

## IN THE HIGH COURT OF SIERRA LEONE

## (LAND AND PROPERTY DIVISION)

IN THE MATTER OF THE ESTATE OF MUSA KAMARA  
(DECEASED)(INTESTATE)

IN THE MATTER OF THE PARTITION ACT, 1868

BETWEEN:

HAWA KAMARA & OTHERS - APPLICANTS

And

SHEKU KAMARA & OTHERS - RESPONDENTS

D G THOMPSON ESQ for the Applicants

Respondents were unrepresented

JUDGMENT

1. By an Originating Summons dated 24 September, 2009 the Applicants applied to this Court "for an Order that the properties known as No.1 Second Street, Freetown, and No.14 Doherty Street, Off Mountain Cut, Freetown... be partitioned, or, in the alternative, if partitioning is not practicable, then for an Order that the properties be sold by private treaty or public auction, and the net proceeds of sale be distributed amount (should be "to") the beneficiaries thereof; and also for an Order that the Master and Registrar of the High Court of Sierra Leone do execute the conveyances to the respective purchasers; and for a further Order that the elder brothers render a just and true account of all the rents collected in respect of No. 1 Second Street, Freetown since the 1<sup>st</sup> day of January, 1998; and the Costs of and incidental to this Application be borne by the estate."
2. The Application is supported by the affidavit of MUSA KAMARA, the 3<sup>rd</sup> Applicant, deposed and sworn to on 24 September, 2009, notwithstanding the statement on the face of the Summons that it is supported by the affidavit of "the elder brothers".
3. In that affidavit, MUSA KAMARA deposes that he makes it on his own behalf, and on behalf of the other Applicants, all of whom are

beneficiaries of the estate of Musa Kamara, deceased. The properties situate at, and known as 1 Second Street, and 14 Doherty Street, respectively were owned by their deceased father who died intestate in Freetown on 21 June, 1992. A copy of his death certificate is exhibited as "A". He was survived by 4 wives, AMINATA FORNAH, who had 4 children; AMINATA KARGBO who had 8 children; HAWA SESAY who had 6 children; and YAYEI GASSAMA who had 2 children. There were quarrels among the various siblings as to how rents and profits accruing from both properties should be allocated or distributed; some siblings got something; others got nothing. This led to the properties falling into disrepair. The services of a Solicitor A R MANSARAY esq. of 65 Siaka Stevens Street, Freetown was sought; but his assistance was not approved of by some siblings, as they continued collecting rent on their own steam. Thus, this Application was brought to settle the matter once and for all time.

4. An affidavit of service sworn to on 12 October, 2009 by a Bailiff, Jonathan Nicol, deposed to service of the process on MUSA KAMARA on Friday 9 October, 2009.
5. On 13 October, 2009 the matter came up before me for the second time. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants were present. None of the Respondents were present. Mr Thompson, Counsel for the Applicants informed the Court that he had only then served four of the Respondents, and needed another two weeks to serve the others. On the adjourned date, 27 October, 2009, Mr Thompson informed the Court that he was still awaiting the report of the Quantity Surveyor in respect of both properties. The case was therefore adjourned to 10 November, 2009.
6. On 5 November, 2009 MUSA KAMARA deposed and swore to another affidavit on behalf of all the Applicants. Exhibited to that affidavit are: "A" a copy of the valuation report and certificate fixing the value of the Second Street property at Le80million; and "B", a copy of the valuation report and certificate in respect of the Doherty Street property, fixing its value at Le150million. The Second Street property has been renumbered 3, by the City Council; and the Doherty Street property has been re-numbered 13 by the same Council. In addition, MR MUSA deposed that they, the Applicants were asking to be given the Second Street property, which is less developed than the other, as their mother and stepmother have promised to build a house there, if the property is given to them by the Court. They are therefore prepared to forgo their rights in respect of the Doherty Street property which is of considerably



higher value, and to concur in the transfer of their beneficial interest in it, to the Respondents.

7. The Applicants filed an Application dated 9 November, 2009 for Orders under Order 10 Rule 5(1)(b) of the High Court Rules, 2007. At the hearing of this Application, I pointed out to Mr Thompson that it was not appropriate for these proceedings, and it was consequently abandoned by him.
8. The Applicants filed yet another Notice of Motion dated 12 November, 2009 asking this Court for an Order Appointing the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Respondents respectively, as representatives of all the Respondents named in these proceedings, as they have an identical interest in the proceedings, pursuant to Order 18 Rule 13(1) and (2) of the High Court Rules, 2007. The Application was supported by the affidavit of Mr Thompson himself, deposed and sworn to the same day. To that affidavit is exhibited as "A" and "B", affidavits of service of the Originating Summons dated 24 September, 2009 on the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Respondents. He deposed that it was impracticable to serve all of the Respondents. On 13 November, 2009 I granted the Application and Ordered that pursuant to the above-stated Rules, 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Respondents be appointed to represent the interests of the other Respondents, and I granted Liberty to Apply.
9. On 18 December, 2009 the Applicants applied to this Court by way of Notice of ex parte Motion dated 16 December, 2009 for a date of trial of the Cause herein to be fixed. The Application was supported by the affidavit of Mr Thompson. Exhibited to that affidavit were "DGT1" a copy of the Order of the Court dated 13 November, 2009; and "DGT2 1-3" copies of the affidavit of service of that Order on the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Respondents respectively. He deposed in paragraph 5 of that affidavit that the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 13<sup>th</sup> Respondents went to see him in his chambers, and told him to stop bothering them with Court papers. He advised them to consult a Solicitor, and he was informed by them that a brother who is presently in Canada, had contacted a Solicitor, Mr Charm. Mr Charm came to see me later in Chambers, and confirmed that persons connected with the properties had spoken to him; and that he would try to instruct a Solicitor to enter appearance on their behalf. On hearing Mr Thompson in support of his Application, I fixed the hearing for 5 January, 2010.
10. At the hearing on 5 January, 2010 Mr Thompson made his Application formally. He referred to all of the documents which I have referred to

above. At the end, I adjourned so that he could notify the Respondents that judgment had been fixed for 20 January, 2010. Judgment was not delivered on that day, because I was hoping the Defendants might show up, and say something about their position in this matter of a sale or partition of properties in which they, and the Applicants were beneficially interested. As they have not done so, and I am duty bound to decide the matter, I have today decided to give judgment.

11. In arriving at my final decision, I have had cause to rely heavily on the integrity and good faith of Mr Thompson, and on the contents of all the affidavits filed on behalf of the Applicants, particularly that deposed and sworn to by the 4th Applicant on 5 November, 2009.

12. The Applicants shall have Judgment in the following terms:

- (1) This Honourable Court Orders that MUSA KAMARA apply, as soon as practicably possible, to the High Court of Sierra Leone for a grant of Letters of Administration to administer the estate of his father MUSA KAMARA who died intestate in Freetown on 21 June, 1992.
- (2) This Honourable Court Orders, that on a Grant of Letters of Administration being made, MUSA KAMARA shall ASSENT TO THE VESTING of the legal estate and beneficial interest in 3 (formerly 1) Second Street, Freetown in the Applicants as Tenants-in-Common; and that the said MUSA KAMARA shall also ASSENT TO THE VESTING of the legal estate and beneficial interest in 13 (formerly 14) Doherty Street, Off Mountain Cut, Freetown in the Respondents as Tenants-in-Common.
- (3) Those responsible for collecting rents from tenants occupying both properties since the demise of the deceased intestate on 21 June, 1992 shall render an account to this Honourable Court, of all such rent collected and of all outgoings in respect of the said properties. Such account or accounts shall be submitted within 3 calendar months of the date of this Order, subject any extension this Court may allow.
- (4) On an account or accounts being rendered as Ordered, this Court shall fix a date for a hearing to settle the accounts, and to make any distribution which may be necessary or may be required by the parties. Similarly, the Court may Order those owing monies to the estate, to make good their obligations.



- (5) The Costs of these proceedings shall be borne by the estate, and for that purpose, all Bills of Costs, and all other Bills, shall be submitted to this Court for Approval before any payment is made.
- (6) There shall be Liberty to Apply.



N C BROWNE-MARKE

Justice of Appeal

23 March, 2010.