

IN THE HIGH COURT OF SIERRA LEONE
LAND AND PROPERTY DIVISION

BETWEEN:

ARNOLD BISHOP-GOODING - PLAINTIFF/APPLICANT

14 GUARD ROOM / SPUR ROAD

AND

GIBRLLA KANU	-	1 ST DEFENDANT/RESPONDENT
JACOB SESAY	-	2 ND DEFENDANT/RESPONDENT
NICOLAS SOWA	-	3 RD DEFENDANT/RESPONDENT
KEKEH TOMMA	-	4 TH DEFENDANT/RESPONDENT
MARIAMA SESAY	-	5 TH DEFENDANT/RESPONDENT
MARIAMA SAHID	-	6 TH DEFENDANT/RESPONDENT
MOHAMED BANGURA	-	7 TH DEFENDANT/RESPONDENT
ADAMA KAMARA	-	8 TH DEFENDANT/RESPONDENT
ADAMA SESAY	-	9 TH DEFENDANT/RESPONDENT
MARIAMA SESAY	-	10 TH DEFENDANT/RESPONDENT
ALUSINE GUBE	-	11 TH DEFENDANT/RESPONDENT
HASSAN WURIE	-	12 TH DEFENDANT/RESPONDENT
MAMADU JALLOH	-	13 TH DEFENDANT/RESPONDENT

ALL OF BORBOR FARM

REGENT VILLAGE

COUNSEL

T. KAMARA AND V. O. COKER for the Plaintiff/Applicant

A. KONDOWA, Y. S. DUGBA AND B. SANNOH, S. I. JALLOH AND P. SEGEPOH THOMAS for
the 4TH Defendant/Respondent

RULING

HONOURABLE MR. JUSTICE

ABDUL RAHMAN MANSARAY J.

28TH DAY OF MAY 2025

Background

1. Before me are two notices of motion filed by the plaintiff/applicant. The first is dated the 28th of November 2024, in which the plaintiff sought an injunctive relief against the 4th defendant herein. The application is supported by the affidavit of Arnold Bishop-Gooding, the plaintiff herein. The 4th defendant contested the application and filed an affidavit in opposition. Alhaji Moo-sa Salia-Konneh, the deponent therein, described himself as the 4th defendant. But the name of the 4th defendant on the papers before the court is Kekeh Tomma. However, since he has submitted himself before the court he shall be addressed as such.
2. The 4th defendant swore to the affidavit on the 9th of January 2025. No affidavit in reply was filed. The second motion is dated the 22nd of January 2025. The plaintiff therein sought an order to enter judgment against all defendants therein but the 4th defendant. The said motion is also supported by an affidavit sworn to by the plaintiff therein on the same date as the motion. None of the defendants therein contested the application. I shall consider the applications by their sequence and the time each was moved before the court.

Motion dated the 28th of November 2024

3. I turn now to the first motion dated the 28th of November 2024. The authority upon which the court grants an injunction is well settled. There are several case law authorities in addition to the American Cyanamid v. Ethicon case and O. 35 of the High Court Rules, 2007 (hereafter the Rules). In the American Cyanamid the following principles are formulated. Whether there is serious issue to be tried; the balance of convenience and where it lies; and whether damages could be adequate remedy. It is on these three heads I shall consider the motion and determine whether or not to grant the application.

Whether there is serious issue to be tried

4. On the first limb, whether there is serious issue to be tried, Mr. T. Kamara, of counsel for the plaintiff, referred to exhibit ABG1, the plaintiff's conveyance dated the 30th of September 1985. He submitted the plaintiff had been the fee simple owner of the property over 35 years. Whereas the defendant was relying on a leasehold title which could not stand against a fee simple title. He added that the 4th defendant had no right to stay on the property where he resided. The referred leasehold tile is exhibited as "AMSK2" in the affidavit in opposition. This "AMSK2", though contested by the applicant, shows that the 4th defendant has an interest in the land in question.
5. Well, Lord Diplock, in laying the principles, set guidelines to determine what is meant by "serious issue to be tried." It is not the business of the court at this stage to investigate whether the applicant has any chance or likelihood to succeed in the trial. It is also not the function of the court currently to resolve conflicts of evidence as to fact which the claims of the applicant depend. It is however, and undoubtedly so, as stated by Lord Diplock: "The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, there is a serious question to be tried."¹ The concern of this court in this regard is whether the parties' rights have been violated or interfered with.

The balance of convenience where does it lie?

6. Both parties are laying claim to the same piece of land and the applicant referred to the respondent as trespasser. So, without doubt there is serious issue for the court to be tried. This now takes the court to the next consideration which is the balance of convenience. That is the method employed by this court to decide if it should stop the respondent from doing something that might be a wrong. In doing so, the court will look at how much it will help the applicant who is complaining and how much it will hurt the respondent who is doing the supposedly wrong thing. The court will try to find a fair balance between the two. The question is where does it lie? The court must

¹ [1975] 1 All ER 510

determine whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

7. In most cases for injunction, the applicant seeks a mixed relief: mandatory and preventive injunctions. It is also the case in this instant matter. In such a situation outright granting or refusing the application does not satisfy the intendment and spirit of the court to maintain a balance. Mr. A. Kondowa, of counsel for the 4th defendant, submitted that the 4th defendant lived on the land with his family. This is not disputed or controverted by an affidavit in reply. But Mr. T. Kamara, when arguing that there was serious issue to be determined, submitted that the 4th defendant had no right to stay in the property which he resided.
8. In paragraph 6 of the affidavit in opposition, the 4th defendant deposed therein that his mother had built a structure on the res where he lived with his relatives. He exhibited the structure as "AMSK4". So, the opinion of this court is not to grant the application as prayed for but modified same to the extent of granting the preventive and not the mandatory injunction. For the granting of the mandatory injunction will amount to evicting the 4th defendant and his relatives from the res. It also outweighs the benefit to the applicant if the mandatory aspect of the injunctive relief sought is refused. Upon the above, it is clear how the court intends to maintain the balance of convenience. So, it would not be necessary to discuss the third guideline.

Whether damages could be adequate remedy

9. Well for the sake of completeness, it is the opinion of the court that damages would be adequate as compensation if the preventive injunction is granted. In other words, if the 4th defendant is stopped from continuing the construction, disposing by whatever means of the res in question until the determination of the ownership of the land, and it turns out that he is successful at the trial, the loss suffered by the injunction is quantifiable. Also, the plaintiff has indicated by exhibit "ABG-4" a proposed undertaken to compensate the 4th defendant upon succeeding at the trial had the

injunction not been granted. This indication is consistent with the American Cyanamid's case as well as O. 35 r. 9(1) and (2) of the High Court Rules, 2007. I shall, therefore, grant the application in part.

Motion dated the 22nd of January 2025

10. I now turn to the second motion dated the 22nd of January 2025 in which the plaintiff sought to enter judgment against all defendants herein but the 4th defendant. Mr. T. Kamara move the court pursuant to O. 13 r. 7(1) of the Rules. He relied on the entirety of the affidavit in support of the motion. He refers to exhibit "ABG2" and submitted that the plaintiff had a good root of title dated as far back as 1932. Exhibit "ABG2" is the title deed of the plaintiff's predecessor. He also submitted that the right of the plaintiff to the property in question had been established. He argued that the plaintiff had been in free and undisturbed possession of the res since 1985 until the interference of the defendants.

11. Mr. T. Kamara submitted further that the defendants were duly notified of the existence of the action which was brought to their notice by serving the writ of summons. He pointed out that the defendants had sufficient notice, but they chose not to defend themselves. He concluded on this point that the court could not wait for them or acted in vain. He mentioned that in the interest of justice, it was for the court to reach a conclusion based on what had been presented. He urged the court to reach that conclusion in favour of the plaintiff.

Analysis and Findings

12. The plaintiff in his affidavit in support at paragraph 3 stated: "... I am the freehold owner of all that piece and parcel of land situate lying and being at Regent Village known as Borbor Farm off Regent/Grafton Road, Regent Village by virtue of a conveyance dated the 30th day of September 1985 ..." and he refers to "ABG-1". Exhibit "ABG-1" is a copy of a conveyance executed on the 30th of September 1985 between

Priscilla Roberts (the vendor therein) and Armold Bishop Gooding, the plaintiff herein (the purchaser therein). In the said exhibit "ABG-1", the vendor disposed and vested the property therein known as Borbor Farm off Regent/Grafton Road, Regent Village to the plaintiff in fee simple absolutely. Exhibit "ABG-1" is registered as No. 642/196115/86 at page 82 in volume 387 in the book of conveyances in the Office of the Administrator and Registrar General, Freetown.

13. The affiant further deposed at paragraph 4 in the affidavit in support describing his predecessor's title and exhibited therein exhibit "ABG-2". He stated: "my predecessor's title is registered in the name of Jonas W. B. Roberts who acquired said property at Borbor Farm pursuant to a conveyance dated the 1st day of December 1932 ..." This goes to show the plaintiff had a good root of title. Mr. T. Kamara submitted that the plaintiff had a good root of tile which dated as far back as 1932 while his own title commenced from 1985. He added that he had enjoyed undisturbed possession of the same. All the plaintiff and Mr. T. Kamara are doing is to prove title of the plaintiff in the action. In consideration of the registered deeds of the plaintiff and his predecessor, and in the absence of any contrary title or registered deed, this court shall grant the prayers sought in the writ on the balance of probability and declare the plaintiff as fee simple owner of property known as Borbor Farm, off Regent/Grafton Road, Regent Village.

Order 13 Rule 7

14. I turn now to O. 13 r. 7(1), it reads:

"(1) Where the plaintiff makes a claim of a description not mentioned in rules 2 to 6 against a defendant, and the defendant fails to file an appearance, the plaintiff may, after the time limited for appearance and upon filing an affidavit proving due service of the writ and statement of claim on the defendant, set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim and the court shall consider the plaintiff to be entitled."

“(2) Notice of an application for leave to enter judgment under subrule (1) shall be served on the defendant against whom it is sought to enter judgment.”

15. O. 13 r. 7 is invoked where the claims as in the writ are of different character from what are stated in rules 2 to 6 of the said order. An example of what is envisaged by this rule is given in the Supreme Court Annual Practice 1999 and it states “where, in addition to a claim of a variety covered by rr.1 to 4 [in our Rules rr.2 to 6], the indorsement includes a claim for an account or an injunction.” This is the case in the plaintiff’s writ. The writ falls squarely within O. 13 r. 7. So, the plaintiff ought to be granted leave to enter judgment in accordance with the writ of summons.

The Orders

16. Consequent upon the above, I shall grant the application and make the following orders:

- (i) Leave is granted to the plaintiff herein to enter judgment against the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th defendants herein upon the claims indorsed in the writ of summons dated the 27th day of March 2024 as follows:
 - a. The plaintiff shall recover possession of several portions of his land within his property known as Borbor Farm (the Farm) off Regent/Grafton Road, Regent Village in the Western Area of Sierra Leone.
 - b. Damages for wrongfully entering the plaintiff’s Farm cutting down trees constructing walls and/or buildings and erecting structures thereon and continuing to damage the plaintiff’s property without lawful authority is assessed at NLe50,000 to be borne by the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th defendants herein jointly and/or severally.
 - c. The defendants (1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th) within three months from the granting of this order pull down, demolish and remove any structure on the said property.

- d. A perpetual injunction restraining the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th 10th, 11th, 12th, and 13th defendants whether by themselves their servants or agents from entering or crossing the plaintiff's farm or causing others to enter or cross the same building structures thereon and selling any portion of the said farm.
- e. The 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th 10th, 11th, 12th, and 13th defendants jointly or severally forthwith pull down and remove their "pan body" structures, building foundations columns on the plaintiff's farm and restore the property to status quo ante.
- f. Costs of the motion dated the 22nd of January 2025 shall be borne by the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th 10th, 11th, 12th, and 13th defendants jointly and/or severally.

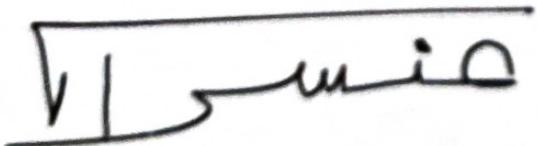
(ii) The 4th defendant/respondent by himself, his builders, servants/agents and surveyors or otherwise are restrained from entering into or take unauthorized person or persons into the res in question situate at Borbor Farm off Regent Grafton Road, Regent Village, in the Western Rural District in the Republic of Sierra Leone or portion of the farm for the purpose of offering/selling portion or disposing of the farm to the public or building structures or continuing construction on the said land pending the hearing and determination of the action herein.

(iii) Costs of the motion dated the 28th of November 2024 shall be in the cause.

(iv) A speedy trial of this action against the 4th defendant is ordered and directed as follows.

1. That each party makes and serves on the other party a list of all documents which are or have been in their possession, custody, and power relevant to this matter within 14 days of the grant of the orders herein and each party makes and serves on the other an affidavit verifying such within 14 days of the grant of the directions herein.
2. That each party serves on the other copies of all documents which are or have been in the possession, custody, or power and relevant to this matter within 14 days of the grant of the directions herein.

3. That the Plaintiff sets down this action for trial within 7 days of the grant of the directions herein.
4. That each party prepares and serves on the other written witness statements of the witnesses it intends to call at the trial of this matter within 21 days of the grant of the directions herein.
5. That the 4th Defendant within 14 days from the date the action is set down for trial identifies to the plaintiff documents central to their case which they would want included in the court bundle to be proved in court pursuant to Order 40(9) of rule 2 of the High Court Rules 2007.
6. That the plaintiff shall, within twenty-eight (28) days from the grant of the directions herein, prepare the court bundle which shall comprise:
 - a. Copies of the pleadings and any affidavits
 - b. Summary of issues in dispute
 - c. Nature of evidence to be relied upon (Oral or Documentary) and including any agreed evidence.
 - d. A list of witnesses and witness statements exchanged between parties.
 - e. Chronology of Relevant facts.
7. That there shall be liberty to restore the summons for further directions.
8. That this matter shall be put before me on Thursday the 26th of June 2025 to ensure compliance and fixing a date for trial.
9. This matter is adjourned to Thursday the 26th of June 2025 at 10:00 a.m.



HONOURABLE MR. JUSTICE
ABDUL RAHMAN MANSARAY J.