

C.C. 904/01

2001 A. NO. 37

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: -

THE ANGLICAN BISHOP OF BO - PLAINTIFF

AND

MADAM PHEBEAN JOHNSON - DEFENDANTS
CHERNOR AMADU SHAW
(by original action)

AND

BETWEEN: -

MADAM PHEBEAN JOHNSON - PLAINTIFFS
CHERNOR AMADU SHAW
(by original action)

AND

1. THE ANGLICAN BISHOP OF BO
2. EGERTON GBONDO
3. REV. AYO JAMES
4. J. W. SCOTT MANGA - DEFENDANTS
5. ABIGAIL WILLIAMS
6. JUNISA MAYOH

C. J. Peacock Esq. for the Plaintiff.

N. D. Tejan Cole Esq. for the Defendants

JUDGMENT DELIVERED THE 17th DAY OF October, 2012

The Plaintiff issued a writ of summons dated 15th November 2001 against the Defendants in which it claims the following reliefs:

1. An order setting aside the deed of conveyance dated 22nd September 2000 and registered as No. 1274/2000 in volume 534 at page 128 in the book of conveyances kept in the office of the Registrar General, Freetown.

2. A declaration that the 1st Defendant has no freehold title to the property situate at 66 Dambara Road, Bo or howsoever called to dispose of.
3. A declaration that the property now known as 66 Dambara Road Bo is part of the property of the Anglican Diocese of Bo.
4. Any other relief that the court may deem fit and just.
5. Costs.

In its particulars of claim, the Plaintiff averred that it is a body corporate possessing property formerly vested in the Bishop of Sierra Leone in the Southern and Eastern Provinces of Sierra Leone. Further that the Plaintiff's predecessor had since 1915 obtained a piece of land situate along Dambara Road by lease for a period of 99 years. That the 1st Defendant's father obtained a lease of a piece of land along the said Dambara Road, Bo for a period of seven years from 25th April 1927. That on 12th April 1956 it was declared by the District Commissioner, Bo that the land purportedly leased to the 1st Defendant was part of the land leased to the Plaintiff's predecessor. That the 1st Defendant who is the daughter of one ~~a~~ **SOLOMON S. JOHNSON** (deceased) a non-native has no freehold land to dispose of.

That on the 23rd July 1956, the District Commissioner declared that the dispute between the Church of England Mission (the predecessors of the Plaintiff) and the 1st Defendant's family was between non-natives and that the lease to the 1st Defendant had expired in 1936 and was never renewed. That the 1st Defendant is a non-native and is incapable of owning any land in the provinces of Sierra Leone other than a lease and she has no basis in law to convey freehold property in the provinces to the 2nd Defendant. That notwithstanding the incapacity of both Defendants the 1st Defendant executed a deed of conveyance dated 22nd September 2000 to the 2nd Defendant registered as No. 1274/2000 in volume 534 at page 128 of the Books of conveyances kept at the office of the Registrar General's Office Freetown and attested before the Regent Chief Albert Ndoloma of Kakua Chiefdom, Bo.

It therefore instituted the present action against the Defendants claiming the reliefs already mentioned.

The Defendants entered appearance to the writ of summons and filed a defence and Counterclaim. They admitted that the Plaintiff became a body corporate in 1981 but denied that it is the successor of the Church of England. They averred that on 21st September 1915 a lease was made between the Paramount Chief of Big Bo Chiefdom and his Councillors of the one part and the Archdeacon of the then Protectorate for and on behalf of the Sierra Leone Church Mission of

the other part in respect of a piece of land situate at Dambara Road Bo for a period of 99 years commencing on the 1st day of January 1915.

The 1st Defendant further averred that on the 25th April 1929 the **LATE SOLOMON S. JOHNSON**, her father entered into a lease agreement with the late Paramount Chief of Kakua Chiefdom and his Councillors in respect of a piece of land situate at the said Dambara Road Bo for a term of 7 years commencing from the 1st day of January 1929. The said lease is registered at page 207 of volume 15 of the Books of Leases in the office of the Registrar General, Freetown. She further stated that the said Lessor built a house on the said land where the family lived up to the death of the said Lessor on 15th August 1949 and thereafter until she sold the said house to the 2nd Defendant on 2nd September 2000.

The 1st Defendant went on to aver that after the expiry of the lease and the death of her father she acquired the land by customary law from the Chiefdom Authority by payment of the customary fees.

She averred that the piece of land claimed by the Plaintiffs is not the same as that of the Defendants. She further pleaded that she and the 2nd Defendant are natives of the provinces contrary to the allegation of the Plaintiff and that as natives they can acquire, dispose of lands in the provinces and exercise all rights, privileges and obligations appertaining to such ownership.

In her counterclaim she alleged that on 4th April 2001 the Defendants maliciously damaged and removed the corrugated iron sheets of the roof of the 2nd Defendant's mud house numbered 66 Dambara Road Bo resulting in her suffering loss and damage. She gave particulars of the loss and damage she suffered amounting to Le16,373,673 and claimed loss of rent at the rate of Le40, 000 per month from April 2001 to date of judgment.

She counterclaimed for declaration that the 2nd Defendant is the lawful owner of the house and land situate at 66 Dambara Road, B; an injunction restraining the Defendants in her counterclaim by themselves, their servants, agents or otherwise howsoever from disposing of, entering upon or in any way interfering with the said land.

The Plaintiff filed a Reply and Defence to the Counterclaim in which it denied the averments contained in the said counterclaim particularly the allegation of maliciously damaging the 2nd Defendant's mud house. It further denied that the 2nd to 6th Defendants are its servants or agents and stated that in the circumstance it could not have instructed or ordered them to carry out the act complained of. It alleged that it was because of the 1st Defendant's persistent act of trespass on the Plaintiff's land that a writ of summons was issued against the Defendants.

The matter was thereafter entered for trial.

At the trial three witnesses testified on behalf of the Plaintiff. I should mention that the first witness **REV. CANON RONALD JAMES PW1**, a member of the clergy of the Anglican Diocese of Bo testified to the effect that the land in issue was leased to the Sierra Leone Church Mission which later became the Anglican Diocese of Bo by an Act of Parliament of 1981. The said body corporate took over the said lease and thereby acquired a lease of the said land for 99 years. The witness PW1 further testified that the land owners and the Chiefdom Authority later converted the leasehold to a freehold and the witness identified Exh B which is a letter to that effect stating the conditions of the transaction addressed to the Plaintiff and signed by the Chiefdom Authority and the land owners. He also identified Exh C which is a voucher for the payment of the purchase price paid by the Sierra Leone Church Mission for the freehold signed by members of the land holding family.

The witness told the court that when the land was leased there was no structure thereon. He recounted that there was a court action brought against the Sierra Leone Church Mission the predecessor of the Anglican Diocese of Bo the 1st Defendant in which she claimed trespass. He stated that judgment was given against her in the said action.

The witness further testified that the land claimed by the 1st Defendant is a portion of the land belonging to the Plaintiff and which they had allowed the 1st Defendant's father to occupy as he was a catechist in the said Diocese, and that she continued to stay on the property after her father's death.

He was cross-examined on his testimony.

I should mention that it was after the testimony of PW1, that the matter was transferred to my court for hearing. I therefore did not have the privilege of hearing the evidence given by the Plaintiff's first witness nor watch his demeanour. I had to depend on the court's record for his testimony.

The second witness for the Plaintiff was **MR. ERIC C. A. FORSTER**, a licensed surveyor and civil engineer whose services were contracted by the Plaintiff to carry out a resurvey of its land at Dambara Road, Bo to establish whether or not there is an encroachment. He stated that he carried out the exercise using the survey plan of the said land Exh E. He told the court that he reduced his findings to a report and prepared a composite plan which he tendered in evidence as Exh F1-3. He further stated that he was also handed the 2nd Defendant's survey plan attached to his Deed of Conveyance Exh G which he also used in carrying out the resurvey. His findings were that there was an encroachment involving house No

66 Dambala Road claimed by the 1st Defendant situate at Area No1 shown in the said composite plan and also one other area of 0.1911 acre of the Plaintiff's land.

The witness PW2 was cross-examined on his testimony.

The third witness for the Plaintiff was **ABDUL RAHMAN BANGURA**, an officer attached to the Registrar General's Office. He tendered in evidence the deed of conveyance of the 2nd Defendant as Exh G. The deed of conveyance dated 22nd September 2000 is registered as No. 1774/2000 at page 128 of volume 534 of the record Book of conveyances kept in the office of the Registrar General Freetown made between the 1st Defendant **MADAM PHEBEAN JOHNSON** and the 2nd Defendant. **MR. JOSIAH BANGALI**, a public servant and the Chief Administrator of Bo was the Plaintiff's final witness.

The 1st and 2nd Defendants were not able to proceed with their case as their witnesses were unable to attend court. Counsel for the Defendants therefore relied on the defence filed on their behalf.

Both counsel submitted written closing addresses.

The Plaintiff's claim is firstly for an order to set aside the deed of conveyance dated 22nd September 2000 made between **MADAM PHEBEAN JOHNSON** as vendor of the one part and **CHERNOR AMADU SHAW** as purchaser of the other part tendered herein as Exh G. His ground for making this claim is that the said vendor, the 1st Defendant herein had no title to the said land and consequently had none to grant to the said purchaser, the 1st Defendant herein. The Plaintiff alleges that the land in issue belongs to the Anglican Diocese of Bo. It has therefore further claimed a declaration that the said 1st Defendant had no title to the said land as well as a declaration that the said land situate at 66 Dambara Road Bo is the property of the Anglican Diocese of Bo.

In a claim for a declaration of title it is well established that the Plaintiff must succeed on the strength of his title and not on weakness of the Defendant's title. See the case of **Kodolinye vs. Odu** {1935} 5 WACA 336 cited in the Supreme Court judgments of **Seymour Wilson vs. Musa Abess** {1981} and **Sorie Tarawalli vs. Sorie Koroma** {2007}.

The onus lies on the Plaintiff to satisfy the court that he is entitled on the evidence brought by him to a declaration of title. It is therefore necessary to look at the evidence brought by the Plaintiff here to establish whether it is entitled to such a declaration.

The Plaintiff's evidence is that its predecessors leased a piece of land situate at Dambara Road for a period of 99 years from the Paramount Chief and Chiefdom Councillors. The Plaintiff's predecessors the Sierra Leone Church Mission leased the said land by Deed of Lease dated 15th September 1915. The Sierra Leone Church Mission became the Anglican Diocese of Bo by Act of Parliament in 1981 and was a corporate body with powers to own property. It therefore took over the lease of the property at Dambara Road Bo.

The Plaintiff has relied on Exh A, a letter from their solicitor addressed to the 1st Defendant explaining its ownership of the said land. There is also in evidence, the letter from the land holding family addressed to the Bishop of Bo acknowledging the receipt of the sum of Le3, 000,000 paid by the Diocese for the freehold of the said land, Exh B. The survey plan Exh C shows the extent of the land leased to the Plaintiff, the freehold of which it bought in 2000 when the lease expired.

In my view the Plaintiff has produced sufficient evidence to establish that it has a valid title to the land delineated on its survey plan Exh E. In the **Seymour Wilson case** (supra) Mr. Justice Livesey Luke C. J. has stated as follows:

“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.”

There is no doubt that the land holding family had good title to the land which they passed on to the Plaintiff. It has therefore sufficiently discharged the onus of proving a valid title to the land it claims.

Now the Plaintiff's allegation is that the 1st Defendant has encroached upon a portion of the said land and has proceeded to sell the said portion to the 2nd Defendant. The Plaintiff's contention is that the said 1st Defendant has no title to the said land which she could pass on to the 2nd Defendant.

The 1st Defendant alleged that she derived title to the land she claimed from her late father who leased it from the late Chief of Kakua Chiefdom and his Councillors in April 1929 for a term of 7 years. After the lease expired and the death of her father, she acquired the land by customary law from the Chiefdom Authority by payment of the customary fees.

Rather unfortunately for the Defendants there is no evidence produced to the court to substantiate this allegation. The 2nd Defendant has produced his deed of conveyance dated 22nd September 2000.

It is quite settled that the production of title deeds is not sufficient to establish good title. In the **Seymour Wilson** (supra), the learned Mr. Justice Luke CJ stated as follows

“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. And of course if there is evidence that the title to the same land vests in some person other than the vendor or the plaintiff, the plaintiff would have failed to discharge the burden upon him.”

In this case the Plaintiff claims that the land belongs to it and that the 1st Defendant has encroached upon it, claimed it as her property and sold it to the 2nd Defendant.

The question is has the Plaintiff been able to establish that the 1st Defendant encroached upon its land in the first place? The evidence given by the Plaintiff is that the 1st Defendant's father was a catechist and as such was allowed to stay on the Plaintiff's land which he did until his death. The 1st Defendant claims that she leased it from the Chieftdom Authority for 7 years but the Plaintiff alleges that the lease was not renewed when it expired and there is no documentary evidence in support of the 1st Defendant's claim that she acquired the freehold.

The Plaintiff has produced evidence that its solicitor wrote to the 1st Defendant in August 2000 – See Exh A the contents of which are self explanatory. There is nothing before the court produced by the 1st Defendant contradicting the statements contained in the said letter.

Counsel for the Defendants submitted that succession applies to natural subjects and not unnatural like the Plaintiff. He has not stated the authority for his submission. Suffice it to say that the plaintiff acquired the freehold in 2000 from the land owners and thereby acquired a valid title to the land.

The Plaintiff also secured the services of a licensed surveyor to carry out a re-survey of its land and investigate the allegation of encroachment. The findings of the said surveyor are that the Plaintiff's land situate at 66 Dambara Road Bo consists of plot 1 which has dwelling houses, one of which is in issue herein and plot 2 which has administrative, school buildings and the church. He confirmed that there has been an encroachment of 0.1911 acre of the Plaintiff's land by the 1st Defendant. See the composite plan and report – Exh F1-3. There is no evidence controverting the said report. In the circumstance it is accepted as proof of the Plaintiff's allegation that the 1st Defendant has encroached upon its land and sold the said portion to the 2nd Defendant.

The 1st Defendant has counterclaimed for the recovery of damages suffered by her as a result of the Plaintiff's agents activities which she alleged caused damage to her property. She has not been able to substantiate these allegations. She has also not been able to prove that she is the lawful owner of the house and land situate lying and being at 66 Dambara Road, Bo. Her counterclaim is therefore dismissed.

The Plaintiff has proved its case on a balance of probabilities and judgment is accordingly given in its favour. I make the following Orders

1. That the deed of conveyance dated 22nd September 2000 registered as No. 1274/2000 at page 128 of volume 54 of the Books of Conveyances kept in the office of the Registrar General Freetown be set aside.
2. A declaration that the 1st Defendant is not the fee simple owner of property situate lying and being at 66 Dambara Road Bo to enable her to dispose of it.

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3. A declaration that the property situate lying and being at 66 Dambara Road Bo forms part of the property owned by the Anglican Diocese of Bo.
4. Costs of the action to the Plaintiff to be taxed if not agreed upon.

A. Showers

SIGNED: - A. SHOWERS 17/10/2012
JUSTICE OF COURT OF APPEAL