

C.C. 4/11 2011 T. NO. 6
IN THE HIGH COURT OF SIERRA LEONE
(FAMILY AND PROBATE DIVISION)

IN THE MATTER OF THE DEVOLUTION OF ESTATES ACT, NO.
 21 OF 2007

BETWEEN: -

IBRAHIM THOMAS	-PLAINTIFFS/
JURAINATU THOMAS	APPLICANTS
(As Administrator and Administratrix	
of the Estate of Alhaji Abdul Osman Thomas	
(Deceased) Intestate	

AND

ALLI EU OSMAN THOMAS	
(Purported Administrator of the Estate of Alhaji	
Osman Thomas)	
FADLU OSMAN THOMAS	-DEFENDANTS
	RESPONDENTS

J. B, Jenkins Johnston Esq. for the Plaintiffs/Applicants
 E. A. Halloway Esq. for the Defendants/Respondents

RULING DELIVERED THE 25th DAY OF January, 2012

This is an application by Notice of Motion dated 14th April 2011 filed on behalf of the Plaintiffs/Applicants herein for the following Orders as amended by leave of the court on 9th May, 2011.

1. That the Defendants herein and each of them, whether by themselves, their servants, agents, any other member of the Family or Beneficiary of the said Estate, or howsoever otherwise be restrained from intermeddling in the Estate of **ALHAJI ABDUL OSMAN THOMAS** (Deceased Intestate).

behalf of the Plaintiffs/Applicants herein for the following Orders:

- a) by going around and collecting rents from the several tenants of the said Estate.
- b) Demanding rent from UNDP in respect of the parking lot at 81 Wilkinson Road, Freetown and preventing UN vehicles from using the said parking lot after they have paid rent to the Estate.

In support of the application are the joint affidavits of **IBRAHIM THOMAS** and **JURAINATU THOMAS**, the Plaintiffs/Applicants herein sworn to on 14th April 2011 and 3rd May 2011 respectively. The facts in this case as gleaned from the affidavit in support are briefly as follows: **ALHAJI OSMAN THOMAS** (hereinafter called the Deceased) father of the Plaintiffs and the Defendants herein died intestate in Freetown on 28th May 2009 seised of several real properties most of which were rented out to numerous tenants. The 1st Defendant herein obtained a Grant of Letters of Administration from the High Court on 20th October 2010. In a bid to obtain the said Grant of Letters of Administration the 1st Defendant declared that the said **ALHAJI OSMAN THOMAS** died possessed of no real properties or personal property. He also deposed in the several affidavits sworn to obtain the said Grant that he is the eldest son of the said Deceased.

The Plaintiffs allege that on the death of the said Deceased the Defendants started collecting rent from the several tenants and failed to give account to the other beneficiaries who numbered over 30.

The Plaintiffs consequently issued a writ of summons dated 10th March 2011 against the said Defendants praying for the revocation and cancellation of the said Letters of Administration, an injunction restraining them from intermeddling with the said Estate particularly by collecting rents from the several tenants and for an order that the Defendants give an account of the rents collected from the tenants since the death of the Deceased. The writ was followed by the issuing of a Citation against the Defendants to bring into court the said Grant of Letters of Administration.

On 17th November 2010 the Plaintiffs themselves obtained a Grant of Letters of Administration in respect of the Deceased's estate in which they declared the full estate and duly paid the required estate duty. They claimed that the Grant obtained by the 1st Defendant ought not to be allowed because of the false declaration made therein by him and it also presented a false picture of the Deceased's estate.

The Plaintiffs filed the present application for the said injunction on receiving complaints from the tenants UNDP that the Defendants were preventing them from using the parking lot for their vehicles after they had paid rent for its use.

The Defendants opposed the application and an affidavit in opposition sworn to by the 2nd Defendant **FADLU OSMAN THOMAS** on 11th July 2011 was filed on their behalf. He deposed that the 1st Defendant, **ALIEU OSMAN THOMAS** is the eldest son of the said Deceased whereas the 1st Plaintiff is the fifth son of the said Deceased.

Receiving complaints from the tenants UNDP that the Defendants were

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He averred that the said Deceased was a Muslim and died a Muslim intestate and that according to the laws of Sierra Leone on the death of a Muslim intestate, his eldest son or eldest brother were the persons entitled to take out a Grant of Letters of Administration in respect of his estate. In the absence of these named persons, the Administrator-General was entitled to take out the said Grant.

The deponent went on to refute the allegation that he collected rents from UNDP tenants without authority and stated that he had the necessary authority to do so and exhibited evidence of contracts made between himself and UNDP. He also explained that the 1st Defendant had been out of Sierra Leone for several years and therefore had little knowledge of his father's estate and when he called a family meeting to ascertain the properties of his late father none of his siblings could give him the said information.

Counsel for the Defendants cross-examined the Plaintiffs on the contents of their affidavit in support of the motion. Counsel for the Plaintiffs also cross-examined the 2nd Defendant on his affidavit.

The application herein is for an injunction restraining the Defendants from intermeddling with the estate of the Deceased and from collecting rents from tenants of the estate. Counsel for the Defendants has challenged the Plaintiff's right to bring the action as Administrators of the estate of the Deceased.

Counsel for the Defendants cross-examined the Plaintiffs on the contents of

He submitted that they are not entitled in law to a Grant of Letters of Administration as they are not persons so entitled pursuant to the provisions of s. 9(2) of the Mohammadan Marriage Act Cap of the Laws of Sierra Leone. He stressed that the rightful person to take out the Grant is the 1st Defendant the eldest son of the Deceased. He therefore contended that the action is frivolous and vexatious as neither of the Plaintiffs herein has a legal right to bring the action in which the claim for an injunction is a relief prayed for. He urged the court to refuse the application.

Both counsel have referred the court to the guidelines or principles set out for the grant of an injunction in the celebrated case of **American Cyanamid Co. vs. Ethicon Ltd** {1975} A-C 396 and as considered in the **Supreme Court Practice 1999** paragraph 29/1/2 at page 564.

It is well established from the above authorities that in an application for interlocutory injunction an initial question which has to be considered is whether the action has raised a serious issue to be tried. Counsel for the Defendants has contended that the action is frivolous having been brought by Plaintiffs who have no legal right to act as Administrators of the estate of the Deceased person.

It must be pointed out that at this stage of the proceedings, it is no part of the court's function to try to resolve conflicts between the parties based on facts on which the claims of either party may ultimately depend.

interlocutory injunction an initial question which has to be considered

The court's main function is to mitigate the risk of injustice to the Plaintiff during the period before the party's claim is resolved. It is therefore necessary to determine whether the Plaintiff has raised a serious question to be tried.

In response to counsel for the Defendant's submission that the Plaintiffs lack the legal right to obtain the Grant and that it is the 1st Defendant as the eldest son who has the said right in law, counsel for the Plaintiff has submitted that the Letters of Administration obtained by the said 1st Defendant ought to be revoked as it was obtained on a false declaration that the Deceased has no assets either real or personal at the date of his death. Counsel has relied on a number of authorities for this submission. What is clear and this has been submitted by both counsel is there are very serious issues to be tried here.

The next question therefore is whether damages would be an adequate remedy for the Plaintiffs injury or violation of their rights. From the facts of this case, it is clear that damages would not be the remedy here.

The court must therefore go on to consider where the balance of convenience lies. The Plaintiffs are suing as Administrators of the estate of the Deceased and have obtained a Grant of Letters of Administration in respect of the said Estate. Counsel for the Plaintiffs has stressed that the action has been brought under the Devolution of Estate Act 2007 and contended that s. 1 of the said Act has repealed by implication s. 9(2) of the Mohammadan Marriage Act relied on by counsel for the Defendants.

The court must therefore go on to consider where the balance

It is my view that these are issues which are to be determined at the trial and the court's duty here is not to decide difficult questions of law which require detailed arguments. These are matters to be dealt with at the trial.

The court now merely has to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is being sought. The relief here is for an injunction restraining the Defendants from intermeddling with the estate of the Deceased, particularly collecting rents from several tenants and demanding rents from UNDP and preventing the said UNDP from parking its vehicles in the Parking Lot leased to them after paying rent to the Estate.

The issue here is whether it would be expedient to grant or refuse the application for the injunction. The court must therefore weigh the balance of the risk of doing an injustice. Counsel for the Plaintiff has maintained that the damage feared here is the interference by the Defendants with tenants particularly the UNDP who have been prevented from using the Parking Lot for which they have paid rent. That in my judgment is a very serious complaint. The court must look at the practical realities of the situation here to which the injunction will apply. The balance of convenience clearly lies in favour of granting the injunction prayed. The degree of harm that will continue to be caused the UNDP in particular would clearly outweigh any possible injustice if at all, to the Defendants. In the circumstance the application is granted. I make the following Orders:

for which they have paid rent. That in my judgment is a very serious

1. That the Defendants herein and each of them whether by themselves, their servants, agents, any other member of the family or beneficiary of the said Estate, or howsoever otherwise are hereby restrained from intermeddling in the Estate of **ALHAJI ABDUL OSMAN THOMAS** (Deceased) Intestate particularly
 - a) By going around and collecting rents from the several tenants of the said Estate.
 - b) Demanding rent from UNDP in respect of the Parking Lot at 81 Wilkinson Road Freetown and preventing U.N. Vehicles from using the said Parking Lot after ^{they} have paid rent to the Estate.
2. The Plaintiffs are to give an undertaking as to damages in the event that this Order ought not to be granted.
3. Costs in the cause.

A. Showers
SIGNED: - A. SHOWERS

23/1/2012

JUSTICE OF COURT OF APPEAL