

IN THE HIGH COURT OF SIERRA LEONE

LAND AND PROPERTY DIVISION

IN THE MATTER OF AN APPLICATION FOR PARTITION/SALE OF LAND AT
15 LEWIS STRET, FREETOWN

AND

IN THE MATTER OF ORDER 37 OF THE HIGH COURT RULES,2007

BETWEEN:

LANANYNNOH GEORGE - PLAINTIFF

AND

REBECA WILLIAMS - DEFENDANT

COUNSEL:

ELVIS KARGBO ESQ for the Plaintiff

S K KOROMA ESQ for the Defendant

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE,
JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 9 DAY OF MAY,2012

PLAINTIFF'S CASE

1. This is an Action brought by way of Originating Summons issued on 4 June,2009 (though dated 28 May,2009), on behalf of the Plaintiff, Madam Lananynnoh George, against the Defendant, Madam Rebeca Williams. The Plaintiff seeks the following reliefs: (1) That the property at 15 Lewis Street, Freetown be partitioned between the Plaintiff and the Defendant; (2) That if partitioning is not feasible, an Order that the said property be sold by private treaty or public auction; (3) that the proceeds of sale be distributed between the Plaintiff and Defendant as beneficiaries after deduction of Solicitors' Costs, rent received by the Defendant for the past 6 years, and other expenses; (4) that the Plaintiff do have conduct of the sale of the property; (5) that the Master and Registrar of the High Court do execute a conveyance in favour of the purchaser or purchasers; (6) any further or other Order that may be just;(7) that the Costs of the Application be borne out of the proceeds of sale.

2. The Originating Summons is supported by the affidavit of the Plaintiff deposed and sworn to on 28 May, 2009 together with the documents exhibited thereto. During the course of the proceedings, she deposed and swore to two other affidavits, on 18 November, 2009 and on 9 December, 2009 respectively, the latter being deposed and sworn to in Reply to the Defendant's affidavit in opposition, deposed and sworn to on 4 December, 2009. There was also a further affidavit from the Plaintiff, deposed and sworn to by her on 11 February, 2010.

PLAINTIFF'S AFFIDAVITS AND EXHIBITS

3. Exhibited to the affidavit of, purportedly, 28 May, 2009 are the following documents: a copy of the will of Bardee Ploe Wesley made on 13 November, 2003; a copy of the Probate of the said Will, granted to William Nargbeh George and Elvis Togbah Johnson, the Executors named in the Will; a Deed of Conveyance dated 12 April, 1955 and duly registered as No. 183/55 at page 94 in volume 178 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown, and expressed to be made between Jim Boyd of the one part and Sylvanus Toe Wesley of the part; a Deed of Conveyance dated 5 March, 1983 and duly registered as No. 332/83 at page 86 in volume 348 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown and expressed to be made between the Administrator and Registrar-General of the one part, and Bardee Ploe and John Tieh Williams of the other part; a writ of summons dated 14 August, 2008 issued by Mr Kargbo at the instance of William George as Executor of the estate of Bardee Ploe Wesley against the Defendant herein, together with an Order of the High Court; and, a copy of proceedings in the Magistrate's Court between William George and Nyoonoh Dee Williams in which both Messrs Kargbo and Koroma were Counsel for the respective parties. In paragraph 7 of her affidavit, the Plaintiff wrongly described the copies of the writ of summons, and of the Order as LNG3 (1-2); those documents should have been exhibited as LNG4(1-2), as exhibit LNG 3 was the Deed of Conveyance dated 5 March, 1983. In her affidavit of 11 February, 2010 she rectified the error by exhibiting the Order of the High Court, and the writ of summons as LNG4 (1-2). But confusingly, she again exhibited the proceedings in the Magistrate's Court as LNG1 (1-3). LNG1 in her first affidavit of 28 May, 2009 was a copy of the Will, and of

the Probate. She did exhibit the proceedings in the Magistrate's Court to that first affidavit, but they were wrongly marked LNG4-2 when this numbering had not been used in the affidavit itself. I put all of this down to Mr Kargbo's untidyness. I pointed out all of these anomalies to him, as recorded in my minutes of the proceedings on 10 February, 2010 - see page 6 of my recorded minutes.

4. In her affidavit filed on 4 June, 2009 the Plaintiff deposes to the following matters: She is a beneficiary of the estate of Bardee Ploe Wesley late of 41 Sanders Street, Freetown who died testate in Freetown on 28 February, 2004. The Testatrix, though evidently a woman, is described as a man throughout the affidavit which perhaps shows how little the Plaintiff may have known her. However, in her affidavit of 18 November, 2009 the Plaintiff rectified the error, and also exhibited thereto, a copy of a valuation certificate dated 13 November, 2009, prepared by Bamzi Estate Services of 52 Liverpool Street, Freetown giving the value of the property at 15 Lewis Street as Le90million.
5. Continuing, the Plaintiff deposes that since the death of the Testatrix, the Defendant had taken over control of the property, occupying a portion of it, and letting out other portions. By clause 3 of the Will, the property at 15 Lewis Street was devised to her. The Testatrix became owner of the property by inheritance from Sylvanus Toe Wesley, deceased, who had purchased the same in 1955. Before her death, the Testatrix instructed John Tieh Williams to prepare a document on her behalf, but, Mr Williams, to use her own description, '*surreptitious (sic) went and included his name in the conveyance as co-owner*'. The Defendant is claiming to be entitled to the property by virtue of this last mentioned deed of conveyance. High Court proceedings were instituted to regularise the situation, but the parties died before the matter was resolved. The Defendant has been collecting rents exceeding Le5million for at least 6 years preceding 2009. As she, the Plaintiff, has not been deriving any and rents and profit from the property, which she believes to be lawfully hers, she has applied to the Court for the same to be sold.
6. I shall now examine the documents exhibited by her. The Will dated 13 November, 2003 clearly shows that the property was indeed devised to the Plaintiff by Bardee Ploe Wesley. The question is, whether Barde Ploe Wesley had title to the same, and could thus dispose of it. That probate of the Will was obtained, and that the Declaration of estate in that Probate, included the property, does not really take the matter anywhere.

The Deed dated 12 April, 1955 clearly shows that Sylvanus Toe Wesley bought the property from Jim Boyd in 1955. The Deed dated 5 March, 1983 shows clearly also, that the Administrator and Registrar-General, as Administrator of the estate of Sylvanus Toe Wesley in 1983 conveyed the property to Bardee Ploe Wesley and John Tieh Williams, both described as beneficiaries - as the persons entitled to the residue of the estate of Sylvanus Toe Wesley, '.....as Tenants-in-Common absolutely free from all incumbrances.' As of 1983 Bardee Ploe Wesley was merely part owner of 15 Lewis Street, and was in no position to dispose of the whole of the freehold of the same, whether by Will, or otherwise, to any other person. She could not have passed the entire freehold estate to the Plaintiff as she claims. To date, no Court has set aside the Deed made in 1983 and it therefore stands for all purposes, irrespective of the proceedings instituted both in the High Court and in the Magistrate's Court by the Plaintiff, both proceedings in any event, remaining inconclusive. The proceedings instituted by Bardee Ploe in 1991 against both the Administrator and Registrar-General and John Tieh Williams for, inter alia, cancellation of the 1983 Deed, remains undecided. The proceedings instituted by the Plaintiff herself in the High Court in 2006 similarly, remains undecided.

DEFENDANT'S AFFIDAVIT IN OPPOSITION

7. The Defendant opposes the Plaintiff's claim, and has filed an affidavit in opposition deposed and sworn to by her on 4 December, 2009. For some inexplicable reason it bears the Judicial Sub-Treasury stamp dated 3 October, 2009. In this affidavit, she deposes, firstly, that she is the daughter of John Tieh Williams, and exhibits her birth certificate as proof of this. It shows that she was born on 21 January, 1957 to both Winneh Williams and Tieh Williams, both of the Kroo tribe. She acknowledges that she is aware that Bardee Wesley was contesting her father's claim to be joint owner of the property, and says further, that the matter is awaiting the Judgment of TOLLA THOMPSON, JSC. She deposes further that the Plaintiff has never resided on the property, and that it was the Plaintiff's partner, William George who had been claiming possession of the premises. She has always been living there with her family. She therefore asks this Court to give her the first option to buy if a sale is allowed, or that it be partitioned.

8. In Reply to that affidavit, the Plaintiff filed a further affidavit deposed and sworn to by her on 9 december,2009. After the many contentions canvassed by her in that affidavit, she concedes that that the property should be shared equally between herself and the Defendant.
9. The proceedings (pages 1-8 of my minutes) commenced before me on 9 November,2009 and were brought to an end on 8 March,2010 by the Court, as Defendant's Counsel had not made himself available to Reply to Mr Kargbo's submissions. As such, Defendant's case has been treated and dealt with on the basis of her affidavit in opposition.

FINDINGS

10. I find that on the evidence, Sylvanus Toe Wesley, died intestate on 6 March,1962 seised of the property situate at and known as 15 Lewis Street, Freetown. I find that on 8 February,1982 Letters of Administration in respect of the deceased intestate's estate were granted to the Administrator and Registrar-General. That Grant has not been set aside by a Court of competent jurisdiction. I find also that both Bardee Ploe Wesley and John Tieh Williams are relatives and/or descendants of Sylvanus Toe Wesley, described presumably, in the letter dated 29 July,1982 written by the Kroo Tribal Headman T K Thomas to the Administrator and Registrar-General, as Bardee Toe alias Toe Wesley. That notwithstanding this letter, the Administrator and Registrar-General in her wisdom, held the view that both Bardee Ploe Wesley and John Tieh Williams were the persons entitled to share in the estate of Sylvanus Toe Wesley. That that decision taken by the Administrator and Registrar-General has not been set aside by a Court of Law, and therefore stands. That, in the premises, the property at 15 Lewis Street, Freetown was as of 5 March,1982 jointly owned by Bardee Ploe Wesley (also known as Bardee Ploe) and John Tieh Williams as Tenants-in-Common. That the Plaintiff being the grand-daughter of Bardee Ploe Wesley, as stated in Bardee Ploe Wesley's Will dated 13 November,2003, and being the only closest surviving relative of the said Bardee Ploe Wesley known to the Court, is entitled to a share in the property at 15 Lewis Street, Freetown. That likewise, the Defendant being the daughter and the only closest surviving relative known to the Court, of the other part owner John Tieh Williams, is entitled by virtue of these facts, to a share in the said property. And that no other person is known to be entitled to share in the estate of both Bardee Ploe Wesley

and John Tieh Williams, or, has a greater right to the estate of both deceased persons other than the Plaintiff and Defendant. I do not find the claim proven, that Defendant had received rents exceeding Le5million for the period of 6 years prior to 2009. No rents or notional rents will be deducted from the proceeds of sale of the property which I shall proceed to Order, below.

11. In the premises, both Plaintiff and Defendant are entitled to equal shares in the said property. And as both parties have prayed for a sale in the event that this Court does not Order a Partition of the property, I shall Order a sale of the same, as I do not believe, on examining the Valuation Report filed by the Plaintiff that it would be practicable or sensible to Order a Partition of the property. According to the Valuer, the house is made of CI sheets and stands on just 1 town lot of land. It is said to be falling apart. The Valuer in late 2009 appraised its value at Le90million. More than two and a half years have elapsed since that valuation was done, and this Court has to take into consideration the effect of inflation, as against the continued deterioration of the property. If it was falling apart in late 2009, the likelihood is that it might be in a worse situation now. Hopefully, it may not have fallen apart altogether. I shall therefore fix a reserved price, taking these matters into consideration. I shall also limit the time within which the sale should be conducted because of the time which has elapsed since 2009. I therefore give Judgment in the following terms:

- i. This Honourable Court Declares that both the Plaintiff LANA NYNNOH GEROGE and the Defendant REBECCA WILLIAMS are jointly entitled as Tenants-in-Common to the property situate at and known as 15 Lewis Street, Freetown.
- ii. That as both parties cannot agree to a joint occupation of the premises, and bearing in mind that a Partition of the same is not feasible for the reasons I have stated in paragraph 11 supra, this Honourable Court ORDERS that the property situate at and known as 15 Lewis Street be sold pursuant to the provisions of Order 37 Rule 2(2) in the following manner:
 - (a) The property shall be sold by Contract Conditional upon the approval of the Court, at a reserved price of Le95million.
 - (b) The sale shall be conducted jointly by the Solicitors for the Plaintiff and Defendant respectively. The result of the sale shall be certified in Court by both Solicitors jointly.

- (c) The gross purchase price shall be paid into Court.
- (d) Solicitors on either side shall submit for the Court's approval, their respective Bills of Costs within 3 days of the sale of the property.
- (e) Plaintiff's Solicitor shall submit for approval of the Court, the Valuer's fees within 3 days of the sale of the property. This shall be done by way of affidavit filed in Court.
- (f) After the full purchase price has been paid into Court, and the same certified by the Solicitors as directed above, the Court shall hold a hearing in chambers for the purpose of making payments out of the same to: (i) both Plaintiff and Defendant; (ii) both Solicitors; (iii) the Valuer; (iv) and for any incidentals which may have arisen out of the sale or out of this Order.
- (g) The sale shall be conducted and concluded within 14 days of today's date, subject to the right of either party to apply for an extension of the time.
- (h) The Master and Registrar shall execute a Deed of Conveyance in favour of the successful purchaser, and the purchaser shall be responsible for the payment of stamp duty and any other fees payable by virtue of the transaction.
- (i) Liberty to Apply.



THE HONOURABLE MR JUSTICE NCBROWNE-MARKE, JUSTICE OF APPEAL