

MISC. APP. 397/12

2012

A.

NO.34

IN THE HIGH COURT OF SIERRA LEONE

(FAMILY AND DIVORCE DIVISION)

IN THE MATTER OF THE HIGH COURT RULES 2007

AND

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

AND

IN THE MATTER OF THE ESTATE OF MOSES JOHNSON (DECEASED INTESTATE)

AND

IN THE MATTER OF A DEED OF GIFT DATED 22ND SEPTEMBER 1990 AND REGISTERED AS NO.246/90 AT PAGE 67 IN VOLUME 77 OF THE RECORD BOOK OF CONVEYANCES

BETWEEN:

THE ADMINISTRATOR AND

REGISTRAR-GENERAL

- PLAINTIFF

AND

HENRIETTA ELFREDA ALBA

ADO ODICO

- DEFENDANT

Counsel:

Mr. R. Johnson for the Plaintiff

Mr. A.B.S. Sangarie for the Defendant

HONOURABLE MRS. JUSTICE V. M. SOLOMON J.S.C.

30th May 2016

JUDGMENT

(1) The plaintiff has commenced this action by Originating Summons dated 23rd November, 2012 for the determination of several questions to wit:-

1. Whether the Statutory Declaration dated 7th September, 1990 and registered as No.162/90 at page 58 in Volume 35 of the Record Books of Statutory Declarations kept in the office of the Administrator and

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Registrar-General by which Rosamond Zenobia Johnson purported to establish her possessory title to all that property at 14 Earl Street Freetown was valid.

2. Whether the Deed of gift dated 22nd September, 1990 and registered as No.246/90 at page 67 in Volume 77 of the Record Books of Voluntary Conveyances kept in the Office of the Administrator and Registrar-General between Rosamond Zenobia Johnson the lawful widow of Moses Johnson (Deceased) Intestate therein described as the Donor and the Defendant therein described as the Donee by which said instrument the said Rosamond Zenobia Johnson conveyed all that property at 14 Earl Street Freetown forming part of the Estate of the said Moses Johnson to the Defendant is valid.
3. That if the answer in (1) and (2) above is in the negative then an order by the Honourable Judge that the Statutory Declaration dated 7th September, 1990 and registered as No.162/90 at page 58 in Volume 35 of the Record Books of Statutory Declarations kept in the office of the Administrator and Registrar-General by which Rosamond Zenobia Johnson purported to establish her possessory title to all that property at 14 Earl Street Freetown and the Deed of Gift dated 22nd September, 1990 and registered at page 67 in Volume 77 of the said Record Books of Voluntary Conveyances between the said Rosamond Zenobia Johnson be respectively expunged from the said Record Books by the Plaintiff and that the properties forming part of the Estate of Moses Johnson including that situated at 14 Earl Street Freetown be distributed by the Plaintiff in accordance with the Administration of Estates Act cap 45 of the Laws of Sierra Leone 1960.
4. That if *Order 3* above is granted by the Honourable Judge then a further order that immediate possession of all that property situated at 14 Earl Street Freetown forming part of the Estate of Moses Johnson Deceased Intestate be delivered up by Defendant and all persons occupying the said property with the consent or authority of the Defendant to the Plaintiff.
5. That the Honourable Judge do make any further orders that may be necessary in this action.
6. That the costs of this action be provided for by the Honourable Judge.

The summons was supported by several affidavits of Mariama Seray Kallay, the Administrator and Registrar-General. An appearance was entered on the 4th December, 2012. There are also several affidavits in opposition deposed to by A.B.S. Sangarie, solicitor for the defendant and

by the defendant herself, to which she was cross-examined. The defendant filed a motion paper dated 9th January, 2013 in which she is seeking inter alia that her title has not been set aside and that the letters of Administration granted to the plaintiff be revoked upon commencement of this application. Mr. Johnson took a preliminary objection to which Mr. Sangarie conceded.

- (2) Mr. Johnson moved the summons and relied on the affidavits as filed. He referred to "MSK2" and submitted that Rosamond Johnson is the wife of Moses Johnson, but she did not take out letters of Administration after his death. Instead she established her possessory title as seen in "MSK3"; she then conveyed the property, that is, 14 Earl Street, Freetown (hereinafter called "The Property") to the defendant who is a step grandchild of the deceased intestate, and a non citizen, and so too her grandmother Rosamond Johnson. Her parents are not related to the deceased intestate. A fortiori the estate of the deceased intestate is now vested in the plaintiff.
- (3) In reply Mr. Sangarie relied on the affidavit in opposition sworn on 7th June, 2013 and submitted that the defendant is claiming title to the property through her grandmother's title. He submitted that the defendant is a Sierra Leonean and referred to exhibit "HEO5" which is her voter card. He submitted that Rosamond Zenobia Johnson did not take out Letters of Administration as she did not know she had to take out one. He submitted that the property is their matrimonial home and the Statutory Declaration indicates a presumption of advancement in favour the defendant's grandmother. He relied on the equitable maxims of equity will not allow a statute to be used as a cloak for fraud and equity looks on that as done which ought to be done. He referred to *Section 9(1) of the Administration of Estates Act Cap 45 of 1960 (herein after called "Cap 45")*, and submitted that the property herein cannot devolve on the plaintiff, but on the defendant who has taken out Letters of Administration marked "HEO3". As she is now the administratrix of the estate of Moses Johnson (deceased intestate) all acts done by her

from 1993 to 2013 are valid. Counsel relied on the cases of *Morgan vs. Thomas (1853) Exch. 302*; *Ingall vs. Moran (1941) 1 ALL ER. 97*. He referred to "HEO4" and submitted that his client is at least entitled to a share of the property. He submitted that the two previous Letters of Administration marked "MSK4" and "HEO8" are revoked by the grant of Letters of Administration to the defendant marked "HEO3". He relied on *Sections and 19 of Cap 45*. After the close of his submissions, the defendant was cross examined on her affidavit of 7th June, 2013.

- (4) Upon cross examination the defendant stated that her parents are Millicent King and George Odico, and that her mother is a Sierra Leonean. She attended YWCA and Christ Church Primary School. She stated that at the time when she attended the YWCA she was living with her grandmother Rosamond Zenobia Johnson, and the deceased intestate, who is her mother's step father. She stated that Rosamond Zenobia Johnson was in possession and collected rents from the said property. That at the time of the death of the deceased intestate he was the freehold owner of the property. She admitted that she took out Letters of Administration and that the declaration on the realty and personality grant is Nil. She agreed that by exhibit "HEO4" she did not say she is owner of the property. She later stated that she is entitled to all the property. She cannot remember her age at the time "HEO2" was prepared. In re-examination she stated that the property was renovated and that she does not know the difference between realty and personality.
- (5) The plaintiff is seeking the determination of two questions and if the questions are answered in the negative, she is seeking two consequential orders. The brief facts are that Moses Johnson died intestate. He was legally married to Rosamond Zenobia Johnson and they had no issues. Moses Johnson had an issue Amy Jarrett (Nee Johnson). The latter took out Letters of Administration to administer her deceased father's estate. Letters of Administration was granted to her by the High Court on the 22nd December, 2000. Another grant was granted

by the High Court to the plaintiff on the 4th January, 2011. During the course of these proceedings Letters of Administration pendent lite was granted on the 7th March, 2013 to the defendant. In essence three Letters of Administration were granted in respect of the property herein. The reality declared in the grant to the plaintiff is in respect of a house and land at 14 Earl Street valued at Le30,000,000/00. The defendant took out a NIL grant, and Mrs. Amy Jarrett (Nee Johnson) took out a grant with realty in respect of the subject matter herein valued at Le8,000,000/00. The evidence is that Mrs. Amy Jarrett renounced her power to administer the estate, and granted such power to the plaintiff as evidenced in her letter of 5th May, 2010. She had renounced her power before the commencement of the action. After the death of Moses Johnson in 1985, Rosamond Zenobia Johnson his wife solemnly declared in a Statutory Declaration dated 7th September, 1990 a possessory title to the property, the subject matter herein. Subsequently on 22nd September, 1990 she executed a voluntary conveyance in favour of the defendant, her granddaughter.

- (6) The first issue for my consideration is whether Rosamond Zenobia Johnson, the lawful wife of Moses Johnson the deceased intestate is entitled 100% to the property. As at 26th September 1985 the deceased intestate was fee simple owner of the property. He never left a will. His lawful widow Rosamond Zenobia Johnson did not obtain Letters of Administration to administer his estate. As at the time of the death of Moses Johnson, he was survived by two beneficiaries, namely; Rosamond Zenobia Johnson, his wife and his daughter Amy Onike Jarrett (Nee Johnson). The latter obtained Letters of Administration on the 22nd December, 2000. Rosamond Zenobia Johnson solemnly declared to a Statutory Declaration that she is the rightful owner of the said property which said title has not been challenged. The same year she transferred the property to the defendant. What then is the validity of her title? From the evidence she is not the sole beneficiary to the estate of Moses Nathaniel Johnson and the defendant is her

granddaughter. The defendant is an issue in relation to Rosamond Zenobia Johnson but not an issue in relation to Moses Nathaniel Johnson, whose estate is in dispute.

- (7) There is no dispute that up to the death of Moses Nathaniel Johnson the property at 14 Earl Street Freetown formed part of his estate. A fact that is acknowledged by Rosamond Zenobia Johnson in paragraphs 2 and 3 of the Statutory Declaration which she swore on 7th September, 1990. She is not the sole beneficiary under the estate of the deceased intestate and she cannot be entitled to a 100% of the property. She is lawful widow and next of Kin, and is entitled to one-half share of the estate of her husband. *See the second schedule on the Rules of Distribution in Cap 45 of 1960*, and his lawful daughter Mrs. Amy Jarrett is entitled to the other half share.
- (8) By *Section 9 of Cap 45 of 1960*, the estate of a deceased person who dies intestate automatically vests in the Official Administrator, that is, the plaintiff. She took out Letters of Administration in respect of this estate on the 4th January, 2011. Before taking on the Letters of Administration notice was served on the defendant. As far back as in May 2001, the then Administrator and Registrar-General wrote to her informing her of her entitlements to the estate of Moses Nathaniel Johnson. The first paragraph reads thus:
- "I had informed your Solicitor, Mr. Raymond Awooner-Renner that you could only lay claims to one-half share of the property at 14, Earl Street, Freetown. The widow of the intestate executed a Deed of Gift in your favour. She could only have been entitled to a one-half share of the residence of the estate".*

The defendant obtained Letters of Administration pendent lite on the 7th March, 2013 and it is submitted that it revokes the letters of administration of the plaintiff. Indeed by *Section 13 of Cap 45* that is the case. The arguments of Mr. Sangarie in his closing address relate

to matters of a matrimonial dispute between a wife and her husband or to those persons who have cohabited in the same household. Even if Rosamond Zenobia Johnson had expended monies on renovations of the property, she was not the sole beneficiary to her husband's estate.

- (9) Counsel has however not addressed the interest of Mrs. Amy Jarrett. It is not disputed that she is lawful daughter of Moses Nathaniel Johnson and she obtained letters of administration before the plaintiff and defendant. Is the letters of administration still subsisting? Has it been validity revoked by the letter of 5th May, 2010 to the plaintiff which was attached to her affidavit duly notarized on the same date? I do not think so. She should have obtained an order from this court to revoke the grant. A fortiori the letters of administration she obtained on 22nd December, 2000 is still subsisting. Hence as at present there are three letters of administration in respect of the same estate. By letter of 5th May, 2010, Mrs. Amy Jarrett has evinced an intention not to continue to be the administratrix of her late father's estate. She renounces that power and instead divests such powers on the plaintiff. The defendant is a beneficiary under the estate who is entitled to one-half share just as Mrs. Amy Jarrett (nee Johnson). The letters of administration she took out on the 22nd December, 2000 is hereby revoked. The defendant is the granddaughter of Rosamond Zenobia Johnson, who died on the 11th September, 1993. But at that time, she was not the sole beneficiary to the estate of Moses Nathaniel Johnson. She had a one-half share of his estate. As the defendant's claim is based on hers, she can only get her grandmother's share and no more. The letters of administration obtained by the defendant on the 7th March, 2013 is also revoked.
- (10) I am now left to consider the Statutory Declaration of 7th September, 1990 and Deed of gift of 22nd September, 1990. From the aforesaid and in view of the second schedule of Cap 45 of 1960, Rosamond Zenobia Johnson never had 100% share in the property as Moses Nathaniel Johnson who died intestate leaving a beneficiary. In essence,

as she was never the sole owner to the property as 14 Earl Street Freetown; she cannot convey it as an absolute gift to the defendant as the maxim goes nemo dat quod non habet that is, you cannot give what you do not have. So therefore, the Statutory Declaration and Deed of Gift of 22nd September, 1990 are to be expunged from the records of the Registrar-General for Sierra Leone. Consequently, the defendant is to give up vacant possession of the property at 14 Earl Street Freetown.

(11) In the premises therefore after due consideration of the evidence and the matters herein judgment is entered in favour of the plaintiff on the following terms and I hereby order as follows:-

1. The Statutory Declaration dated 7th September 1990, registered as No:162/90 at page 58 in volume 35 in the record book of voluntary conveyances be expunged.
2. The Deed of Gift dated 22nd September 1990, registered as No:246/90 at page 67 in volume 77 in the record book of voluntary conveyances be expunged.
3. The Letters of Administration granted to Amy Jarrett (nee Johnson) on the 22nd December 2000 be revoked.
4. The Letters of Administration granted to Henrietta Elfreda Alba Odo Odico on the 7th March 2013 be revoked.
5. The Plaintiff is to administer the estate of Moses Nathaniel Johnson.
6. Mrs Amy Jarrett is entitled to a half share of the Estate of Moses Nathaniel Johnson.
7. The Defendant is entitled to a half share of the Estate of Moses Nathaniel Johnson.
8. In the event the property is to be sold the beneficiaries herein are to be given the first option to purchase. It is only after they are not willing or able to purchase will the said property be sold by private treaty.
9. The Defendant is to deliver up vacant possession of the property at 14 Earl Street Freetown, upon the sale of the property to either Amy Jarrett or a 3rd party.

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10. Each party to bear its costs.

..... *V. M. Solomon*

HON. JUSTICE V. M. SOLOMON JSC.