

IN THE HIGH COURT OF SIERRA LEONEFAMILY AND DIVORCE DIVISION

BETWEEN:

CHIEF MATHEW JIBAO YOUNG
ALLIEU HAKU
TAHIRU DABOH
HAJA HALIMATU LAMIN
PRINCE BINDI
CHIEF SIDI TAMBOYEKE

PLAINTIFFS

(All sung as associated beneficiaries under the Estate of
the late Haja Aminata Fofanah (Deceased Intestate)
C/O ELIZABETH STREET
FREETOWN (D. J. Peacock, E. N. B. Ngakia)

VS.

MS AMINATA FOFANAH
(ADMINISTRATOR OF THE LATE HAJA
AMINATA FOFANAH (DECEASED)
C/O PERCIVAL STREET
FREETOWN (E. E.C. Shears-Moses, D. B. Stark)

DEFENDANT

JUDGMENT OF HON. MRS JUSTICE M. D. KAMARA –JDATED : 22ND FEBRUARY, 2019

The 1st Plaintiff claims to be the customary husband of the Deceased intestate whilst the Defendant claims to be the adopted child of the Deceased Intestate where either claim cannot be controverted. The question to be determined is who amongst the two has authority to take out letter of administration on the death of the deceased intestate.

In an attempt to justify his stance, he narrated how he came to have the customary marriage with the deceased intestate and testified as follows: that he Chief Young met Haja Aminata Fofanah in March, 2008. That he proposed love to her but she

said that she is a Haja and that she does not encourage, boyfriend. That she asked him to marry her which he said he did twice, firstly in Freetown in May 2008 through her brother Momodu Bah Fofanah who had cause to travel from Hangha to witness same.

That he had cause to re-marry her again on, the 25th December 2010 in her home town Yengema for the other family members to recognize him and that they performed the yearly ceremony on the 26th December, 2010.

That on their way to Freetown on 27th December, 2010, they had cause to stop over at Gbayama-where she introduced him to Dr Daboh as her husband.

That every year, they spend Christmas at Yengema.

That on the 27th February, 2014, his wife passed away.

That a family meeting was held on the 28th February, 2014, chaired by Dr Daboh. And that the Yengema, family was represented by Prince Bindi, that after a lengthy deliberations, the family decided to handover the remains of his wife to him as her customary husband.

That thereafter, he immediately took over the burial ceremony.

That he signed for her corpse and conveyed same to be buried near her late mother in Yengema as she had requested. him to do. That he was at Yengema until after the 7 days-before he returned to Freetown. Thereafter he prepared for the 40th day ceremony which was observed at No 18 Percival Street, Freetown

That he was appointed by the family members to be in charge of his late wife's estate to be assisted by some family heads.

That in August 2014, the defendant herein took out Letters of Administration as next of kin without the consent of the family or himself; which he and other family members challenge in this action.

That the defendant has ever since forcefully entered and occupied the premises known as No 18 Percival Street-that she has broken into the late Haja Aminata bedroom and occupied same with her husband and cohorts.

That they have misappropriated his personal effects as well as that of his late wife in the said premises.

The Plaintiff told the Court that he was the customary husband of the deceased intestate, that he went to her village where he was presented by the deceased intestate as the man she is delivering her prayer through, that she being a Muslim is required to deliver her prayer through a man she calls her husband. The Plaintiff claims he paid the nominal dowry as tradition demands and he was recognized as the deceased intestates' customary husband. This transaction was confirmed by three prosecution witnesses but was not registered.

In this case PW2, PW3 and PW4 all confirmed that the Plaintiff herein was the customary husband of the deceased intestate. DW 1 confirmed that his sister was delivering her prayer under the supervision of the Plaintiff. And it is not contested that the deceased intestate is related to PW 2, PW 3, PW 4 and DW 1. The defendant, qualified same by saying that PW 2, PW 3 PW 4 are distant relatives and DW 1 a consanguinal brother of the deceased intestate. As a result of the said relationship, the Plaintiff say he was given the privilege to head the funeral ceremony without anyone raising a finger to the extent he was involved in taking down inventory of the deceased intestate personality in her room/shop to ascertain and realize same for the benefit of the beneficiaries. In an attempt to substantiate this, he referred the Court to minutes of the family meeting dated 5th November 2014 held at No 18 Percival street exhibited as O 1-3.

~~The Defendant confirmed that the 1st Plaintiff was a friend of the deceased~~
~~intestate~~

In an attempt to justify her stance the Defendant alleged that Chief Young (the 1st Plaintiff herein) rented out the property and collected the rent without informing any member of the family. That as a result she had cause to ask her father to come down to Freetown immediately. That her father decided to lock the shop and took the keys with him as Chief Young could not pick his calls- that he switched off his

phone. That it was then that Chief Young alleged that the Defendant and her brother Abu Fofanah have broken into his house and vandalised his property. That he had made this report at the F S U at Central Police, that it was at this point that she and her husband, went to see their Solicitor and applied for the Letters of Administration for her aunts, property on a decision by the family to avoid further interference by Chief Jibao Young.

She also narrated how her aunt had introduced Chief Jibao Young to her late father as the man she will be praying with. That her aunt had always said to her that her property did not belong to Chief Young but her family.

Prince Brima Bindi confirmed that the customary marriage did take place, and confirmed that the plaintiff paid dowry in the sum of Le1,000,000/00 in the calabash as "Bride price".

That the family appreciated the money and shared it.

This was corroborated by the testimony of Sheku Umaru Musa-who said Chief Young paid greeting fees in the sum of Le500,000/00 and placed Le1,000,000/00 in the calabash.

From the evidence adduced by the defendant it is not contested that the deceased intestate is the biological aunt of the defendant and she is named after her. Furthermore that she the defendant had been given to the deceased intestate from her childhood days to become the adopted child of the deceased, intestate. As she the deceased died not having an issue of her own body. The Defendant grew into, womanhood and she got married and was cohabitating with her husband in her matrimonial home. The defendant is the daughter of the elder brother of the deceased intestate.

Thus the deceased and the defendant lived a ward/ guardian/niece/aunt relationship until her demise. She denies that the deceased intestate was customarily married to the Plaintiff, but confirms they were friends". She also confirmed her aunt introduce him as the man she prays with to her father

DW 1 Kemoh Fofanah who was included as PW 2 but later dropped from the list of Plaintiffs when it appeared that he had pitched sides with the defendant through an amendment that was sought by the 1st plaintiff herein. He testified on behalf of the defendant as a witness.

This witness testimony has an inherent limitation, due to infirmity of mind. A case in point is when he categorically denied having made a witness statement at the defense counsel's chamber. To his astonishment, Defense Counsel had cause to halt his testimony for a long time. He later came to say he now say he made a statement to Defense Counsel.

No evidence was adduced by the defendant to show that the native guardianship matured into adoption, properly so called.

Similarly the customary marriage between the Plaintiff and the deceased intestate was not registered.

The question that we now need to answer for both the plaintiff and the defendant are as follows respectively:-

- (a) Does the non-registration of the customary marriage between the plaintiff and the deceased intestate nullify the existence of the said customary marriage?
- (b) Does a long guardianship of a niece by an aunt without more mature into adoption strictly so called? Another question to be determined is whether or not this court has discretion to order that letters of administration be granted to the plaintiff instead of the defendant (of the deceased intestate). The question is not in regard to distribution or any other matter expressly provided for in S. 9 of the Mohamedan Marriage Act Cap 96.

In re-Martin (3), in the Judgment of Webber, C J Sierra Leone (3 WACA Act 02).

The learned Judge was correct in stating that where a claim such as this is based on native law and custom that particular native law and custom must be established by positive evidence.

That there is a presumption of marriage where no marriage certificate is in existence as established under Mohamedan Law. Abdul Bun Kadri Imam of Fourah Bay Mosque once had this to say in Fourah Bay "We have the Juma Sect, all children born by parent who got marriage under the Mohamedan Law and custom are lawful".

The question that we now need to answer for both the plaintiff and the defendant are as follows:-

- a) Does the non-registration of the customary marriage herein referred to between the plaintiff and the deceased intestate nullify the existence of the said customary marriage?
- b) Does a long guardianship of a niece without more mature into adoption strictly so called as to vest in the ward the right of taking out letters of administration in the estate of the deceased intestate even when there is a spouse?

To the first question I say no and that they could have availed themselves of late registration using the registration of instrument (Amendment Act). Therefore, the customary marriage subsists albeit it was not registered.

To the second question a ward can take out letters of administration in her deceased guardian intestates estate provided she is not survived by a spouse or other relations. The Laws of Sierra Leone recognize customary marriage just as it does for Civil, Christian and Moahmedan marriages. Furthermore, the laws of Sierra Leone recognize customs applicable to particular communities' in Sierra Leone (see S 170 of the Constitution Act No 6 of 1991). From experience certain customs and traditions of marriage are recognized and considered as a valid mode

of contracting marriage in many native communities in Sierra Leone. Without them being celebrated and registered. For example, where DW 1 testified that his late sister deceased intestate was delivering her prayer through the plaintiff herein is one such custom and tradition. It is not contested that the plaintiff was granted the permission to oversee the funeral rites of the deceased intestate. As a tradition in many native communities. The corpse of a woman is often laid to rest in her grave by her husband. A husband includes a hurriedly concluded marriage at the death of a widow, often it is the brother of the deceased husband that will be called upon, for an elderly woman with many grandchildren one of her grandsons will represent her husband and he will lower her into her grave. Similarly, "temporary" marriages for the fast month or one going on a journey; such temporary marriages may subsist beyond that period, such marriages are not celebrated or registered but are recognized in certain communities in particular. Madingo, Fulla, Susu, Yalunka, Korankoh etc communities. As a matter of tradition, every woman should fast under the supervision and be buried by a man she calls her husband. Such a man is entitled to all the respect that would have been accorded any man described in any relationship as a spouse, if such a woman dies leaving properties without will this husband should not act in isolation but in consultation with the rest of the deceased intestate's family. The husband will be the figure head around whom all activities relating to her estate revolves for the benefit of her family. Similarly the essence of taking out letters of administration is to empower the administrator to take possession and realize the Estate of the deceased intestate for the benefit of the beneficiaries entitled.

From the foregoing exposition, It stands to reason that the 1st plaintiff herein has authority to take out letters of administration and administer, the estate of Haja Aminata Fofanah under the guidance of the immediate and distance relatives. In such a case the administrator is considered as a trustee for the benefit of the beneficiaries of which the defendant herein is one. It would have been different if

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the letter of administration were taken by any of the brothers of the deceased intestate. This would have given rise to the presumption of her not being married. For the simple fact that the brothers and other family relations identified themselves with the 1st Plaintiff held their hands close to their chest and did not come out in the open to oppose the 1st plaintiff herein, this lends credence to the fact that the family was aware of the deceased intestate's relationship with the plaintiff. They will be constrained to admit that the 1st plaintiff and the deceased intestate were 'friends' as alleged by the defendant, the deceased intestate being a 'Haja' The Laws of Sierra Leone as provided for in S 170 of the Constitution and the Devolution of Estates Act Act No 21 of 2007 strengthens the position of the 1st plaintiff in this regard.

The devolution of estate Act states (interpretation section) in unequivocal terms as to who takes out letters of administration in intestacy. It states that the surviving spouse is the proper person to apply for letters of administration to administer the estate. Only if there is no spouse or he/she cannot be found will other relatives, the next of kin be allowed to apply for letters of administration. In the event of polygamous marriages and the man dies intestate the first wife shall apply for letter of administration and in her absent the next wife in line shall apply. This Act apply to all persons dying in Sierra Leone (Family Property Exempted) who has property anywhere in Sierra Leone

And that a spouse means:

(a) A person married to the intestate or the testator

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(b) An unmarried woman who has cohabited with an unmarried man as if she were in law his wife for a period of not less than five years immediately preceeding the death of the interstate/testator.

- (c) An unmarried man who has cohabited with an unmarried woman as if they were in law her husband, for a period of not less than five years immediately preceeding the death of the intestate or testate.

Furthermore, S.170 of Act No 6 of 1991 recognizes that marriage includes marriage under the Civil Marriage Act, Christian Marriage Act, the Mohamedan Marriage Act or any customary law.

A question that needs to be answered for a similar situation is:

Does the acquisition of property by a woman introduce a new definition of spouse in certain customary marriages? Are families reclaiming the corpse of their dead to do female relatives who die intestate so that they administer their estate? The reason for asking these questions is because this issue of questioning the legality of a woman's customary marriage often rears its ugly head if she dies intestate and has affluence/real property particularly in the Western Area of Sierra Leone.

In the light of the transactions narrated by both the 1st plaintiff and his three witnesses who testified, including narratives of the defendant and D W 1, the 1st plaintiff has on a balance of probability proved to be the customary husband of the deceased intestate herein. Whilst the defendant and other relations are beneficiaries to the estate of the deceased intestate.

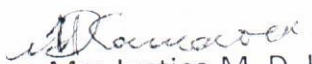
And pursuant to S 170 of Act No 6 of 1991, the constitution of Sierra Leone and the Devolution of Estates Act, Act No 21 of 2007, I hold that the 1st plaintiff herein is entitled to take out letters of administration for the estate of Haja Aminata Fofanah-deceased intestate and not the defendant herein.

In consequence whereof it is hereby ordered that the letters of administration issued to the defendant herein be expunged from the record books in the Probate office in the High Court Registry as if it never existed. And that the defendant gives account of her, stewardship during the subsistence of the letter of administration she obtained in this estate.

That the 1st plaintiff takes out letters of administration in respect of the estate of the deceased interstate herein.

And that the 1st plaintiff works in consultation with the Principal member of the deceased intestates family to ascertain all beneficiaries entitled and map out a distribution schedule that meets the approval of the relatives of the deceased intestate.

Each party to bear their costs.


Hon Mrs Justice M. D. Kama - J
22/2/2019