C.C. 160/10 2010 T No. 13

IN THE HIGH COURT OF SIERRA LEONE

LAND AND PROPERTY DIVISION

BETWEEN:

BENONI THOMAS - PLAINTIFF

AND

MRS HANNAH PRATT - 1st DEFENDANT

MRS EMILIA DEEN-COLE - 2nd DEFENDANT

COUNSEL:
R A DURING ESQ (now deceased) for the Plaintiff
R A NYLANDER ESQ for 1st Defendant
R A D JONES ESQ for 2nd Defendant

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT
JUDGMENT DELIVERED THE 17 DAY OF FEBRUARY, 2021

THE ACTION

1. On 31 May, 2010, the Plaintiff herein, Mr Benoni Thomas issued a writ of summons against the 1st Defendant. In his writ, the Plaintiff prayed for immediate possession of property situate at, and known as 12 Mammy Yoko Street, Freetown, then occupied by the 1st Defendant; cancellation of a deed made the 18 day of January, 1992 and registered as No 30/92 at page 26 in volume 80 of the Record Books of Voluntary Conveyances kept in the office of the Registrar-General, Freetown; and the Costs of the action.
2. In his particulars of claim, the Plaintiff contended that the property at 12 Mammy Yoko Street was conveyed to him by way of a voluntary conveyance, by his deceased father William Oludubeh Thomas. The deed of voluntary conveyance is dated 12 May, 1986 and is duly registered as No 99/86 at page 113 in volume 68 of the Record Books of Voluntary Conveyances kept in the office of the Registrar-General, Freetown. The Plaintiff allowed the 1st Defendant to occupy the premises as a tenant-at-will while went to work at the village of Waterloo. In his absence, the 1st

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Defendant collected rent form his tenants, but she did not render a proper account to him. By letter dated 16 March, 2010, the 1st Defendant was given notice to quit the property. Instead, through her solicitor, the 1st Defendant responded to that letter, claiming that she was the true owner of the property, as it had been conveyed to her by Plaintiff's father by way of voluntary conveyance dated 18 January, 1992 and registered at the Registry. The Plaintiff therefore prayed for the reliefs set out above.

1ST DEFENDANT'S DEFENCE

3. Appearance was entered for the 1st Defendant by the late O O Nylander esq on 8 June, 2010. He also gave notice of the same to Plaintiff's Solicitor, the same day. On 5 July, 2010, Mr Nylander filed a statement of defence on behalf of the 1st Defendant. In her pleading, the 1st Defendant reiterated her claim that she was the true owner of the property, the same having been conveyed to her by Plaintiff's father by way of deed of voluntary conveyance dated 18 January, 1992 and registered as No 30 at page 28 in volume 80 of the Record Books of Voluntary Conveyances kept in the office of the Registrar-General, Freetown. Thereafter, the general traverse followed. She did not counterclaim. On 8 July, 2010, the Plaintiff filed a Reply, joining issue with the 1st Defendant upon her defence.

ORDER 17 HCR, 2007 APPLICATION BY PLAINTIFF

4. On 28 July, 2010, the Plaintiff applied, by way of notice of motion, to the Court for a determination of the action on a point of law, to wit, whether, after conveying the property at No 12 Mammy Yoko Street, to the Plaintiff, the Donor could later convey the same to the 1st Defendant. The application was supported by the affidavit of Mr During, deposed and sworn to the same day. To his affidavit were exhibited the deeds referred to above, together with other relevant documents. Also exhibited, was a Statutory Declaration made by the William Oludubeh Thomas, the Plaintiff's father, and two others, Bankole Emmanuel Cole, and Mrs Ayo Hamilton, respectively, on 12 March, 1986. To that deed is drawn and attached survey plan LS636/85 dated 12(?) (the date is not too clear) May, 1985. There, it is witnessed that the Plaintiff's father was had been his predecessor-in-title.

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5. The application was opposed by the 1st Defendant. She filed two affidavits: the first, was deposed and sworn to by her apparently on 10th January, 2011, but actually only filed on 17 January,2011. She reiterated her claim to the property based on the 1992 deed described above. The second affidavit in opposition was deposed and sworn to by one Abdulai Bangura, on 1 March, 2011, who claimed to be residing at the property. He deposed also that he had been put into possession of the property by Willie Thomas, who, it seems, is the same William Oludubeh Thomas, the Plaintiff's father. He deposed further that he had been instructed by W O Thomas to pay rent to the 1st Defendant as she was the new owner of the property. However, he was not called to give evidence at the trial on behalf of the 1st Defendant.
6. The Plaintiff's Application went for hearing before SOLOMON, JA on 2nd November, 2010. At the time, O O Nylander esq was Counsel for the 1st Defendant. And there was only one Defendant then. The second Defendant was added on later. O O Nylander esq responded to the Plaintiff's application on 3 March, 2011, i.e. after filing the two affidavits in opposition, referred to above. He canvassed the issue of limitation of action, i.e. that the Plaintiff's claim was out of time as the 1st Defendant had been occupying the property since at least 1992, more than 18 years last past at least. Towards the end of his submissions, at page 5 of the minutes taken down by SOLOMON, JA, he said that the 1st Defendant was no longer in occupation of the property, but had rented it out to Mrs Emelia Deen-Cole. In his reply, Mr During referred to what he described as discrepancies between the Plaintiff's deed and that of the 1st Defendant's, in that there was no mention in the 1st Defendant's deed of the Statutory Declaration made by Plaintiff's father in 1986.

2ND DEFENDANT JOINED AS A PARTY

7. The hearing into this application spilled over into 2011 largely because regrettably, Mr O O Nylander was unwell at the time. During one of the many adjournments, an application for joinder of the 2nd Defendant came up for hearing. The application was dated and filed on 12 May, 2011. In it, the 2nd Defendant asked to be joined as a party to the action, and for a stay of all proceedings until the determination of the action. One of the documents exhibited to the affidavit in support of the 2nd Defendant's application was a deed of conveyance dated 28 May, 2007 in which the 1st Defendant purported to convey the property at Mammy Yoko Street to

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her. It is important to note at this stage, that the Plaintiff's application for judgment under Order 17 HCR, 2007 was, as stated in paragraph 5, supra, resisted by the 1st Defendant. At page 5 of the minutes recorded by SOLOMON, JA, Mr O O Nylander, Counsel for the 1st Defendant had said, inter alia: "*.....The Defendant is not presently in occupation. The Defendant has rented the property to Mrs Deen Cole. That is all*". This final submission is at variance with the facts which eventually emerged: that in fact, in 2007, the 1st Defendant had purported to convey the property to 2nd Defendant. This was a fact well known to the 1st Defendant at the time she filed her defence in July, 2010. I do not believe that this was an oversight on the part of the 1st Defendant, or of that of her Solicitor and Counsel.

8. On 28 June, 2011, SOLOMON, JA ordered that the 2nd Defendant be joined as party to the action. Leave was given to her to file a defence and counter claim. She was represented by R A D Jones, esq. Submissions were heard on behalf of the new 2nd Defendant in respect of the Plaintiff's application for judgment under Order 17 HCR,2007. On 19 January, 2012, the Learned Justice gave judgment. Ancopy of the judgment is in the file. The hearing was adjourned to 23 February, 2012 for directions to be given. The Plaintiff's application was dismissed. These Directions were given by the Learned Justice on the latter date for the future conduct of the trial. On 4 May, 2012 she gave directions for the file to be returned to the Registry for it to be re-assigned to a Judge for trial. The file was assigned to this Court.

EVIDENCE AT THE TRIAL

PLAINTIFF'S EVIDENCE

9. On 4 June, 2012, the Plaintiff gave evidence before me. He said he was the owner of the property at 12 Mammy Yoko Street, Freetown. He tendered in evidence the Court bundle including his witness statement and applied that his statement form part of his evidence in chief, and I so ordered. He identified the following documents:

(a) his title deed at pages 3 - 8 of the Court bundle
(b) his deceased father's statutory declaration at pages 17 - 19.
(c) The notice to quit issued to the 1st Defendant at page 20
(d) The 1st Defendant's Solicitor's reply to the notice to quit at page 21
(e) 1st Defendant's deed of conveyance at pages 9 - 12

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(f) Plaintiff's Solicitor's reply to 1st Defendant's Solicitor's letter at page 22.

10. He testified further that he was living in the house with 1st Defendant when he told her he had to go to Waterloo to work. There, he fell ill. He had asked 1st Defendant to look after the property in his absence. On his return, the 1st Defendant could not render an account to him. He therefore instituted the proceedings herein. He concluded his evidence in chief by saying he did not know 2nd Defendant.
11. He was cross-examined by R A Nylander esq. He said that 1st Defendant was not his sister; but they grew up together in the same house. She was adopted by his father who had her baptized. A witness, Solomon Thomas was present when he demanded back-rent from the 1st Defendant. His father died in 1993. Lawyers, Solomon Parker, and Gibson Okeke had written to the 1st Defendant, on his behalf before he instructed Mr During to do the same.

PW2 CHRISTIAN ABIODUN THOMAS

12. PW2 was Christian Abiodun Thomas. He said the late William Thomas was his brother. He knew 1st Defendant. He said the 1986 deed relating to the Mammy Yoko Street property was handed over to him by William Thomas. He in turn, handed it over to PW1. The 1st Defendant had been exerting pressure on him, and this is why he handed it over to the Plaintiff. He applied for his witness statement at pages 34 - 38, to form part of his evidence-in-chief, and I so ordered. In that statement, PW2 said, inter alia, that at the time, i.e, 2012, he, PW2, was 82 years old. The deceased Donor was his younger brother. The deceased donor had handed over the deed in favour of the Plaintiff, to him for safekeeping, and later, to hand it over to Plaintiff. His brother never told him he had given the property to 1st Defendant.
13. Under cross-examination by Mr R A Nylander, PW2 said that he handed over the document to PW1 after the death of the donor. According to PW1, the donor died in 1993. PW2 said he believed the document was given to him by the donor in 1986. In answer to Mr Jones, PW2 said that he was not aware that there was a document in the name of the 2nd Defendant for that property. He was not re-examined. Thereafter, the Plaintiff closed his case.

DEFENCE CASE

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1ST DEFENDANT'S CASE

14. The defence opened with 1st Defendant giving evidence in her defence. She claimed Plaintiff was her brother, and that the property in dispute was given to her by her father. She tendered her witness statement, and asked that it form part of her evidence in chief, and I so ordered. The statement is exhibit B page 10. In that statement, 1st Defendant reiterated her claim to the property in dispute, and that it had been given to her by her late father. She said also that she had conveyed the property to 2nd Defendant. She was surprised that the Plaintiff was claiming the property as his. In answer to Mr Jones on behalf of the 2nd Defendant, 1st Defendant said that 2nd Defendant was her cousin, and that she had conveyed the property to her. In answer to Mr During, 2nd Defendant said that Plaintiff was her 'blood' brother; that she never knew the deceased donor had given over the property to Plaintiff; and that PW2 was only a customer of the deceased donor who was a publican. Thereafter, the 1st Defendant closed her case.

2ND DEFENDANT'S CASE

15. 2nd Defendant also took the witness stand. She claimed the property in dispute was hers, as it had been conveyed to her by 1st Defendant who was her cousin. She relied on her witness statement which she also applied to form part of her evidence in chief. I so ordered. It is exhibit C pages 17 & 18. In that statement, 2nd Defendant claimed she had spent millions in developing the property, and that she had only come to know that the Plaintiff was laying claim to the property, recently. She was cross-examined by Mr During. Thereafter, she closed her case. Counsel on both sides filed written addresses.

FINDINGS

16. One of the first things I have been called upon to decide is whether the Plaintiff's claim is maintainable .The Defendants have not claimed in their respective pleadings that the Plaintiff's claim is statute barred, but it has been suggested in argument that it is. The first point I would make is that neither defendant is relying on the doctrine of adverse possession. Both Defendants are relying on their respective conveyances as the basis of their respective titles. The principal issue for decision is whether Plaintiff's deed effectively conveyed the fee simple estate of the

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property at 1 Mammy Yoko Street to him. If it did, there the matter ends. 1st Defendant's deed will be valueless, and therefore null and void. So also would be 2nd Defendant's deed, as it is a derivative of 1st Defendant's deed. The Plaintiff's claim is not therefore statute barred, and I so hold.

17. Plaintiff's deed was preceded by the Statutory Declaration dated 10 March, 1986 made by the deceased donor and two others and duly registered on 12 March, 1986 as No 47/86 at page 3 in volume 28 of the Record Books of Statutory Declarations kept in the office of the Registrar-General, Freetown. It encloses survey plan LS636/85 duly signed by the Director of Surveys and Lands as required by section 15 of the Surveys Act, Cap 128 as amended. The property at 12 Mammy Yoko Street is duly delineated in that survey plan and its boundaries are duly described and defined in the first paragraph of the deed. The same area and boundaries with the same beacons are delineated in survey plan LS637/85 drawn and attached to Plaintiff's deed dated 12 May, 1986 There is no doubt, that the land and house described in the Statutory Declaration are the same which were conveyed to the Plaintiff by his deceased father by the deed dated 12 May, 1986. Having divested himself of the freehold estate in the said deed, the donor could not very well convey the same property to another person, and certainly, not to the 1st Defendant. The 'Nemo dat' principles applies here. The first, is that "Nemo contra factum suum proprium venire potest" - no one can go against his own deed; the second is, "Nemo dat quod non habet" - no one gives who possesses not. The deceased donor could not, in 1992, purport go against his own deed made 6 years before in 1986; neither, in 1992 could he give away, what he had already given away in 1986.
18. The signature of William Oludubeh Thomas in both the Statutory Declaration, and in Plaintiff's deed, appear to be the same or similar, though there has been no real suggestion that they differ. I cannot say the same for the signature of the donor which appears in 1st Defendant's deed. In any event, none of the deeds tendered in these proceedings was submitted for forensic examination.
19. Further, both statutory declaration and Plaintiff's deed were prepared by the same Solicitor, Solomon Ayo Parker. However, the 1st Defendant's deed is remarkable in some respects. For instance, the donor is referred to as Willie Thomas, rather than as William Oludubeh Thomas, his full name as recorded in his statutory declaration which he signed. But most

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importantly, it does not recite the deed of statutory declaration executed by the deceased donor in 1986.

REGISTRATION OF AN INSTRUMENT CONSTITUTES NOTICE TO ALL

20. Registration of a deed at the Registry constitutes notice to the whole world of its existence. A proper search at the Registry would have disclosed to the 1st Defendant that this Deed, the Statutory Declaration had been duly executed, and it would then have been recited in the preamble in 1st Defendant's deed. Section 9(1) of the General Registration Act, Chapter 255 of the Laws of Sierra Leone, 1960 permits searches to be conducted on payment of the required fee. It was open to the respective Solicitors of both Defendants to have carried out such a search on behalf of their respective clients. That the deceased donor's Statutory Declaration was not recited in either Defendant's deed, shows that no proper search was conducted before either deed was prepared.
21. Section 4 of the Registration of Instruments Act, Chapter 256 of the Laws of Sierra Leone, 1960 as amended by Act No. 6 of 1964 is of importance in this respect. It states: "*Every deed....Conveyance executed after 9th February, 1857, so far as regards any land to be thereby affected, shall take effect, as against other deeds affecting the same land, from the date of its registration.....provided that every such instrument shall take effect from the date of its execution, if registered within any of the periods limited for registration.....*" On this ground alone, 1st Defendant's case should fail, as clearly, her deed purporting to transfer the same property to her, was executed 6 years after that of the Plaintiff.
22. Alternatively, it may be that the 1st Defendant did not make full disclosure to her Solicitor. Whichever way one looks at it, Plaintiff's deed preceded that of 1st Defendant. William Oludubeh Thomas therefore had nothing in 1992 to convey to 1st Defendant; nor did 1st Defendant have proper title to convey to 2nd Defendant.

DEFENDANTS NOT BONA FIDE PURCHASERS FOR VALUE WITHOUT NOTICE

23. Further, 1st Defendant could not fall within the description of a bona fide purchaser for value without notice. Nor would the 2nd Defendant fall within that category of persons. 1st Defendant was a volunteer; and so was 2nd Defendant. No consideration was paid for the property. In

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addition, Section 3(1) of the Conveyancing and Law of Property Act,1882 which is part of the adopted Law of Sierra Leone by virtue of the Schedule to Chapter 18 of the Laws of Sierra Leone,1960 provides that: " *3(1) A purchaser shall not be prejudicially affected by notice of any instrument, fact or thing unless – (i) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or (ii) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.*" Clearly, this provision attributes constructive notice to a purchaser, as much as to a volunteer. No proper inquiries were made as to the provenance of the property.

24. Furthermore, STIRLING,J had this to say in BAILEY v BARNES [1894] 1 Ch 25 at page 31. Citing LORD CRANWORTH in WARE v LORD EGMONT 4 D.M.&G 460,473, he said: "*But where he has not actual notice, he ought not to be treated as if he had notice, unless the circumstances are such as enable the Court to say, not only that he might have acquired, but also, that he ought to have acquired, the notice with which it is sought to affect him- that he would have acquired it but for his gross negligence in the conduct of the business in question.*" At page 35, STIRLING,J says further: "*..'ought' here does not import a duty or obligation.....the expression 'ought reasonably' must mean ought as a matter of prudence, having regard to what is usually done by men of business under similar circumstances.*"

ASSESSEMENT OF EVIDENCE

25. I venture to say, that having listened to the evidence led in this case, and watched the demeanour of all the witnesses on both sides, there is no doubt in my mind that 1st Defendant was not merely grossly negligent in her failure to find out whether the property in dispute had earlier been disposed of by the donor; she was deliberate in her actions; Plaintiff had been away for some time, and she probably felt he was unlikely to return. She used the opportunity given by his absence to appropriate the property to herself. Though she claimed William Thomas was her dad, she had herself in the proceedings before SOLOMON, JA, deposed and

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sworn to an affidavit on 13 May, 2011. Therein, she exhibited a copy of her birth certificate as "HP1". It was obtained on 3 March, 2011. The columns 'full name of father' and column 'full name of mother' are blank. There is no mention of William Thomas. On the other hand, and for what it is worth, and in those same proceedings, the Plaintiff also deposed and swore to an affidavit, to which was exhibited a copy of his certificate of birth. There, the father's name is given as Ogundupeh Willie Thomas. It was issued by the office of the Chief Registrar, births and deaths on 8 March, 2011, 5 days after the 1st Defendant had obtained hers.

26. 2nd Defendant was in all probability grossly negligent in the sense intended by STIRLING, J in the case cited above. True, her deed, like that of the 1st Defendant was prepared by the same Solicitor, Mr O O Nylander of blessed memory, 15 years apart. But it was her primary responsibility to instruct her Solicitor to conduct diligent search for the antecedents of the property she intended to invest in, as much as it was his responsibility. I do believe her when she said in evidence that she was induced into the purchase agreement by the 1st Defendant; that 1st Defendant had been recently bereaved, and wanted her to look after her until she died with the promise that she would convey the property to her. But she must bear the responsibility for this. She claimed in her evidence in chief that she had spent millions developing the property , but no receipts in respect of purchases, or, for payment for workmen's services were tendered; nor were any pictures tendered to demonstrate what the property looked like before, and after such renovation work. She was also a volunteer. Equity does not normally assist a volunteer, and on a balance of probabilities, the 2nd Defendant has not provided the Court with sufficient reasons why it should. She took a risk, and she must bear the consequences.

CONCLUSION

27. In the premises, I have reached the conclusion that the Plaintiff is the true owner of the property at 12 Mammy Yoko Street, Freetown. That his deed of conveyance was first in time, and therefore, in accordance with the provisions of section 4(1) of Cap 256, takes precedence over that of the 1st Defendant. The evidence led at the trial is insufficient to ground a finding that the 2nd Defendant was an innocent purchaser for value. She was not, in any event a purchaser for value; she was a volunteer. Further, she did not plead a counterclaim. Whatever she has lost, if any, can only

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be reclaimed from the 1st Defendant. I hold that the Plaintiff has proved his case against both Defendants on a balance of probabilities. I therefore find for the Plaintiff.

28. As regards the 2nd Defendant, the Plaintiff's Solicitor and Counsel ought to have amended his pleadings after the Order made by SOLOMON, JA on 28 June, 2011. Further, whilst dismissing the Plaintiff's application for judgment on a point of law on 19 January, 2012, the Learned Justice did Order, inter alia, that the Plaintiff should file a reply though she did not specifically grant him leave to file amended pleadings reflecting the addition of the 2nd Defendant as a party to the proceedings. But this should have flowed automatically from her judgment.

29. It was also Plaintiff's Counsel's duty to have drawn the Learned Justice's attention to this omission. As it is, Plaintiff's pleading remains un-amended. As such, I cannot grant him any specific relief against the 2nd Defendant. The most I can do is to pronounce against the validity of the Voluntary deed of conveyance dated 28 May, 2007 and duly registered as No 190/2007 at page 24 of volume 106 of the Record Books of Voluntary Conveyances kept in the office of the Registrar-General since its standing in the eyes of the law has been canvassed before me.

THIS HONOURABLE COURT ADJUDGES AND ORDERS as follows:

(1) The Plaintiff is the owner of the property situate at and known as 12 Mammy Yoko Street, Freetown and is entitled to immediate possession of the same. He has been owner of this property since 1986.

(2) Consequently, Deed dated 18th January, 1992 and expressed to be made between Willie Thomas, therein described of the one part, and Hannah Thomas, the 1st Defendant herein, therein described of the other part, and duly registered as No. 30/92 at page 26 in volume 80 of the Record Books of Voluntary Conveyances kept in the office of the Registrar-General, Freetown is Cancelled.

(3) The Plaintiff shall have the Costs of the action, such Costs to be taxed if not agreed.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JSC

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