do things in the proper manner, cross-examination of PW1 and PW2 was only commenced on 27 May, 2014.

CROSS-EXAMINATION OF PW1 AND PW2

12. PW1, Alieu Musa, when cross-examined reiterated that he saw the Defendant demolish the Plaintiff's pan-body structure. One Aminata had

been living there. He said that he had built another pan-body structure on that portion of land which had not been forcibly grabbed by the Defendant. He again named those who had taken part in the demolition of Plaintiff's pan-body structure. A man called Alfred, who, it appears, was acting on the Defendant's behalf, was also there. PW2 could not be cross-examined, as he was away from Court that day.

13. On the adjourned date, Mr Garber, Counsel for Defendant intimated the Court that he would wish to examine PW2 further because the defendant had filed additional documents which necessitated that he does this. Leave was granted for him to do so. He was shown these additional documents, and asked to comment on them - see page 15 of my minutes. At the time he did his re-survey, he was not in possession of the Defendant's survey plan nor of her conveyance. After he received both documents, he plotted both Plaintiff, and Defendant's land on a sheet of paper. He found out that though Defendant's building clearly encroached into Plaintiff's land, this was not shown on Defendant's survey plan. His opinion there remained unchanged: that Defendant had encroached into Plaintiff's land which was situated a 15ft access road for a distance of 167ft along Yumkella Road. This finding conformed to what was actually on site. The Defendant had deliberately built on Plaintiff's land. Thereafter, PW2 prepared a composite plan. He tendered his additional report as pages 53 and 54 of the Court Bundle.

14. Whilst being cross-examined by Mr Kamara on 19 June, 2014, I observed at page 16 of my minutes that the plan attached to Mr Kaikai, Defendant's surveyor's Report, seemed to correspond with that of the encroachment plan prepared by PW2. I therefore held that a locus in quo would be necessary, after which Mr Kamara could continue his cross-examination of the witness.

LOCUS IN QUO

15. The locus in quo was held on 5 July, 2014. I was there; so also was Mr Garber and Mr Kamara. My Registrar was also present. At its conclusion, I adjourned hearing to the following Thursday, 10 July, 2014 for cross-examination to continue. But on 16 July, 2014 Mr Kamara indicated that he had no further questions for the witness. Mr Garber did not wish to re-examine the witness, and proceeded to close the case for Plaintiff. The hearing was adjourned for the Defendant to open on 11th November, 2014. He could not do so. He informed the Court that the surveyor who

had gone to the locus with the Court was not Licensed, and that the surveyor who prepared Defendant's survey plan was then deceased. The Defendant had therefore commissioned another Licensed Surveyor, Mr Eric Forster to again conduct a re-survey on behalf of the Defendant, and to prepare a report on the same. It would therefore be necessary for him to apply for the Court Bundle to be re-opened so as to include the survey's report, and re-survey plan, if any.

COURT BUNDLE RE-OPENED

16. The application dated 17 November, 2014 was eventually heard on 12 December, 2014. Leave was granted to the Defendant to re-open the Court Bundle so as to include: the witness statement of Moses Kamara made on 12 November, 2014; a Statutory Declaration dated 19 December, 1997 and duly registered; a Power of Attorney dated 30 August, 2005 and duly registered; and a witness statement made by Eric Forster and dated 12 November, 2014. Also to be added to the Bundle was a Report made by Eric Forster together with his re-survey plan dated 1 August, 2014; and another survey plan LS712/07 dated 7 May, 2007. It is significant that the date on Mr Forster's re-survey, was dated 1 August, 2014. The date came nearly four weeks after the locus in quo. I also made some consequential orders which are listed on page 22 of my minutes.
17. There were adjournments for the Defendant to proceed with her case. This took us up to the hearing on 17 February, 2015. Mr Beoku-Betts appeared for the Plaintiff.

DEFENCE CASE

DW1 - JANET WILLIAMS

18. The Defendant was present in Court and began her testimony. She identified her conveyance dated 19 June, 2009, and she tendered her witness statement. On her application, it was ordered that it form part of her evidence in chief. She testified further that when she first took possession of the land, she found no structure there. She, and others whom she named were present when the survey was conducted by one Mr Kaikai. The owner of the land at the time, Moses Kamara was also present. It was only in 2010 that Plaintiff's Solicitors wrote her a letter about the land. A joint inspection of the land was done, and measurements were taken, but the dispute about ownership remained unresolved.

19. She was cross-extensively by Mr Beoku-Betts. According to her, there were no pillars on the land at the time she bought it. It is recorded at pages 26 - 30 of my minutes. After being shown her witness statement, the Defendant admitted that she had found a pan-body structure on the land. She said she started construction work in 2007.

DW2 - MOSES KAMARA

20. DW2 was Moses Kamara. He said the land in dispute was originally owned jointly by himself, Balogun Leigh and Prince Campbell. He identified the Statutory Declaration as evidence of their joint ownership. He agreed that at the time the land was sold to the Defendant, the other two co-owners were deceased. He identified the Power of Attorney given to him, and also applied that his witness statement form part of his evidence in chief. The application was granted. He said also that Balogun Leigh was a cripple; and that Balogun had never told him about the Plaintiff's claim to the land he purported to jointly own with the said Balogun, and the other gentleman.

DW3 - ERIC FORSTER - LICENSED SURVEYOR

21. The Defendant's last witness, DW3 was the Licensed Surveyor, Mr Eric Forster. He tendered in evidence his Report and re-survey plan as exhibit B, pages 6 -11. Under cross-examination by Mr Beoku-Betts, Mr Forster tendered as exhibit B, page 12, a plan showing the building he said he found on the Defendant's land when he carried out his re-survey. He was questioned about the distance from Yumkella Road to the property claimed by the Plaintiff, and that claimed by the Defendant. All in all, Mr Forster's evidence was very unsatisfactory. Clearly, he had merely been called in to bolster the Defendant's case. In my opinion, he had not carried out a proper survey in order to determine whether the part of the property claimed by the Defendant, did in fact form part of the property which had been sold to the Plaintiff years before. No distances were stated by Mr Forster. That in itself was most unhelpful. I had cause to put a question to Mr Forster after the close of cross-examination in order to see whether he could explain away some of the inconsistencies in his evidence. Sadly, he was unable to do so. The Defendant closed her case at the end of PW3's testimony.

FINDINGS

22. After reviewing the evidence, certain conclusions can be drawn. Balogun Leigh established his possessory title to the land in dispute in 1997 by way of Statutory Declaration dated 19 December, 1977 and duly registered. One of the other two Declarants, was Moses Kamara. In May, 2001, Mr Leigh sold this property, or, a portion of it, to the Plaintiff's predecessor-in-title, Aminata Rogers. This is evidenced in the deed of conveyance dated 7 May, 2001 and duly registered. This same portion of land was sold to the Plaintiff in 2003. After the purchase in 2003, the Plaintiff took possession of this piece of land, and put the deceased Alfred Bangura, and PW1 in charge of the same. In 2006, agents or servants of the Defendant, entered upon this piece of land, and demolished the pan-body structure and pillars which had been erected on it. In May, 2009, the Plaintiff instituted the proceedings herein. In her original defence filed on 22 June, 2009, no title deed is referred to therein. But there is evidence that a deed in the name of the Defendant relating to the same piece of land was duly registered on 19 June, 2009, though the survey plan attached thereto, LS712/07, was signed by the Director of Surveys on 7 May, 2007. In other words, the Defendant's purported title to the property in dispute only came into existence after the proceedings herein had been instituted.
23. In the Deed dated 19 June, 2009, DW2, Moses Kamara deposes to ownership of the land. But the Statutory Declaration in the first recital is that which appears in the Plaintiff's deed as well, and it states quite clearly that that deed witnessed that Balogun Leigh was the owner of the land off Yumkella Road. In the second recital on the Defendant's said deed, it is witnessed that: "AND WHEREAS by an agreement dated 17th June, 2005 the said piece or parcel of land became vested in Balogun Leigh and the Vendor herein." How did this happen? How did DW2 come into it? Any disposition of an interest in land has to be done by deed, and has to be duly registered. This is the sum effect of Section 4 of the Registration of Instruments Act, Chapter 256 of the Laws of Sierra Leone, 1960 as amended, and section 4 of the Statute of Frauds, 1677. There has been no evidence that the purported agreement was duly registered. It follows that Moses Kamara did not have any interest in the land which he could have passed on to the Defendant. Further, and to compound matters, the third recital witnesses that Balogun Leigh has since died (no date is stated) intestate seised of the said parcel of land. But in the very recital, DW1 boldly asserts that he is the person seised

of the property, and therefore entitled to dispose of it. Clearly, DW2 had no interest in the said land he could lawfully dispose of to another person. The purported disposition of the same to the Defendant fails for this reason if not for any other.

24. But has been rightly pointed out by Counsel for the Plaintiff in his written closing address, where a declaration of title to land is sought, the Plaintiff can only succeed on the strength of his title, and not on the weakness of the Defendant's - see: SEYMOUR-WILSON v MUSA ABESS, Sup Ct Civ App 5/79, judgment delivered by LIVESEY LUKE, CJ on 17 June, 1981. There, the Learned Chief Justice, said, inter alia: "*But in a case for a declaration of title the plaintiff must succeed by the strength of his title. He must prove a valid title to the land. So, if he claims a fee simple title, he must prove it to entitle him to a declaration of title. The mere production in evidence of a conveyance in fee simple is not proof of a fee simple title. The document may be worthless. As a general rule, the plaintiff must go further and prove that his predecessor in title had title to pass to him.....*"

25. Therefore, even though Defendant's title cannot stand up by itself in a Court of Law, the Plaintiff has to prove on a balance of probabilities that she indeed has title to the land in dispute. However, based on the evidence led by both sides to the dispute, I have no hesitation in holding that the Plaintiff has indeed satisfactorily proved that she has fee simple title to the property in dispute. I hold also, that she has proved, in the words of RENNER-THOMAS, CJ in Sup Ct Civ app 7/2004 - SORIE TARAWALLI v SORIE KOROMA at page 11 of his judgment that: "*.....(s)he has a better title not only as against the defendant but that there is no other person having a better title than her(him)self....*"

26. In reaching the decision that the Plaintiff has done so, I have benefitted immensely from my observations at the locus in quo, and to the evidence in Court of both surveyors, Messrs Bangura, and Forster, respectively. The importance of a locus in quo in land matters was also emphasised by RENNER-THOMAS, CJ in the Sorie Tarawlli case cited above, at page 15 of his judgment. Mr Forster was not at the locus in quo; the surveyor who was there on behalf of the Defendant, did not testify during the trial. The Defendant was present. A surveyor was present on behalf of the Defendant, but after our return to Court, Mr Kamara informed the Court that he was not licensed to carry out surveys. Another surveyor, Sheriff Kargbo had drawn the survey plan in the Defendant's 2009 conveyance.

His purported composite plan which showed the relative positions of the property claimed by the Plaintiff, and that claimed by the Defendant forms part of the Court Bundle. It purports to show that both properties are located a short distance apart. What it does not do, is to show the distance between the piece of land claimed by the Defendant, and Yumkella Road. I believe this is the crux of the matter. At the trial, the Court was informed by Mr Kamara that he, too, i.e. Mr Sheriff Kargbo was deceased, and that his demise was the reason he had had to seek the services of the unlicensed surveyor.

27. I have already said above that I asked Mr Forster to read and compare the co-ordinates on the respective survey plans of both parties, and on his re-survey. He read out the co-ordinates, the northings and the eastings. Quite clearly, they showed that the land the Defendant was laying claim to, fell squarely within the boundaries of the land Plaintiff's vendor had sold to her. I believe that one clear determinant was the distance between Yumkella Road and the land in dispute. The Plaintiff's survey plan, and the re-survey both done by PW2 show that the distance is 260ft along the access road. The same distance within the same co-ordinates, appears on the Defendant's survey plan, LS712/07. As the land which falls within those co-ordinates had been sold to the Plaintiff in 2003, that same land could not have been lawfully sold to the Defendant in 2009. In addition, and as I have pointed out above, DW2 had no title to pass on to her. The purported power of attorney he tendered in evidence has no bearing on the issues in dispute in this case. He sold to the Defendant in his own right, and not as an Attorney for Balogun Leigh, said by him to be deceased. Even there, once Balogun Leigh was deceased, the purported power of attorney given to DW2 ceased to have any effect in law. Only an executor or administrator can act on behalf of a deceased person. Certainly, not an attorney. The dispute, in my estimation is not so much about the validity of Plaintiff's title, but as to the true location of the land she is claiming. As I have been to the scene, it has become clear to me, sitting as the tribunal of fact and law, that the Plaintiff's land has been accurately plotted, and that she is the lawful owner of the same. It follows, that I have no hesitation in declaring for her. The true position of Plaintiff's land, vis-à-vis the land purportedly claimed by the Defendant has been truly depicted by PW2 in his composite plan.
28. Moving on to the claim for Damages for Trespass, I have come to the conclusion also, that the Plaintiff is the person entitled to possession of

the land. She has been wrongfully disposed of the same by the Defendant. The Defendant has deliberately and unlawfully encroached into the Plaintiff's land, and is therefore liable to the Plaintiff in Damages for Trespass. An Injunction was granted by TAYLOR, J against the Defendant as far back as 3 April, 2010, 10 years ago. She ought to have abided by its terms. Her failure to do so and her continued acts of trespass, make it imperative that she should be mulcted in Damages for trespass for the whole period during which the Plaintiff has been out of possession.


29. Regarding the claim for a perpetual Injunction, I shall again refer to the Judgment of RENNER-THOMAS, CJ in the Sorie Tarawalli case, cited above. There, the Learned Chief Justice at page 17, began, by citing with approval, a passage from CLERK & LINDSELL ON TORT: "*..... Where an injunction is sought to restrain the continuation of a wrongful act which interferes with the claimant's rights and is prohibitive in substance as well as in form, then in the absence of special circumstances, the claimant is entitled to his injunction 'as of course'.....*" The Learned Chief Justice then continued as follows: "*...The injunction sought was a prohibitory one to restrain the continuation of a wrongful act, trespass by the appellant on the respondent's land. Having analysed the totality of the evidence, I hold that there is evidence that unless restrained therefrom the Appellant by himself his agents r howsoever otherwise intend to continue the said trespass upon the said land by remaining thereon.....*" I find that the Plaintiff herein is also entitled to the Injunction she has prayed for. The Plaintiff is also entitled to the immediate recovery of possession of that portion of her property which has been wrongfully claimed by the Defendant. There shall be judgment for the Plaintiff.

ORDERS:

1. This Honourable Court Adjudges, Orders and Declares that the Plaintiff is the owner of, and the person entitled to possession of all that piece or parcel of land and all the buildings and structures thereon, situate, lying and being off Yumkella Road, Juba, Freetown, in the Western Area of the Republic of Sierra Leone the same whereof is delineated in survey plan LS570/02 dated 29 April, 2002 drawn and attached to deed of conveyance dated 18th June, 2003 and duly registered as No. 503/2003 at page 121 in volume 563 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown. A copy of the said survey

plan is attached hereto. She is also the owner of all structures and buildings lying within the boundaries of the aforementioned survey plan, LS570/02

2. Consequently, this Honourable Court Orders that the Plaintiff is entitled to immediately recover possession of that piece or parcel of land described and delineated in the said deed of conveyance and in the said survey plan, a portion of which is presently wrongly occupied by the Defendant.
3. This Honourable Court grants the Plaintiff a perpetual Injunction restraining the Defendant, her servants and her agents from entering upon, remaining on the said land, or, in any way whatsoever, interfering with the Plaintiff's right to ownership and possession of the said land.
4. This Honourable Court Adjudges and Orders that the Defendant do pay the Plaintiff Damages for Trespass, assessed in the sum of Le20million.
5. The Plaintiff shall have the Costs of the action, such Costs to be taxed, if not agreed.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE