

C.C 609/95 2005 J. NO. 33

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: -

PRINCE A. JOHNSON  
(SUING BY HIS ATTORNEY  
VERONICA ABA JOHNSON

- PLAINTIFF

AND  
PA. ALIMAMY DUMBUYA  
KABBA DUMBUYA  
SULAIMAN JALLOH  
HAWA THORONKA

-1<sup>ST</sup> DEFENDANT  
-2<sup>ND</sup> DEFENDANT  
-3<sup>RD</sup> DEFENDANT  
4<sup>TH</sup> DEFENDANT

**A. Y. Brewah Esq. for the Plaintiff**  
**S. M. Sesay Esq. for the Defendants**

**JUDGMENT DELIVERED THE 26<sup>th</sup> DAY OF October 2011**

The Plaintiff issued a writ of summons dated 30<sup>th</sup> May 2005 against the Defendants herein claiming the following reliefs:

1. Immediate possession of a piece of land situate off Wilkinson Road, Murray Town, Freetown..
2. Damages for trespass.
3. Any further or other relief
4. Costs.

The Plaintiff, **PRINCE A. JOHNSON** sued by his Attorney **VERONICA ABA JOHNSON** who is also his wife. In his particulars of claim, the Plaintiff pleaded that he is the owner of a piece of land situate lying and being off Wilkinson Road, Murray Town Freetown covering an area of 0.0861 acre and delineated on survey plan LS 512/83 dated 7<sup>th</sup> March 1982. He acquired the said land by Deed of Gift from his late father **ISAAC EMMANUEL JOHNSON**. He further averred that the 1<sup>st</sup> Defendant was originally his caretaker for the said land but later on connived with the other Defendants to unlawfully set up a rival claim in respect of the land and to trespass thereon. That the 3<sup>rd</sup> and 4<sup>th</sup> Defendants have erected structures on the said land. He pleaded that he issued a notice dated 9<sup>th</sup> April 2005 to the Defendants to quit the said land but they have refused to quit and consequently he brought the present action claiming the reliefs earlier mentioned.

The Defendants entered appearance to the said writ and filed a defence and counterclaim. They denied that the Plaintiff is the fee simple owner of the said land and averred that the land has been in the possession of the 1<sup>st</sup> Defendant's predecessor in title for a period of upwards of 20 years until the 1<sup>st</sup> Defendant made a statutory declaration dated 24<sup>th</sup> March 2005 and registered at page 41 in Volume 49 of the Book of Statutory Declaration kept in the office of the Registrar General Freetown. He averred that the action is therefore statute barred by s. 5 (1) of the Limitation Act 1961.

He further pleaded that the said **ISAAC EMMANUEL JOHNSON** did not own the said land and as such could not pass any title to the Plaintiff and relied on the maxim *nemo dat quod non habet*.

The 1<sup>st</sup> Defendant denied ever being a caretaker of the Plaintiff and averred that his predecessors in title had always been in full free and undisturbed possession of the land for a period upwards of 20 years. He also denied conniving with the other Defendants to lay claim on the land. Furthermore they could not vacate the land since they occupied it legitimately and were not trespassers thereon.

The Defendants filed a counterclaim in which they claimed a declaration that the 1<sup>st</sup> Defendant is the fee simple owner of the land described in his statutory declaration; damages for trespass and a perpetual injunction restraining the Plaintiff whether by himself, servants, agents or howsoever called from entering or remaining on the said land or from disposing of same either by sale or mortgage or lease.

The Plaintiff filed a Reply but failed to file a defence to the counterclaim. Directions for the conduct of the trial were given and when complied with, the matter was set down for trial.

The first witness for the Plaintiff PW1 was an official from the office of the Administrator and Registrar General who tendered in evidence the Plaintiff's documents of title starting with a Statutory Declaration sworn to by **MRS. EDITH BENKA JOHNSON** dated 9<sup>th</sup> June 1966 – Exh “A”; Deed of Conveyance dated 5<sup>th</sup> August 1966 made between **EDITH JOHNSON** as Vendor and **ISAAC EMMANUEL JOHNSON** as Purchaser – Exh “B”; Deed of Gift dated 3<sup>rd</sup> May 1984 between **ISAAC EMMANUEL JOHNSON** as Donor and **PRINCE A. JOHNSON**, the Plaintiff as Donee, Exh “C”. He also tendered in evidence the Power of Attorney from the Plaintiff to **VERONICA ABA JOHNSON**, his Attorney and Agent as Exh “D”.

The second witness for the Plaintiff was his brother **DENNIS EKUNDAYO JOHNSON** who confirmed the Plaintiff's allegation that the land in dispute was given to him by their father and he identified the Deed of Gift Exh “C”. He also testified that the 1<sup>st</sup> Defendant lived near the said land and acted as a caretaker of the said land after he was asked to do so by their father and that he continued to take care of the land for his brother, the Plaintiff after it was conveyed to him.

The witness PW2 was cross-examined on his testimony. The third witness for the Plaintiff PW3 was **ALEXANDER MACAVORY COKER**, the Plaintiff's surveyor. He told the court that he was asked to investigate the land dispute between the Plaintiff and the

1<sup>st</sup> Defendant and that he carried out the exercise using only the survey plan of the Plaintiff and his predecessor in title.

He said he did not have a copy of the 1<sup>st</sup> Defendant's survey plan when he did the exercise and he tendered in evidence his report and composite plan as Exh- "E" and Exh "F" respectively. His conclusion is that the physical location of the Plaintiff's property conforms with the cadastral location and there has been overlapping on the property by the 1<sup>st</sup> Defendant. He ended up by stating that the area now occupied by the 3<sup>rd</sup> and 4<sup>th</sup> Defendant is the property of the Plaintiff. The witness PW3 was cross-examined on his testimony and that ended the case for the Plaintiff.

The Defendants called an officer from the Administrator and Registrar General's Department as their first witness. He tendered in evidence the 1<sup>st</sup> Defendants documents of title which were two statutory declarations, the first sworn to 7<sup>th</sup> March 1966 as Exh -G" and the second sworn to on 24<sup>th</sup> March 2005 as Exh "H".

The second witness for the Defendants was the son of the 1<sup>st</sup> Defendant, **ARNOLD KABBA DUMBUYA DW2**. He told the court that he has been living in premises No 77 Byrne Lane all his life and that he was now 40 years old but that he has never met the Plaintiff. He stated that the said premises were owned by his father and he identified his father's documents of title Exh "G" and Exh "H". He went on to state that he has several brothers and sisters all living in the

said premises and he recalled receiving a letter from the Plaintiff's solicitor A. B. Lansana Esq. which he forwarded to his father's solicitor with instructions to reply. He tendered in evidence as Exh "J" the reply which was copied him. He stated that the letter from the Plaintiff's solicitor was a notice to quit but that he did not comply with the said notice as they owned the land. The witness DW2 was cross-examined on his testimony.

The third witness for the Defendants was **JAMES MORLAI BANGURA, DW3**, a licensed Surveyor. He told the court that he was contacted by **ARNOLD KABBA DUMBUYA, DW2** on behalf of the 1st Defendant his father to do a re-survey of property No. 77 Byrne Lane, which he did and he tendered his report and composite plan as Exh "K1-3". He stated that he used documents of title of **EDITH BENKA JOHNSON, ISAAC JOHNSON, PRINCE JOHNSON and PA, ALIMAMY DUMBUYA** in carrying out the exercise. He stated that the property of **PA. ALIMAMY DUMBUYA**, the 1<sup>st</sup> Defendant fell within the estate of **A. BENKA COKER** and that the property of the Plaintiff **PRINCE A JOHNSON** was subdivided from the property of **EDITH BENKA JOHNSON**. He concluded that there is no overlap from the property of the Plaintiff and that of the 1<sup>st</sup> Defendant. The witness DW3 was cross-examined on his testimony.

The next witness was the 1<sup>st</sup> Defendant who said he was over 90 years old. He told the court that he did not know the Plaintiff nor his Attorney, his wife.

He told the court that he had lived on the land No. 77 Byrne Lane for well over 30 years as the building he constructed on the land is well over 30 years and he had always lived there together with all his family. He stated that his mother had no document for the land and that before she died she advised him to get one made. He said that his mother had lived on the land for several years before her death and that after she died he remained on the land and no one took him to court before now. He identified his documents of title Exh "G" and Exh "H" and he told the court that the property has been fenced all round and that he has never paid rent to anyone in respect of the said property. He tendered in evidence demand notes for city rates he had received over the years – Exh: L1-12" in respect of 77 Byrne Lane and explained that he could not produce the receipts for their payments as they were destroyed when his house burnt down.

Under cross-examination the witness confirmed that he had been on the land for the past 60 years and that the **BENKA COKERS** originally owned the land and gave him as a gift. He told the court that they did not give him any document in respect of the land. He further stated that two people gave him the land, the **BENKA COKERS** and his mother, **MADAM BOMPEH TURAY** and that he did not survey the land until 1995 but had built the wall fence 40 years ago.

**CHIEF PA. ALIMAMY KAMARA** was the Defendant next witness DW5. He is a Limba Section Chief and he told the court that he has known the 1<sup>st</sup> Defendant for over 50 years and that the 1<sup>st</sup> Defendant had lived in the said land in issue since he came to know him. He stated that he knew the 1<sup>st</sup> Defendant's mother and that she had lived in the same house with the 1<sup>st</sup> Defendant up to the time of her death over 20 years ago. He also knew his children all of whom were born in the said house and the eldest was now over 50 years old. He recalled that the land was originally given to 1<sup>st</sup> Defendant's mother by the late **PA. BENKA COKER** as consideration for her effecting a cure of his illness, and that the said **PA BENKA COKER** had showed the mother the area of the land. He said that the 1<sup>st</sup> Defendant was already living on the land and that the 1<sup>st</sup> Defendant was present when **PA. BENKA COKER** showed his mother the land.

The witness was cross-examined on his testimony. The next three witness, DW6, DW7 and DW8 testified and confirmed that the 1<sup>st</sup> Defendant had lived on the land for over 50 years without being challenged and that the land was originally owned by the **BENKA COKERS** who gave it to the 1<sup>st</sup> Defendant's mother as a gift.

The final witness was subpoenaed by the court and was **DENNIS BRIMA**, a clerk at the Freetown City Council responsible for preparing demand notes for payment of city rates.

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He stated that the demand notes are copied from the Rate Register and that according to the information in the Rate Register the 1<sup>st</sup> Defendant took over the payment of city rates for 77 Byrne Lane in 1997/1998 and that there was no record of payment of city rates for 77 Byrne Lane by **PA. ALIMAMY DUMBUYA** for 1990. He tendered in evidence rate registers for the years 1990 -2002 which showed that the name on the register for 77 Byrne Lane from 1990-1996 is **A – BENKA COKER** and that the name was changed from **A, BENKA COKER** to **PA. ALIMAMY DUMBUYA** from 1997. The witness was cross-examined on his testimony. That ended the case for the Defendant.

Both counsel submitted written closing addresses.

Now the Defendants have raised in their defence a plea that the Plaintiff's claim is statute barred pursuant to the provisions of s. 5 (3) of the Limitation Act 1961. The said section provides for a limitation period of 12 years from the date on which the right of action accrued in respect of an action for the recovery of land. In this case the Plaintiff's case is for immediate possession of the piece of land situate off Wilkinson Road, Freetown. Counsel for the Defendant has submitted that the length of time the Defendants have been on the land automatically deprives the Plaintiff of any right he has to institute an action for declaration of title to his alleged land. With all due respect to counsel for the Defendants, the Plaintiff's claim is not for a

declaration of title but for recovery of possession of the said land. The evidence is that the Defendants were given notice to quit dated 9<sup>th</sup> April 2005 to which their solicitor replied on 28<sup>th</sup> April 2005 Exh "J". I must state here that the notice to quit was not tendered in evidence though it was part of the court bundle and reference was made to it by **MR. KABBA DUMBUYA DW2**. The reply to the said notice however was put in evidence as Exh "J". It is my view that in this case the cause of action accrued to the Plaintiff on the expiration of the said notice to quit. The action was instituted by writ of summons dated 30<sup>th</sup> May 2005 claiming recovery of possession of the said piece of land and damages for trespass. The action therefore cannot be statute-barred.

The Plaintiff has also claimed damages for trespass.

It is well established that in a case of trespass all the Plaintiff has to prove is a better right to possession than the Defendant. One way to do this is to show that he has a better title to the land. In the leading authority of **Seymour Wilson v Musa Abess** 1981 unreported decision of Supreme Court, Livesey Luke, C. J. states as follows:

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

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."

It is therefore necessary to examine the documents of title of the rival claimants here. The Plaintiff has produced not only his own document of title which is a deed of gift from his father but also produced his father's title deeds which is a deed of conveyance from his predecessor in title. Further there is in evidence the statutory declaration of the original owner of the land, **MRS. EDITH BENKA JOHNSON**. There are therefore "three generations" as it were of title deeds to support the Plaintiff's claim to entitlement of the property here.

In the case of the Defendant he has produced two documents of title. Both are statutory declarations made by himself and other persons. In the first statutory declaration dated 7<sup>th</sup> March 1996 the 1<sup>st</sup> Defendant declared inter alia as follows:

- "1. That I know well all that piece or parcel of land situate lying and being at No 77 Byrne Lane off Wilkinson Road, Murray Town Freetown as the same is defined described and bounded in the schedule hereto and delineated on Survey Plan hereto attached and intended to be part hereof.

2. That the said piece or parcel of land was formerly owned by the **BENKA COKER** family of Murray Town aforesaid.
3. That for upwards of sixty years I served the said family faithfully and resided on the said land as a worker and caretaker thereof.
4. That sometime in the year 1966 the **BENKA COKER** family decided to make a gift of the said land to me for the services rendered.
5. That at the time of the said gift no conveyance was prepared in my favour in respect of the said transaction as I was unaware of the necessity for such a document ...”

In the second statutory declaration dated 24<sup>th</sup> March 2005 the 1<sup>st</sup> Defendant declared inter alia as follows

1. That I am the estate owner in fee simple free from incumbrances of all that piece of land situate lying and being at 77 Byrne Lane off Wilkinson Road Freetown --- whose position dimensions and boundaries are shown **RED** on the survey plan LS 1540/03 dated 26<sup>th</sup> August 2003 attached hereto  
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2. That the said piece or parcel of land was formerly the freehold of my late mother **MADAM BOMBEH** who during her lifetime several years before her death gave the said piece or parcel of land to me as freehold gift and at the same time put me in possession of the same but she then omitted to execute the necessary documents in respect of the said transaction as the document had not then been prepared ...”

The 1<sup>st</sup> Defendant testified that two people gave him the said land. It is apparent that the said gifts were made at different times and the pieces of land must have been separate and distinct and yet the said pieces of land are both numbered the same 77 Byrne Lane. One piece of land, the first gift is in respect of 0.2680 acre and the other piece, the second gift is for 1.5900 acre. It is observed that when the Defendant's surveyor re-surveyed the said land only the second statutory declaration with survey plan LS 1540/03 was given to him and that plan is what is reflected in his report. No mention is made of the other piece of land delineated on survey plan LS 1748/95 attached to the 1<sup>st</sup> Defendant's earlier statutory declaration in 1995. There therefore seems to be some discrepancy in the piece of land described as 77 Byrne Lane. Is it made up of the two pieces of land? This is not clear from the evidence before the court. However, it has clearly been established that the **BENKA COKERS** owned a large piece of land in that area. **MR. BENKA COKER** owned a very large portion thereof and **EDITH BENKA JOHNSON**, his daughter also owned a portion.

**EDITH BENKA JOHNSON** is the Plaintiff's predecessor in title and it is my view that he has shown a valid and better or more reliable title to the land he claims. In the case of **Ocean Estates vs. Pinder** {1969} 2 A. C. 19 at 25 relied upon by Livesey Luke C.J. in the **Seymour Wilson** case (supra) it states:

"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 unless debarred under the Real Property Limitation Act."

In this case there is no doubt that the 1<sup>st</sup> Defendant has been on his land for a long time. He himself declared that he has been on the land for 60 years and had served the **BENKA COKERS**, the original owners for several years as their caretaker. I believe him when he states that he was given a portion of the land in 1966 as consideration for his faithful service. The question is what portion of land was he given. What is the acreage of the land he now claims? He has disclosed in his testimony under cross-examination that he did not survey the land until 1995 and that he built the wall fence 40 years ago. This evidence reveals that he built the wall fence even before he had the land surveyed and his boundary determined. Furthermore as is evident from his surveyor's report, Exh "K1-2", his document of title given to the surveyor when he was contracted to do a re-survey was the one with survey plan LS 1540/03 alone. What therefore is the status of the land delineated on survey plan LS 1748/95 attached to the other statutory declaration?

In the report of the Plaintiff's surveyor, Exh "F", he concluded that there has been a total overlapping of the property of **MR. PRINCE A JOHNSON** by **PA. ALIMAMY DUMBUYA** and that the property now called 77 Byrne Lane presently occupied by **HAWA THORONKA** the 4<sup>th</sup> Defendant and **SULAIMAN JALLOH**, the 3<sup>rd</sup> Defendant, is the property of **MR. PRINCE A. JOHNSON**, the Plaintiff.

The conclusion of the Defendant's Surveyor is that "because the entire property of **PA. ALIMAMY DUMBUYA** falls within the portion originally owned by **A. BENKA COKER**; therefore **PRINCE JOHNSON** has no claim to it as his title originates from **EDITH BENKA JOHNSON**." Let me state that the surveyor was given only one survey plan relating to 77 Byrne Lane. There is in existence another survey plan purporting to be of 77 Byrne Lane which was not shown to him. He was therefore not correct when he said the entire property of **PA. ALIMAMY DUMBUYA** falls within the portion of land owned by **A. BENKA COKER**. The 1<sup>st</sup> Defendant throughout his testimony maintained that he has two documents in respect of the land and he identified Exh "G" and Exh "H" as his documents of title, yet he only gave Exh "H" to his Surveyor to use to re-survey the land. No explanation has been given for this omission. It therefore puts in doubt the area of the land he now claims.

The 1<sup>st</sup> Defendant has counterclaimed for a declaration that he is the fee simple owner of the land described in his statutory declaration.

He must therefore succeed on the strength of his title and not on the weakness of the Plaintiff's. See the **Seymour Wilson** case (supra). The evidence here has disclosed a number of discrepancies in the title deeds of the 1<sup>st</sup> Defendant which have already been highlighted. Even his boundaries have not been well established, one of the requirements for obtaining the declaration he seeks. See the case of **England vs. Official Administrator**, 1964- 66 ALRSL 315. The Plaintiff in my view has proved a better right to possession of the land he claims.

Taking all the evidence and the circumstances of this case into consideration the Plaintiff has proved his case on a balance of probabilities and judgment is given in his favour. The 1<sup>st</sup> Defendant's counterclaim is therefore dismissed. I make the following Orders:

1. That Plaintiff is entitled to immediate possession of the piece or parcel of land situate off Wilkinson Road, Murray Town Freetown described on survey plan LS 512/83 attached to his Deed of Gift dated 3<sup>rd</sup> May 1984 registered at page 146 of Volume 64 of the Books of Voluntary Conveyances in the office of the Registrar General, Freetown.

2. Damages for trespass assessed at Le5 million.
3. Costs of the action to be taxed if not agreed upon.

*A. Showers*

**SIGNED: - A. SHOWERS** 26/10/2011  
**JUSTICE OF COURT OF APPEAL**