

IN THE HIGH COURT OF SIERRA LEONE**BETWEEN****OWEN ATERE-ROBERTS**

PLAINTIFF**AND****IRENE MOMOH**

DEFENDANT

Friday 10th
November 2006

Before Mrs Justice A Showers J

Case called
Dr. W.S. Marcus Jones Esq. for plaintiff

JUDGEMENT

The plaintiff in this matter is by a Writ of Summons dated 29th June 2005 claiming against the defendant a declaration that he is the fee simple owner of land and premises situate lying and being at 4 Dougan Street Freetown and for possession of same from the defendant. The plaintiff at a later stage of the proceedings applied to amend the claim against the defendant to include a revocation of the Deed of Gift dated 31st January 1996 expressed to be made between the plaintiff as donor and the defendant as Donee and registered as No. 25 96 in volume 86 at page 79 of the Books of Voluntary Conveyances in the office of the Registrar General. The necessary leave was granted for the relief to be added.

In the particulars of claim, the plaintiff states that he is the owner in fee simple of the land and premises situate at 4 Dougan Street Freetown and that the property was devised to him by clause 5 of the last Will and Testament of his father, Marcus Sigismond Roberts dated 4th October 1973 and that he got possession of the same thereby. He further alleges that the defendant was and has always been a tenant in respect of the said premises. When he fell ill in 1997 and was admitted in hospital he states that the defendant stopped paying rent to him and now claims that the property is hers as she alleges he made a Deed of Gift of the said property in her favour.

The plaintiff in his evidence reiterated these assertions and explained that it was after he became seriously ill and was hospitalised that the defendant stopped paying rent. He said that he had cause to institute proceedings against her in the Magistrates Court for arrears of rent in 1996. At the trial of that matter she alleged that he had given the house to her. He stressed that

he had not given the house to her by Deed of Gift as she alleged or otherwise. The said Deed of Gift was tendered in evidence as Exhibit A. He further testified that after his illness his health deteriorated and he was sometimes delirious. He denied ever giving instructions to a solicitor to prepare a Deed of Gift of the said premises in favour of the defendant. He also denied ever knowing a solicitor by the name of Samuel Cole and that he had not given the said solicitor instructions to prepare a Deed of Gift. He testified that when he discovered the existence of the said Deed of Gift, he went to consult a solicitor Mr Tejan Cole but did not proceed with the matter as he could not pay the fees he charged. He stated that he also spoke to another lawyer, the late Mr Claude Campbell with whom he was friendly and Mr. Campbell told him he would take steps to secure a revocation of the said Deed. He then introduced him to another solicitor who was in chambers with him called Mr Sesay but they never proceeded with the Deed of revocation.

The plaintiff in his evidence admitted that the defendant used to provide him with food and that she had access to his house when he was ill but denied that the Deed of Gift was made for the services she had rendered him. He stated that he had 5 children with whom he had good relationship. He denied that he ever signed the said Deed of Gift and stressed that the said Deed of Gift was not his act as the signature on the document was not his own. He tendered in evidence a specimen of his signature.

He therefore prayed that the court grants the reliefs claimed in the said Writ of Summons.

I have listened carefully to the evidence given by the plaintiff. The defendant in this matter filed a notice of appearance and a defence but failed to turn up at the hearing. Her Counsel has also not turned up although notices of hearing were served on him. In the circumstance not having heard any evidence to the contrary, I believe the evidence of the plaintiff. It is my view that he has proved his case on a balance of probabilities and judgment is hereby given in his favour. I therefore declare that the plaintiff is the fee simple owner of the land and premises situate lying and being at 4 Dougan Street Freetown. He is therefore entitled to possession of the property from the defendant. I also order the revocation of the Deed of Gift expressed to be made between the plaintiff as Donor and the defendant as Donee and registered as No. 25/96 in Volume 86 at Page 79 of the Books of Voluntary Conveyances in the office of the Registrar General Freetown. The defendant shall pay the costs of the action assessed at Le2 million (Le2,000,000).

A. Showers
A. Showers J
10/4/06