

IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)

BETWEEN:

ALHAJI OSMAN H JALLOH

- PLAINTIFFS

HAJA MARIE T JALLOH

(Suing by their Attorney, TIGIDANKAY BANGURA)

AND

THE MINISTER OF LANDS, COUNTRY PLANNING AND THE ENVIRONMENT

THE DIRECTOR OF COUNTRY PLANNING

- DEFENDANTS

THE INSPECTOR-GENERAL OF POLICE

COUNSEL:

S K KOROMA ESQ for the Plaintiffs

O KANU ESQ, State Counsel for the Defendants

JUDGMENT

1. By Originating Notice of Motion dated 28 August, 2009 the Plaintiffs applied to this Court, for Judgment on the Writ of Summons herein issued on 27 May, 2009. In the said Writ, which the Plaintiffs issued through their Attorney, Tigidankay Bangura, the Plaintiffs averred that they were the fee simple owners of property, measuring 0.4092 acres, situate at and known as 8 Baila Lee Drive, Hill Station, Freetown, their title to which was evidenced in Deed of Conveyance dated 10 October, 1996 and duly registered in the Office of the Registrar-General, Freetown as No. 1364/96 at Page 62 in Volume 501 of the Record Books of Conveyances.
2. The Plaintiffs applied for a Building Permit from the 1st Defendant's Ministry, and the same was granted. On 11 February, 2009, without any Stop Notice whatsoever having been issued by the Ministry, the 1st Defendant's servants or agents went onto Plaintiffs' property, and demolished the wall fence they had erected, and also damaged Plaintiffs' water-well. These servants or agents created an access road through

Plaintiffs' property, thereby, giving access to the general public. The Plaintiffs had therefore been deprived of the use and enjoyment of their property, and the destruction of the fence had exposed the building and the building materials stored therein, to depredation. As Special damages, the Plaintiffs claimed the total sum of Le60,805,000 which sum covered the respective amounts for repairing the damage to the wall, to the water-well, and the cost of hiring a builder to reconstruct the fence.

3. Appearance was entered for the Defendants by OSMAN KANU ESQ on 21 October, 2009 but no Defence has been filed on their behalf. Thus, the Plaintiffs applied to this Court for Judgment on their claim. The Application is supported by the affidavit of MR KOROMA deposed and sworn to on 28 August, 2009. Exhibited to that affidavit are: "SKK1" a copy of the Writ of Summons; "SKK2" a copy of the Power of Attorney given by Plaintiffs to Ms Bangura; "SKK3 1-2" are copies of Plaintiffs' Deed of Conveyance dated 10 October, 1996 and Ministry of Lands Approval Notice for the construction of a Dwelling-House and Boundary wall fence dated 15 May, 2001; "SKK4" is a copy of Notice of Intention to institute proceedings dated 12 February, 2009 issued by Mr Koroma on behalf of the Plaintiffs. "SKK5" is a copy of a Search Fee receipt issued by the Judicial Sub-Treasury evidencing the payment of search fee on 27 August, 2009.
4. In the affidavit, Mr Koroma, deposes, inter alia, that when he caused a search to be conducted in the Cause Book in the Master's Office, he found out that no appearance had been entered for and on behalf of the Defendants. As I have indicated above, appearance was entered much later in the year.
5. On 29 October, 2009, the fifth hearing date before me, Mr Kanu, Counsel for the Defendants, conceded that the demolition was done without Order of the Court, and that the Defendants therefore submitted themselves to the Judgment of this Court. Notwithstanding Defendants' submission, I pointed out to Mr Koroma that I could not then, on the facts before me, award Special Damages, as no evidence of this had been presented to the Court. He promised to remedy this default.
6. On 26 November, 2009 he filed another affidavit deposed to by himself again, to which he exhibited a Bill of Quantities in respect of the reconstruction of the fence and water-well. The total cost was estimated to be Le60,805,000. When the matter came up for hearing again before me on 30 November, 2009, Mr Koroma drew my attention to this affidavit. Unfortunately, it was not in the Court file, but I took the liberty of

inspecting the copy in his file. I pointed out to him, that in its then state, the Bill of Quantities was unacceptable to the Court as it was unsigned, undated and without declaration of authorship by way of signature or initials. I could not grant Judgment on the basis of an anonymous document. He again promised to remedy the default.

7. By affidavit deposed and sworn to by Mr Koroma on 22 December, 2009, the default was remedied. Mr Koroma exhibited to that affidavit, a copy of the Bill of Quantities signed by one IDRISSA KOROMA Project Engineer of Caritas, and dated 2 June, 2009. Thereafter the next sitting was 12 January, 2010 when Mr Koroma asked for another date to complete making the Application. After three more adjournments, on 10 February, 2010 Mr Koroma finally informed the Court that he did not wish to add to what he had said before and closed his arguments. I then reserved Judgment.
8. The first thing I have to ask myself, is whether the Plaintiffs' Application is one authorised by the Rules. At the time the Application was filed, it was in respect of a Default of Appearance; but by the time it was actually heard, Appearance had been entered by the Defendants. Thus, though no Judgment had as yet been obtained, the Plaintiffs had already taken a step in default: i.e. they had filed an Application to this Court for Judgment in default of appearance, but the same had not been heard. I thus have to consider Plaintiffs' Application on the basis of an Application for Judgment in Default of Pleadings as Mr Kanu has frankly admitted that the Defendants have no Defence to the Plaintiffs' claim.
9. I have noted that the Writ, exhibit "SKK1", does not bear the indorsement provided for in Order 6 Rule 6(b), which means the Plaintiffs are not only pursuing their claim for Special Damages, but also those for General Damages, and for a Declaration. Order 22 Rule 7(1) provides that "*where the Plaintiff makes against the Defendant or defendants a claim of a description not mentioned in rules 2-5 then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for Judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to in his statement of claim.*" The Claims for a Declaration, for an injunction, and for an Order directing the Defendants to reconstruct the demolished wall fence, the latter being more in the nature of a prayer for a mandatory Injunction, are not specifically mentioned in Order 22 Rule

2(2) to (5) and the Application falls to be determined in accordance with the provisions of Rule 7(1).

10. I have carefully considered the evidence adduced by the Plaintiffs through the several affidavits filed on their behalf, and I am satisfied on a balance of probabilities, that they have proved their claim for Special Damages against the Defendants. No evidence has been adduced in respect of any injury suffered by them over and above the Special Damages claimed by them, and thus, the award of General Damages will be minimal. The claim for a Declaration in terms of The Freetown Improvement Act Chapter 98 of the Laws of Sierra Leone, 1960 cannot be granted, firstly, because that Act, is not Chapter 98, but rather Chapter 66 of the Laws of Sierra Leone, 1960; secondly, because no specific provision of that Act has been cited - I cannot make a declaration in vacuo. No particular wrong-doing proscribed by that Act, has been cited. At page 268 of the White Book, 1999 it is stated that: *"A declaration can only be made after proper argument and cannot be made merely on admissions by the parties whether in pleadings or otherwise....on the other hand, the rule of the court that a declaration will not be granted when giving judgment by consent or in default without a trial is a rule of practice and not of law and will give way to the paramount duty of the court to do the fullest justice to the plaintiff to which he is entitled..."* As was pointed out by the Court in GUARANTY TRUST OF NEW YORK v HANNAY [1915] 2 KB 575: *"....it is essential that some relief should be sought, or that a right to a substantive relief should be established..."* The Plaintiffs have not established the right to any substantive relief under the terms of Cap 66, which should be enforced by way of a Declaration. My view is that the remedy lies in the award of Damages for the injury suffered.

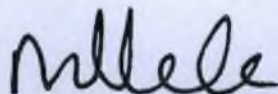
11. The Plaintiffs have also, proved on a Balance of Probabilities, that they are entitled to an Injunction in the terms stated in the Writ of Summons. If none is granted, there is a likelihood that the Plaintiffs' property will continue to be used as an access road, much to their inconvenience, annoyance, and discomfort.

12. In the result, there shall be Judgment for the Plaintiffs in the following terms:

- (1) The Defendants jointly and severally, shall pay to the Plaintiffs, Special Damages in the sum of Le60,805,000 with interest thereon at the rate of 28% per annum from the date of the issue of the

Writ of Summons, i.e. 27 May, 2009 to the date of Judgment, i.e. 17 March, 2010 and thereafter at the Statutory Rate until payment

- (2) The Defendants, jointly and severally, shall pay to the Plaintiffs, General Damages assessed at Le1,500,000.
- (3) This Honourable Court grants an Injunction Restraining the Defendants, their servants and/or agents or howsoever otherwise, and members of the public, from trespassing on Plaintiffs' property delineated and described in Deed of Conveyance dated 10 October, 1996 and duly registered as No. 1364/96 at Page 62 in Volume 501 of the Record Books of Conveyances kept in the Office of the Registrar-General, Freetown, or from using the said property as an access road, until further Order.
- (4) The Plaintiffs shall have the Costs of this Action, and of this Application, such Costs to be Taxed, if not agreed.



N C BROWNE-MARKE

Justice of Appeal

17 March, 2010.

