

BETWEEN:

MRS VIOLET KHAMA
(J. B. Jenkins-Johnston)
AND

PLAINTIFF

JOSEPH KHAMA

1ST DEFENDANTAdministrator of the Estate of Amadu Khama; added by Order of Court dated 24th February 2012.

ERNEST JOSEPH FRANKLYN CAMPBELL -
(F.M. Carew)

2ND DEFENDANT

AND

SAMUEL FORTUNATUS V. CAMPBELL -
(R. A. During)

3RD DEFENDANT

Judgment – by Hon Mrs Justice M. D. Kamara

Dated the 18th day of November, 2015.

The action herein was commenced by Writ of Summons dated the 28th day of March 2006 in which the Plaintiff averred in her particulars of claim as follows:-

1. That Plaintiff and the 1st Defendant are wife and husband respectively; they having been lawfully married at the Centenary Tabernacle Church, Circular Road, Freetown on the 3rd day of June 1987 after which the Plaintiff and 1st Defendant lived and cohabited as husband and wife until about 25th April 2005 when the 1st Defendant deserted Plaintiff.
2. That there are four (4) children of the marriage altogether ACKMED KHAMA born on the 2nd October 1980. THELMA KHAMA born on the 4th November 1982, JOSEPH KHAMA born on the 2nd 1987 and FRANCIS KHAMA born on the 31st August 2005, of which JOSEPH KHAMA was born to the Plaintiff and the 1st defendant while the other children were born to the 1st Defendant and brought into the marriage and that they now all do live with the Plaintiff.
3. The Plaintiff avers that the property at Spur Loop, Wilberforce was bought after four (4) years of marriage to the 1st Defendant.
4. The Plaintiff further avers that the purchase price for the land (Le60,000/00) came from the business she runs. KHAMLET ENTERPRISES at Brookfields Bus-halt, and that the said land was acquired after Plaintiff pleaded with the Late President Momoh to help them obtain land.
5. The Plaintiff avers further that the land was bought with the clear intention that it was to be the matrimonial home of the parties, to be utilized and enjoyed as such equally by the parties for the rest of their lives.

6. That the 1st Defendant had the property conveyed to him solely when infact he knew that it was obtained through the efforts of the Plaintiff and also at the time the Plaintiff never realized that the 1st Defendant would eventually desert her and sell the property without her knowledge or consent.
7. The Plaintiff will further aver that purchasing the land and with the future of the children in mind, using the proceeds of the business, she contracted MR ALFRED DAVIES, Private Building Contractor who was contracted to build four (4) structures on the land over a period of 9 years.
8. The Plaintiff will aver that the first 2 buildings were constructed in 1989/90, the third building which consist of a room and parlour self-contained followed, and the 4th building 3 rooms and a parlour self-contained and building in 1998.
9. The Plaintiff will further aver that the 1st Defendant a Staff-Sergeant in the Army was almost always up country and played very little part in the acquisition and construction of the building.
10. The Plaintiff avers further that on or about 25th April 2005 the 1st Defendant sold and conveyed the property which is the subject matter of this action, to the 2nd Defendant, without the knowledge, consent or approval of the Plaintiff knowing fully well the existence of the Plaintiff's equitable and beneficial rights and then deserted her with his whereabouts remaining unknown at this time. The Plaintiff avers that the property was sold at a gross undervalue thereof to the detriment of herself and her children.
11. The Plaintiff avers that because of the conduct of the 1st Defendant she now lives together with the children at her business place in conditions which to say the least are most unsatisfactory.
12. The Plaintiff further avers that from the foregoing the 1st Defendant has deprived the Plaintiff and the children of a home and her share therein after (18) Eighteen years of marriage to the 1st Defendant, and that her only hope left is for this Honourable Court to take remedial action on behalf of the Plaintiff and the Defendants be accordingly restrained by an injunction.

WHEREFORE THE PLAINTIFF CLAIMS against the Defendants

1. A Declaration that the land and hereditaments situate lying and being at 9E Spur Loop, Wilberforce, Freetown in the Western Area of the Republic of Sierra Leone

is held by the 1st Defendant on trust for himself and the Plaintiff in equal shares, even though the property was conveyed to the 1st Defendant in his name only.

2. An Order that the Deed of Conveyance dated 24th January 1991 and registered as No189/91 in Volume 446 at Page 99 in the Book of Conveyances be amended by the addition of the name of the Plaintiff as Co-owner/Purchaser.
3. An Order that the said property be partitioned equally between the parties under and by virtue of the Partition Act 1868, as amended by the Partition Act 1976.
4. An Order that's the Deed of Conveyance dated 25th April 2005, expressed to be made between AHMADU KHAMA (As Vendor) and ERNEST JOSEPH FRANKLYN CAMPBELL (As Purchaser) and registered as No 770/2005 at Page 30 in Volume 587 of the Book of Conveyances be set aside cancelled and expunged from the record books' of Conveyances.
5. An injunction restraining the Defendants by themselves, agents, servants, or howsoever otherwise, from disposing of the said property by sale, lease, mortgage or in any other way that would be prejudicial to the interest of the Plaintiff, pending the hearing and determination of the action herein.
6. Any further or other Order that the Court may deem necessary and just in the circumstances.
7. The Costs of the Action

Signed: J B Jenkins-Johnston Esq
Counsel

The first Defendant –Ahmadu Khama (hereinafter referred to as the Deceased) died on the 21st day of July, 2006 nearly four months after the issue of the writ of summons in this action without filing a defence, by Order of Court dated the 24th day of February, 2012, leave was granted to Joseph Khama-the administrator of the Estate of Amadu Khama to be substituted as the Personal Representative of the aforesaid 1st Defendant herein.

The 2nd Defendant in his defence and counter-claim dated 28th day of August 2006, states as follows:-

1. The 2nd Defendant cannot admit or deny paragraphs 1, 2 and 3 of the Plaintiffs particulars of claim and will put her to strict proof of the various assertions contained therein.
2. The 2nd Defendant denies paragraph 4 of the Plaintiff's particulars of claim and will further aver that the assertions contained therein are not reflected on the title deed of the 1st Defendant.

3. The 2nd Defendant denies paragraph 5 of the Plaintiff's particulars of claim and will aver that the Plaintiff and the 1st Defendant never cohabited as husband and wife in the property known as No 9E Spur Loop, Wilberforce, Freetown the subject matter of this action.
4. Paragraphs 6, 7, 8 and 9 of the particulars of claim is denied and the Plaintiff is put to strict proof of the various allegations contained therein.
5. The 2nd Defendant admits in part paragraph 10 of the particulars of claim to the effect that he bought the said property on the 25th day of April, 2005. The 2nd Defendant will further aver that at the material time he was buying the said property from the 1st Defendant he was never aware that the Plaintiff has an "equitable and beneficial" right on the said property as she had never made her interest known to the 2nd Defendant orally or in writing until after the sale had been concluded and the Deed of Conveyance of the 2nd Defendant executed by the 1st Defendant. The 2nd Defendant therefore aver that he is a bona fide purchaser for value without notice of any equitable or beneficial interest of the Plaintiff.
6. The 2nd Defendant will further aver that the Plaintiff had never at any point in time exercise direct control over the property the subject matter of this action.
7. In answer to paragraph 10 of the Plaintiff's particulars of claim, the 2nd defendant will aver that he only became aware of the claim of the Plaintiff when he went into effective occupation and possession of the property the subject matter of this action sometime in June, 2005.
8. Save as hereinbefore expressly admitted or denied the 2nd Defendant denies each and every allegation of fact contained in the Plaintiff's particulars of claim.

COUNTER CLAIM

9. The 2nd Defendant repeats paragraphs 1 to 8 of the Defence.
10. The 2nd Defendant avers that he is the fee simple owner of all that piece or parcel of land and premises therein known as no 9E Off Spur Road, Wilberforce, Freetown by virtue of a Deed of Conveyance dated the 25th day of April, 2005 expressed to be made between Ahmadu Khama of the One Part and the 2nd Defendant of the Other Part which is registered as No 770/2005 at Page 30 in Volume 587 of the Record Book of Conveyances kept in the Office of the Administrator and Registrar-General in Freetown.

11. The 2nd Defendant conducted a thorough search in the Office of the Administrator and Registrar-General and the Department of Surveys and Lands to ascertain whether the Vendor is a joint owner of the said property but his search reveal that this is not the case.
12. That the title of the Vendor to convey the said property to the 2nd Defendant was never challenged by the Plaintiff or any other person as owner.
13. The 2nd Defendant will aver that it was only after three months when he had bought the said property and moved into effective possession and occupation of same that the Plaintiff made known to him her interest in the property.

1. For a declaration that he is the fee simple owner of all that piece or parcel of land and hereditaments situate lying and being at No 9E Spur Road Wilberforce Freetown which is delineated on Survey Plan No LS dated the 24th day of March 2005.
2. For an Injunction restraining the Plaintiff whether by herself, her servants or agents from interfering with the property of the 2nd Defendant in any way whatsoever.
3. For any further order that this Honourable Court may deem fit and just
4. That the Plaintiff pays the cost of this action.

Signed F M Carew & Co

The 3rd Defendant by notice of Motion dated the 8th day of April, 2013 sought an interim stay of proceedings in this cause pending the hearing and determination of an application by him for leave to be granted him so that he be added as the 3rd Defendant-which orders were granted and after the exchange of documents between the Solicitors, he too filed a defence and a counter-claim as follows:-

3. The 3rd Defendant cannot admit or deny paragraph 9 of the Plaintiff's statement of claim.
4. The 3rd Defendant admits that the 1st Defendant sold and conveyed the property which is the subject matter of this action to the 2nd Defendant but cannot admit or deny that this was done without the knowledge, consent or approval of the Plaintiff and knowing fully well the existence of the Plaintiff's equitable and beneficial rights and then deserted her and that the property was sold at a gross undervalue to the detriment of the Plaintiff and her children as stated in paragraph 10 of the Plaintiff's statement of claim and will also plead paragraph 5 of the 2nd Defendant defence herein dated the 28th day of August, 2006 and also the counter claim of the 2nd Defendant therein.
5. The 3rd Defendant cannot admit or deny paragraphs 11 and 12 of the Plaintiff's statement of claim.
6. The 3rd Defendant will aver that he maintained the tenants who were in the premises the subject matter of this action and they have always been paying rents to him since 2007 when his brother gave him the premises up to date.

COUNTER CLAIM

1. The 3rd Defendant repeats paragraphs 1 to 6 of his Defence.
2. The 3rd Defendant avers that he is the fee simple owner of all that piece or parcel of land and premises therein known as 9E Off Spur Road, Wilberforce, Freetown by virtue of Statutory Declaration of the 3rd Defendant dated the 12th day of November, 2012 and duly registered at Page 19 in Volume 53 in the Book of Statutory Declarations in Registrar-General's Office in Freetown and will further aver that the 2nd Defendant, his brother who gave him the said premises the subject-matter of this action was originally the fee simple owner of the said premises by virtue of a Deed of Conveyance dated the 25th day of April, 2005 expressed to be made between Amadu Khama the 1st defendant herein of the one part and Ernest Joseph Franklyn Campbell the 2nd Defendant herein of the other part duly registered as number 770/2005 at Page 30 in Volume 587 in the Book of Conveyances in the Registrar-General's Office in Freetown
3. The 3rd Defendant will also aver that the fee simple estate in possession of the property the subject-matter of this action passed on to him.

WHEREOF THE 3RD DEFENDANT CLAIMS:

1. For an injunction restraining the Plaintiff whether by herself her servant, agents or however called from dealing in any whatsoever with the 3rd Defendant's said property.
2. For any further Order that this Honourable Court may deem fit.

Signed: R. A During
Counsel

Evidence Adduced included the following:

Witness statement of the Plaintiff

My name is VIOLET KHAMA (Nee Nicol). I live at No 33 Bismark Johnson Street, Freetown. I got married to the 1st Defendant AMADU KHAMA at Centenary Tabernacle Church, Circular Road, Freetown on the 3d June 1987. We lived and cohabited as husband and wife for about 18 years when he deserted me on or about the 25th of April, 2005. There were Four (4) children of the marriage.

I know as a fact the property at 9E Spur Loop, Wilberforce, was bought four (4) years after I got married to the 1st Defendant. The purchaser money of Le60,000/00 (Sixty Thousand Leones) used to buy the said property came from the Business I run called-"KHAMLET ENTERPRISE" at Brookfields Bus-halt. The said land was acquired after I pleaded with the Late President Joseph Momoh to help us obtain the said land. Our intention of buying the said land was for it to be used as our Matrimonial Home. Utilized and enjoyed equally by both of us for the rest of our lives. The 1st Defendant conveyed the property solely in his name by a Deed of Conveyance dated 24th day of January 1991 knowing fully well that it was obtained through my efforts. I never realized that after 14 (fourteen) years the 1st Defendant would eventually desert me and sell the said property to the 2nd Defendant without my knowledge or consent with full knowledge of my equitable and beneficial rights.

I know that after the land was purchased I contacted Mr Alfred Davies a Private Contractor to construct a FOUR-APARTMENT Structure on the said land over a period of 9 years with the future of our children in mind, using the proceeds of my business. On or about 1989-90 the First Two (2) Buildings were constructed followed by the Third consisting of A ROOM AND A PALOUR self-contained and Fourth consisting of THREE BEDROOMS AND A PARLOUR self-contained was built in 1998.

During that time the 1st Defendant, (then a Staff Sergeant in the Military) was almost Up-Country and played very little part in the construction of these Buildings. It was on or about the 25th of April, 2005 that the 1st Defendant Amadu Khama sold and conveyed the said property to the 2nd Defendant ERNEST J F CAMPBELL by a Deed of Conveyance dated 25th April 2005 at a gross under-value to the detriment of myself and my children. As a result of the 1st Defendant's action, I together with my children now live at my Business Place at Brookfields in conditions which are most unsatisfactory. Furthermore that the 1st Defendant has deprived me and my children of a home I labored for and my share of the said property.

On my instruction a letter dated 25th July 2005 was written by my Solicitors to the Tenants of the said Property as Jointly-owned by me and the 1st Defendant. AMADU KHAMA that I have not given my consent or approval to any Sale of the said property and advised them not to pay any rent to anybody except me. Furthermore I consulted my Solicitors to commence proceedings in the High Court seeking the reliefs prayed for therein.

Dated this 27th day of March 2008

Signed Violet Khama (Mrs)
Plaintiff

During cross examination P W 1 had this to say:

P W 1. – re-sworn on the Holy Bible. My name is Mrs Violet Khama. I said I provided the money that was used to purchase, the land at No 9 Spur Loop, Wilberforce (Le60,000.00)

I have seen the conveyance between my husband and the Minister, it was both me and my husband that went to make same. My name does not appear on the conveyance and I will give you the reason why.

I want to explain the reason why I was not very experienced then. Immediately we finished making it, I went and explain to my God-mother-Mrs Momoh who condemned what has happened and suggested that the conveyance ought to have been made in the names of me and my husband and not my husband alone.

My husband responded that since we are legally wedded, that it matters not whether my name was on the conveyance or not. That infact he is going to handover everything to me to assume responsibility for its administration. Thereafter I was responsible for payment of City Rate Water Rate and the tenants paid to me the rents. Since then I have been paying infact I have just recently paid.

During the war I left the document with my husband and proceeded to Guinea with my children. Upon my return, he took me to the lawyer- Mr Carew including the house document's for it safe keeping-he being a soldier, had been posted to the province and he thought the documents will not be safe with him up country. We then decided that since the fragile nature of the peace then did not guarantee safety enough, that the solicitor collects the rent including safe-guarding the documents. We both used to go to the Lawyer and collect rent and share. During that process my husband fell sick-he was admitted to 34 Hospital. He discharged and went home. One day one Mr Davies-our contractor who built our houses saw the Lawyer come to the house and collected my husband. I chased then at the Lawyer's place enquiring about my husband but he replied saying he knows nothing about my husband.

I then contacted my Lawyer who then made enquires about the documents which he hurriedly dismissed-thereafter my Lawyers enquired at the Roxy Building and discovered that the Plaintiff had sold not to my knowledge or consent. I never saw my husband over two years and I searched everywhere for him including making adverts on local news papers., C I D, Limba Pentecostal Church etc. Later I was informed that my husband is dead- And that he died at Port Loko.

I then reported to the C I D who requested the corpse to be brought for post mortem examination:-which revealed that he died of cardiac arrest.

All what I am saying is true because I loved my husband and we tried to achieve.

My sole interest was not in the property as I buried him,

That all for this witness.

Any re-examination" Ms. R. Suffian Kargbo says none.

No witness statement was filed by the 1st and 2nd Defendants neither was one filed by their personal representatives rather, the personal representatives of the 1st Defendant pitch in with the Plaintiff.

That he does not intend to contest the application made by the Plaintiff that he is not defending but supports the proceeding..

Witness statement of 3rd Defendant Samuel F. B. Campbell

My name is SAMUEL F. B CAMPBELL I live at 28 Patton Street, Freetown I am seventy-seven years old I am retired Head Master of the school for the Blind in Freetown, Sierra Leone. I am the third Defendant in the matter herein.

Sometime during the year 2005, my late younger brother, Ernest Frankly Balogun Campbell bought property 9E Spur Loop from one Mr Amadu Khama. My late brother had a conveyance in respect of the property which I have asked my Solicitor to use as one of the documents I rely upon during the hearing of the matter. There were four tenants in the premises occupying the four flats (separate building) when my late brother bought same and after the sales the tenants started paying rents to my brother. Sometime during the year 2007, my late brother gave me the said property and I afterwards started collecting rents from the tenants. My late brother by the name of Jonathan A Campbell was issuing receipts to the tenants on my behalf and after his death Mr Harold Williams was my agent in respect of the premises.

I made a Statutory Declaration in respect of my possessory title of the premises and which was duly registered in the Office of the Registrar-General's Office in Freetown. I also requested my solicitor to use it as one of the documents I intend to rely on the hearing of the matter.

I was in full free and undisturbed possession of the said premises until during the month of June, 2012 when my agent. Mr Harold Williams received a letter from the Plaintiff's Solicitor on a pending matter before the Honourable Mr Justice Brown-Marke J.A. in respect of the premises. I do not know what was the outcome of the matter. The four tenants whom I inherited from my late brother in the premises are still my tenants.

Dated this 7th day of March 2014,

Signed Samuel Fortunatus Bradford Campbell (who is blind)

No cross-examination or re-examination

Witness statement of Harold Adjai Williams

My names are HAROLD ADJAI WILLIAMS. I live at No 4 Aitkin Street, Murray Town Freetown. I am a retired Banker. I know Mr Samuel Fortunatus B Campbell the 3rd Defendant herein. I have known him for a period of about fifty-five years. I know he has a property numbered 9E Spur Loop, Wilberforce which his late brother gave to him. I have been collecting rents on his behalf from four tenants in the said premises I know that the Plaintiff herein tried to eject the said tenants from the premises but was not successful. I later received a letter from the Plaintiff's Solicitors regarding the said property which among other things stated that there was a pending matter in respect of the property before the Honourable Mr Justice Browne-Marke, J A I do not know what was the outcome of the matter

Dated the 18th day of March 2014

Signed Harold Adjai Williams.
No cross examination or re-examination

In his closing address, Plaintiff's Solicitor canvased the following propositions of law to persuade the bench give judgment in favour of his client;
That land will become the subject matter of a constructive trust as an equitable remedy in order to benefit a party that has been wrongfully deprived of its right due to either another person obtaining or holding legal right to property which they should not possess due to unjust enrichment or interference. That as a creature of equity, a constructive trust is, principally remedial. And that Trusts generally have involved the holding of property for another such the trustee has liability's to account in the event of a breach of trust and in the discharge of trustee's duties.

In an attempt to elucidate the application of the above proposition of law in the present case, that the following authorities refer to the circumstances in which land will be subject to a constructive trust were established by the House of Lords in Gissing v Gissing (1971) AC 886 at 905, where Lord Diplock stated "A.... constructive trust..... is created by a transaction between the trustee and the (beneficiary) in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the beneficial interest in the land acquired". Lord Denning MR advocated a novel approach whereby a constructive trust should be imposed simply to achieve perceived justice between the parties. In Hussey v Palmer (1972) 3 All ER 744 he expounded the nature and operation of such a trust.
.....it is a trust imposed by law whenever justice and good conscience require it, it is a liberal process, founded on large principles of equity to, to be applied in cases where the Defendant cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or a share in it. The trust may arise at the outset when the property is acquired or later on, as the circumstances may require. It is an equitable remedy by which the court can enable an aggrieved party to obtain restitution.

That one of the more creative mechanisms for the imposition of a constructive trust has been in domestic relationships. This is because, where there is a joint endeavor established by a domestic relationship over a period of time, a constructive trust is imposed where it would simply be unconscionable for one party to retain solely the benefit of the trust of that joint endeavor. In this action, it would appear that the 1st Defendant by his actions has deprived the Plaintiff from benefiting from a joint endeavor.

In the course of their Judgment in the Supreme Court of Sierra Leone in Eleady-Cole vs Eleady-Cole (unreported) their Lordships made reference to the case of Rimmer v Rimmer (1952) AER where Lord Romer said:

'Cases between husband and wife ought not to be governed by the same strict consideration both at law and in equity as are commonly applied to the ascertainment of the respective rights as strangers when each of them contribute to the purchase price of property and the old fashion doctrine that equity leans towards equality is peculiarly applicable to disputes of the character of the present one, where the fact, as a whole, permits its application.'

They also made reference to the case of Jansen vs. Jansen (1965) 363 where Lord Denning said:

“agreements such as these, as I say are outside the realm of contract altogether. The common law does not regulate the firm of agreement between spouses. Their promises are not sealed with seals and sealing wax. The consideration that really obtains for them is that natural love and affection which counts for so little in these cold courts”.

That the Deceased herein had the property conveyed solely in his name. It is however from the Plaintiff's evidence that the funds used to purchase the land and the construction thereon had been provided by her. Notwithstanding the fact that the Plaintiff and the Deceased had intended to utilize this property as their matrimonial home, that it is clear from the evidence before this Honourable Court that the Plaintiff and the Deceased intended from the beginning to have a joint interest therein.

In reaching their decision in Eleady-Cole vs Eleady Cole (supra) the Supreme Court further made reference to the case of Pettitt vs Pettitt (1969) 2 AER 411 where a freehold of a cottage had been purchase entirely by moneys provided by the wife and the property stood in her name, The husband undertook internal decoration and built a wardrobe in it. He also laid a lawn and constructed a wall and side wall in the garden. It was held that the husband was not entitled to an interest in his wife's property merely because he had done in his own leisure time jobs which husband normally did. Lord Diplock in that case said:

“how does the court ascertain the “common intention” of spouses as to their respective proprietary interest in a family asset when at the time it was acquired or improved as a result of contributing in money or money's worth by each of them they failed to formulate it themselves? It may be possible to infer from their conduct that they did in fact form an actual common intention as to their respective proprietary interest and where this is possible the court should give effect to it.”

In the recent Australian case of Foley v Foley & Anor (2007) FamCa 584 the court held that:

“A constructive trust will be imposed by the court when, having regard to the circumstances of the case, it would be unconscionable for one party to rely, as against the other party, on legal title to property as representing the actual interests of the parties.

In Isaac v John (1957-60) ALR S L 208 an agent who had bought property in his own name with money provided by his principal was held to be a constructive trustee of the property of the parties.

In Jones vs. Maynard (1951) 1 AER 802 it was decided that where there is joint purse between husband and wife, whatever comes out of that joint purse or pool is the joint property of both parties.

Viscount Dilhorne's dicta at page 784 in the case of Gissing vs. Gissing I AER 1043 supports this view:-

“.....that a claim to a beneficial interest in land made by a person in whom the legal estate is not vested and whether made by a stranger, or spouse or a former spouse must depend for its success on establishing that it is held in a trust or give

effect to the beneficial interest of the claimant as cest que trust, Where there was a common intention at a time of acquisition of the house that the beneficial interest in it should be shared, it would be a breach of faith by the spouses in whose name the legal estate was vested to fail to give effect to that intention and the other spouses will be held entitled to a share in the beneficial interest."

At page 782 of *Gissing v Gissing* (supra) Lord Reid said:

"If there has been no discussion and no agreement or understanding as to sharing in the ownership of the house and the husband had never evinced an intention that his wife should have a share then the crucial question is whether the law will give a share to the wife who has made those contributions without which the house could not be bought. I agree that depends on the law of the trust rather than on contract so the question is under what circumstances does the husband become trustee for his wife in the absence of any declaration of trust or agreement on his part. It is not disputed that a man can become a trustee without making a declaration of trust or evincing any intention to become a trustee. The facts may impose on him an implied constructive or resulting trust."

In his closing address, the 3rd defendant's solicitor submitted that the 2nd defendant had parted with the property to a third party;- the 3rd defendant herein with no notice of the plaintiff's equitable interest which in his words, the plaintiff has miserably and woefully failed to adduce in evidence. He seemed to place reliance on the legal maxim-legal rights are good against the whole world. Equitable rights, against all persons including those claiming under him.

This bona fide purchaser, the 2nd defendant in the instant case-he says is often known as "equity's darling".

Further more that the plaintiff has not substantiated or mentioned in her pleadings as well as her evidence that the late Mr Khama, the vendor nor the late Mr Campbell the purchaser in anyway acted fraudulently with regards to the sale of the land, the subject matter of this action.

Counsel respectfully submits that the property the subject matter of this action was wholly legally and duly passed over to the 2nd defendant in fee simple and who in turn gave same to his brother the 3rd defendant before he (2nd defendant) died.

In summary evidence adduced included for the: Plaintiff: A Conveyance dated 25th April 2005, expressed to be made between the 1st and 2nd Defendants, a Marriage Certificate dated 3rd June, 1987 expressed to be executed between the Plaintiff and the 1st Defendant herein, a letter dated 25th July, 2005 wherein she raised her concerns that are now in issue in this cause:-

Notifying the tenants about her interest in the res her witness statement, oral testimony and her responses during cross examination.

The 1st defendant and/or personal representative did not file a defence nor did they give evidence rather after the death of the 1st defendant his personal representative pitched in with the Plaintiff and says he supports the Plaintiff's application.

The 2nd Defendant filed a defence and a counter-claim but no witness statement. He is reported dead but was not represented during the trial. Rather he is said to have donated, the ~~res~~ to the 3rd Defendant which transaction is not evidenced in writing.

The 3rd Defendant filed a defence and a counter-claim, a witness statement and called one witness who also filed a witness statement. Furthermore, he filed an indenture of

Conveyance dated 24th January, 1991, as root of title of 1st Defendant, a Deed of Conveyance dated 25th April 2005, expressed to be made between 1st and 2nd Defendants, a Statutory Declaration purportedly establishing possessory title of 3rd Defendant, who claims that sometime during the year 2007, while this matter was pending in court, his late brother gave him the said property and that he afterwards started collecting rents from the tenants, that his late brother was issuing receipts to the tenants on his behalf, and after his brother's death Mr Harold Williams was his agent in respect of the premises. The 3rd Defendant further stated that he made a Statutory Declaration in respect of his possessory title of the said property by virtue of him being in full free and undisturbed possession of the said premises until during the month of June 2012. It is worthy to note that no deed of conveyance was executed by the 2nd Defendant in favour of the 3rd Defendant herein.

The question arises which of the two modes of acquisition of title does the 3rd defendant rely on?

- a) The oral gift of the property by his brother, albeit without a proper deed of transfer?
or
- b) The Statutory Declaration establishing his possessory title from 2007 to June 2012?

The law with regard acquisition of title to land in the Western Area of the Republic of Sierra Leone, requires:-

- i. Pursuant to the provisions of the Statute of Frauds 1677 a Conveyance of land must be made in writing and must be registered.
- ii. Section 4 of the Registration of Instrument Act Cap 256 of the Laws of Sierra Leone 1960 provides that a transfer of land would only take effect from its date of registration.
- iii. For the purposes of the Limitation Act 1961, for Statutory Declaration to establish possessory title, the possessor should have obtained at least twelve years (12 years) exclusive possession of the said premises/land, without any one laying claim on same.

In land Law, the creation of trust of land by implication of law as stated by John Stevens and Robert A Pearce, means any trust of property which consist of or include land but does not include settled land.

The reference to a trust in this regard is to any description of trust (whether express implied, resulting or constructive) including a trust for sale and a bare trust.

In the case of all trusts the law imposes on the trustee a duty in the exercise of any function relating to land subject to trust so far as practicable to consult the beneficiaries of full age and beneficially entitled to an interest in possession in the land and so far as is consistent with the general interest of the trust, to give effect to the wishes of those beneficiaries; or in the case of dispute of the majority according to the value of their combined interests.

That in the creation of trust by implication of law,

The express intention of the legal owner of land is not always necessary for the creation of a trust. That the law is willing to imply trust from the circumstances in which land has been acquired, and those who have contributed in some way to its acquisition may be entitled to a share of the equitable ownership by means of a trust even though they are not the legal owners, especially where a person has contributed to the purchase price of the land may be entitled to a share of the equitable ownership directly proportional to the extent of his/her contribution by way of a resulting trust.

And where the understanding between two people was that, they were to share the ownership of land but the land is owned at law by only one of them, the other may be entitled to a share of the equitable ownership equivalent to what they were mutually intended to have by way of a constructive trust.

The general principle is that resulting trusts protect the position of persons who contribute to the purchase price of land whereas constructive trust, protect the interests of person where there was a common intention that they were intended to have a share of the property which has been fulfilled by the legal owner. From the evidence adduced, the present case is a cross-cutting cause that manifests a bit of all of the above, furthermore that a beneficiary who is beneficially entitled to an interest in possession of the land has an entitlement to occupy the land if:

- the purposes of the trust are held by the trustees to include making the land available for his/her occupation; and
- the land is available and
- the land is suitable for occupation by him/her.

In *Williams & Glynns Bank Ltd v Boland* (1981) A.C. 487 at 507.

Lord Wilberforce considered that to describe the interests of spouses in a house jointly bought to be lived in as matrimonial home as merely an interest in the proceeds of sale is just a little unreal.

In *City of London Building Society v Flegg* (1988) A.C. 54. The House of Lords held that the beneficiary of a trust for sale had the right to occupy the land. Thus implying that a beneficiary who is beneficially entitled to any interest in possession in land subject to a trust of land is entitled by reason of his interest to occupy the land at any time.

In law, joint tenancy is a convenient way for a husband and wife to hold the house they live, the matrimonial home. When one of them dies, the other one automatically gets the house. It follows from the nature of joint tenancy that if the land is sold the proceeds are divided equally.

Alienation of one's share by a joint tenant constitutes one of the ways in which severance may occur. This may result into the conversion of a joint tenancy into a tenancy in common. If land is held on trust for certain beneficiaries and the trustees sell the land, the purchaser takes free from the equitable interests of the beneficiaries only if either he can show that he is a bona fide purchaser for value without notice of the equitable interests, or statute provides that on his compliance with certain conditions he will take free of the equitable interest notwithstanding that he had knowledge that such interests exist.

However, in the light of the 2nd defendant's defence and counter claim filed, he is presuming to know more than what an ordinary purchaser for value, without notice of the wife's equitable interest in the res, the subject matter of this cause, in particular paragraphs 2, 3, 4 and 6 in my view went over board as only 1st defendant can tell.

Also paragraph 12 of same is untenable, hence it is the reason for this cause under consideration. And this is further strengthened by a letter dated 25th July, 2005 written by Plaintiff's Solicitor to the tenants of the said property-informing them that it is jointly owned by her and the 1st Defendant. And that she had not given her consent approval to any sale of the said property and advised them not to pay any rent to anybody, except her. Thereafter she instituted these proceedings in the High Court seeking the reliefs prayed for herein. And luckily the 1st Defendant was still alive, he did nothing, said nothing until his death on the 21st day of July, 2006, approximately one year after the issues herein were raised.

I am inclined to ask-what did the 2nd defendant do to ameliorate his suffering when he became aware of the facts that may tend to derogate from the 1st defendant's grant to him?

✓
Or indicate him from having knowledge of the plaintiff's interest in the property in the light of his defence?

It is my considered view that the 2nd defendant went too far into what otherwise would have rightfully belonged to the realm of marriage and domestic relationship. This in my view suggests he may not be as innocent as he claims – As he seems to have bitten more than what he can chew in his defence and counter claim. As it would have been sufficient for him to have pleaded innocent purchaser for value without notice after he conducted search. He volunteering to give evidence of what otherwise should have been information that should be in the domain of the couple, is unfortunate. The best author would have been the 1st defendant who did nothing.

As such, I hold that the 2nd defendant can not properly be described as an innocent purchaser for value without notice of the plaintiff's interest.

This inference disentitles him to benefit from the legal maxim legal rights are good against the whole world, equitable rights against all persons except a bona fide purchaser of the legal estate for value without notice of equitable interest in the land and those claiming under him.

In this regard the 2nd defendant has failed to measure up to be called equity's darling.

In my considered view, the issues at stake could have best been addressed by the plaintiff and the 1st defendant and/or his personal representative. But it would appear the situation was hijacked by the 2nd defendant by taking the wind out of the sails, giving evidence on issues he was not privy to or ought not to have known as between man and wife. By so doing, he has made himself vulnerable to attack, shaken the foundation of his defence to the extent it is no longer tenable. In the same way his attempt to pass the property to the 3rd defendant as alleged has a similar effect.

In view of the fact that the 1st defendant nor his personal representative challenged the plaintiff herein, it is inevitable that in the absence of any contravening evidence and the 1st defendant's representative not opposing the reliefs prayed for the plaintiff has on a balance of probability proved her case.

Further more, from the plethora of authorities cited supra, I have no doubt in my mind in granting the reliefs prayed for and any other order that may be conveniently given to ensure a fair play.

In consequence where of the court makes the following declarations and consequential orders:-

1. That the land and hereditaments laying, being and situate at 9E Spur Loop Wilberforce Freetown in the Western Area of the Republic of Sierra Leone is held by the Deceased on trust for himself and the plaintiff in equal shares regardless the fact that the conveyance is in the name of deceased solely.
2. That the deed of conveyance dated 24th January 1991 and registered as no 189/91 in volume 446 at page 99 in the book of Conveyances be amended by the addition of the name of the Plaintiff as co-owner/purchaser.
3. That the deed of conveyance dated the 25th day for April, 2005 expressed to be made between Alimadu Khama (as vendor) and Ernest Joseph Franklyn Campbell (as purchaser) and registered as No 770/2005 at page 30 in volume 587 of the book of

conveyances be set aside cancelled and expunged from the record books of conveyances.

4. That the said property be partitioned equally between the parties under and by virtue of the Partition Act 1869 as amended by the Partition Act 1976.
5. That the first defendant's shares after partitioning be transferred to the estate of the second defendant by the personal representative of the first defendant, to ensure the 1st defendant is not allowed to profit from his own fraud.
6. The 3rd defendant's remedy may lie in the hands of the executors/administrators of the estate of the 2nd defendants to be sorted out at the family level or otherwise, (if at all).
7. Cost of this action assessed at Le15,000,000/00 be borne by the 2nd and 3rd defendants jointly.


Hon Mrs Justice M. D. Kamara