



IN THE COURT OF APPEAL OF SIERRA LEONE
CIVIL DIVISION

CIV. APP. 89/16

CLEMENTINA AGNES HARDING

APPLICANT

AND

KENNETH PONSFORD ELEADY-COLE

RESPONDENT

REPRESENTATION:

SHEARS-MOSES & CO.

COUNSEL FOR THE APPLICANT

BMT LAW CHAMBERS

COUNSEL FOR THE RESPONDENT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA. RULING
DELIVERED ON THE 27TH SEPTEMBER, 2017

1. This is an application by Notice of Motion dated the 24th day of April, 2017 for the following orders:
 1. That the Appellant/ Respondent be restrained from using the Letters of Administration in his custody to do anything in respect of that part of the estate of Teddy Kenneth Eleady - Cole at 87 Wilkinson Road, Freetown pending the hearing and determination of the Appeal.
 2. Any other order the court may deem just.
 3. Costs in the cause.
2. The Respondent/Applicant (hereinafter referred to as the "Applicant") used the affidavit of Emmanuel Ekundayo Constant Shears- Moses sworn on the 24th day of April, 2017.
3. The Appellant/ Respondent (hereinafter referred to as the "Respondent") opposed the application and used the affidavit of Kenneth Ponsford Eleady - Cole sworn to on the 13th day of June, 2017.
4. In her submission, Ms. A. Williams, Counsel for the Applicant relied on the entirety of the affidavit in support but more particularly on paragraphs 3, 4, 5, 6 and 7 thereof together with the exhibits attached thereto. Exhibit "A" was an Order of the High Court dated 10th October, 2016 and Exhibit "B" was the Notice of Appeal filed by the Respondent herein.
5. Ms. Williams submitted that by Exhibit "A", the Respondent herein was ordered to bring in the Letters of Administration to be revoked and to enable Probate to be granted to subsisting Executors of Letters of Administration with the will annexed taken by beneficiaries. The Letters of Administration to be lodged with the Master and Registrar within 14 days

of the date of the judgment. She noted that this had not been done and the Respondent continues to use the purported Letters of Administration for her own benefit.

6. Ms. Williams prayed this court to restrain the Respondent from continuing to use the said Letters of Administration to do anything in respect of the part of the estate of Teddy Kennenth Eleady – Cole at 87 Wilkinson Road, Freetown.
7. Mr. D.E Taylor on behalf of the Respondent opposed the application. He used the affidavit in opposition sworn to on the 13th June, 2017 together with the Exhibits attached thereto. He referred to Exhibit KEC 1, which was an affidavit sworn to by Simeon Mcfoy, Attorney for the Applicant herein particularly paragraph 10 thereof.
8. Mr. Taylor submitted that since judgment was delivered in the High Court in this matter, the status quo had not changed. The Respondent had not taken any step or done anything that would adversely alter the status quo. He particularly commented on paragraph 6 of the affidavit in support of in which it was averred that the Defendant had been informed by the Applicants that the property was being pulled down with the knowledge and approval of the Respondents herein. Mr. Taylor noted that paragraph 10 of exhibit KEC 1 also averred that the Respondents (Defendants) recently removed the tenants who were known by the Plaintiff (Applicant) and transacted to lease and sell the property to person who have proceeded to demolish the structure. This court noted that exhibit KEC 1 was sworn

to on the 7th March, 2014 whilst the affidavit in support was sworn to on the 24th April, 2017.

9. Mr. Taylor in conclusion submitted that the source of information regarding the demolition of the structure was baseless. An injunction was an equitable remedy and must be sought with clean hands. As the Applicant had not come before these Court with clean hands, the application must be dismissed – the efficacy of paragraph 10 of exhibit KEC 1 being the factor.
10. Ms. Williams reply submitted that what was alleged in paragraph 6 of the affidavit in support was that the Respondents were in the process of demolishing the structure and not that it had been done. In any event what the Applicant was seeking was the preservation of the status quo pending the hearing and determination of the Appeal.

DECISION

11. I have listened to Counsel on both sides and perused the affidavits in support and in opposition. The issue in dispute here is factual. Has the Respondent complied with the Orders of Showers JSC (sitting as a High Court Judge) dated the 10th day of October, 2016, Order 3 thereof.
12. The question of whether the property had been demolished or in the process of being demolished is irrelevant for our present purpose. It is not the function of this court to resolve semantical issues. Had the Order been complied with, there would have been no need for this application. But as it is, the Respondents have not provided any evidence that they have complied with Order 3 of the Orders of the High Court dated 10th October,

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2016. Had that been done, anybody dealing with the Respondents with regard to the property would be doing so at his or her peril as the doctrine of the innocent purchase would not be of any assistance.

13. To my mind, this application can be resolved by ordering the preservation of the status quo. Noting that the Respondent has denied doing anything to upset that status quo.

In the circumstance, I order as follows:

1. That the Respondent is hereby restrained from using the Letters of Administration in his custody to do anything in respect of that part of the estate of Teddy Eleady – Cole at 87 Wilkinson Road Freetown Pending the hearing and determination of the Appeal.
2. Costs in the cause.



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HON MR. JUSTICE SENGU M. KOROMA JA.

