

MISC APP 85/11

2011

A No. 9

IN THE HIGH COURT OF SIERRA LEONE  
FAMILY AND PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF DR SIAKA PROBYN STEVENS  
(DECEASED)

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT, CAP 45 OF  
THE LAWS OF SIERRA LEONE, 1960

BETWEEN:

THE ALBERT ACADEMY SCHOOL

- PLAINTIFF

(Suing by its Chairman The Bishop of the United  
Methodist Church, Sierra Leone)

AND

DR JENGO STEVENS (As Executor & Trustee of  
the Will of Dr S P Stevens, deceased)

- DEFENDANTS

MANIKA CONTEH (As Executor & Trustee of  
the Will of DR S P Stevens, deceased)

THE ADMINISTRATOR AND REGISTRAR-GENERAL

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

JUDGMENT DELIVERED THE 3<sup>rd</sup> DAY OF APRIL, 2012.

INTRODUCTION

1. The Plaintiff, the Albert Academy, brings this action through its Chairman of the Board of Governors, His Lordship the Bishop of the United Methodist Church, Sierra Leone. The action is brought by way of Originating Summons dated 1 April, 2011. The Plaintiff seeks several reliefs, the chief of which are: A Declaration that the Plaintiff is the entity or person in law entitled as of right to all that property situate at and known as 1 Kingharman Road, Freetown, formerly known as "Presidential Lodge"; a Declaration that it is entitled to take possession, control and management of the property; an Injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from dealing with the property in way whatsoever; and Damages against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for wrongful user, and

conversion of the said property. Lastly, that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants bear the Costs of the action.

2. During the course of the hearing, it was confirmed that 2<sup>nd</sup> Defendant was deceased. Plaintiff's Solicitors therefore filed a Notice of Discontinuance of the Action against deceased 2<sup>nd</sup> Defendant, on 6 May, 2011. Since the proceedings were instituted by way of Originating Summons, the trial of the action was conducted on affidavit evidence; no oral evidence was taken by the Court. Further, one of the beneficiaries of the deceased's estate, James Stevens, entered appearance through A K A Barber, esq, and filed affidavits in opposition to the reliefs sought by the Plaintiff.

#### PLAINTIFF'S AFFIDAVIT

3. The Plaintiff has filed an affidavit deposed and sworn to by Daniel Koroma esq, Associate in the firm of Plaintiff's Solicitors, on 1 April, 2011. This affidavit constitutes the evidence relied on by the Plaintiff in support of the reliefs claimed in the Originating Summons. Exhibited to this affidavit, are the following documents:
  - DBK1 is a copy of the Will dated 3 November, 1984
  - DBK2 is a copy of the death certificate of the deceased testate
  - DBK3 is a copy of a letter dated 23 March, 2011 from Plaintiff's Solicitors to the Registrar of Births and deaths
  - DBK4 is a copy of Notice of the Resealing of Grant in respect of the Deceased's testate's estate issued by the Family Division of the UK High Court and the Grant of Probate by the High Court of Sierra Leone, dated 21 June, 1989
  - DBK5 is a copy of the Declaration of estate sworn to by both 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 21 June, 1989.
  - DBK6 is a copy of Auctioneer Ralph Beserve's Valuation Certificate dated 14 Nvember, 1988.
  - DBK7A-2 are pictures showing the state of the property at the time they were taken
  - DBK8 is a copy of a letter dated 31 December, 2007 from James Stevens to the Chairman Board of Governors of the Plaintiff School
  - DBK9 is a copy of a letter dated 9 June, 2010 from Plaintiff's Solicitors to 1<sup>st</sup> Defendant

DBK10 is a copy of a letter dated 1 July,2010 from Plaintiff's Solicitors, to 3<sup>rd</sup> Defendant with a copy of a letter dated 9 June,2010 attached.

4. In his affidavit, Mr Koroma deposes that the property at 1 Kingharman Road was devised to the Plaintiff school by the Testator by clause 5 of his Will; that Probate was taken by both 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 21 June,1989; that in the Declaration of Estate accompanying the Grant, No 1 Kingharman Road was not included, a tacit admission, according to Mr Koroma, that the property did not form part of the estate. Here, I disagree with the conclusion reached by Mr Koroma. All property forming part of the estate of a deceased testator must be called in and declared and must form part of the Grant of Probate before the same is vested in the named beneficiary or beneficiaries, if necessary. Mr Koroma deposes further that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have been treating the property as theirs; and that a brother to 1<sup>st</sup> Defendant, James Stevens even wrote to the School's Board's Governor, asking that the property be given to the Stevens family, contrary to the express wishes of the Testator.

#### MR BARBER'S INTERVENTION ON BEHALF OF MR JAMES STEVENS

5. On 12 April,2011 (the date of filing) Mr A K A Barber entered appearance for James Stevens, a beneficiary of the estate, and in Mr Barber's words, a concerned party. On 21 April,2011 (the date of filing) Mr Manly-Spain entered appearance for 1<sup>st</sup> Defendant.
6. On 2 May,2011 Mr Barber filed an affidavit deposed and sworn to by James Stevens on 19 April,2011. In it, Mr Stevens deposed that Mrs Rebecca Stevens, the life tenant of the property, died on 9 October,1990. A copy of her death certificate is exhibited as JS1. Remarkably, according to Mr Koroma, his firm was unable to get such a copy. Mr Stevens deposed further, that to the best of his information, knowledge and belief, the Defendants had not neglected their duties, but rather, the Plaintiff school had refused to meet the expenses involved in administration.
7. On 6 May,2011 as I have stated above, the Plaintiff discontinued the action against the deceased 2<sup>nd</sup> Defendant.

#### COMMENCEMENT OF HEARING

8. For some time, no affidavit in opposition was filed on behalf of 1<sup>st</sup> Defendant. Hearing commenced on 19 May, 2011 on which date, Mr Macauley moved the Court for the reliefs sought in the Originating Summons. I adjourned the hearing for Mr Manly-Spain to Reply. When he did not appear on the adjourned date, 2 June, 2011, Judgment was reserved but not delivered as the Court sitting term was approaching its end.

#### RE-OPENING OF CASE FOR 1<sup>ST</sup> DEFENDANT

9. On 3 October, 2011 Mr Manly-Spain applied for the hearing to be re-opened since Judgment had not yet been delivered. In the exercise of the Court's discretion, I allowed Mr Manly-Spain to reopen the case for 1<sup>st</sup> Defendant.

#### 1<sup>ST</sup> DEFENDANT'S AFFIDAVIT

10. On 12 October, 2011 1<sup>st</sup> Defendant filed an affidavit deposed and sworn to by him on 11 October, 2011. In his affidavit, 1<sup>st</sup> defendant confirmed that Mrs Rebecca Stevens died on 9 October, 1990. He agreed that the property at 1 Kingharman Road was not included in the Grant of Probate obtained by him. He deposed that after the death of his mother Mrs Stevens, the Plaintiff did not take steps to claim the property despite several requests made by the then Solicitor to the estate. Correspondence to this effect are exhibited as "JS1 (1-5)". JS1(1) is a copy of a letter dated 31 October, 1990 from the late M O Mackay esq to D B Quee, esq in his capacity as Vice-Chancellor, Board of Trustees, UMC Conference. By this time, Probate had been granted. But Mr Mackay was here saying: "*Briefly, the relevant law provides that in the absence of contrary directions or intention in the will, estate duty payable in respect of property which does not pass to the Personal representatives, must ultimately be borne by the persons beneficially entitled to such property. The Executors of the estate are nearing the end of distribution of the estate. They have not yet paid the 10% estate duty on either of the two properties.....*" Mr Mackay was here admitting that Probate had not been obtained in respect of the property devised to the school, because of issues relating to payment of estate duty. His view that it was incumbent on the school to pay the portion of estate duty attributable to the

property at 1 Kingharman Road, is reiterated in his letter of 30 November, 1990 addressed to the late F M Carew esq - exhibit JS1(2). He also notified Mr Carew of the passing away of Mrs Stevens, the life tenant, and of the fact that the property could now be vested in the school. That letter was copied to the Principal of the School.

11. JS1(3) is a copy of a letter written by Mr Carew to Mr Mackay dated 21 January, 1992. It speaks of litigation being instituted by Mr James Stevens, challenging the validity of the Will. It notifies Mr Mackay of acts of vandalism against the property carried out, or caused by Mr James Stevens. Mr Mackay's reply, JS1(4) is dated 18 February, 1992. As regards the property devised, Mr Mackay informed Mr Carew that he had briefed Mr J B Jenkins-Johnston to file a defence and counterclaim to the claim brought by James Stevens, and to claim the sum of Le30,000 as mesne profits, which sum, if awarded by the Court should go to the school. JS1(5) is the last of the letters. It was written by Mr Mackay to the Resident Bishop, UMC Conference and is dated 21 February, 1997. It states, inter alia, that: "*...I am pleased to inform you that the state of the property No 1 Kingharman Road is as follows: (a) I have now prepared the additional Probate papers to take out the additional grant. (b) The property has been valued at Le80million. (c) On the 9<sup>th</sup> of February, 1991 Mr L V McEwen had surveyed the land and although up to the time of his death his bill was not paid, the survey plan could still be used. As you are aware, certain fees will have to be met by you, to wit..... I will merge both my fees for the Probate and preparing the Vesting Deed - 10% Le8million - total Le18,438,426.*"

12. Also exhibited as JS2 is a copy of the writ of summons issued by Mr Manly-Spain at the instance of James Stevens against 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 19 February, 1991. The writ asked for a pronouncement to be made against the validity of the Will, and that the Probate granted to the Defendants, be nullified. JS3 is a copy of the Citation to bring in the Will, dated 25 January, 1991. JS4 is a copy of a Declaration and of a Valuation Certificate prepared and signed by M D Carew esq. The Declaration is dated 1 February, 1991 and the certificate is dated 28 January, 1991. The value is given as Le10million. JS5 is a copy of Mr McEwen's bill dated 19 March, 1991 for professional services.

13. On 17 October, 2011 there was another hearing. Mr Macauley indicated to the Court that he did not wish to file an affidavit in Reply to that filed by 1<sup>st</sup> Defendant. Mr Manly-Spain was late to coming to Court, and on his arrival he stated that he wished to address the Court in addition to the affidavit filed on behalf of 1<sup>st</sup> Defendant. On the next day, 18 October, 2011 Mr Manly-Spain addressed the Court. His address is to be found on pages 5-7 of my minutes.

#### MR MANLY-SPAIN'S SUBMISSIONS

##### PROPER PLAINTIFF

14. Mr Manly-Spain's first point was that the Albert Academy School does not exist. There is an Albert Academy, though. I disagree with Mr Manly-Spain in this respect. The Albert Academy School is the beneficiary named in the Will of the Testator. That the tag, school, has been added on to the name Albert Academy does not affect the identity of the beneficiary or the claimant in the action. Certainly, it does not lie in the mouth of an Executor and Trustee to set aside the express wishes of the Testator. The correspondence exhibited by 1<sup>st</sup> Defendant as JS1 (1-5) is sufficient proof that the Plaintiff in this action, is the entity or institution entitled to the property at 1 Kingharman Road.

##### CAPACITY TO SUE

15. On the second point, about the capacity of the Chairman of the Board of Governors to bring suit, the short answer is that the Plaintiff is the school itself. The Chairman of the Board of Governors appears in a representative capacity. The land on which the school is built was vested in the Foreign Missionary Society of the United Brethren in Christ, the precursor of the United Methodist Church, by the United Brethren in Christ Act, Chapter 282 of the Laws of Sierra Leone, 1960. The Act conferred on the Mission the right to own and to alienate the lands described in the schedule. The land on which the Albert Academy stands is one of those lands. The Education Act, 2004 provides for a Board of Governors in all Government and Government Assisted Schools, i.e. schools other than primary or private schools of which the Albert Academy is one. Section 32(2) states that "Every Board of Governors

*established under subsection (1) in respect of any school shall be responsible for the management of that school in accordance with rules prescribed by the Minister under this Act. S.32(3) states that "Every Board of Governors shall be a body corporate with perpetual succession and a common seal." The Board is the Supreme Governing Body of the School, and its Chairman, in the case of the Plaintiff, is the Bishop for the time being of the United Methodist Church. The action could have been brought in the name of the Chairman of the Board of Governors; but the law permits a beneficiary to bring an action against an Executor in cases of this nature, where all that the beneficiary seeks to do is get the Executor to carry out his duty under the Will.*

#### DECLARATION UNNECESSARY

16. The next point canvassed by Mr Manly-Spain, is that the first Relief sought by the Plaintiff is unnecessary. I agree with Mr Manly-Spain in this respect. This Court cannot Declare, nor can it constitute a person or an entity a beneficiary of a Will. The Will itself does that. What this Court can do, is to enforce the right of the beneficiary.

#### VESTING OF PROPERTY AND TAKING POSSESSION OF SAME

17. Mr Manly-Spain's further argument was that the plaintiff could not take possession of the property until the property was vested in it. The Executors were the persons presently in charge of the property. My reading of the case of *GOODING v ALLEN [1937-49] ALR SL 328 HC.* tells me that the property devised vests automatically in the beneficiary named in the will, and not in the Personal Representative. At page 335 of his Judgment in that case, BEOKU-BETTS, Ag J, had this to say: "*By the Land Transfer Act, 1897 when real estate vested in the personal representatives instead of the devisees as hitherto, it was expressly provided that the executor must assent to the devise to transfer title to the devisee. The Land Transfer Act, 1897 is not in force in the Colony, as it is subsequent to 1880 .....and therefore the requirement of the executor's assent is not operative in this Colony. The land devised by a testator vests immediately in a devisee, subject to the provisions of S.3 of the Execution against Real property Ordinance.....*" It follows, that immediately after Mrs Stevens died, the Plaintiff, as the devisee named

in the Will, became the fee simple owner of the property at 1 Kingharman Road. It was also the entity entitled to possession of the same.

#### DUTIES OF EXECUTORS

18. An Executor and Trustee cannot benefit from Trust property save where there has been a direct devise or bequest made to that Executor and Trustee. An Executor cannot likewise defeat an express devise in a will, nor can he set up a claim on behalf of a person not named in the will, against a named devisee or beneficiary. I have noted the contents of Sections 4, 5(3), and 16 of the Limitation Act, 1961 relied on by Mr Manly-Spain. Section 4 does not apply to these proceedings, as it deals with chattels. We are here dealing with real property. Section 5(3) cannot apply to the Defendant, because he is not himself claiming a right to the property based on adverse possession. He cannot in any event do that, as his duty as an Executor is to carry out the express wishes of the Testator. He cannot deprive a devisee of its property by the simple ruse of claiming that the devisee has been guilty of laches. Nor does the Doctrine of Lapse - see **WILLIAMS ON WILLS** 2<sup>ND</sup> Edition at pages 242 - 244- apply to the facts of this case: The devisee has survived the Testator. Nor has the devise failed for any other reason. The Executors are not entitled to possession of the property as argued by Mr Manly-Spain. Their duty was to protect the estate. As the WILLIAMS puts it at page 121 of his monograph, "*An Executor is the person appointed by the Will to administer the property of the testator and to carry into effect the provisions of the Will.*" The Plaintiff claims that instead of doing this, the Executors sat by while depredations were committed on, and against the property. This is unacceptable to this Court. Further, as WILLIAMS puts it at page 127 of his monograph: "*A Grant of Probate or Letters of Administration as long as it remains unrevoked is conclusive evidence of the Will and its validity....*" The Will is valid; it is therefore the duty of the surviving Executor to carry out its intention.
19. I agree however with 1<sup>st</sup> Defendant that he had not himself, or together with the deceased 2<sup>nd</sup> Defendant tried to hold on to the property indefinitely. The letters exhibited to his affidavit show that he was willing to let go of the property, provided the Plaintiff paid Administration and legal expenses. The 1<sup>st</sup> Defendant's argument is that

he has had to remain in charge of the property because of Plaintiff's failure to pay the fees and charges demanded by Mr Mackay. In this respect, I differ from Mr Mackay. My view is that payment for taking out Probate should have come from the estate, and not from the Beneficiary named in the Will. And as I have stated above, a Vesting Assent was not really necessary. The professional charges amounting to Le8million in 1997 may have appeared to be exorbitant to the Plaintiff school in 1997.

#### MR BARBER'S 2<sup>ND</sup> INTERVENTION

20. After I had reserved Ruling in this matter on 18 October, 2011 Mr Barber filed another Motion dated 25 October, 2011 asking that Mr James Stevens be joined as a Defendant. In support of that Application, is the affidavit of Mr James Stevens himself, deposed and sworn to the same day. In his affidavit, Mr Stevens deposes that he has been living on the property and that any Order made in respect of Plaintiff's claim, will affect him. That is true. But because of the decision I have arrived at in the main action, his Application dated 25 October, 2011 is dismissed with Costs, such Costs to be taxed, if not agreed. Mr James Stevens is not a devisee of the property. He can only continue to live there with the express permission of the Plaintiff, the devisee named in his late Father's Will.

#### FINDINGS

21. I now return to the main action. As I have stated above, it is unnecessary for this Court to grant the Reliefs claimed in paragraphs 1 and 2 of the Originating Summons. Clause 5 of the Will is clear enough. The Plaintiff is the entity to which the property at 1 Kingharman Road was devised. It is thus the owner of that property. It became entitled to the fee simple estate in that property on the demise of the life tenant, Mrs Rebecca Stevens on 9 October, 1990. What it requires additionally, is that an additional Grant of Probate be obtained by the sole surviving Executor to perfect the devise. I THEREFORE ORDER That the 1<sup>ST</sup> Defendant Dr Jengo Stevens do obtain an additional Grant of Probate in respect of the estate of the late Dr Siaka Probyn Stevens, deceased testate, expressly declaring the property situate at 1 Kingharman Road, Freetown as forming part of that estate.

22. The cost of the exercise seems to have been the main stumbling block in the past. In this respect, and in order to limit the financial obligations of the 1<sup>st</sup> Defendant in view of the fact that the estate had been administered, according to Mr Mackay, many years ago, the cost of obtaining the additional Grant shall be borne by the Plaintiff. Plaintiff's Solicitors shall therefore prepare the Additional Grant and shall request 1<sup>st</sup> Defendant, on completion of the same, to attend before the Master and Registrar, for the purpose of executing the same.
23. The Plaintiff is entitled to possession of the property.
24. I have no evidence before me that 1<sup>st</sup> Defendant has been responsible, either by himself, or by his servants and agents, for the current wrongful user of the premises. The evidence available to this Court shows that Mr James Stevens is perhaps the person responsible for this. I cannot therefore grant an Injunction against the 1<sup>st</sup> defendant in the terms requested by the Plaintiff. But an Injunction in the terms stated in paragraph 4 of the Originating Summons is granted against Mr James Stevens and his servants and/or agents.
25. As to the 5<sup>th</sup> relief claimed by the Plaintiff, an award of Damages for unlawful use and conversion of property, I am afraid, this is a relief this Court cannot grant. Damages for Conversion is a remedy available in respect of chattels. Plaintiff has indeed exhibited pictures showing the dilapidated state of the property, but as no action was instituted all these years until last year, it has nobody to blame but itself.
26. As to the Costs of the action, I have to bear in mind that the 1<sup>st</sup> Defendant has been sued in his capacity as Executor of his late father's Will. He cannot therefore be made to bear the Costs of this action in his personal capacity. Likewise, the 3<sup>rd</sup> Defendant was not directly connected with this litigation. But as she has not filed any papers, and has not appeared by Counsel, no Costs Order will be made for, or against her. The Plaintiff shall have the Costs of the action, such Costs to be borne by the estate.



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