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MISC. APP 12/10 2010 C. NO.3

IN THE HIGH COURT OF SIERRA LEONE  
(LAND AND PROPERTY DIVISION)

BETWEEN: -

DR. NATHALIE KOTO ELEADY-COLE -1<sup>ST</sup> PLAINTIFF  
ROSE NINI CHAMPION & DR. NATHALIE  
KOTO ELEADY-COLE (as Administratrix of the -2<sup>nd</sup> PLAINTIFF  
Estate of ROSETTA HARRIS)

AND

ROSE MARIE MARKE -1<sup>ST</sup> DEFENDANT  
ROSE MARIE MARKE (as Administratrix of the  
Estate of JEANNE ROSEMARIE MARKE) -2<sup>ND</sup> DEFENDANT  
NATHANIEL MARKE -3<sup>RD</sup> DEFENDANT  
MARIETTA MARKE-QUINN -4<sup>TH</sup> DEFENDANT  
FERNARD MARKE -5<sup>TH</sup> DEFENDANT  
SAMUEL MARKE -6<sup>TH</sup> DEFENDANT  
MOIRA MURRAY -7<sup>TH</sup> DEFENDANT

Y. H. Williams Esq. for the Plaintiffs  
Dr. W. S. Marcus-Jones for the 1<sup>st</sup> Defendant  
Dr. B. Jabbie for the 2nd Defendant  
C. F. Margai Esq. for the 3<sup>rd</sup> – 7<sup>th</sup> Defendants

JUDGMENT DELIVERED THE 22<sup>nd</sup> DAY OF February 2012

This action which commenced by Originating Summons dated 12<sup>th</sup> January, 2010 has been remitted to the High Court for continuation of the trial or hearing. This is the decision of the Court of Appeal dated 10<sup>th</sup> July 2012 allowing the appeal against the Judgment of this court dated 7<sup>th</sup> October 2010.

The facts of the case are briefly as follows:

The property in issue situate at 19 Howe Street Freetown belongs to the estate of **NATHANIEL JOHN HARRIS** (Deceased) Intestate. The said **NATHANIEL JOHN HARRIS** was married twice, first to **MRS. ROSEMARIE HARRIS** and they had a daughter **MRS. JEANNE ROSEMARIE MARKE** (nee Harris) the mother of the Defendants. **NATHANIEL JOHN HARRIS'** second wife was **MRS. ROSETTA HARRIS**, the mother of the Plaintiffs, **DR. NATHALIE ELEADY COLE** and **MRS. ROSE NINI CHAMPION**.

On the death of **NATHANIEL JOHN HARRIS** in March 1934, his widow then **MRS. ROSETTA HARRIS** obtained a grant of Letters of Administration in respect of his estate in May 1934. She thus became entitled to one-third of his estate as the deceased's widow. His three children, namely, **MRS. JEANNE ROSEMARIE MARKE**, **MRS. ROSE NINI CHAMPION** and **DR. NATHALIE ELEADY COLE** were then entitled to the remaining two thirds of the said estate.

On the death of **MRS. JEANNE ROSEMARIE MARKE**, her children the Defendants herein became entitled to her one-third share in the remaining two thirds share of the said deceased estate. The Plaintiffs also were entitled to their mother's one-third share.

The Plaintiffs however agreed that though the Defendants are only entitled to 22.7% of the said estate which is one-third of the remaining two-thirds, being their mother's share they are prepared to give them 40% thereof and they take the remaining 60%. The 3<sup>rd</sup> to 7<sup>th</sup> Defendants are agreeable to this proposal.

The 1<sup>st</sup> Defendant opposed the application and sought to challenge the Letters of Administration of their mother's estate granted to the Plaintiffs herein on 7<sup>th</sup> July 1984. She also questioned the paternity and legitimacy of **MRS. ROSE NINI CHAMPION** and challenged her claim as a beneficiary of the estate of **NATHANIEL JOHN HARRIS** (Deceased). As a result of these issues raised by the 1<sup>st</sup> Defendant, the Originating Summons was amended and **MRS. CHAMPION** was dropped as a party in her own right.

The 1<sup>st</sup> Defendant also contended that the application ought not to have been made by way of an originating summons as it was fraught with substantial disputes of fact. Judgment was given in favour of the 1<sup>st</sup> Defendant and the Originating Summons was struck out. The Plaintiffs then appealed to the Court of Appeal which upheld the appeal and the action remitted to the High Court for continuation of the trial. The Court of Appeal held that there were no substantial disputes of fact and that the only issues left for determination by the court were whether or not to grant the Order to sell the property and to decide the proportions in which the proceeds of sale were to be divided.



At the continuation of the trial, counsel for the Plaintiffs relied on an affidavit sworn to on 24<sup>th</sup> September 2012 by Bernard E. Jones, an Associate of the Plaintiff's firm of solicitors. He deposed, inter alia, that counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in addressing the Court of Appeal stated that the 1<sup>st</sup> Defendant was not opposed to the sale of the property but that she would like to purchase it as soon as she can raise enough money to do so. Counsel for the said 1<sup>st</sup> and 2<sup>nd</sup> Defendants in reply denied making such a representation and swore to an affidavit in opposition in that regard and deposing that the statement attributed to him is incorrect.

Counsel for the said 1<sup>st</sup> and 2<sup>nd</sup> Defendant in fact proceeded to oppose the application and an affidavit in opposition sworn to by the **ROSEMARIE MARKE** the said 1<sup>st</sup> Defendant on 10<sup>th</sup> October 2012 was filed on her behalf. In it she deposed that she is informed that the property in issue was given as a gift to her late grandmother, **MRS. ROSEMARIE HARRIS** by the late **NATHANIEL JOHN HARRIS** upon the birth of their daughter **JEANNE ROSEMARIE MARKE**, the 1<sup>st</sup> Defendant's mother. She further deposed that several family members during their lifetime attested to this gift by her grandfather to her grandmother including her mother's half brother and son of **NATHANIEL JOHN HARRIS, JACK MICHAEL HARRIS**.

The 1<sup>st</sup> Defendant went on to state that sometime in 2008 the said **JACK MICHAEL HARRIS** made a written statement witnessed before a Justice of the Peace attesting to his knowledge of the alleged gift and ownership of the said property. A copy of the said statement is exhibited as Exh. RM1.

She therefore opined that the Plaintiffs have no right, interest or title to the said property and therefore the application should be refused. She however concluded by stating that if the court should order the sale of the said property as prayed, that she be given the first option to purchase it and pay the other interested parties their respective shares. She indicated that her emotional and sentimental attachment to the property is very strong and that she would like to keep it in the family pursuant to her mother's wish.

The question therefore which arises from this new piece of evidence is whether real property can be transferred inter vivos by a method or procedure other than by Deed. Counsel for the 1<sup>st</sup> Defendant in seeking to justify the admissibility of the said evidence submitted that **JACK MICHAEL HARRIS**'s declaration is one made against his own interest and is therefore an exception to the rule against hearsay. He submitted that the statement serves no other purpose than to show in a truthful manner the said ownership of the property. He maintained that it is therefore relevant evidence. He stressed that the evidence from **JACK HARRIS** statement is that the property was handed over to **MRS. ROSETTA HARRIS**' sister-in-law and it was she who took care of it. He therefore submitted that the reason for this was because **MRS. ROSETTA HARRIS** had no right or interest in it, in which case the Plaintiffs too have no possible right or interest in the said property as the property, based on this evidence in the said affidavit, never passed to the estate of **MRS. ROSETTA HARRIS**.

I believe it is well established that a Deed is necessary to make a grant or any other conveyance taking effect between living persons of any real property, or any estate or interest therein. See **Halsbury's Laws of England** 3<sup>rd</sup> ed. Vol. 11 at paragraph 520. Further, sections 2 and 3 of the Real Property Act 1845 provides that the transfer of real property must be done by deed and any grant not so transferred should be void unless the transfer is done by Will.

Counsel for the Plaintiff has also referred the court to the provisions of the Conveyancing Act 1881 and to s.4 of the Statute of Frauds which requires that there must be evidence in writing and signed as provided by the said Statute of Frauds to make any transaction relating to land valid. There is no such evidence in writing signed by the party to be changed here.

It is therefore apparent that the evidence of **JACK MICHAEL HARRIS** as deposed to in the 1<sup>st</sup> Defendant's affidavit cannot be relied upon to establish that **MRS. ROSETTA HARRIS** has no interest in the property in issue.

There is sufficient evidence before the court as canvassed by counsel for the Plaintiff that the mother of the Defendants **JEANNE ROSEMARIE MARKE** not only recognised the interests of the Plaintiffs in their personal capacity but also that of their mother **ROSETTA HARRIS** in the said property. There is in evidence the lease agreement, Exh H attached to the supplemental affidavit of Yada H. Williams sworn to on 16<sup>th</sup> October 2012.



The Defendant's mother **JEANNE ROSEMARIE MARKE** was a signatory to the said lease, together with the Plaintiffs and thereby acknowledged the interest of the Plaintiffs in the said property.

In the light of all the above the Plaintiffs are entitled to the grant of the Order for sale of the property as prayed.

With regards the distribution of the proceeds of sale it is my view that counsel for the Plaintiffs has made out a sound case and established that the 1<sup>st</sup> Plaintiff and the estate of **ROSETTA HARRIS** are jointly entitled to 66.6% and the Defendants to 33.3% shares of all that property situate at No. 19 Howe Street Freetown forming part of the estate of **NATHANIEL JOHN HARRIS** (Deceased) Intestate.

There is evidence that the Plaintiffs have offered to take 60% share and to allow the Defendants 40% which form of distribution the 3<sup>rd</sup> to 7<sup>th</sup> Defendants have accepted. I shall therefore grant the application and make the following Orders

1. That the 1<sup>st</sup> Plaintiff and the estate of **ROSETTA HARRIS** are jointly entitled to 66.6% and the Defendants to 33.3% of all that property situate at No. 19 Howe Street Freetown which forms part of the estate of **NATHANIEL JOHN HARRIS** (Deceased) Intestate.

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2. That the Plaintiffs and the Defendants are hereby empowered to sell the said property by private treaty and that solicitors for the parties have conduct of the sale.
3. That an independent valuer be appointed within 14 days of the date of this Order to value the said property for the purposes of fixing a reserved price for the said property and that his fees be paid out of the purchase price before distribution of the shares to the Plaintiff and Defendants.
4. That the 1<sup>st</sup> Defendant be given the first option to purchase the said property, such option to be exercised within 30 days of the valuation of the said property, failing which the property is to be put up for sale in the open market.
5. That solicitors costs be paid out of the proceeds of sale before distribution of the said shares in the proceeds of sale to the Plaintiffs and Defendants.
6. That the Master and Registrar do execute the Deed of Conveyance in favour of the purchaser.
7. Liberty to apply.

SIGNED: - A. SHOWERS  
JUSTICE OF THE COURT OF APPEAL.

A. Showers  
22/11/2012