

C.C. 66/2011

2011

R. NO. 2

IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROEPRTY DIVISION)

BETWEEN: -

ADE RENNER THOMAS

- PLAINTIFF/APPLICANT

AND

DAVID CHAMBERS

- DEFENDANT/RESPONDENT

R. Johnson Esq. for the Plaintiff/Applicant**E. N. B. Ngakui Esq. for the Defendant/Respondent**

RULING DELIVERED THE 13th DAY OF February 2012

This is an application by Notice of Motion dated 29th November 2011 filed on behalf of the Plaintiff/Applicant seeking an interlocutory injunction restraining the Defendant/Respondent by himself his servants agents privies or howsoever otherwise from entering, using, erecting structures on or remaining on property situate at Adonkia Goderich Road, Goderich delineated on Survey Plan LS 2415/86 dated 19th November 1986 measuring 0.3846 acre pending the hearing and determination of this action.

In support of the application is the affidavit of **RANSFORD JOHNSON** sworn to on 29th November 2011. He deposed that the Plaintiff/Applicant herein became entitled to certain land and hereditaments situate at Adonkia Goderich Road Goderich by virtue of his deed of conveyance dated 30th March 1990 and registered at page 90 in Volume 436 of the Record Books of Conveyances kept in the office of the Registrar General in Freetown. Copies of all the relevant documents are exhibited to the said affidavit.

sworn to on 29th November 2011. He deposed that the Plaintiff

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He further deposed that sometime in November 2010, the Defendant/Respondent trespassed on the said land and destroyed all the concrete pillars which the Plaintiff/Applicant had erected around the perimeter of his said property and put certain persons in possession of same. The said Defendant/Respondent was warned by letter to desist from his acts of trespass and when he failed to do so, a writ of summons was issued against him claiming delivery up of possession of the said property, damages for trespass and an injunction. The deponent was informed by the Plaintiff that in spite of the commencement of the action against the said Defendant, he continues his acts of trespass on the said property and has amassed stones, sand, cement blocks and other building materials on the said property with the intention of erecting a permanent structure thereon. Further he has authorised several young men to go onto the property and they are making threatening remarks that they will harm anyone who dares go on the land. That he believed that the Defendant's action threaten to permanently alter the state of the Plaintiff's land by the erection of a concrete structure and that unless restrained by this court, the Defendant intends to continue his said acts of trespass on the Plaintiff's property. He therefore urged the court to grant the injunction prayed for.

The Defendant/Respondent opposed the application and swore to an affidavit in opposition on 8th December 2011 which was filed on his behalf. He deposed that whereas the Plaintiff is claiming land situate at Adonkia Goderich, his land which the Plaintiff is laying claim to is situate at York Road, Oba Funkia Goderich. He deposed further that his land was conveyed

and acts of trespass on the Plaintiff's property. He therefore prayed for

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to him by Deed of Gift dated 14th October 1982 by his father, the late **SOLOMON CHAMBERS** who acquired the said land from one **MUCTARR COLE** in 1947. That even before his father gave him the land; he had erected a house thereon where members of his family now live. Further that since the gift was made to him in 1982 he has been in quiet possession of same until the Plaintiff started laying claim to it in 2010. That he was born and bred in the Goderich community and he knew for a fact that Adonkia Road Goderich is separate and distinct from York Road Goderich. He therefore denied trespassing on the Plaintiff's land and stated that it would be unjust to restrain him from going on his property at York Road Goderich which is not situate at Adonkia Road, the location of the Plaintiff's land especially when his family members are residing there.

Counsel for the Defendant urged the court to refuse the application as he submitted it lacked merit. He argued that the action is frivolous and vexatious as the Defendant has asserted that the lands of both parties are located in different areas. Furthermore the Defendant has shown that he acquired his land in 1982 whereas the Plaintiff acquired his own in 1990. He contended that the Plaintiff has not shown that this is a case where an injunction ought to be granted and relied on the principles for granting an injunction laid down in the case of **American Cyanamid Co. vs. Ethicon Ltd** {1975} 1 All E. R. 504.

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I believe it would be appropriate at this point to consider the guidelines set out in the said **American Cyanamid** case (supra) and also the notes on the grants of injunction in the **Supreme Court Practice 1999** paragraph 29/1/2 at page 564.

It is well established from the above authorities that in an application for an interlocutory injunction an initial question which has to be considered is whether the action has raised a serious question to be tried. Counsel for the Defendant has contended that in view of the several exhibits consisting of the conveyances of both parties and those of their predecessors in title and the photographs of the present status of the property in issue, the Plaintiff has not shown that the matter is not frivolous or vexatious.

Counsel for the Plaintiff on the other ^{hand} has emphasized that notwithstanding the difference in the names of the roads of the properties of both parties, ~~and~~ it is evident that the Plaintiff and Defendant are claiming the same piece of land and the issue of ownership of the said piece of land is a serious question to be determined by the court. He further submitted that counsel cannot at this stage ask the court to determine the said ownership based on the affidavit evidence before it.

I agree with counsel for the Plaintiff's submission that at this stage of the proceedings it is no part of the court's function to try to resolve conflicts between the parties based on facts on which the claims of either party may ultimately depend.

The court's main function now is to mitigate the risk of injustice to the Applicant during the period before his claim is resolved. What is clear is that the Plaintiff has raised a serious issue of the ownership of certain land which has to be determined by the court.

The next question is whether damages would be an adequate remedy for the Plaintiff's injury or violation of his right. The Plaintiff has expressed his fear that the Defendant by his conduct in amassing stones, cement blocks and other building materials on the land in issue has threatened to alter the state of the property by the erection of permanent concrete structures thereon. He wants the status quo as at present to be maintained.

The general principle with regards the issue of the adequacy of damages as an alternative remedy is if they would be adequate to compensate the Plaintiff for the loss he would sustain as a result of the Defendant continuing to do the act complained of and the Defendant is in a financial position to pay them, then the application for the injunction should be refused.

In this case as it happens the Defendant has only threatened to carry out the acts complained of. There is no evidence before the court that if damages were awarded against the Defendant he would be in a financial position to pay them. It is therefore necessary for the court to consider where the balance of convenience lies. Does it lie in favour of granting or refusing the injunction prayed for?

The Defendant has urged that it will be unjust to restrain him from going to his property especially when his family members are residing there and have done so for a number of years. Counsel for the Plaintiff has controverted that argument by stating that the property where the Defendant's family resides is situate on the land belonging to the Plaintiff's predecessor-in-title, the late **DR. JOHN KAREFA SMART**. The Plaintiff's apprehension is the intention of the Defendant to start construction work on the land in dispute and that is the extent of the injunction prayed for.

It is my view that it is a counsel of prudence where the Defendant has not started the act complained of to preserve the status quo. Let me quote from **American Cyanamid case** (supra) where Lord Diplock states as follows {1975} 1 All E. R. at 511

"If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark on a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial."

The first example given here is the one more applicable in this case, the Defendant not having started to embark on the construction work he contemplates. In the circumstance I shall exercise my discretion in granting the injunction sought thereby preserving the status quo. I make the following Orders:

1. I hereby grant an interlocutory injunction restraining the Defendant/Respondent whether by himself, his servants, agents privies or howsoever otherwise from entering, using, erecting structures on or remaining on property situate at Adonkia Goderich Road Goderich delineated on Survey Plan No. LS 2415/86 dated 19th November 1985 measuring 0.3846 acre pending the hearing and determination of this action.
2. The Plaintiff/Applicant is to give an undertaking in writing as to damages in the event that it turns out this Order ought not to have been made.
3. Costs in the cause.

A. Showers

SIGNED: - A. SHOWERS

13/2/2012

JUSTICE OF COURT OF APPEAL

damages in the event that it turns out this Order ought not to have been made.