

C.C. 202/98 1998 S. NO. 26

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: -

ABDULAI SILLAH - PLAINTIFF

ABU BAKARR KOROMA -1ST DEFENDANT

AND
MARIAMA AMARA -2ND DEFENDANT

C. F. Edwards Esq. for the Plaintiff

E. E. C. Shears-Moses Esq. for the Defendants

JUDGMENT DELIVERED THE th 24 DAY OF October, 2011

This action was commenced in July 1999 before Mr. Justice J. E. Massally now deceased and it was passed on to me after the Plaintiff had closed his case and the defence had adduced evidence from four witnesses. An application had also been granted for the 2nd Defendant to be added as a party. I had the privilege of hearing the testimony of the 2nd Defendant, but had to rely on the typed records of the earlier proceedings.

The Plaintiff's claims against the Defendant are for damages for trespass, conversion and an injunction restraining them, their servants or agents from entering upon the land in issue. In the particulars of claim the Plaintiff averred that he is the owner of a piece or parcel of land and that his conveyance was registered on 10th May 1972 as No 337 at page 129 in Volume 254 of the Books of Conveyances kept in the office of the Registrar General Freetown.

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That sometime in 1997 the Defendants trespassed on his land and took away and converted to their own use 15 trips of ball stones and removed his beacons. That they also demolished a pan body structure he erected on the said land as a result of which he has suffered loss and damages. Particulars of special damage suffered are set out in the said writ of summons which is dated 25th June 1998.

The 1st Defendant entered appearance and filed a defence in which he denied the allegations made against him by the Plaintiff and put the Plaintiff to strict proof of the several averments.

The Plaintiff filed a Reply and the matter was set down for hearing. At the trial of the matter, the Plaintiff **ABDULAI SILLAH** was the first to testify on his own behalf. He told the court that he owned the piece of land situate at Kissy Mess Mess and that he had documents of title to the said land which he identified. He stated that sometime in January 1997 he saw the 1st Defendant on the said land and when he confronted him the 1st Defendant told him off. He then went to the Director of Surveys and complained about the 1st Defendant's conduct and the Deputy Director was directed to invite both parties to produce their title deeds. He stated that he produced his deed of conveyance and the 1st Defendant produced a statutory declaration and both of them explained how they had acquired the land and the Director informed them that if the matter was brought to court a representative from the Department of Surveys would testify.

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The Plaintiff told the court that the panbody structure he had erected on the land was demolished by the 1st Defendant and the four beacons and ball stones on the land were also removed. He further testified that he consulted a solicitor who wrote a letter dated 1st April 1997 to the Defendant informing him about his trespass on his land and requesting him to remove the panbody structure he had built on the land. The letter was tendered as Exh "A". The 1st Defendant did not respond to the request and the Plaintiff consulted another solicitor who again wrote to the 1st Defendant a letter dated 21st July 1998 along the same lines as the first letter. The second letter was tendered as Exh "B". He then gave details of the costs of the items lost as a result of the 1st Defendant's activities on the land.

The witness PW1 was then cross-examined on his testimony.

The second witness for the Plaintiff was **IBRAHIM CONTEH** who told the court that he was the caretaker of the Plaintiff's land which shared the same boundary as the piece of land owned by his brother, a **SAIDU DAVIES** which was also in his care. He stated that they also got someone else to keep an eye on the land and that that person was the Imam of the Mosque, **PA. CHERNOR** and that it was **PA. CHERNOR** who told him something about the land that made him go to the land where he met the 1st Defendant. He said he questioned him but the said 1st Defendant denied any involvement with the land but he informed the witness that the land was owned by his daughter and that they had removed the Plaintiff from the land and demolished his panbody structure.

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The witness said that he then told him that the land was owned by the Plaintiff and warned him to refrain from interfering with it. He stated that three days later **PA. CHERNOR** called him again and when he went to the land he found a surveyor called **MR. SQUIRE** and another person and they told him they had gone to survey the land. He told the court that he prevented them from doing the survey and invited them to Kissy Police Station where he made a report. They were asked to produce their title deeds which he did but the 1st Defendant could only produce a site plan. He told the court that later he observed workers doing construction work on the site and he sent for the Plaintiff who was then in Konò. When he arrived in Freetown they went to the site where they were both beaten up as a result of which he fell and broke his right leg and the Plaintiff lost a tooth and suffered other injuries. They were later invited to the Department of Surveys and Lands where they made statements to the Director.

The witness was cross-examined and he confirmed that the 1st Defendant had told him that the land belonged to his daughter.

The third witness for the Plaintiff was **ROLAND BRIMA SAMURA**, an officer at the Administrator and Registrar's Department and he tendered in evidence the Plaintiff's title deeds which is a deed of conveyance dated 10th May 1972 made between **PETAN DERO SAWYER** and himself. The said conveyance was tendered as **Exh "C"**.

MR. JOHN NATHANIEL ARISTOBULUS COKER was the Plaintiff's fourth witness. He is a Surveyor attached to the Ministry of Lands and he tendered in evidence copies of letters written to the Defendant in respect of the complaint made by the Plaintiff to the Director of Surveys relating to the land in dispute. He told the court that there was a meeting held after the letters were written. At that stage of the hearing the matter was adjourned for the witness PW4 to produce the report which had been prepared by them on the investigation they conducted relating to the Plaintiff's complaint.

The Plaintiff's fifth witness, the Deputy Director of Lands PW5 was next interposed. The Deputy Director, **SYLVESTER MOMODU KOROMA** testified that he knows the Plaintiff and Defendant and that they were invited to his office in respect of land at Kissy Mess Mess. He stated that he saw the title deeds of the Plaintiff which incorporated his survey plan and that at the meeting they came to the conclusion that according to the documents the land belonged to the Plaintiff. He told the court that they prepared a report which was kept in a file **SLD60/53** at the Surveys and Lands Department. The matter was adjourned at this stage for the witness to produce the report. At the next hearing the witness informed the court that he was unable to locate the file containing the report and so could not produce the report. He stated that however he could testify as to what transpired at the meeting with the parties in the matter. He went on to state that he invited the Plaintiff and Defendant to a meeting at his office in respect of a complaint made by the Plaintiff

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and referred to him by the Director of Surveys. He said the Plaintiff and his family were present and so were the Defendant and his family. He further stated that one **MR. LEBBIE ALLIE** a Surveyor was also present and took down notes. Both parties produced their documents of title and he observed that the Plaintiff produced a conveyance whereas the Defendant produced a statutory declaration. He said the conveyance was dated in the 1970's and the statutory declaration was dated in the 1980's. Further that he looked at both plans and observed that the plan in the conveyance was signed earlier than that in the statutory declaration and his conclusion was that the land in dispute belonged to the Plaintiff. He stated that he advised the Defendant to forget about the land.

The witness PW5 was cross-examined on his testimony.

The last witness for the Plaintiff was **SANTIGIE KAMARA, PW6**. He stated that he is a supplier of sand and stones to builders and that he had spent 13 years in the business. He told the court that in 1998 a trip of ball stones including transportation cost Le70, 000 and at that present time the price of a trip of ball stones including transport was Le135, 000. In 1998 he said a trip of sand cost Le25, 000 and transport came to Le50, 000 as the sand was collected then at Rokel. In 2001 a single trip of sand including transportation cost Le145, 000.

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The witness PW6 was not cross-examined.

The ended the case for the Plaintiff.

The first witness for the Defendant DW1 was **EKUNDAYO PRATT**, an officer at the Administrator and Registrar's Office. He tendered in evidence as Exh "D", the statutory declaration declared in favour of **MADAM MARIAMA AMARA**

BENONI ABIODUN O. THOMAS was the Defendant's second witness DW2. He stated that he is a practicing Licensed Surveyor and that sometime in 2000 he was hired by the Defendant to check and ascertain whether there was an encroachment on the land belonging to the Defendant. He was given the survey plan LS1131/96 attached to Exh "D", the title deed of the Defendant and the survey plan LS344/72 attached to Exh "C", the Plaintiff's conveyance. He stated that he carried out the exercise and discovered that there was no encroachment. He said he prepared a composite plan dated 27th March 2000 which he signed. He tendered the said composite plan as Exh "E".

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The witness DW2 was cross-examined and he established that he did not talk to any of the parties before carrying out the exercise nor did they identify their lands to him. He also did not talk to the surveyor who prepared the survey plans, one of whom had died in any case.

The 1st Defendant was the next witness and he told the court that he knows the Plaintiff and that he recalled sometime in 1997 when he saw him on a piece of land belonging to his daughter **MARIAMA AMARA**. He said they did not talk to each other. He denied going on the Plaintiff's land or removing 15 trips of ball stones or destroying his panbody structure and removing his beacons. He stated that he does not know where the Plaintiff's land is situated. He recalled that he received a letter from the Director of Surveys sometime in February 1997 inviting him to a meeting which he attended and where the Plaintiff was also present together with the Deputy Director, **MR. KOROMA, PW5**. He said his daughter **MARIAMA AMARA** was also present and the meeting was chaired by **MR. KOROMA**. He told the court that at the end of the meeting **MR. KOROMA** told them that whoever was dissatisfied could take legal action and he was prepared to be a witness. He stated that the Defendant and the Plaintiff took along to the meeting their title deeds which **MR. KOROMA** inspected.

The witness DW3 was cross-examined on his testimony and he confirmed that the land in issue belonged to his daughter and was not his property.

MARIAMA AMARA, the Defendant's daughter next gave evidence as DW4. She stated that she knew the Plaintiff and the 1st Defendant and that she owns a piece of land situate off Main Road Thunder Hill Kissy Mess. She recalled attending a meeting at the office of the Deputy Director of Surveys also attended by the Plaintiff, the Defendant and some others where she produced her statutory declaration and the Plaintiff produced his conveyance. She stated that the Deputy Director looked at the documents and told them he would decide nothing but the matter should be taken to court. She further told the court that her uncle, the late **MOMOH KAMARA** had owned the land but died around 1955 when she was a baby and had left the land to her as he died childless. She said her father developed the land and when she came of age handed it to her and she had started developing it. She stated that she planted crops on the land.

The witness was cross-examined on her testimony.

The court later paid a visit to the locus in quo and at the next hearing the court Registrar gave his report which he tendered in court as Exh "F". Both parties and their counsel were present at the locus and the Plaintiff showed them the disputed land on which was an unfinished structure and a panbody structure which the Plaintiff alleged was built by the 1st Defendant but which the 1st Defendant denied. The Plaintiff explained that all his beacons have been removed by the Defendant but showed the court the extent of his land.

The Defendant also showed the extent of his land and also his beacons and explained that he is just a caretaker for his daughter who actually owned the land.

Counsel for the Defendant next applied for the Defendant to be struck out of the proceedings pursuant to Order XII rule 12 of the High Court Rules 1960. Counsel for the Plaintiff opposed the application and the learned trial judge (Massally J as he then was) refused the application. Counsel for the Plaintiff then applied that **MADAM MARIAMA AMARA** be added as 2nd Defendant in the action. The application was granted on 26th April 2002 and the court ordered the amended writ of summons to be served on the 2nd Defendant.

I should mention that after the above order was made the solicitor and counsel for the then Defendant, B. C. J. Thompson Esq. died and there was subsequently a change of Solicitors to E. E. C. Shears Moses who had to familiarise himself with the case. The learned trial Judge, Mr. Justice Massally also passed away and the matter was later assigned to me. The records had to be typed.

I took over the matter at the stage where the amended writ of summons was to be served on the 2nd Defendant. She subsequently entered appearance and filed a defence dated 1st June 2009 in which she denied trespassing on the Plaintiff's land.

She averred that the land in dispute belonged to her uncle who left it in the care of her father for her and that the said land had been in her uncle's possession since 1955. Further she pleaded that the land has been in their continuous possession without interference from anyone and that out of caution she made a statutory declaration in 1996.

The 2nd Defendant later testified on her own behalf along the lines already set out in her defence and in her earlier testimony as DW4. She was cross-examined on her testimony. That ended the case for the Defendants.

Both counsel waived their rights to address the court.

The Plaintiff's claim against the Defendants is for damages for trespass. It is well established that in a case for trespass all the Plaintiff has to prove is a better right to possession than the defendant and one way to do this is to show that he has a better title to the land. See the celebrated case of **Seymour Wilson v Musa Abess**, 1981 unreported decision of the Supreme Court where Mr. Justice Livesey Luke C.J. had this to say

"But better title in the context of an action for trespass is not necessarily "valid" title. In a case for trespass the court is concerned only with the relative strength of the titles or possession proved by the rival claimants.

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The party who proves a better title or a better right to possession succeeds even though there may be another person not a party, who has a better title than he”.

In this case the Plaintiff has stressed that he has a deed of conveyance in respect of the land whereas the Defendant has only produced a statutory declaration. It is clear from the **Seymour Wilson** case that it is not necessarily a valid title that entitles a claimant to succeed in an action for trespass. There are other factors which he must prove to establish his claim. For instance, he must be able to identify the land with certainty and show the extent of encroachment he alleges. In this case the Plaintiff has not been able to produce the report prepared by the Surveyor assigned by the Director of Surveys to investigate his complaint. Both witnesses PW4, MR. **ARISTOBULUS COKER**, the Surveyor attached to the Department of Surveys and Lands and PW5, MR. **SYLVESTER M. KOROMA** the Deputy Director of Surveys and Lands were unable to locate the report and produce it in court. The court only has their word that the land in dispute belongs to the Plaintiff.

The Defendant's on the other hand called their surveyor to testify and he tendered in evidence a composite plan which showed that there was no encroachment. In the case **Frederick Max Carew vs., Dr. P. K. Lavahun** a 2010 decision of the Supreme Court, Mrs. Justice Wright, JSC stated as follows

“Where the parties in dispute know and are at ad idem as regards the identity of the land in dispute, there is certainty as to the suit land and no surveyor’s plan is necessary. See **Ojihah v Ojihah** {19991} 5 NWLR 296 at 311. However perhaps a preferable and better way of proving identity is by filing a surveyor’s plan of the area claimed. The production of a surveyor’s plan of the area depicting the salient features and boundaries of the land being claimed and its relative position to the surrounding land and adjacent properties is necessary where the identity of the land in dispute is being challenged or is in doubt.”

It is my view therefore that the Plaintiff ought to have put in evidence a surveyor’s composite plan showing the land and the extent of the encroachment. This he failed to do relying only on the word of the Deputy Director of Surveys and Lands, that the land in dispute belongs to the Plaintiff. The report on which he based this pronouncement is not before the court.

From the records it is seen that the court was able to visit the locus and the report of the said ~~was~~^{visit} was tendered in evidence. At the locus the Plaintiff showed the extent of his land but said that all his beacons have been removed from the land. The 1st Defendant also showed the court the land which he said is owned by his daughter and identified the beacons on the said land.

In an action for trespass the important consideration is possession. A mere possession is sufficient to maintain trespass against one who cannot show a better title. See **England vs. Mope Palmer** 14 WACA 659. In this case the Defendants have identified the land and shown their beacons thereon. The Plaintiff on the other hand has not been able to identify his land with any certainty. He has failed to establish that there has been an encroachment of his land by the Defendants. In **Bristow v Carmican** {1878} 3 App. Case 641 H.L. relied upon and cited in the **Seymour Wilson** case (supra) it states as follows

“There can be no doubt whatever that mere possession is sufficient against a person invading that possession without himself having any title whatever, as a mere stranger; that is to say, it is sufficient against a wrong doer. The slightest amount of possession would be sufficient to enable the person who is so in possession, or claims under those who have been or are in such possession to recover as against a mere trespasser”.

There is evidence here that the 1st defendant has been developing the land since the previous owner her uncle died and left it in her father, the 1st Defendant's care for the 2nd Defendant. According to the Plaintiff's evidence the 1st Defendant exercised acts of possession over the land when he removed the Plaintiff's ballstones and trips of sand therefrom and demolished his panbody structure.

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The fact that she has a statutory declaration rather than a conveyance has been explained in her testimony. It is trite law that a statutory declaration is not a document of title but may be described as an attempt to record evidence of how a person came to claim possessory title to a piece of land. See 2007 decision of the Supreme Court in the case **Sorie Tarawalli vs. Sorie Kamara**. I must emphasize here that the claim is for trespass and not for declaration of title. Here the important consideration is possession of the said piece of land.

It is my view that from the evidence the 2nd Defendant has proved that she has a better right to possession of the property than the Plaintiff. She has been able to identify her land with certainty and has shown evidence of having exercised acts of possession over the land.

ASH. The Plaintiff has therefore failed to prove his case and judgment is given in favour of the 2nd Defendant. She is entitled to possession of the piece or parcel of land described in her statutory declaration. Costs of the action to the 2nd Defendant to be taxed if not agreed upon.

A. Showers

SIGNED: - A. SHOWERS

24 / 10 / 2011

JUSTICE OF COURT OF APPEAL