C.C 400/17 2017 J. N0.25

In the High Court of Justice of Sierra Leone

(Land and Property Division)

Between:

Jesse Omojowo John
By His Attorney Jesse O. John- **Plaintiff/Applicant**
33A Hill Street
Freetown

Versus

Gregory Pabs-Garnon- **1st Defendant/Respondent**
Baltimon Pabs-Garnon- **2nd Defendant/Respondent**
9 Bage Street
Waterloo

Sillah Kamara
4 Main Motor Road- **3rd Defendant/Respondent**
Kerry Town

Counsels:

Bernard Jones Esq.

G. B. kanneh Esq.

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Ruling on an Application for a Summary Judgment, Regarding a Declaration of a Title to Property, Recovery of Possession and an Injunctive Relief, Delivered on Tuesday, 10th February, 2020, by Hon. Dr. Justice A. Binneh-Kamara, J.

1.0 Introduction

This ruling is contingent on an application made by Yada Williams and Associates, pursuant to a Judge's Summons, dated 23rd January, 2018. The Judge's Summons is accompanied by the requisite affidavit of the Plaintiff/Applicant herein (Jesse Omojowo John) sworn to and dated 15th January, 2018, together with the exhibits attached thereto and filled herewith. Thus, the application is essentially 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).

The contents of the Judge's Summons are underpinned by three (3) unequivocal prayers, which Bernard Jones Esq., wants this Honourable Court to grant. Significantly, I will thus sequentially set out the orders as prayed for:

1. That Judgment be entered for the Plaintiff, pursuant to Order 16 of the High Court Rules, 2007 in respect of the following specific orders:

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a. A Declaration that all that piece and parcel of land situate lying and being at Peninsular Road Kerry Town in the Western Area of the Republic of Sierra Leone, enclosing an area of 2.6755 Acre in the Conveyance, dated the 17th day of November, 2008, registered as N0. 217/2008 in Volume 108 at page 126 of the Record Books of Conveyances, kept at the Office of the Administrator and Registrar General.

b. Recovery of possession of all that piece and parcel of land as described above.

c. An injunction restraining the Defendant herein, their agents, privies, assigns, howsoever called from entering, remaining, or otherwise constructing any structure (s) thereon on the Plaintiff's piece and parcel of land.

2. Further or other reliefs.

3. Costs

1.1 <u>The Argumentations of the Plaintiff's/Applicant's Counsel</u>

Consequently, G. B. kanneh Esq. of Halloway and Partners, filled in an affidavit in opposition, sworn to by Sillah Kamara (the 3rd Defendant/Respondent) and dated 10th June, 2019, in justification of his conviction that this Court, should not under any circumstance, give credence to the foregoing application.Meanwhile, on the 11th June, 2019, Bernard Jones Esq., conscientiously moved the Court; and thus made the following seemingly convincing submissions:

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1. That he had complied with the provisions in Sub rule (1) of Rule 1 of Order 16 of the High Court Rules, 2007; and that an appearance had been entered by the 3rd Defendant/Respondent, before an application for summary judgment was entered.
2. That Exhibit E is a copy of the Plaintiff's conveyance, indicating that he owns the fee simple absolute in possession in respect of that piece and parcel of realty that it depicts. The said title deed is dated 17th January, 2008. Counsel further rationalised his submission on this point in the locus classicus of Seymour Wilson v Musa Abbess(Civ. App. 5/79).
3. That the 3rd Defendant/Respondent has no defense on the merit; and there is thus no dispute to be resolved or question/ issue to be tried in this matter.
4. That page 164, particularly paragraph 14/1/2 of the Supreme Court Annual Practice 1999 (The White Book), under the rubric application of Order 14, is quite instructive on this application(See also the 5th paragraph).

1.2 <u>The Protestations of the 3rd Defendant's/Respondent's Counsel</u>

Contrariwise, G.B Kanneh Esq., alluded to the aforementioned affidavit in opposition, which he said was filed, pursuant to Rules 3, 4 and 7 of Order 16 of the High Court Rules 2007, to strengthen the undermentioned protestations:

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1. That the application is ill-suited and completely at variance with the spirits and intendments of the rules, under which it was made. As a consequence, the application is baseless and it is of no moment, before this Honourable Court.
2. Counsel draws the Bench's attention to the combined effects of facts, contained in paragraphs 8, 9 and 10, of the affidavit in support of the application; with specific emphasis on paragraph 3, (dealing with the particulars of claim)and asserted that Order 16 is inapplicable to any cause or action, wherein the pleadings raised issues of allegata probanda (allegata and probata).
3. The pleadings depict that the Defendants/ Respondents, have been in possession and occupation of the land in question, for a period of forty-five (45) consecutive years; without being disturbed by any person, purporting to own it (see exhibit E).
4. The Plaintiff's/ Applicant's title deed by virtue of registration, came into being in 2008. And this title deed, upon which the applicant has placed much reliance, raises a plethora of uncertainties and probabilities, which Counsel believes, can never be resolved without the conduct of a full blown trial.
5. Exhibit E raises questions on whether the Defendants/ Respondents, were already on the land, when the survey was actually done. Counsel then refers the Court to the cases of Swill v Caramba-Coker Civ. App. Case 5/71 at page 287, lines 22-30;

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Kamara v Fornah (1964-66), ALR S/L. Series at page 413, Seymour Wilson v Musa Abbess S. C Civ. App. N0. 5/79.

6. The application is also ill-suited on the ground that an application cannot be entertained under Rule 1 of Order 16, when there is already an acknowledgement of a service of a defense that is already filed (see Rule 1 of Order 16).
7. That Sub rule (1) of Rule 7 of Order 16 is a punitive provision and it is hereby invoked in respect of cost. Finally, Sub rule (1) of Rule 3 of Order 16, justifies Counsel's submission that there are indeed triable issues that this Court must resolve.

1.3<u>The Approach/Method Leading to the Determination of the Application</u>

Meanwhile, in this ruling, 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 Judgments. Secondly, I will adopt an elliptical approach by juxtaposing the argumentations of both counsels to address their individual legal concerns; regarding the reasons why the order for 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 order for

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Summary Judgement, as it is prayed for on the face of the Judge's Summons.

However, before any systematic attempt is made to handle any of the foregoing tasks, I must state that my reading of the papers inter alia depicts that the application factually dovetails with the provisions in Sub rule (2) of Rule 1 of Order 16. And that the affidavit that bolsters the application is also undoubtedly chimed with the provision of Sub rule (2) of same. Again, the affidavit in opposition does not contravene the provisions in Sub rules (1) and (2)of Rule 4 of Order 16. Therefore, 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 to Establish the Courts' Position in Determining the Circumstances, Pursuant to which Applications of Summary Judgements, should or should not be granted.

To start with, the authors of the Supreme Court Practice of 1999 (The White Book), which contains a detailed analysis of the High Court Rules of Sierra Leone, 2007, incisively 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 obliged 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.

Essentially, in tandem with the foregoing, my consideration to grant or not to grant the orders (as prayed for on the face of the Judge's Summons) will be entirely determined by the provisions of Order 16 of the High Court Rules, 2007; as opposed to any other consideration that may appear fair, just 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 available defense to negate his/her claim (s).

Again, Summary Judgement can still be entered in favour of the Plaintiff/Applicant, even in circumstances wherein the defenses are predicated on an ill-conceived point of law. The Courts' decisions in the cases of C.E Health plc. vCeram Holding Co. (1988) 1 W. L. R. 1219 at 1228; (1989) 1 All E.R. 203 AT 210, Home v Overseas Insurance Co. Ltd. (1990) 1 W.L.R 153-158, are quite instructive on this realm of procedural justice. Significantly, my reading of Rules1, 2 and 3 of Order 16, which are the basis of the application, depicts the following

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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 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.

Meanwhile, regarding the first conditionality, paragraph 3 of the affidavit in opposition, confirms that the 3rd Defendant/Respondent, accordingly entered appearance to this action in- person. Exhibits SK2 and 3, are reflective of the Memorandum of Appearance and Notice of Appearance-in- Person, respectively. Moreover, paragraph 3 of the affidavit in support of the application, also confirms that the 3rd Defendant/Respondent indeed entered an appearance in this action. This legal fact is justified by Exhibits C and D, respectively attached to the said affidavit.

Again, paragraph 6 of the affidavit in opposition, ascertains the 3rd Defendant's/Respondent's intention to defend the action (see also paragraph 9 of the affidavit in support of the application); as he verily believes his defense is 'concrete, tenable and legally viable' in the circumstance. So, as seen in the specificities of the foregoing facts, the notice of intention to defend was made known, when the 3rd

Defendant/Respondent, acknowledged service of the writ; and stated in the acknowledgement that he intended to contest the action.

Furthermore, having regard to the second criterion, Exhibit SK1, which is the writ of summons that commenced this action, clearly 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 3rd Defendant/Respondent in this action; as there is an affidavit of service in the file.

Again, in this case, the statement of claims is indorsed with the writ; it is nether served with it, nor immediately after the service of it; though either of the foregoing latter situations, suffices to meet the threshold of the second criterion.

Additionally, consonant with the final criterion, the affidavit in support of the application, incisively acknowledges a statement of the deponent's belief that there is indeed no defense to his claims; as indorsed on the writ (see paragraphs 9, 10 and 11 of the affidavit that bolsters the application). Procedurally, having established that the above 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 3rd Defendant/Respondent to establish to the

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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.

1.5Juxtaposing the Argumentations of Counsels to Establish Why an Order of Summary Judgement, should or should not be granted.

Circumspectly, the principle 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 that piece and parcel of land situate lying and being at Peninsular Road, Kerry Town in the Western Area of the Republic of Sierra Leone, enclosing an area of 2. 6755Acres in a deed of Gift dated the 17th day of November, 2008, registered as N0. 217/2008 in Volume 108 at page 126 of the Record Book of Deed of Gifts kept in the Office of the Administrator and Registrar General, at Walpole Street, Freetown.

The Plaintiff/Applicant has produced a documentary evidence (see Exhibit E); a conveyance in justification of his assertion that the 3rd Defendant/Respondentdoes not own the realty in question; rather it belongs to his principal, on whose behalf this action is instituted.The 3rd Defendant/Respondent on the other hand, has not relied on any documentary evidence, in justification of his Counsel submission, that the pleadings show that he has been in possession of the aforesaid realty, for a period of forty-five (45) years (possessory title).

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As indicated above, his Counsel referenced the case of Swill v Caramba-Coker (Civ. App. N0. 5/71) to heighten, fine-tune and give credence to this submission.Nevertheless, though the aforementioned case is accordingly referenced, there is nothing before this Honourable Court (at this stage), establishing that the 3rd Defendant/Respondent, has been in possession of the realty in question for up to forty (45) years.

Essentially, there are a number of questions to be raised at this stage, in a bid to determine whetherthere 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 principal thrust of the provision of Sub rule (1) of Rule 3 of Order 16, which is quite central 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 germane to the 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 conveyance alluded to above)?
2. Does Cap. 256, pursuant to which Exhibit E is registered, deal with registration of title?

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3. Does reliance on possessory title constitute a defense to an action, in a circumstance, wherein the other side relies on a registered instrument(conveyance)?

Meanwhile, 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 Wilson v. Musa Abbes (Civ. App. 5/79), which is alluded to by both Counsels in justifications of their submissions.

> 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. <u>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}.</u>

Moreover, the second question can also be answered 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 clear that the statute revolves around 'registration of instrument' and not 'registration of title'; and there is no provision, in all its thirty-one (31) sections and three (3) schedules

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that deals with registration of title. Livesey Luke C. J.,in the aforementioned case, 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 in his analysis, between pages 74 and 81. The segments of his analysis, which can be elliptically put into context are these:

> '...it should be abundantly clear that there is 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 effected 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'{see page78}.

Analytically, the third question indubitably 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 underpinned the application. In variably, according to the said Sub rule,when a court of

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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 applicant. Contextually, it is the responsibility of this Honourable Court to determine whether the mere reliance on 'possessory title' constitute a defense to an action, in a circumstance, wherein the other side relies on a registered instrument (conveyance).

Essentially, the Courts decisions in Cole v Cummings (N0. 2) (1964-66) ALR S/L Series p. 164, Mansaray v Williams (1968-69) ALR S/L Series, p.326, John and Macauley v Stafford and Others S. L Sup. Court Civ. Appeal 1/75, are incisively 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 alsosatisfactorily bolstered by Livesey Luke C. J., in Seymour Wilson v. Musa Abbes (see page 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 of 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 as against

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the true owner holding an unregistered pre-1964 conveyance. The legislature would not have intended such absurd consequences'.

Significantly, in tandem with the above analysis, it cannot be concluded that Exhibit E (the registered conveyance that Counsel for the Plaintiff/Applicant has relied on) is sufficient enough to negate Counsel for the 3rd Defendant's /Respondent's contention that this matter should proceed to trial. The central contention in this matter is simply about ownership to a particular realty (referenced above) that is being claimed by both the Plaintiff/Applicant and the 3rd Defendant/Respondent.This Honourable Court is therefore of the conviction that this contention can only be resolved, when a full blown trial is expeditiously conducted. Moreover, 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 3rd 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 3rd Defendant/Respondent, relied on a contention, which would entitle his client to an unconditional leave to defend.

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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 underscored the application for cost is one that is practically directory, but not mandatory. Further, the submission that the application is ill-suited on the ground that an application cannot be entertained under Rule 1 of Order 16, when there is already an acknowledgement of a service of a defense that is already filed; cannot be upheld, because there is no acknowledgement of service of any defense on file. Counsel for the 3rd Defendant/Respondent practically relied on a typographical error in his colleague's papers to make this submission, which this Honourable Court, is not prepared to give any legal plaudit (accolade).

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 3rd Defendant/Respondent is hereby granted leave to defend this action on the condition that he provides a security for cost of Eighty-Million Leones (Le 80,000,000) to be paid into the Judicial Sub-treasury, within twenty-one (21) days after this order.
2. That Counsel for the 3rd Defendant/Respondent shall produce documentary evidence of payment of the said sum by way of a

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receipt, acknowledging same; and the said receipt shall be filed, exhibited or attached to an affidavit.

3. That final judgment shall be entered in favour of the Plaintiff/Applicant, in respect of the claims indorsed in the writ of summons, commencing this action should the 3rd Defendant/Respondent, fail to comply with orders one (1) and two (2) above.
4. That Counsel for the 3rd Defendant/Respondent files his defense to this action within seven (7) days.
5. That the reply and defense to the counter-claim (if any) to be filed within seven (7) days after receipt of the defense and counter-claim.
6. That the parties shall exchange lists of documents within seven (7) days of this order.
7. That the parties shall exchange copies of documents they would wish to duly tender at the trial 10 days after this order.
8. That the matter is set down for trial fourteen(14) days from the date of this order.
9. That the parties shall exchange witnesses statements not later than 21 days from the date of this order.
10. That within fourteen (14) days from the date this matter is set down for trial the 3rd Defendant/Respondent shall identify to the Plaintiff those documents which he would want to include in the

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bundle to be produced to the Court, pursuant to Sub rule (2) of Rule 9 of Order 40 of the High Court Rules, 2007.

11. 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 fact 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 include in the bundle.

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

f. A survey of the proposition of law to be relied upon and the list of authorities to be cited.

g. Chronology of relevant facts

h. That the date for the trial for this action is fixed for the 2nd day of March, 2020.

i. Liberty to restore summons for further directions

j. Matter is adjourned to Monday, 1st March, 2020.

k. Costs in the cause.

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I so order.

Hon. Dr. Justice A. Binneh-Kamara. J.

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