

Supreme Court of Sierra Leone

Frederick Max Carew

V

Dr. P.K. Lavahun

SC. CW APP 1/96

Gideon Miracle Johnson¹

ABSTRACT

This case reviews **Frederick Max Carew v Dr P K Lavahun** (SC. CW APP 1/96)(unreported), a Supreme Court of Sierra Leone decision addressing the evidentiary and doctrinal requirements governing declaration of title, trespass to land, and the identification of disputed property. The appeal arose after the Appellant's claim for damages for trespass, declaration of title, and injunction was dismissed by both the High Court and the Court of Appeal. Before the Supreme Court, the Appellant argued that the Court of Appeal erred by determining the matter solely on one ground without addressing the remaining grounds of appeal. The Supreme Court clarified that an appellate court may properly dispose of an appeal on a single determinative issue where that issue goes to the foundation of the claim. The central failing in the Appellant's case was the inability to establish the identity of the land in dispute, an essential requirement grounded in authorities such as **Kodolinye v Odu**.² The Appellant's survey evidence was contradictory and insufficient, while the Respondent failed to trace title from the alleged original owner, thereby undermining both parties' claims. As certainty of land is a precondition to any declaration of title or finding of trespass, the Supreme Court held that neither party had met the requisite burden. Accordingly, the Court set aside the decisions of the lower courts, non-suited the Appellant, and ordered a retrial.

Keywords: Declaration of title - disputed evidence Damages for trespass- better right to possession – Locus in Quo- Identification of the land

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² (1935) 5 WACA 336

Supreme Court of Sierra Leone

Frederick Max Carew v Dr. P.K. Lavahun

SC. CW APP 1/96

S Bash- Taqi JSC, S Koroma JSC, VSA WRIGHT JSC, ME Tolla-Thompson

JSC, Semega -Janneh JSC

The appellant filed an appeal to the Supreme Court for determination: -

Declaration of title- - disputed evidence

*Damages for trespass- better right to possession- better title- not necessarily valid title-
unsupported evidence*

Practice and Procedure- judgment of the locus in quo

Introduction

In **Frederick Max Carew v Dr. P.K. Lavahun**,³ the Supreme Court reaffirmed that a claimant who seeks declaration of title and trespass must clearly identify the land in dispute. Where the identity of the land is uncertain, the claim cannot succeed.

Although this principle was already established, the case is important for its careful treatment of the burden of proof, its clarification of the link between declaration and trespass, and its endorsement of a non-suit where evidential shortcomings may be remedied at a retrial

Background and Facts

The Appellant commenced proceedings in the High Court on 26 September 1988 claiming damages for trespass, declaration of title, injunction, and a declaration voiding a conveyance dated 26 November 1986. The land was described as situated at No. 5 Adonkia Road, Freetown.

The Respondent denied trespass and asserted that the land upon which he built was his own, derived under a registered conveyance. He further pleaded limitation.

Both parties relied on documentary title and survey plans. The Appellant's surveyor (P.W.2) tendered plans (Exhibits G and H). The Respondent's surveyor (D.W.1) tendered Exhibit M. The survey evidence conflicted materially. Coordinates differed; northings and eastings were inconsistent; and measurements between the two parcels varied significantly.

³ SC. CW App. 1/96 (Supreme Court of Sierra Leone, 21 January 2010.)

A locus in quo was conducted, but the registrar's notes were unavailable due to a fire at the court building.

The trial judge found that the Appellant failed to establish that the Respondent trespassed upon his land and dismissed the action. The Court of Appeal affirmed the decision substantially on the ground that the Appellant failed to discharge the burden of proving the identity of the land. The Appellant appealed to the Supreme Court. On the following grounds;

(a) The COA wrongly applied the elements of declaration of title (instead of trespass to land and based its decision solely on this question), and did not consider all the claim relating to declaration of title;

(b) The COA was wrong to rely on a hypothesis by requiring the Appellant to prove trespass to land;

(c) The COA did not consider the correctness of the HC's declaration that the Respondent was the owner of the disputed land; and

(d) That the COA decision is unreasonable, cannot be supported by evidence, and is against the weight of evidence.

Summary of the Court's Decision

Delivering the leading judgment, Wright JSC held:

“In a claim for a declaration of title, it is of vital significance that there is certainty of the land in question. The onus... of establishing the identity of the suit land is on the person making the claim.”

The Court further stated:

“Once the identity of the land being claimed by the Plaintiff is in doubt, the claims for a declaration of title and trespass... must necessarily fail” The ratio is as follows:

Where the identity of the land in dispute is put in issue and the claimant fails to prove that identity with sufficient certainty, claims for declaration of title and trespass cannot succeed.

The Court reaffirmed **Kodolinye v Odu**⁴ and relied on **Seymour Wilson v Musa Abess**⁵ in reiterating that a claimant must succeed on the strength of his own title, not on the weakness of the defendant’s

Trespass and “Better Title”

The Appellant argued that the Court of Appeal wrongly treated the matter as one of declaration rather than trespass. The Supreme Court clarified the doctrinal position.

Citing **Seymour Wilson v Musa Abess**, the Court observed:

⁴ (n 2)

⁵ Supreme Court Civ. App. 5/79. Judgment delivered 17/6/81 unreported

“Better title in the context of an action for trespass is not necessarily valid title. In a case of trespass the Court is concerned only with the relative strengths of the titles or possession proved by the rival claimants.”⁶

Thus, trespass is fundamentally possessory. The operative inquiry is superior right to possession between the parties before the court. It does not require proof of absolute ownership.

The Court rejected the suggestion that the High Court had granted possessory title to the Respondent. The trial judge had merely dismissed the Appellant’s claim; no declaration was granted in favour of the Respondent.

Identity of Land and Survey Evidence

The evidential difficulty lay at the centre of the case. The Appellant’s surveyor admitted under cross-examination that the methods adopted in preparing certain plans differed, making it difficult to pinpoint exact positional relationships. The plans were not harmonised using identical coordinate systems.

The Respondent’s surveyor asserted that the Respondent’s land was far removed from the Appellant’s, yet discrepancies persisted across plans.

The locus in quo proved unhelpful. The registrar who took notes could not produce them due to fire damage. The Supreme Court observed that the locus did not ultimately assist in identifying the land.

⁶ (n 5) 55

In these circumstances, the Court concluded that the identity of the land claimed by the Appellant had not been proved with the required certainty.

Appellate Procedure

On the procedural complaint, the Supreme Court held that an appellate court may dispose of an appeal on a single ground where that ground is decisive of the matter. The Court of Appeal was therefore entitled to determine the appeal on the failure of proof of identity.

This reasoning supported the outcome but did not constitute the central ratio.

Non-Suit and Retrial

Rather than dismissing the action outright, the Court entered a non-suit and ordered a retrial, setting aside the judgments of the lower courts. Each party was ordered to bear its own costs.

A non-suit was appropriate because the evidential deficiencies were potentially curable. The Court was not satisfied that the lands of either party had been properly identified. The order preserved the opportunity for the matter to be reheard on properly coordinated survey evidence.

Commentary and Significance

This decision clarifies evidential discipline in Sierra Leonean land litigation in four respects. First, identity of land is foundational. Without certainty of subject matter, declaratory relief cannot be granted. This aligns with West African authorities such as **Kwadzo v Adjei**⁷ requiring precise identification where land is in dispute.

⁷ (1944) 10 WACA 274

Second, the case correctly distinguishes trespass from declaration of title. “Better title” in trespass refers to superior right to possession between litigants, not proof of absolute ownership.

Third, the decision exposes recurring weaknesses in land litigation practice: inconsistent coordinate systems, absence of joint site identification, and failure to harmonise survey overlays.

Fourth, the case underscores the evidential importance of properly documented locus proceedings.

Conclusion

This case reaffirms that certainty of land identity is indispensable in actions for declaration of title and trespass. The Supreme Court’s decision demonstrates that where identity remains unresolved after conflicting survey evidence and inconclusive locus proceedings, claims cannot succeed.

By ordering a non-suit rather than dismissal, the Court balanced strict burden-of-proof principles with procedural fairness.