CC 109/19 2019 A NO. 3

BETWEEN:

MOHAMED ADAMS - PLAINTIFF

NO. 51 MOUNTAIN CUT

FREETOWN

AND

ABDUL FATTAH TERRY - DEFENDANT

NO. 18 SMALL WATERLOO STREET

FREETOWN

COUNSELS:

ELVIS KARGBO ESQ. FOR THE PLAINTIFF/APPLICANT

WILLIAM C. ILOBA FOR THE DEFENDANT/RESPONDENT

Ruling on an Application for a Summary Judgement, Regarding a Declaration of Title to Property, Recovery of Possession etc. Delivered on Thursday, 2nd April, 2020, by Hon. Dr. Justice Abou B. M. Binneh-Kamara

1.0 Introduction

This ruling is based on an application made by Elvis Kargbo Esq. of Betts and Berewa Solicitors, in accordance with a Judge's Summons, dated the 27th September, 2019. The application is strengthened by the requisite affidavit of the Plaintiff/Applicant herein (Mohamed Adams), sworn to and dated the 27th September, 2019, together with the exhibits attached thereto and filed herewith. Moreover, the application is principally made, pursuant to Rules 1, 2 and 3 of Order 16 of the High Court Rules, 2007, Constitutional Instrument N0. 25 of 2007 (hereinafter referred to as the High Court Rules, 2007). Essentially, the orders prayed for in the foregoing application are accordingly indorsed with the Writ of Summons, commencing this action (see Exhibit MA1). Consequently, William Chukuka Iloba Esq., of Edward's Chambers, deposed to and filed in an affidavit in opposition, dated the 4th November, 2019, in justification of his conviction that this Honourable Court, should not under any circumstance, give credence to the foregoing application.

1.1 The Arguments of Counsel for the Plaintiff/Applicant

Meanwhile, on the 31st October, 2019, Elvis Kargbo Esq. moved the Court on the contents of the foregoing application and relied on the entirety of the affidavit of Mohamed Adams, containing six attachments, which are accordingly numbered as Exhibits MA1- 7. Counsel made the following seemingly convincing submissions to bolster his conviction that this Honourable Court, in the circumstance, should grant the application:

1. By virtue of the Exhibits submitted, this case should not proceed on a full blown trial, because of the inherent and manifest weaknesses that underpinned the defense filed for and on behalf of the Defendant/Respondent. The so-called defense is so weak that it does not amount to any defense to the Statement of Claim indorsed in the Writ of Summons. Counsel invited the Court to peruse and examine the contents of Exhibit MA3, to determine whether it factually amounts to a defense, in the context of Rule 4 of Order 16 of the High Court Rules, 2007.
2. The Plaintiff/Applicant got the land from a title deed made in 1939 (see Exhibit MA4). Moreover, it was in 1993, that the Plaintiff's vendor, bought from the 1939 document, pursuant to a title deed dated 4th August, 1993. The acreage is 0. 0955. In 1999 (24th March) the Plaintiff/Applicant bought the same acreage (0.0955 acre) from

Dr. Samuel S. Kamara and Mrs. Valentina B. Kamara. The report of the license's surveyor clearly states the legal history of the property. And it shows that Mohamed Adams is the owner of the property. Counsel cautioned that because there is no other report, contrary to the Alexandra Report alluded to above, there is no need for a full-blown trial; as this will amount to a waste of time and financial resources for particularly the Plaintiff/Applicant.

1.2 <u>The Arguments of Counsel for the Defendant/Respondent</u>

Contrariwise, William C. Iloba Esq., argued that he has a meritorious defense that is sufficient enough to warrant this Honourable Court to allow this matter to proceed to a full-fledged trial. Counsel canvassed the following arguments in justification of his conviction:

1. The defense has a realistic prospect of success; as each of the particulars of claim was denied. Counsel drew the Court's attention to Paragraph 3 of the Particulars of Claim; and Paragraph 3 through 7 of the Statement of Defense.
2. The acreage (physical side) of the land is not the same; they have included the property of the Defendant/Respondent therein.
3. The report of Alexandra Coker of Bathurst Street, is not a conclusive evidence that the property is owned by the Plaintiff/Applicant; for

a final Judgement in this matter cannot be pronounced, without an independent expert opinion.

1.3 The Approach/Method Leading to the Determination of the Application.

Meanwhile, I shall first review the existing legal literature (embedded in case law and other pertinent legal authorities), alongside the requisite statutory provisions, as a guide, to assess how the Superior Court of judicature, has been exercising its jurisdiction in making orders, relative to summary Judgements. Secondly, I shall adopt an elliptical approach by juxtaposing the arguments of both Counsels, to address their individual concerns; regarding why the order of a Summary Judgement, which is the principal thrust of this application, should or should not be granted. Thirdly, I will eventually determine whether in the context of this application, it is legally and rationally expedient, to grant or not to grant the orders, as prayed for on the face of the aforementioned Judge's Summons.

However, before proceeding with any of the foregoing tasks, let me hasten to state that my reading of the papers, inter alia, depicts that the application, factually dovetails with the provisions of Sub rule (2) of Rule 1 of Order 16. And that the affidavit that bolstered the application is also undoubtedly chimed with the provision of Sub rules (1) and (2) of Rule 4

of Order 16. Essentially, there is no issue of procedural incongruity to grapple with (prior to) the determination of this application.

1.4 A Review of the Existing Legal Literature on Summary Judgements.

Circumspectly, the authors of the Supreme Court Annual Practice of 1999 (The White Book), which contains a detailed analysis of the High Court Rules of Sierra Leone, 2007, clearly articulated the legal significance of Summary Judgements in their analysis between pages 162 and 199. Their pontification in paragraph 14/1/2 in page 163 is so pertinent to the Court's jurisdiction in its determination of applications on Summary Judgements, that I feel obligated to replicate it here:

> The scope of Order 14 *(Order 16 in the High Court Rules, 2007, my emphasis in italics)* proceedings is determined by the rules and the Court has no wider powers than those conferred by the rules, nor any other statutory power to act outside and beyond the rules or any residual or inherent jurisdiction where it is just to do so.

Thus, in tandem with the foregoing, my consideration to grant or not to grant the orders, will be entirely underpinned by the provisions of Order 16 of the High Court Rules, 2007; as opposed to any other consideration that may appear just, fair and reasonable to either of the parties to the application. Purposefully, the beauty of Order 16 is to enable the

Plaintiff/Applicant to expeditiously obtain a Judgement in a circumstance, wherein there is certainly and plainly no defense to negate his/her claim(s).

Furthermore, Summary Judgement can still be entered in favour of the Plaintiff, even in circumstances, wherein the Defendant's defenses, are predicated on an ill-conceived point of law. The Court's decisions in the cases of C. E Health PLC v Ceram Holding Co. (1988) 1 WLR 1219 at 1228; (1989) 1 ALL E.R 203, at 210, Home v Overseas Insurance Co. (1990)1 WLR 153-158, are quite instructive on this realm of procedural justice. Significantly, my reading of Rule 1 through 3 of Order 16, depicts the following conditions precedent that should be met, for an order of Summary Judgement to be entered in favour of the Plaintiff/Applicant:

1. The defendant must have given a notice of intention to defend
2. The Statement of Claim must have been served on the Defendant
3. The affidavit in support of the application must comply with Rule 2 of Order 16.

Analytically, regarding the first conditionality, Exhibit MA2, confirms that the Defendant's/Respondent's Solicitor, accordingly entered appearance to this action on his behalf. And this is accordingly seen in both the Memorandum of Appearance entered and the Notice of Appearance entered by William C. Iloba Esq., of Edward's Chambers, on

the 10th April, 2019. Moreover, the facts deposed to in the affidavit in opposition, collectively points to the Defendant's/Respondent's willingness to defend this action. This inferential conclusion is seemingly factually strengthened by the Defendant's/Respondent's undated Defense, which was duly served on the Solicitor for the Plaintiff/Applicant. Thus, the notice of intention to defend this action, was even made known, when the Defendant/Respondent, acknowledged service of the writ; and stated in the acknowledgement that he intended to contest the action.

Further, having regard to the second criterion, ExhibitMA1, which is the Writ of Summons, commencing this action, incisively contains the Statement of the Plaintiff's/Applicant's Claims. This confirms the fact that the Statement of Claims has been appositely served on the Defendant/Respondent in this action; as there is an affidavit of service in the file. In fact, in this case, the Statement of Claims is indorsed with the Writ of Summons, dated the 28th March, 2019. Thus, it is neither served with it, nor immediately after the service of it; though either of the foregoing latter situations, meets the threshold of the second criterion.

Furthermore, consonant with the final criterion, the affidavit in support of the application, indubitably acknowledges a statement of the deponent's belief that there is indeed no defense to his claim (see

paragraphs 8 and 9 of the affidavit that bolstered the application). Procedurally, having established that the foregoing criteria have been accordingly complied with, a prima facie case can thus be made, for an order of Summary Judgement to be entered in favour of the Plaintiff/Applicant. However, Sub rule (1) of Rule 3 of the same Order 16, imposes a clear evidential burden on the Defendant/Respondent to prove to the Court that there is an issue or question in dispute, which ought to be tried, or there ought for some other reason to be a trial.

1.5 Contextualizing the Arguments of Counsels to Determine the Application

Analytically, the principal thrust of the contention in this matter, having regard to the affidavits (in support and in opposition), and the exhibits attached thereto, is about ownership of all that property situate, lying and being at N0. 51 Mountain Cut and Rocklyn Street, Freetown, in the Western Area of the Republic of Sierra Leone, as delineated and described on Survey Plan L. S 1536/93 dated 22nd December, 1998 and attached to a Conveyance duly registered as N0. 94/22417/99 at page 145, in Volume 518, of the Record Books of Conveyances, kept in the Office of the Administrator and Registrar General in Freetown.

Moreover, the Plaintiff/Applicant has produced a documentary evidence, the above conveyance (see Exhibit MA4) in justification of his

assertion that the Defendant/Respondent, does not own the realty in question, but rather it belongs to him. The Defendant/ Respondent on the other hand, has also relied on a documentary evidence (a conveyance), depicting property in the name of Mr. Abdul Fatta Terry (who happens to be the Defendant/Respondent in this application). The said property is situate, lying and being at Rocklyn Street, Freetown, in the Western Area of the Republic of Sierra Leone, as delineated and described on Survey Plan L. S 479/86 dated 25th April, 1986 and attached to a Conveyance duly registered as N0. 863/07602/86 at page 3, in Volume 518, of the Record Books of Conveyances kept, in the Office of the Administrator and Registrar General in Freetown.

By parity of reasoning, it is clear that first, the property, which the Defendant/Respondent, is laying claim to is unnumbered, but it is situate lying at Rocklyn Street, Freetown, in the Western Area of the Republic of Sierra Leone. However, that which the Plaintiff/Applicant is claiming, is situate lying at N0. 51 Mountain Cut and Rocklyn Street, Freetown, in the Western Area of the Republic of Sierra Leone. Of course, Rocklyn Street, is one of the streets at Mountain Cut. And the realties in all of the Streets at Mountain Cut, including that which the Plaintiff/Applicant is claiming, are accordingly numbered, but that which is depicted in the Defendant's/Respondent's conveyance is unnumbered.

Undoubtedly, given the facts that both parties, have relied on registered conveyances, this Honourable Court, cannot at this stage, determine whether the parties are laying claim to the same property. In fact, the Defendant's/Respondent's Counsel has contended that the Plaintiff's/Applicant's survey plan, extends to the property, which his client is laying claim to. This is indeed a contention which, should this matter proceed to trial, must be resolved. Nevertheless, according to Counsel for the Plaintiff/Applicant, his client got the land from a title deed made in 1939 (see Exhibit MA4).

He posited that it was in 1993 that the Plaintiff's vendor, bought from the 1939 document, pursuant to a title deed dated 4th August, 1993; noting that the land's acreage is 0.0955. Counsel furthered that in 1999 (24th March) the Plaintiff/Applicant, bought the same acreage (0.0955 acre) from Dr. Samuel S. Kamara and Mrs. Valentina B. Kamara. He also stated that the license's surveyor's report clearly states the legal history of the property; indicating that it shows that Mohamed Adams is the owner of the property. Counsel cautioned that because there is no other report, contrary to the Alexandra Report alluded to above, there is no need for a full-blown trial; as this will amount to a waste of time and financial resources for particularly the Plaintiff/Applicant.

However, to this submission, Counsel for the Defendant's Respondent's response is that the report of Alexandra Coker of Bathurst Street, is not a conclusive evidence that the property is owned by the Plaintiff/Applicant. Nonetheless, notwithstanding the authenticity of the aforementioned report, it cannot be concluded at this stage that the Plaintiff/Applicant is the owner of the fee simple absolute in possession of the aforesaid property, which title is in contention. The evidential value of the affidavits (in support and in opposition) that is cognate with the application, in respect of both sides, is not based on a possessory title; it is based on a documentary title (registered conveyances).

Alas! This does not however presuppose that a total reliance on a possessory title as against a documentary title, renders the possessory title legally negligible. In the circumstance wherein a litigant places a total reliance on a possessory title that is predicated on a continuous and undisturbed possession of a period of forty-five years (45); as enunciated in the case of Swill v Caramba-Coker (Civ. App. NO. 5/71), that would amount to a good defense, in a case for a declaration of title to property. However, does the mere reliance on a 'possessory title' constitute a defense to an action, in a circumstance, wherein the other side relies on a registered instrument?

Essentially, the Courts decisions in **C**ole v **C**ummings (NO. 2) (1964-66) ALR S/L Series page 164, **M**ansaray v **W**illiams (1968-69) ALR S/L Series page 326, John and **M**acauley v **S**tafford and **O**thers S. L Sup. Court Civ. Appeal 1/75, are very much indicative of the circumstances in which Judgements have been entered in favour of owners of possessory titles, in even instances wherein their contenders, were holders of registered conveyances. This position is satisfactorily bolstered by Livesey Luke C. J., in Seymour Wilson v Musa Abbess (Civ. App. 5/79):

> I think it is necessary to point out that until 1964, registration of instruments was not compulsory in Sierra Leone. It was the Registration of Instruments (Amendment) Act, 1964 that made registration of instruments compulsory. So there are possibly hundreds of pre-1964 unregistered conveyances... It would mean that any person taking a conveyance to a piece of land after 1964 from a person having no title to the land and duly registering the conveyance would automatically have title to the land against the true owner holding an unregistered pre-1964 conveyance. The legislature would not have intended such absurd consequences.

Meanwhile, the specificities of the facts of this case do not revolve around issues of possessory title, such issues are only alluded to, to

clarify the misconception that in matters, relating to declaration of titles to properties, it is only persons with documentary titles (conveyances, deeds of gifts, statutory declarations, etc.) that are certainly to succeed over those with possessory titles.

Nevertheless, there are a number of questions to be raised at this stage; in a bid to determine whether there are issues or questions in dispute, which ought to be tried; or whether there ought for some other reason (s), to be a trial. This is the central thematic construct of the provision of Sub rule (1) of Rule 3 of Order 16, which is germane to the determination of this application. The answers to the following questions, will certainly guide this Honourable Court, to discern the concerns, raised in Sub rule (1) of Rule 3 of Order 16, in tandem with the facts in issue relevant to this application:

1. Does the mere registration of an instrument, pursuant to Section 4 of Cap. 256 of the Laws of Sierra Leone, 1960 (as amended), ipso facto, confer title to that holder of the registered instrument (in this case the Conveyances referenced above)?
2. Does Cap. 256 deal with registration of title?
3. Does the Defendant's/Respondent's registered conveyance constitute a defense to this action?

Essentially, I will answer the first question in the negative; and simultaneously provide the requisite succour for this position, with a notable quotation from Livesey Luke, C. J., in the celebrated case of Seymour **W**ilson **v** Musa **A**bbess (**C**iv. **A**pp. 5/79):

> Registration of an instrument under the Act *(Cap. 256, my emphasis in italics)* does not confer title on the purchaser, lessee or mortgagee etc., nor does it render the title of the purchaser indefeasible. What confers title (if at all) in such a situation is the instrument itself and not the registration thereof. So the fact that a conveyance is registered does not ipso facto mean that the purchaser thereby has a good title to the land conveyed. In fact the conveyance may convey no title at all *(my emphasis)*.

Moreover, I will also answer the second question in the negative. Thus, the short title to Cap.256 (as amended) reads 'An ordinance to Amend and Consolidate the Law Relating to the Registration of Instruments'. So, it is indisputable that the purports of the statute is about 'registration of instruments' and not 'registration of title'. Unarguably, there is no provision in its thirty-one (31) sections and three (3) schedules that deals with registration of title. Livesey Luke C.J., further espoused the fundamental distinction between 'registration of instrument' and

'registration of title', by reference to the position in England, and with a clearly articulated thought experiment, rationalised between pages 74 and 81 of his analysis. The following are the segment of his analysis, which can be quickly and elliptically put into context in a bid to determine the application:

> '... it should be abundantly clear that there is a fundamental and important difference between registration of instruments and registration of title. Cap 256 does not provide for, nor does it pretend to contemplate, the registration of title. It states quite clearly in the long title that it was passed to provide for the registration of instruments (see page 76)
>
> '...the mere registration of an instrument does not confer title to the land affected on the purchaser etc. unless the vendor had title to pass or had authority to execute on behalf of the true owner, nor does it thereby render the title of the purchaser indefeasible'(page 78).

Analytically, the third question undoubtedly resonates with the determination of the issues, contemplated in Sub rule (1) of Rule 3 of Order 16, in relation to the facts in issue, which underscored the application. In variably, according to the said Sub rule, when a court of competent jurisdiction, establishes that there are issues or questions in

dispute, which ought to be tried; or there ought for some other reason (s), to be a trial, it frowns at making an order of Summary Judgement in favour of the Plaintiff/Applicant.

Significantly, in tandem with the foregoing analysis, it is indeed hard to conclude (at this stage) that Exhibit MA4 (the conveyance that Counsel for the Plaintiff/Applicant has relied on) is sufficient enough to negate Counsel for the Defendant's/Respondent's argument that this matter should proceed to trial. The main contention in this matter is simply about ownership of a realty at N0.51 Mountain Cut and Rocklyn Street, Freetown, in the Western Area of the Republic of Sierra Leone, which is being claimed by both the Plaintiff/Applicant and the Defendant/Respondent; on the basis of their competing conveyances. This Honourable Court is of the conviction that this contention can only be judiciously resolved, when a full-fledged trial is expeditiously conducted.

Furthermore, in as much as I will not accede to the submission of Counsel for the Plaintiff/Applicant that there are no triable issues in this matter, I will simultaneously not lend succour to Counsel for the Defendant's/Respondent's submission that the application is ill-suited, and does not dovetail with the spirits and intendments of Order 16. However, having regard to the affidavit in support of the application and

the exhibits attached thereto, it does not appear to this Honourable Court that Counsel for the Plaintiff/Applicant knew that the Defendant/Respondent, relied on a contention, which would entitle his client to an unconditional leave to defend.

Against this backdrop, I am not inclined to impose any cost on Counsel for the Plaintiff/Applicant for this application. Invariably, the provision in Sub rule (1) of Rule 7 of Order 16, which underpinned the request for cost is one that is practically directory, but not mandatory. Finally, in consideration of the foregoing analysis, I will thus invoke the provisions in Sub rule (3) of Rule 4 and Paragraph (a) of Rule 6 of Order 16, and the proviso thereto, to make the following orders:

1. That the Defendant/Respondent is hereby granted leave to defend this action on the condition that he provides a security for cost of thirty-five million Leones (Le 35, 000, 000) to be paid into the Judicial Sub-treasury, within twenty-one (21) days after this order.
2. That Counsel for the Defendant/Respondent shall produce documentary evidence of payment of the said sum by way of a receipt, acknowledging same; and the said receipt shall be filed, exhibited or attached to an affidavit.
3. That the reply and defense to the counterclaim (if any) to be filed within seven (7) days after this order.

4. That the parties shall exchange copies of documents within seven (7) days after this order.
5. That the parties shall exchange copies of documents they would wish to duly tender at the trial ten (10) days after this order.
6. That the parties shall exchange witnesses statements not later than twenty-one (21) days from the date of this order.
7. That within fourteen (14) days from the date this matter is set down for trial the Defendant/Respondent shall identify to the Plaintiff/Applicant those documents which he would want to include in the bundle to be produced to the Court, pursuant to Sub rule (2) of Rule 9 of Order 40 of the High Court Rules, 2007.
8. That not later than seven (7) days to the date fixed for trial the Plaintiff shall provide for the Court two (2) bundles, comprising the following documents as per Sub rule (2) of Rule 9 of Order 40 of the High Court Rules, 2007 to wit:
   a. Pleadings and any amendments thereto.
   b. Admission of facts if any.
   c. The nature of the evidence to be relied on (documentary or oral) and this shall include any piece of evidence agreed upon.
   d. The documents that are central to each party's case, which that party would want to include in the bundle.

e. The lists of witnesses and the witnesses' statements exchanged between them.

f. A survey of the propositions of law to be relied upon and the lists of authorities to be cited.

g. The chronology of relevant facts

h. That the date for the trial of this action is fixed for Tuesday, 31st March, 2020.

i. Liberty to restore summons for further directions

j. Matter is adjourned to Monday, 30th March, 2020

k. Costs in the cause.

I so order. 2/4/2020

Hon. Dr. Justice A. B. M. Binneh-Kamara, J.