C.C. 35/2006 2006 A No. 1

IN THE HIGH COURT OF SIERRA LEONE

(LAND AND PROPERTY DIVISION)

BETWEEN:

DR ARNOLD AUBEE - PLAINTIFF
(LAWFUL ADMINISTRATOR
OF THE ESTATE OF MRS GRACE AUBEE)

AND

ABIOSEH ALBERT CHAMBERS - DEFENDANT

COUNSEL:
C J PEACOCK ESQ (now deceased); F CAMPBELL ESQ for the Plaintiff
E N B NGAKUI ESQ for the Defendant

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

JUDGMENT DELIVERED THE 19 DAY OF FEBRUARY, 2021

THE PLAINTIFF'S CLAIM

1. On 11 January, 2006 Mrs Grace Aubee issued the original writ of summons herein, against Pastor David Chambers (alias BOH). The claim was for a declaration of title to property situate at and being at Kebbie Lokko, Marjay Town, Goderich, in the Western Area of Sierra Leone. The Plaintiff also prayed for an Injunction, Special Damages, Damages for Trespass; Cancellation of any document conferring title to the property on the Defendant; any other relief; and the Costs of the action. As the trial proceeded on the basis of the writ as amended twice, on subsequent occasions, I shall only set it out in its final form.

DEFENDANT ENTERS APPEARANCE AND FILES DEFENCE; REPLY

2. Appearance was entered for the Defendant by Brewah & Co on 4 December, 2006, and notice of the same was filed the same day, and served on the Plaintiff's Solicitor. A statement of defence was filed on the then Defendant's behalf on 12 January, 2007. The Defendant averred that he was merely Attorney for the real owner of the land in dispute,

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Abioseh Albert Chambers, who was then resident in the USA. The averments in the Plaintiff's claim were denied. A reply to this pleading was filed on 8 January, 2007. The action was then entered for trial on 8 February, 2007. HALLOWAY, J who was then presiding, gave directions for the future conduct of the case, on 18 May, 2007.

DR AUBEE IS SUBSTITUTED FOR ORIGINAL PLAINTIFF

3. Whilst the action was in progress, it seems the Plaintiff, Mrs Grace Aubee became incapacitated, and Dr Aubee was brought in, first, as her Attorney by virtue of deed of Power of Attorney dated 8 December, 2005 and duly registered. Later, she passed away on 15 September, 2006, and Dr Aubee was substituted as Plaintiff in his new capacity as Administrator of her estate by Order of the Court, KONOYIMA, J presiding, dated 21 May, 2008. Then, when the file was assigned to this Court, on 16 February,2011, the writ was further amended to reflect the parties as described above. At this point in time, 3 years had elapsed since the action was commenced.

PLAINTIFF'S PARTICULARS OF CLAIM

4. The particulars of claim as finally amended pleaded the following facts. The Plaintiff is the fee simple owner of all that piece or parcel of land and the hereditaments thereon, situate, lying and being at Marjay Town, Kebbie Loko village, Goderich, in the Western Area. The Plaintiff became owner of this property by virtue of deed of conveyance dated 8 June, 1976 and duly registered as No. 575/76 at page 47 in volume 285 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown. She had since been in undisturbed possession of the land and hereditaments. The vendor was Thomas John Shorunkeh-Sawyerr. The Defendant began interfering with the land between 2004 & 2005. The Defendant was warned by letter dated 17 December, 2005 to cease all acts of trespass. The Defendant refused to do so. As a result, the Plaintiff had suffered loss and damage, specifically, the total sum of Le2.050,000 comprising Solicitor's fees, cost of conveying Solicitor to the disputed land, and the Licensed Surveyor's fee. The Plaintiff therefore prayed for the reliefs stated therein, and recited above. The Defendant's defence remained the same, notwithstanding the change in the description of the Defendant.

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5. The recorded minutes show that the action first went before HALLOWAY, J, on 5 December, 2006. It was then put before KONOYIMA, J on 2 April, 2008. Nothing much happened at the beginning save for the amendment which was ordered, but on 24 June, 2009, KONOYIMA, J began hearing evidence.

PROCEEDINGS BEFORE KONOYIMA, J

PW1 DR AUBEE

6. PW1 was Dr Aubee, Administrator of his deceased wife's estate. He testified as to how his late wife became owner of the property at Kebbie Loko. He knew the land himself. His wife had installed a caretaker, Idrissa Kargbo on the land. When he passed away, his widow became the caretaker. In order to pinpoint the exact location of the land, he testified that Dr Molley Wright owned property adjacent to his wife's land. He was told about the Defendant's Attorney's activities on the land by the caretaker. He was able to confirm the truth of this report. He tendered his witness statement in evidence, and applied for it to form part of his evidence in chief. The Order was made by His Lordship. PW1's witness statement formed part of the Court Bundle lodged and filed on 6 December, 2007. It was numbered PWS1. It was made and signed by PW1 on 5 December, 2007. There, he narrated how he came to know about the acts of trespass committed by the Defendant's Attorney. He had bought the said land for his wife, as a gift, from T J Shorunkeh-Sawyer. He therefore prayed for the reliefs itemised in the writ. He was cross-examined by Mr Ngakui. He said his wife died on 15 September, 2006. He said he had told the people he found on the land that they were trespassers. He reported the matter to the Police. He had never met Pastor Chambers, the Defendant's Attorney. He said that there was a structure on the land in which the caretaker, Idrissa lived. There were various persons on the land, who claimed to have derived title from a common vendor. He had brought Defendant to Court because his Attorney, Pastor Chambers was trespassing on the land. He was not re-examined. Nothing further happened before KONOYIMA, J. On 21 June, 2010, the file was put before me for trial.
7. Both Counsel agreed in writing, on behalf of their respective clients, that the trial should continue before me, and with the adoption of the evidence taken so far by KONOYIMA, J.

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8. PW2 Eric Forster was the next witness. He was a Licensed Surveyor. He was contracted by PW1 sometime in 2008 to do some work on the land in dispute. He was taken to the land by PW1 and his son. The caretaker showed him around. He did a survey of the land, and prepared a Report based on this. His Report was tendered as exhibit A pages 1 – 19. PW1 also gave him a Report prepared by the Ministry of Lands, and other documents relating to the land. He was shown pages 12 – 13 of exhibit A. He said the Report touched and concerned the land in dispute.
9. Under cross-examination, PW2 was shown page 3 of his Report. He said one of the pan-bodies identified in his survey plan was occupied by one Dabor and his family. Another was one Abu Samura. One Papa was the agent of the Chambers, and he had brought his boys around. He was given a document for the Defendant. He investigated the strength of that document. There was a pipe line running through the property. The document was prepared in 1958 and was numbered LS588/58 but the date on the conveyance was 30 November, 1965. He was shown page 4. The survey plan there is LS803/76 and is in the name of Mrs Grace Aubee. The neighbouring plot was owned by Dr Molley Wright. He summarised that there had been an encroachment. He disagreed with Counsel that there had been no encroachment into Plaintiff's property. In his opinion, the Defendant's land was not far away from Plaintiff's. He investigated survey plan LS881/58 and found out that it was in respect of land owned by Abisoseh Chambers. His conclusion was that Defendant was trespassing on Plaintiff's land. He was not re-examined.

PLAINTIFF CLOSES CASE

10. At the hearing on 12 July, 2010, the Court bundles were finally paginated. Plaintiff's bundle was exhibit B pages 1 – 35; Defendant's bundle was exhibit C pages 1 – 23. Plaintiff closed his case at this point. Both Counsel agreed to the trial proceeding during the vacation, and they were requested by the Court to so indicate in writing. They did so indicate. Hearing was therefore adjourned to 16 July, 2010. But as Mr Peacock was unavoidably absent on the adjourned date, the hearing was eventually adjourned to 7 October, 2010, and then to 20 October, 2010. I fell ill around that time, as recorded on page 5 of my minutes. The next full hearing was on 8 December, 2010.

DEFENDANT'S CASE

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11. At this hearing, Pastor David Chambers was called to the witness box as DW1. He started off by saying that the land at Kebbie Loko was owned by his uncle Abioseh Chambers. I then noted at page 7 of my minutes that in view of what DW1 had said, I invited Counsel to address me on whether an Attorney could be sued. An amendment to the writ was obviously necessary. Counsel requested a date, and hearing was adjourned to 10 January, 2011. There were a few adjournments for this to be done. Mr Peacock had not got it right as recorded in my minutes on pages 9 – 10. He was finally able to do so, i.e. to seek leave to amend the writ, on 16 February, 2011 as recorded on page 10 of my minutes. Abioseh Chambers was substituted as Defendant in place of Pastor David Chambers. Due to the absence at one time or the other of the Defendant's Attorney, no proceedings were taken between February and June.
12. On 7 June, 2011, the Defendant was again called to the witness stand to continue testifying as DW1. He identified his uncle's title deed as exhibit C pages 1 -3. He also identified the Power of Attorney given to him by the Defendant, exhibit C page 8. He later said it bore the date 21 March, 2003. He denied knowing Mrs Aubee, or the current Plaintiff, Dr Aubee. He denied receiving any letter from Mr Peacock. He denied knowledge of the location of Plaintiff's property.
13. Under cross-examination by Mr Peacock, he said he had had no dealings with the land until he was given the power of attorney to act, by his uncle. He identified the deed, exhibited as C pages 27- 31. He agreed that it witnesses that land was sold by his uncle and others to George Beresford Cole, one of the predecessors-in-title of the land claimed by the Plaintiff. He said the Defendant had executed the Power of Attorney in Freetown. This is rather doubtful as the Defendant's address on that deed is in the USA. Further, it was not notarised as required by law. He said also that he was not aware that the Ministry of Lands had done a report about the land.
14. DW2 was the Licensed Surveyor, James Morlai Bangura. He was commissioned to survey and report on the land in dispute by DW1. He was given the deeds of the Plaintiff and of the Defendant. He went to the site with both sets of documents. According to him, the properties did not overlap. He prepared a re-survey plan, and a report. Both were tendered as exhibits E1&2. As Mr Peacock was unavailable that day, cross-examination was deferred to 7 July, 2011.

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15. Under cross-examination by Mr Peacock, DW2 said, among other things that the two plots of land claimed by the opposing parties did not overlap. He was referred to exhibit to exhibit B pages 32 – 35. He was referred specifically to page 33 where the Ministry of Lands' surveyor had said that the Defendant's survey plan was grossly inadequate. He said that was a matter of opinion. He was the last witness for the defence. The defence closed on 17 July, 2011. Counsel submitted written addresses.

FINDINGS

16. This case rests on the interpretation to be given to the re-surveys commissioned by both sides to the litigation, and to the reports tendered in evidence by surveyors on opposite sides. To help me reach a just conclusion, I shall first refer to the Survey Rules, Chapter 128 of the Subsidiary Legislation of the Laws of Sierra Leone, 1960. These Rules were made pursuant to the Surveys Act, Chapter 128 of the Laws of Sierra Leone, 1960. Part of Rule 15 states: "……*Measurements which are taken to fix the position of physical features, structures, and other features adjacent to the boundaries shall be shown on the diagrams in a clear and legible fashion…..*" Rule 17 states: "*Topographical features shall be shown with special care in the vicinity of beacons. The field notes shall be lucidly kept so as to enable a draughtsman without other information to draw a true plan of the survey,*" Rule 33: "*Beacons shall be placed at the points where the boundaries intersect roads and streams of importance. On straight lines of more than 660 feet, beacons shall be placed at intervals of not more than 660 feet.*" Rule 40: "*The Director of Surveys and Lands shall allot to licensed surveyors a distinctive letter or letters for their use as a prefix to the consecutive numbers to be stamped on all property beacons they may put up.*" These prefixes are usually the initials of the surveyor concerned.

THE LAW

17. I must also bear in mind at all times, that in a claim for a declaration of title to land, the Plaintiff must prove on a balance of probabilities that the land in dispute is his property. He must rely on the strength of his title, rather than on the weakness of the Defendant's title. This principle of law was re-affirmed in the case of S.C. civ app 5/79SEYMOUR-WILSON v MUSA ABESS, judgment of LIVESEY LUKE, CJ. It was also

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established in that case, that registration of a deed of conveyance of land pursuant to 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 does not really confer title on anyone. As stated by the Learned Chief Justice at page 76 of the bound volume of Supreme Court judgments for 1981, "…….*Cap 256 does not provide for, nor does it pretend to contemplate, the registration of title. It states quite clearly in its long title that it was passed to provide for the registration of instruments. What interpretation then, is to be put on section 4 of Cap 256? In my opinion registration of an instrument under the Act confers priority over other instruments affecting the same land which are registered later. Registration of an instrument under the Act does not confer title on the purchaser…….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 confer no title at all e.g. where the vendor had no title to pass. Continuing on page 77, the Learned Chief Justice said: "…In other words, if two deeds are registered in respect of the same land, one may take effect before the other under section 4, but that does not mean that the prior registered deed confers a better title. The prior registered deed may confer an imperfect title, or, no title at all. But its prior registration would not ipso facto perfect an imperfect or invalid title……"*

18. I concur with the views expressed by the Learned Chief Justice in that case, and would go on to say that because the Defendant in this case has relied on a deed registered purportedly 12 years before that of the Plaintiff, the Defendant has not thereby established a title to the property in dispute. Far from it, as I shall explain below.
19. The Plaintiff's Solicitor and Counsel did file as part of the Court Bundle, a report and re-survey of the land in dispute prepared by the Government Surveyor, J M K Sinnah. Mr Sinnah was listed as a witness, but he was not called to testify. However, as his Report formed part of the Court Bundle, it also forms part of the Record of the Court. I will refer to them, later.

FINDINGS

LANBUK.COM LANBUK SIERRA LEONE

20. What I have to consider are not only the title deeds of the contending parties, but the evidence of the surveyors called by the respective parties. Starting off with the Defendant's deed, it is dated 30 November, 1965 and purports to have been duly registered No.536/65 at page 90 of volume 220 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown. It encloses a survey plan LS881/58 dated 6 January, 1959. The surveyor's name is not quite legible in the copy filed, but his initials appear to be E E with a surname beginning with B. But noticeably, the beacons erected and depicted on the plan are prefixed AA. The area demarcated is said to be 10.1182 acres. A stream is delineated on what I will call the north east portion of the plan, i.e. on the right side of the boundary; the top right portion of the page. The stream is not depicted as intersecting with any portion of the land depicted on the plan. The draughtsman of the deed's name unusually, does not appear on the copies filed. Prior to the passing into law of the Legal Practitioners (Amendment) Act, 1984, non-lawyers could, and did prepare registerable instruments. Section 17 of that Act proscribed the old practice. It authorised the Registrar-General to refuse to register any instrument not drawn up by a lawyer.
21. The old practice was that such a non-lawyer draughtsman would insert an indorsement that he had received no fee for preparing the document, and would append his signature at the bottom. No such indorsement nor signature appear on the Defendant's deed.
22. Further, the witness to the signatures of the vendors is that of one Moses Smith. But at the back of the deed, the Registrar-General's stamped indorsement, a requirement of 14(1)(a) and Form D of the Registration of Instruments Act, Chapter 256 of the Laws of Sierra Leone, 1960, shows that the witness was one George Vincent. The difference in names contravenes the provisions of the said section 14. The person who witnesses the execution of the deed should be the same person who acknowledges the signature of the vendor in terms of section 14(1)(a) of Cap 256.
23. Further, the page number in the book of conveyances seems to have been altered without it being initialled. These alterations were not done in red ink, or, underlined in red as required by section 14 of the General Registration Act, Chapter 255 of the Laws of Sierra Leone, 1960. All of

LANBUK.COM LANBUK SIERRA LEONE

these discrepancies throw considerable doubt on the authenticity of the Defendant's deed of conveyance.

24. Moving on to the contents of the deed itself, no earlier title appears in the preamble in the Defendant's deed; nor is there any recital in the preamble about the length of time the vendors had been in free and undisturbed possession of the land before it was conveyed to the Defendant. But, as I have stated earlier, notwithstanding all these faults, the Plaintiff has to rely on the strength of his title, and not on the weakness of the Defendant's.

25. I will now move on to the deed on which the Plaintiff is relying. It is dated 8 June, 1976 and duly registered as No 575 at page 47 in volume 285 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown. It was executed by the vendor, Thomas John Shorunkeh-Sawyer in the presence of Patrick Coker and George Songo-King. In accordance with the provisions of section 14(1)(a) of Cap 256, Mr Songo-King acknowledged the vendor's signature before the Registrar-General as can be seen in the Form D acknowledgement on the deed. The deed witnesses that the property to be conveyed formed part of lands belonging to Juliana Christiana Lewis who died testate in Freetown on 14 July, 1926 seised of the same. In her will, Juliana Lewis devised these lands to Lauretta Davies who went into possession of the same; but on 7 April, 1939 Lauretta Davies put one Iscandri Gibril Cole into possession of these lands. On 28 February, 1958 Iscandri Cole conveyed the property to George Beresford Cole. The year 1958 is significant , because the Defendant's survey plan suggests that it was drawn in December, 1958. By deed dated 22 June, 1961, George Beresford Cole conveyed the property to T J Shorunkeh-Sawyer, the Plaintiff's vendor. That deed was prepared by the lawyer M C Marke, one-time Acting Solicitor-General of Sierra Leone in the 1950s. On 8 June, 1976 T J Shorunkeh-Sawyer conveyed part of his property into the name of the Plaintiff's deceased wife. The survey plan drawn and attached to the deed is LS803/76 dated 19 May, 1976. Four contiguous plots of land are delineated on the survey plan. Plot 3 is that of the Plaintiff. It measures 0.890 acre. It is bounded on one side by property belonging to Dr Molley Wright the owner of plot 2. A stream is clearly delineated flowing from plot 2 into plot 3. In the Defendant's survey plan, this stream appears outside the boundaries of the land surveyed in his name.

LANBUK.COM LANBUK SIERRA LEONE

The presence of the stream in the Plaintiff's survey plan, is a distinguishing landmark, and shows that the surveyor paid heed to the requirements of Rules 16 and 17 of the Survey Rules, Cap 128 of the Subsidiary Legislation of Sierra Leone, 1960. The surveyor was Mr L V McEwen. The draughtsman was A N B Stronge esq, later a Justice of Appeal. The beacons fixed by him and delineated on the survey plan bear the initial of his surname, which is, as I have indicated above, the proper practice. All in all, the Plaintiff's deed and his survey plan, conform with the requirements of all the applicable laws.

26. But at the same time, I have to record in this judgment that Mr Peacock did file a supplementary document on 25 January, 2008. It is a deed of conveyance between the Chambers family including the Defendant herein of the one part, and George Beresford-Cole of the other part. It was shown to DW1 while giving evidence. But as no arguments were advanced by either side as to its significance, nor was any evidence led as to its bearing on the case, I have not made a finding about it.

27. I accept DW2 James Bangura's evidence that the two properties, one claimed by the Plaintiff, and the other claimed by the Defendant do not overlap. But I believe that he is wrong in saying that the Defendant's land is properly located, and reflects the situation on the ground as represented in LS881/58. In any event, I have grave doubts about the authenticity of that survey plan. Though it purports to have been prepared in 1958, it was only attached to a conveyance, purportedly in 1965. The Defendant may have property somewhere in Kebbie Loko, for example, the property delineated in the survey plan in the deed described in paragraph 26, supra, but I am satisfied that the land claimed by the Plaintiff has been properly and legally identified, plotted, and demarcated on LS803/76. Though Mr Sinnah did not testify before me, by agreement of Counsel, his report had formed part of the Court bundle and was tendered in evidence as I have stated above. His sketch made on 25 February, 2008 accurately depicts the location of Plaintiff's land, with the stream delineated in the same position as in LS803/76. In that sketch, Mr Sinnah concluded that, according to the co-ordinates, Plaintiff's land lay next to Dr Molley Wright's land. This conclusion amply supports the survey done by Mr McEwen in 1976. The conclusion I have reached is that the Plaintiff has proved his case on a balance of probabilities. He is entitled to a declaration of title. It follows that all

LANBUK.COM LANBUK SIERRA LEONE

persons presently occupying any part or portion of the land delineated in survey plan LS803/76 are trespassers. The Plaintiff is therefore entitled to general damages for this Tort. He is also entitled to an injunction to stop them interfering with his right to possession of the same land. They are illegally occupying Plaintiff's land. The Plaintiff shall therefore have judgment in the terms prayed for in his amended statement of claim.

28. THIS HONOURABLE COURT ADJUDGES AND ORDERS:

I. That the Plaintiff is entitled to the Declaration he has prayed for in his amended writ of summons. He is the fee simple owner of, and the person entitled to possession of all that piece or parcel of land situate, lying and being at Marjay Town, Kebbie Loko village, Goderich in the Western Area of the Republic of Sierra Leone, with the buildings thereon, delineated on survey plan LS803/76 dated 19 May, 1976 drawn and attached to deed of conveyance dated 8 June, 1976 and duly registered as No. 575 at page 47 of volume 285 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown.

II. That the Plaintiff is awarded the sum of Le17million as Damages for Trespass. This amount takes into consideration the number of years he has been disposed of the same.

III. That the Plaintiff is granted a Perpetual Injunction restraining the Defendant, his agents, servants, workmen and privies from entering on, or, remaining on the said land, and from disposing of the same or, any portion thereof, to any other person.

IV. Special Damages as claimed in the amended writ of summons, in the sum of Le2,050,000 plus interest thereon at the rate of 32% from 11 January, 2006 unto today's date, and thereafter at the statutory rate until payment.

V. The prayer for cancellation can only be granted in respect of the Defendant's deed. No evidence was led in respect of other deeds which may have come into existence since the first act of trespass was discovered . The Defendant's deed of conveyance dated purportedly dated 30 November, 1965 and registered as No 536/65 at page 90 of volume 220 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown is cancelled.

LANBUK.COM LANBUK SIERRA LEONE

VI. 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

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