C.C. 276/11 2011 P No. 12

IN THE HIGH COURT OF SIERRA LEONE

LAND AND PROPERTY DIVISION

BETWEEN

1. DARRELL EDWARD PALMER - PLAINITFFS
2. NORRELL EWEN PALMER

AND

1. CHERNOR SESAY - DEFENDANTS
2. HAJA ZAINAB CONTEH
3. SHEKA TURAY
4. ISMAEL KAMARA
5. IBRAHIM KAMARA
6. MR HAROUNA
7. MR AMADU
8. GBESSAY KAMARA
9. SALAMATU WILLIAMS
10 KADIE RAHMAN

COUNSEL:

E T KOROMA ESQ, and later E E C SHEARS-MOSES ESQ for the Plaintiffs

S K KOROMA ESQ for the 4th, 9th and 10th Defendants

The other Defendants were not parties to the Application before the Court, and did not appear

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

~~JUSTICE OF~~ JUSTICE OF THE SUPREME COURT

JUDGMENT DATED THE 14th DAY OF JULY,2015

THE 3 APPLICATIONS

1ST MOTION- NOTICE OF MOTION DATED 8 DECEMBER,2014 FILED BY ISATU KANU as ATTORNEY for SANTIGIE KOROMA and JARIATU KOROMA

1. There are three Applications before for consideration and determination. The first one, is the Notice of Motion dated 8th December,2014 filed on behalf of Isatu Kanu, Attorney for Santigie Koroma and Jariatu Koroma. In that Application, the Applicant is asking that she be joined as 11th Defendant in the action herein; that leave be granted to her to file a Defence to the Plaintiffs' claim; that this Court grants an interim stay of



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execution of a Judgment in default of appearance entered by this Court on 11th October,2013; that this Court set aside the writ of possession issued by the Plaintiffs on 26th February,2014 pursuant to the said Judgment on the grounds of irregularity, to wit: that the Judgment of 11th October,2013 was never served on the occupiers of the land the proposed Defendant claims she owns; and that no letter notifying the occupiers of the said land of the said Judgment, was served on them before leave was sought to issue the writ of possession. She also asks that this Court grants any other relief it may deem fit.

AFFIDAVIT OF S K KOROMA

2. The Application is supported by the affidavit of Mr S K Koroma deposed and sworn to on 8th December,2014. Exhibited to that affidavit are, copies of the writ of summons in the action herein, the default judgment dated 13th December,2013, the writ of possession issued on 26th February,2014, and a copy of deed of conveyance dated 23rd November,2009 and duly registered as No. 721/2009 at page 77 in volume 652 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown, and expressed to be made between Chernoh Sesay, the 1st Defendant in the action herein of the one part, and Santigie Koroma and Mrs Jariatu Koroma of the other part. That deed purports to show that Mr Koroma and Mrs Koroma jointly bought in 2009, the land described and delineated in survey plan LS1760/2009 drawn and attached to the said deed of conveyance. The last exhibit is a copy of the proposed defence of the Applicant.
3. This Application first came up for hearing before me on 19th February,2015. This was 3 days after I finally approved the draft of the Order I had made on 3rd December,2014 Ordering the joinder of the 9th and 10th Defendants. For various reasons, some of them relating to the breakdown of the lawyer/client relationship between Mr E T Koroma and the Plaintiffs, as evidenced by a letter dated 22nd April,2015 addressed to Mr Koroma, and copied to the Court, and also the appointment of Shears-Moses & Co, as Solicitors for the Plaintiff, hearing into the Application was adjourned on several occasions until it was finally heard on 9th June,2015.

WHETHER ATTORNEY COULD BE JOINED AS DEFENDANT



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4. The first thing I pointed out to Mr S K Koroma, Counsel for the Applicants was that I could not very well order the joinder of someone who claimed to be the Attorney for persons who were claiming ownership of the land in dispute based on a deed in their own names which was exhibited to Mr Koroma's affidavit. Further, no Power of Attorney was exhibited. Isatu Kanu, the purported Applicant herein cannot be a proper party to the action herein because she has no claim in respect of the property in dispute. The proper parties are the person named in the Deed made in 2009. To this extent, that part of the Application fails, though in the result I propose to make the appropriate Order for joinder so as to avoid a multiplicity of trials relating to the same disputed land.
5. The Judgment in Default entered by this Court on 11th December,2013 was against the 2nd - 8th Defendants, and not against the 1st Defendant. The 2009 Deed exhibited to Mr Koroma's affidavit shows that the Koromas bought the land from the 1st Defendant, and not from any of the other Defendants. In fact, on 23rd April,2015 Mr E T Koroma, then Solicitor for the Plaintiffs had purported to enter the action, i.e the action against 1st Defendant, for trial. I say purported, because the Order to enter the action for trial is usually given on a Summons for Directions - see Order 40 Rule 2(1). It seems to me that practitioners have still not become accustomed to the new Rules of Court in this respect. It follows that the judgment in default has nothing to do with the purported claims of the Koroma's, the Applicants herein, and I cannot therefore set aside the said Judgment in default. And as the Applicants have not claimed by affidavit evidence or otherwise that they were in occupation of the land at the time the Judgment was served on the occupiers thereof, I cannot also set aside the same Judgment, nor stay the execution thereof. I can only do so in respect of a person who was in occupation at the time and/or a person against whom the Judgment was entered, for instance, the 2nd - 8th Defendants.
6. Mr S K Koroma also filed another affidavit deposed and sworn to by him on 4th May,2015. To that affidavit are exhibited, pictures of the land the Koromas' are claiming. They depict a building under construction and a perimeter wall.

PLAINTIFFS' AFFIDAVIT IN OPPOSITION

7. This Application is opposed by the Plaintiffs, and they have filed an affidavit in opposition deposed and sworn to by Mr Shears-Moses on 8th



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June,2015. Essentially he is saying there, that the 1st Defendant had not title to the land he is claiming, and could not therefore have passed good title to the proposed Defendants. He deposed also that the persons named as Defendants in the writ of summons were indeed served with copies of the Judgment, and exhibited copies of respective affidavits of service deposed and sworn to by Mr Charles Davies, Bailiff. I think I have already indicated above that the service of copies of the Judgment on 2nd - 8th Defendants herein, is irrelevant to this Application as they have not applied for the default Judgment to be set aside. Mr Shears-Moses has also exhibited a writ of summons issued by the 2nd Plaintiff herein against the 1st Defendant herein on 15th June,2004 and a Judgment entered in the Plaintiff's favour by KONOYIMA, J on 4th December,2008 in respect of the land claimed by him in that action. Mr Shears-Moses' argument seems to be that that Judgment conclusively proved that 1st Defendant was not entitled to the land he had purportedly sold to the Koromas. I have taken this argument into due consideration in deciding on the best course of action.

8. What I can do, as I have intimated above, is to make an Order in the terms set out in Order 18 Rule 4 and Rule 6, respectively, so that all issues relating to the land in dispute will be dealt with at one and the same time, and that all persons having an interest in the same land will be joined as parties in the same action. This I propose to do when I come to deal with the Summons for Directions.

APPLICATION DATED 21ST APRIL,2015 FILED BY 5TH DEFENDANT

9. The next Application I have to determine is that dated 21st April,2015 filed on behalf of the 5th Defendant Ibrahim Kamara by Mr S K Koroma. In fact, it arose out of the views I had expressed in open Court about the soundness of the Application I have dealt with above: I could not set aside a Judgment against the 5th Defendant on the Application of persons who were not parties to the action unless they were so joined, or, being persons in occupation of the land, they had come to the Court seeking relief against dispossession. As I have pointed out above, the Applicants in the earlier Application were no such persons at the relevant point in time. The 5th Defendant applied that the default Judgment of 11th October,2013 be set aside and that the same be stayed; that leave be granted to the 5th Defendant to file and serve a defence out of time; alternatively, that the action brought against the 5th Defendants be



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struck out on the ground that he is not a necessary and proper party to the action; and any other Order the Court may deem fit.

5TH DEFENDANT'S AFFIDAVIT

10. The Application is supported by the affidavit of Mr Kamara himself, deposed and sworn to 21st April,2015. The purport of his affidavit is that he is not the owner of the land he was occupying and from which he was evicted by the Plaintiffs in execution of the writ of possession issued on their behalf. He has also exhibited the documents relevant to the action. He has exhibited as "D", copies of two deeds: the first, is that dated 22 May,2007 and duly registered as No. 1102/2007 at page 66 in volume 623 of the Record Books of Conveyances, and expressed to be made between Chernoh Sesay, the 1st Defendant herein, and Salamatu Williams, the lady who was joined as 9th Defendant by Order of this Court on 3rd December,2014; the second is that dated 17th June,2008 ad duly registered as No. 697/2008 at page 49 in volume 641 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown and expressed to be made between Chernoh Sesay of the one part, and Kadie Rahman of the other part. Exhibited also, is a copy of his proposed Defence. There, he avers that he is lawfully on the land the Plaintiffs are claiming, as caretaker for the 9th and 10th Defendants. The sum total of the 5th Defendant's case is that he is lawfully in possession of the land through the ownership of the 9th and 10th Defendants, and not by himself. In this respect, he really has no defence to the Plaintiffs' action unless the both 9th and 10th Defendants succeed at the trial of the action. Further, as it has been established that this is the full extent of his case, he is not really a necessary party to the action, as his principals have been made parties. He does not therefore need to file a statement of defence. As to whether he should be allowed to continue to stay on the land, I shall say something about that below.

PLAINTIFFS' 1ST AFFIDAVIT IN OPPOSITION

11. The Plaintiffs filed an affidavit in opposition deposed and sworn to by Mr E T Koroma on 5 May,2015. In his affidavit, Mr Koroma deposes that the 5th Defendant was indeed served with a copy of the default Judgment; that he has, notwithstanding the execution of the writ of possession, defiantly remained on the land; he has also confronted the Plaintiffs both physically and verbally, preventing them from re-possessing their



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property pursuant to the Court's default judgment. He therefore asks that the 5th Defendant's application be dismissed.

PLAINTIFF'S 2ND AFFIDAVIT IN OPPOSITION

12. The Plaintiffs filed a further affidavit deposed and sworn to by Mr Shears-Moses on 8th June,2015. Exhibited thereto, are Deeds showing the Plaintiffs' joint and separate entitlement to the land being claimed by Mesdames Salamatu Williams and Kadie Rahman respectively. He deposed further, that since the date of the default judgment, both ladies have not shown any interest in the proceedings and have done nothing in relation to the same. That is not quite true, as they applied to be joined as Defendants and they were so joined by Order of this Court made on 3rd December,2014. Further, they filed their joint statement of defence on 9th December,2014.
13. At the hearing on 9th June,2015, Mr Shears-Moses adopted Mr Koroma's affidavit as his response to the 5th Defendant's Application in addition to relying on his own.

FINDINGS AS REGARDS 5TH DEFENDANT

14. As regards the 5th Defendant's Application, I have to bear in mind that the claim brought against him jointly and severally, is not only for a declaration of title land, but also for recovery of possession of the same and for Damages for Trespass. He may not be the owner of the land the Plaintiffs are claiming, but he is in possession of the same wrongfully according to the Judgment of this Court, though, according to him, in his capacity as caretaker for the 9th and 10th Defendants. I think it will be in the interest of all concerned that he vacates the property immediately, as the persons on whose behalf he was and is supposedly acting, are now parties themselves to the action. I accept and believe the Plaintiffs' complaint as contained in Mr E T Koroma's affidavit, that he is making a nuisance of himself.

PLAINTIFFS' SUMMONS FOR DIRECTIONS DATED 23RD APRIL, 2015

15. I now turn to the third and last Application, which is the Summons for Directions filed by the Plaintiffs through their former Solicitor, Mr E T KOROMA ON 23RD April,2015. The purpose of a Summons for Directions is not only to give directions for the future conduct of the action, but



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also to determine all interlocutory applications. Order 28 Rule 1(1) reads as follows:

"*With a view to providing, in every action to which this rule applies, an occasion for the consideration by the Court of the preparations for the trial of the action, so that:*

*(a) All matters which shall or can be dealt with on interlocutory applications and have not already been dealt with may, so far as possible, be dealt with; and*

*(b) Such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economic disposal thereof,*

*The Plaintiff shall, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these rules referred to as a summons for directions) returnable in not less than 14 days....."*

ORDERS

16. The Plaintiffs have asked for the usual Orders in the Summons and my duty here, is to make the additional Orders consequent upon the conclusions I have reached in the two Applications I have dealt with above. The Directions will form part of the Order I shall make below.

17. This Honourable Court Orders as follows:
    1. This Honourable Court Orders that SANTIGIE KOROMA and JARIATU KOROMA be joined as 11th and 12th Defendants respectively in the action herein, as they are necessary parties to the same. Consequentially, Leave is granted to the Plaintiffs to amend the writ of summons to include the new 11th and 12th Defendants respectively, and to file and serve the said amended writ of summons within 10 days (inclusive of the Long Vacation of this Court) of the date of this Order.
    2. That the said 11th and 12th Defendants shall pay the Plaintiffs the Costs of the Application for Joinder, such Costs to be Taxed if not agreed.
    3. That the said SANTIGIE KOROMA and JARIATU KOROMA do enter appearance to the writ of summons herein within 20 days (inclusive of the Long Vacation of this Court) of the date of this Order.



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4. That the said SANTIGIE KOROMA and JARIATU KOROMA do, if they so desire, file and serve a Statement of Defence or, a Statement of Defence and Counterclaim as the case may be, jointly or severally, not later than Friday 25th September,2015.
5. That the Plaintiffs, if they so desire, shall file a Reply, or, a Reply and Defence to Counterclaim as the case may be, not later than Monday 5th October,2015.
6. Pleadings shall be deemed to be closed on Tuesday 6th October,2015.
7. That not later than Monday 19th October, the Plaintiffs shall serve the Defendants, and each Defendant shall serve the Plaintiffs with the following:

(a) List of all documents to be used or tendered at the trial.
(b) Copies of all such documents
(c) List of witnesses
(d) Witness statements of all such witnesses
(e) Admissions of fact, if any
(f) List of Issues in Dispute
(g) Nature of evidence to be called.

8. That not later than 26th October, 2015 the Plaintiffs shall set down the action for trial, and shall state the estimated length of the trial.
9. Within 14 days from the date the action is set down for trial, all Defendants shall indicate and identify to the Plaintiffs those documents central to his case which he wishes to be included in the Court Bundle.
10. At least 7 clear days before the date fixed for trial, the Plaintiffs shall Lodge two Bundles consisting of one copy each of the documents listed in order 40 Sub-Rule 9(2) paragraphs (a) to (c) inclusive of the High Court Rules,2007.
11. This file shall be put before a Judge on the 11th day of November, 2015 for the purpose of ensuring compliance with these Directions, and for the purpose of fixing a date of trial.
12. There shall be Liberty to Restore this Summons for further Directions.
13. The Costs of the Summons for Directions, shall be Costs in the Cause.
14. The 5th Defendant is struck out of the action herein in consequence of the Order made in sub-paragraph 1 above, as he is not a necessary party to the same. No Order as to Costs in respect of his Application dated 21st April,2015. However, the Judgment in Default dated 11th



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October,2013 entered against him, and the writ of possession issued thereon by the Plaintiff for the recovery of possession of that portion of the land occupied by him, stands, in view of the matters deposed and sworn to by Mr E T Koroma in his affidavit of 5th May,2015.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT



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