

C.C 617/04 2004

W No.14

IN THE HIGH COURT OF SIERRA LEONE

CIVIL JURISDICTION

BETWEEN:

Abiodun Williams - PLAINTIFF

(Suing by his Agent Rebecca Williams)

AND

The Administrator -General -Defendants

(As Official Administrator of the estate of

DAVID JOHNSON

SAMUEL JOHNSON

SYLVANUS JOHNSON

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 8 DAY OF JULY, 2011

1. The Plaintiff brought this action against the Defendants herein by way of Writ of Summons dated 15 June, 2004 through his Attorney, his mother, Mrs Rebecca Williams. She instituted the action by virtue of a Power of Attorney given to her in that behalf by the Plaintiff, dated 3 August, 1990 and duly registered as No.135/90 at page 79 in volume 51 of the Record Books of Powers of Attorney kept in the office of the Registrar-General, Freetown. That Writ was issued by the Plaintiff's former Solicitor, Ms Burney-Nicol. In it the Plaintiff claims, inter alia, a Declaration of Title to properties situate lying and being at Peninsular Road, Ogoo Farm in the Western Area. Both properties are described in, and delineated in Survey plans LS 2078/80 and LS2295/80 drawn and attached respectively to, and form part of Deed of Conveyances dated 12 January, 1981 and duly registered as No.7781 at page 99 in volume 325 of the Record Books of Conveyances kept in the Office of the Registrar-General, Freetown; and Deed of Conveyance dated 13 February, 1981 and duly registered as No. 25 at page 58 in volume 59 of the Record Books of Voluntary Conveyances kept in the same office.

2. The Defendants entered appearance to the writ of summons by their Solicitor A Y BREWAH esq on 13 July, 2004. Surprisingly, on 28 September, 2004 Mr Brewah filed a Defence and Counterclaim on behalf of all the Defendants, averring in paragraph 1 thereof that the 1<sup>st</sup> Plaintiff whom he had entered appearance for, was long since dead. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants averred that the lands claimed by the Plaintiff had been in their possession for generations past, and that they had been occupying the same. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not plead the fee simple title to these lands in this part of their pleading. In the counterclaim, they averred that "...their family beneficially owns the piece of land occupied by them, having devolved on them through generation from their ancestors.....the second and third defendants and their siblings reside on the said piece or parcel of land, which is part of a greater portion of land for more than fifty years." But in their prayer, the second and third Defendants prayed for a Declaration that they are ".....the fee simple owners of the piece or parcel of land situate at Lakka Fakai aforesaid." No Deed was referred to nor pleaded as showing entitlement to this property.
3. The Plaintiff filed a Reply and Defence to Counterclaim, on 29 November, 2004; curiously, her Solicitor dated the Memorandum and Notice of Entry of Action for Trial filed by her, two days before, on 27 November, 2004 though it appears from the Sub-Treasury stamp that it was actually filed on 29 November, 2004.
4. The action it appears, went to sleep, until it was resurrected in June, 2009 when the Plaintiff's Attorney appointed Renner-Thomas & Co, to represent her. On 2 June, 2009 they gave Notice to Defendants' Solicitors, that they intended to proceed with the trial of the action. On 7 December, 2009 TAYLOR, J gave Directions for the future conduct of the action.
5. On 13 April, 2010 the Plaintiff filed a Judge's Summons seeking the Leave of this Court to enter final Judgment for the reliefs claimed in the Writ of Summons. The Summons is supported by the affidavit of the Plaintiff's Attorney deposed and sworn to the same day. A copy of her Power of Attorney is exhibited to her affidavit as RW1. The Deed of Conveyance, dated 12 January, 1981 and duly registered, together with the survey plan in respect of that particular piece land, is exhibited as RW2. RW3 is a



copy of the Voluntary Conveyance dated 13 February, and duly registered together with the survey in respect of that particular piece of land. She deposes in paragraphs 2 and 3 that she has personal knowledge of the fact the Plaintiff is the owner of the two pieces of land. Both survey plans were drawn and signed by the late respected Licensed Surveyor, Mr Oluwole.

6. Mrs Williams deposes further that she regularly visited the lands up to 4 March, 1991 when with the consent of her son, the Plaintiff, she leased both properties to St Michael's Lodge. A copy of the Lease is exhibited as RW4. The company closed down operations in 18996, and she resumed control of the properties. Since 1993, the Defendants have been trespassing on these properties. She therefore instructed Ms Burney-Nicol to institute the present action, which instruction she carried out. The writ is exhibited as RW5. The Defendants' Defence is exhibited as RW6.
7. This Summons first came for hearing before me on 4 May, 2010 but because of the absence of Counsel, the hearing could not proceed. At the hearing on 13 May, 2010, both Counsel, Messrs Pabs-Garnon for the Plaintiff, and Mr Brewah for the Defendants were present. Mr Brewah came in with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, and pronounced that the 1<sup>st</sup> Defendant had been dead long since. As I had already adjourned the matter before Mr Brewah came to Court, I did not make any Orders that day, or give any directions in respect of the information given to the Court by Mr Brewah. On the adjourned date, 19 May, 2010 I directed Plaintiff's Counsel to consider whether he should proceed against the estate of the deceased 1<sup>st</sup> Defendant, or whether he would discontinue the action against him. I gave him a month to think about it.
8. On 21 May, 2010 by way of Notice of Motion dated 20 May, 2010 filed on behalf of the Plaintiff, Mr Pabs-Garnon applied to this Court for, inter alia, Orders that the Administrator-General be appointed as Representative of the Estate of the deceased 1<sup>st</sup> Defendant pursuant to Order 18 Rule 7; and that she be substituted as a party to the action. As it was rather strange that this Application was being made long after the alleged deceased 1<sup>st</sup> Defendant was served with the writ of summons, Mr Pabs-Garnon explained in paragraphs 6 and 7 of his affidavit in support of the Application that until 19 May, 2010 Mr Brewah had not given any

indication that his client or former client, David Johnson was dead. Mr Pabs-Garnon referred to a death certificate in paragraph 8 of his affidavit, but none was exhibited. In a further affidavit deposed and sworn to by him that same day, i.e. 21 May, 2010, he exhibited the death certificate, wrongly as EPG5 - his first affidavit already exhibited documents numbered EPG 1-6. I pointed this out to him during the hearing, and allowed to him to use it though wrongly numbered. The Death Certificate which appears to have been issued only in March, 2006, 13 years after the supposed death, does not comply fully with the provisions of the Births and Deaths Registration Act, 1983 as it was registered more than a year after the supposed death. But as Mr Brewah had himself declared in open Court, in the presence of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants that 1<sup>st</sup> Defendant was dead, and since Mr Pabs-Garnon was prepared to accept that this was the case, I directed Mr Pabs-Garnon to submit a draft Order for approval. As Mr Brewah was again absent, I adjourned the hearing in order for him to make any representation he would wish to make. On the adjourned date, 24 May, 2010, he was again absent. I therefore granted the Orders sought by the Plaintiff in terms of the draft Order submitted for the Court's approval by Mr Pabs-Garnon. That Order is exhibited as EPG2 to a further affidavit deposed and sworn to by Mr Pabs-Garnon on 23 November, 2010.

9. On 2 July, 2010 Mr Brewah deposed and swore to an affidavit in opposition to the Plaintiff's Application. It was filed on 5 July, 2010. To that affidavit is exhibited a copy of the Defendants Defence and Counterclaim as A; copies of 3 Deeds showing, firstly, that David Johnson and James Johnson were owners of the property described and delineated in B1; that David Johnson was entitled to the property described and delineated in B2; and that David Johnson, Samuel Johnson and Samuel Johnson and several others were owners of the property described and delineated in B3. All 3 documents are Statutory Declarations, the first done in 1975, the second in 1978, and the third in 1988. Exhibit C is a copy of an Agreement dated 10 January, 1989 and duly registered, but later cancelled as appears handwritten on all pages of the copy of the Deed exhibited.
10. On 14 October, I fixed 21 October, 2010 as the date for the hearing of the Summons. I fell ill that week, and the next hearing was on 12



November, 2010 after I had resumed work. Again, Mr Brewah was absent. On the adjourned date, 19 November, 2010 Mr Brewah was again absent. I therefore allowed Mr Pabs-Garnon to move the Court in his absence. Mr Pabs-Garnon later deposed and swore to two further affidavits on 5 October, 2010 and 23 November, 2010 respectively. The first one exhibited an agreement dated 10 January, 1988, and the second one, among other documents, a copy of the amended writ of summons.

11. I have examined the affidavit evidence presented by both sides, very carefully. It appears to me on the evidence that the Plaintiff is entitled to the reliefs claimed in the Writ of Summons. He has through his Attorney proved on a balance of probabilities that she is the owner of the properties situate, lying and being at Peninsular Road, Ogoo Farm in the Western Area of Sierra Leone. There shall be Judgment for the Plaintiff in the terms stated in the Writ of Summons. The Costs of the Action, and of this Summons shall be that of the Plaintiff, such Cost to be Taxed, if not agreed. The Plaintiff's Solicitors shall submit a draft Order for the Court's approval.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE