



IN THE HIGH COURT OF SIERRA LEONE
LAW COURTS BUILDING
SIAKA STEVENS STREET

CC 353/1

MRS. SYLVIA PARKINSON

PLAINTIFF

AND

HAJA YA ALIMAMY KAMARA & ORS.

DEFENDANT

REPRESENTATION:

E.N. NGAKUI ESQ.

COUNSEL FOR THE PLAINTIFF

A.K. KAMARA ESQ.

COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
JUDGMENT DELIVERED ON 30TH MAY, 2018

1. The Plaintiff issued a Writ of Summons dated the 7th day of November, 2016 against the Defendants jointly and severally for the following:

A. A Declaration that the Plaintiff's husband MR. MERRIMAN FRANK SISCO PARKINSON (Deceased) INTTESTATE was during his lifetime the fee simple owner of all that piece or parcel of land situate, lying and being at off Lumley Road, Lumley Village, now known as Babadorie, Lumley, Freetown in the Western Area of the Republic of Sierra Leone:

STARTING from property beacon marked K232/80 along an Access Road on bearing of 333°22 for a distance of 75.0 feet, onto property thence on a bearing of 66° 18" for a distance of 118.7 feet, onto property beacon marked K237/80 along property of Mr. A.J. Macauley thence on a bearing of 158 °37 "for a distance of 75.0 feet onto property beacon marked K238/80 along property of Mr. G.C. Young Williams thence on a bearing of 246 °14" for a distance of 113.1 feet, onto a property beacon marked K232/80 which is the point of commencement thus enclosing an area of 0. 1993 acre or thereabout as delivered on lands and surveys plan numbered on lands LS 2203/81 dated the 25th day of January, 1981.

B. A perpetual injunction restraining the Defendant herein whether by themselves, privies, servants, agents, workmen or employees or whosoever from entering, remaining upon, passing through or in any way interfering with the Plaintiff's (Deceased) intestate husbands above mentioned property

C. Damages for trespass

D. Any further or other reliefs

E. Costs.

2. The Defendants Defence was that

- a) The first Defendant is the fee simple owner and person entitled to possession of the piece of land situate, lying and being at off Spur Road, Lumley Freetown measuring 0.2666 acre as particularly delineated on Survey Plan dated the 25th May, 2010 DELINEATED on Survey Plan with LS4534/09 contained in a Deed of Statutory Declaration dated 1st July, 2010 registered in volume 52 at page 37 of the Record Book of Conveyances kept at the Office of the Administrator and Registrar General.
- b) The land the Plaintiff is claiming is separate and distinct from the 1st Defendant's land in any shape or form.
- c) The Land 1st Defendant is in occupying was in the possession of her husband – Momoh Kamara (Deceased).
- d) That the structures on the said piece or parcel of land of the other Defendants were there at her instance and with her permission.

3. Apart from the issues raised in the defence, the Defendant denies all the allegations contained in the particulars of claim and puts the Plaintiff to strict proof of same.

4. The Defendants counterclaims as follows:-

- a) Declaration that the Defendant is the fee simple owner and person entitled to possession of all that piece or parcel of Land situate, lying and being at off Spur Road, Lumley, Freetown measuring 0. 2666 acre as particularly delineated on Survey Plan dated 25th May, 2010 as contained in a Deed of Voluntary Statutory Declaration dated 1st July, 2010 registered in volume 52 at page 37 of the Record Book of Statutory Declaration kept in the Office of the Registrar-General.
- b) Declaration that the Plaintiff herein has trespassed into, encroached upon, occupied and has continued to lay unlawful claims to the Defendants said piece of land;

- c) Perpetual injunction restraining the Plaintiff whether by herself, her servants, privies relations, heirs, administrators, employees and /or agents from entering upon, remaining, occupying or interfering with the said piece of land
 - d) Damages for trespass and encroachment by the Plaintiff on the said land; and
 - e) Costs.
5. In her reply the Plaintiff avers that the Defendants were not occupying the land they purported to have but that the said Plaintiff's land was within the land the Defendants are laying claim to. She further avers that the land in question was originally owned by one Sarah Salonica Macauley since 5th October, 1951 and the one Eleanor Cole being a daughter of Sarah Salonica Macauley sold the portion of land the subject –matter of the action to the Plaintiffs' husband by Deed of Conveyance dated 13th March, 1984.
6. In her defence to the Counterclaim, the Plaintiff avers that the specific land now occupied by them was owned by the Plaintiff's deceased husband and that the said land does not even have a common boundary with the Defendants' purported land. She also denies any trespass on any piece of land owned by the Defendants.

I have noted that the Plaintiff in paragraph 1 of the Defence to counterclaim used the phrase "cannot admit or deny" I shall comment on the effect of such pleading in civil procedure later on in this Judgment.

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7. Three witnesses testified on behalf of the Plaintiff. These are:
- a) PW1- Mohamed Badamasi Babatunde Mahdi, a licenced Surveyor and Civil Engineer. PW 1 testifies that he was engaged by the Plaintiff's Attorney sometime in January, 2017 with instructions to draw a composite Plan to ascertain whether there is any overlap or encroachment on the Plaintiff's land by survey Plan LS534/09, property of the 1st Defendant. To carry out this exercise, he was given the following survey Plans:-

- i. L S 4534/09 – Property of Haja Ya Alimamy Kamara – the first Defendant
- ii. L S 2203/81 – property of Mr. Merriam Frank Sisco Parkinson
- iii. L S1564/80 – Property of Mr. George Younge Williams
- iv. L S – 1743/80 – Property of Mr. Philip Hazeley.

The various plans were plotted to have their co-ordinates which he computed in Exhibit A4. PW 1 interpreted Exhibit A4 as follows:-

- i. The property verged RED is the property of Philip Hazeley
- ii. Property verged BLACK is that of Mr. George Young Williams
- iii. The property verged GREEN beings to Mr. Merriam Frank Cisco Parkinson
- iv. The one verged blue is that of Haja Ya Alimamy Kamara.

PW1 testifies that there is a 400 feet distance between the properties verged BLUE from the other properties. A perusal of the various conveyances reveals that the properties of Mr. George Young-Williams, Mr. Philip Hazeley and Merriam Frank Cisco Parkinson were bought from the same vendors and that the properties of Mr. Young-Williams and Merriam Parkinson shared a common boundary.

The PW1 concludes by informing the Court that he prepared a report which is attached to Exhibit 1-41 dated 7th March, 2017.

8. Under cross-examination, PW1 admits that he used only the survey Plans and did not visit the site. He admits that he identified beacon numbers on the plans given to him
9. PW2 Obed Cole – a Building Contractor and Attorney of the Plaintiff. He recalls signing a witness statement on the 7th March, 2017 marked A42 43. He identifies the Letters of Administration granted to the Plaintiff in respect of her deceased husband in Maryland, USA which forms part of Exhibit A 27-39. On his appointment as Attorney of the Plaintiff by Power of Attorney executed and dated 30th March, 2016, he applied for Letters of Administration on the 30th June, 2016 which were granted by the High Court, Probate Jurisdiction. This he tendered as Exhibit A 27-39. PW2 testifies that the Plaintiffs' husband before his death visited Sierra Leone from the USA in 2013 and during that

period went with him to the land he had purchased in 1984 from one Eleanor Cole situate at off Lumley Road, Lumley Village, an area now called Babadorie and found that it has been trespassed on by the Defendants. Mr. Merriam Parkinson before his departure for the USA gave him his conveyance in respect of the said land which was tendered as Exhibit "A 13-16" PW 2 admits giving all the Plans referred to in testimony of PW1 to him. He also provided PW1 with the last Will and Testament of one Sarah Macauley – Exhibit A 1-2"

10. Under cross-examination, he informs the Court that he engaged the services of PW1 to draw up an independent composite Plan. He however admitted that he did not give the conveyance of Haja Ya Alimamy Kamara and PW1 did not visit the site.
11. In re-examination, PW2 recognised the name of first Defendant on Exhibit 41. The owners of the other conveyances given to PW1 were not parties to the action but were the neighbours of the Plaintiff.
12. PW3 Princess Isata Conteh. She testifies as the adopted daughter of Mr. George Young Williams and also knew Mr. Merriam F.C. Parkinson. PW3 testifies that her adopted father bought a piece of land which was later gifted to her by Exhibit A 17-19 and that her land shares a common boundary with that of the Plaintiff's deceased husband. In 2004, she visited the land and found a plantation therein but could not discover who planted them.
13. Under cross examination, PW3 admits that she was not present when the transaction took place for the land bought by Mr. Parkinson but was shown the documents. She admits that they did not visit the land immediately but did so in 2004 on the instructions of Mr. Young Williams. When they visited the site, they found a plantation on the land which they discovered to be owned by the first Defendant. PW3 admitted stating in her paragraph 13 of written statement that the 1st Defendant owns the land close to theirs.
14. PW3 finally admits that she was in Court because of her own land.

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15. DW1 – Haja Ya Alimamy Kamara.

DW1 testifies that she does not know the Plaintiff but made a statement to his Solicitor in respect of this matter on the 5th day of June, 2017. She testifies that she knows the 2nd and 3rd Defendants in this action. She knew one late Pa Santigie Kalokoh, father of the 2nd Defendant who was previously in possession of the land. Her late husband entered into a transaction with the said Santigie Kolokoh for the land but no proper documentation was made. Her late husband however took possession in the 1970s and was farming there with no disturbance until he passed away in 2004. Thereafter, she has continued in possession of the land with no challenge, to her rights until the present action

DW1 tendered her document of title to the land as Exhibit "B". She also tenders the receipt of payment for the land as "B 1-4".

16. Under cross examination, DW1 admits that the land in dispute is not close to where she lives but that it is situate at Babadorie. She insists that the land is at the Junction of Babadorie community. She recognises her survey Plan Exhibit B1-5

17. DW2 – Brima Kalokoh – A former hotel worker. He lives adjacent to the land which is the subject matter of this action. He knows the first Defendant and not the Plaintiff and has lived in the Community for the past 30 years. He recalled that a transaction for the land took place between his late father and the 1st Defendant's husband and later the 1st Defendant herself continued planting on the land without disturbance. He admits signing the statutory Declaration as a witness because he has always known the 1st Defendant as owner of the land.

18. Under cross examination, DW 2 agrees that he witnessed the Statutory Declaration. The property is located at Babadorie but it was previously Freetown –Lumley Road. He denied knowing that the land belonged to Sarah Macauley. He denies knowing Mr. Young Williams or the Mr. Hazeley. He denies knowing that the land has since been purchased by a Mr. Parkinson as he had left Babadorie 15 years ago after living there for over 30 years.

19. DW3 – Josiah Balogun Cole Davies, a licensed surveyor, the witness recalls being contacted by the 1st Defendant to do survey work for her. He visited the site surveyed it and prepared a report which he tenders as Exhibit B 8-14.
20. Under cross examination, the DW3 insists that the property is at Lumley. He does not agree that Spur Road is at Lumley but Babadorie is in Lumley. He states that the two beacons he identified during the survey form part of the property of Mr. Young-Williams. He agrees that the Defendant encroached on the property of the Plaintiff by 0.75. but there was no total encroachment.

ISSUES FOR THE DETERMINATION:-

21. Both Counsel, Easmond Ngakui Esq. for the Plaintiff and Abdul Karim Kamara Esq. for the Defendant both filed issues in dispute between the parties. However, to my mind, the actual issues for determination are as follows:
- 1) Whether the Plaintiff has proved his title to the land allegedly encroached on by the Defendant
 - 2) Has there been an encroachment trespass on the said land by the Defendants.
22. In respect of the first issue, the Plaintiff is here claiming a declaration that “Mr. Merriam Frank Cisco Parkinson (Deceased) intestate was during his lifetime the fee simple owner”.... It is the law that where such a declaration is sought, the Plaintiff must establish at least 40 years good root of title. Where on the other hand the Plaintiff is not claiming declaration of title as a fee simple owner” but only declaration of title sumpliciter, and pleads that he has been wrongly deprived by the Defendant, then he need not prove a root of title of 40 years. He needs only prove that he has a better title than the Defendant – see GELAGA –KING JA in KORA SESAY & ORS. VS. ALIE KAMARA & ORS CIV.APP40/89 (Unreported)
23. In the instant case, as I have already mentioned the Plaintiff is seeking a declaration as a fee simple owner.
24. It is a well established principle of law that in an action for a declaration of title the Plaintiff must succeed on the strength of his own title and not on the

weakness of the Defendants. This principle, accordingly to Gelaga King JA in the KORA SESAY CASE, ... goes back three hundred years to the Eighteenth century in the case of ROE d. NALDANE –V- HARVEY –V –BURR, 2484,2487, onto the 19 century in DANFORD –V- MC ANNUITY (1883) 8 APP. CAS. 456, 4.2 and to this century in COBBLAH –V- GBEKE (1947) 12 WACA 294, KODILIYE V ODU (1935) 2 WACA 294, 336 and coming home to VENN THOMPSON & MASON V COLE (1968/69) ALR SIERRA LEONE 331, C.A and the unreported Supreme Court decision in DR C.J. SEYMOUR WILSON V MUSA ABESS CIV.APP 15/79

25. The Plaintiff is relying on a Deed of Conveyance dated 13th day of March, 1984 – Exhibit A 13-16. The root of title here can be traced to the 5th day of October, 1951 by virtue of a statutory Declaration of that date and registered as page 69 in volume 163 in the Book of Conveyances in the office of the Administrator-General for Sierra Leone. The Plaintiff can therefore establish a root of title for over 40 years. It should be mentioned that the 1st Defendant has also by Statutory Declaration traced her root of title by over 40 years. Both roots of title are traced from Statutory Declarations and not only that of the 1st Defendant has alleged by the Plaintiff's Solicitor in his submission on that point. It does not however stop here. It has to be determined whether the parties are referring to the same piece of land or some other land and there is also the question of possession.
26. PW1, the surveyor contracted by the Plaintiff has admitted not having been to the land at the time he prepared his report. He testified that he received four site plans including that of the 1st Defendant, under cross examination however PW2, the Plaintiff's Attorney admitted that he did not provide the PW1 with the site plan of the 1st Defendant. To my mind, the report of PW1 is not conclusive as regards the location of the disputed land or whether there has been any encroachment on the land by the Defendants. I am more inclined to consider the report of DW3 –Mr. Josiah B. Cole – Davies – Exhibit D.1. in his concise report, he stated that the terms of reference given to him was to inspect and survey the property with a view to ascertaining the location of the

property and to determine any encroachment thereon on the property of Mr. M.F.C. Parkinson. In carrying out this exercise, he received two site plans: viz – survey plan LS 4534/09 dated 25th May, 2010 and survey plan L.S 2203/81 dated 25th January, 1982. He made the following findings:-

The two survey beacons seen (K231/80) and (K239/80) on the east boundary relate to the original layout of the area which had been interfered with and replaced with a different one.

- The beacons form part of property that now or lately belong to a Mr. G.C. Young Williams
- It would appear that Haja Ya Alimamy Kamara's survey plan LS 4534/09 is a resurvey of the land adjacent to the property of Mr. Parkinson.
- This account for the overlapping and encroachment into Mr. Parkinson's property measuring 45 feet on the North-side and 25 feet on the south-side along the access road, the encroachment is approximately 0.75 of a town lot which can be measured and returned to Mr. Parkinson.

27. The DW3 concluded his report in the following words: "on the basis of the above findings, it is my opinion that Haja Ya Alimamy Kamara has encroached partly (0.75 of a town lot) into Mr. Parkinson's property and not the entire property as Mr. Parkinson is claiming."

28. In a claim for a declaration of title, it is of vital significance that there is certainty of the land in question. The onus and it is a heavy one, of establishing the identity of the suit land is on the person making the claim. There are various ways of doing this. It can be done by a clear description of the land including salient features of the land, so that any surveyor acting on the description should be able to produce an acceptable plan of the suit land ...However, perhaps a preferable and better way of proving the identity is by filling a surveyor's plan of the area being claimed. The production of a surveyor's plan depicting salient features and boundaries of the land claimed and its relative position to the surrounding land and adjacent properties is

necessary where the identity of the land in dispute is being challenge or is in doubt. In the instant case, the Plaintiff has not been able to discharge the heavy burden of establishing with any certainty the land he is claiming. This was done efficiently by DW3, a witness for the defence

29. I agree with the findings and recommendations of DW3 and will accordingly adopt them.
30. From the available evidence, the Plaintiff has failed to prove that he has title to all piece or parcel of land he is claiming. Rather what has been established by evidence is that the Plaintiff and the 1st Defendant own adjacent land but due to a resurvey of the 1st Defendant's land, there has been an overlap and encroachment into the Plaintiff's land measuring 45 feet on the North-side and 25 feet on the South-side along the access road. I must add that the visit to the locus in quo did not establish anything better than the evidence of PW3.
31. On the Counterclaim, the evidence of the DW3 clearly shows that because of the resurvey, the 1st Defendant entered into the Plaintiffs land by 0.75 of a town lot. There is no evidence that the Plaintiff's land entered into 1st Defendant's land. What has been established is that both parties own adjacent lands. It will therefore not be appropriate to make any separate order in respect of the counterclaim.
32. Mr. Ngakui in his submission argued that the said 0.75 of a town lot encroachment amounts to trespass. But we should not lose sight of the principle that trespass is an attack on possession and not necessary ownership to the exclusion of all others. There is no evidence that the Plaintiff has ever been in possession of the land. According to PW3, they did not visit the land since acquisition in 1985 until 2004 nearly twenty years afterwards. PW2, the Attorney on the other hand said he visited the land with the Plaintiff's husband in 2013, twenty-eight afterwards. The 1st Defendant on the other hand has been in possession of the land having plantation thereon. This is confirmed by PW2 and PW3. The principle is that the person, who is in possession of land, even if wrongfully, has a title to the land which is good

against all except those who can show a better title. Until that is done conclusively, the party in possession cannot be held to have trespassed.

33. This is based on the generally accepted and well established principle of the common law that mere possession of a piece of land may in certain circumstances raise a presumption of entitlement to such possession or at least of lawful occupation of same.

34. Earlier on in this Judgment I commented on the Plaintiff's use of the phrase "cannot admit or deny." Such a pleading is wrong. As Gelaga King JA stated in the KORA SESAY CASE the Defendant must either admit or deny.

35. In the circumstance I have no alternative but to make an Order consistent with the findings of DW3. I therefore Order as follows:-

1. That the Plaintiff and 1st Defendant prepare new site Plans based on the composite Plan prepared by the DW3, Mr. J.B. Cole-Davies dated the 12th day of June, 2017 and marked as B8-14 clearly delineating their respective piece and parcel of land.
2. That these site Plans be tendered in Court by the respective surveyors on the next adjourned date after which final Orders shall be made.
3. No Order as to costs at this stage
4. Matter adjourned to Wednesday 27th June, 2018 at 9:30 AM.



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Hon. Mr. Justice Sengu Koroma J.A.