

IN THE HIGH COURT OF SIERRA LEONE  
LAW COURTS BUILDING  
SIKA STEVENS STREET

MISC. APP. 23/18

MARLYN NGOBEH

APPLICANT

AND

RONALD GEORGE FASHOLE-LUKE

RESPONDENT

REPRESENTATION:

C. VANDY ESQ. COUNSEL FOR THE PLAINTIFF

L. M. BAYOH ESQ. COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JSC.  
RULING DELIVERED ON 26<sup>TH</sup> SEPTEMBER, 2019.

The Plaintiff applied to this Court by originating summons dated the 15<sup>th</sup> January, 2018 for the following orders:-

1. That the property situate, lying and being at No. 26 Siaka Stevens street Freetown which forms part of the Estate of Constance Ameha Ngobeh (Deceased Testate) be sold by Private Treaty or Public Auction
  2. That the proceeds of sale of the said property be distributed between and among the beneficiaries of the said Estate after the deduction of the Solicitors costs of 10% and other expenses.
  3. That in the event that a beneficiary is dead, the proceeds of the sale should be given to the next of kin of the deceased beneficiary.
  4. That in the event that the deceased beneficiary has no next of kin, the proceeds of the sale should be distributed equally among the parties/other beneficiaries
  5. That the Applicants do have conduct of the sale of the said property
  6. That the Respondents be ordered to give an account of the proceeds of rent accrued from the said property spanning from 2005 to date.
  7. Any further or other Orders(s) as this Honourable Court may deem fit and expedient in the circumstance
  8. That the costs of this application be costs in the cause.
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2. The Applicant gave notice that at the hearing of the Application, she intended to use and rely on the affidavit of Arlett Ngobeh sworn to on the 15<sup>th</sup> day of January, 2018 and any other affidavit that Counsel may seek leave and use
  3. The Applicant was represented by the firm of Brewah & Co.
  4. The firm of Shears-Moses & Co. entered appearance for and on behalf of the Defendant; Ronald George Fashole-Luke by memorandum and Notice dated the 22<sup>nd</sup> day of January, 2018
  5. The Respondent swore to an affidavit on the 14<sup>th</sup> day of March, 2018 opposing the Application.



6. The matter first came up for hearing on the 4<sup>th</sup> July, 2018 Mr. L.M. Bayoh Esq. appearing for the 1<sup>st</sup> Plaintiff/Applicant was present whilst the firm of Shears-Moses & Co. on record as representing the Defendant was not represented. The Registrar informed the Court that they were served with the notice of hearing.
7. The matter was adjourned to the 4<sup>th</sup> July, 2018 at which the Plaintiff's Counsel was present, and the Defendant's was not. The matter was subsequently adjourned on five occasions due to the absence of the Defendant's counsel

### THE APPLICATION

8. Due to the persistent absence of the Defendant's Counsel, the Plaintiff's Counsel was ordered to move his application on the 28<sup>th</sup> February, 2019
9. Lamin M. Bayoh Esq. Counsel for the Applicant relied on the affidavit of Arlett Ngobeh sworn to on the 15<sup>th</sup> day of January, 2018 together with the affidavits attached thereto. He submitted that the subject-matter of this action is owned by both the Applicant and the Respondent but has been under the control of the latter.
10. Lamin M. Bayoh Esq. referred to paragraph 5 of the affidavit of Arlett Ngobeh in which it is alleged that the Respondent has failed to give account of the running of the estate since 2005.
11. Counsel submitted that the Respondent was not averse to this application as in Exhibit AN4, he wrote to the Applicant expressing his intention to dispose of the property. The only contention the Respondent has with this application is paragraph 6 thereof in which the Applicants were praying that they have conduct of the sale.
12. Mr. Bayoh briefly referred to the affidavit in opposition filed by the Respondent but commented that there was no indication as to whether it supported or opposed the application.
13. Charles Vandy Esq., Counsel for the Respondent responded to the application on Wednesday, 3<sup>rd</sup> July, 2019. He relied on an affidavit in

opposition sworn to by the Respondent herein, Roland Fashole-Luke on the 14<sup>th</sup> March, 2018 together with the exhibits thereto.

14. Mr. vandy submitted that proceeds of rent were shared among the beneficiaries Exhibit RFL 1 <sup>a-c</sup> and Exhibit RFL 2 <sup>a-b</sup> Demand notes in respect of city rates and receipt.
15. Mr. Vandy further submitted that the Respondent was not averse to the sale of the property in question but prayed that the Court takes into cognisance the Respondent's expenditure on it. The Respondent was also not averse to the Applicants being given the first option.
16. This matter though seemingly direct as the Respondent is not completely averse to the application, there are two issues for determination; these are:-
17. a) Whether the Applicant should have the conduct of the sale of the property. The Respondent has not in his affidavit in opposition contested this prayer. But this Court is of the view that in order to avoid any future dispute, it would be just for both parties to conduct the sale. The reserve price to be stated herein shall guide the sale.
18. B) The Reserve Price
19. The affidavit of the Respondent has not made any mention of a reserve price. Indeed that affidavit is vague and has not been of much assistance to this Court. The applicant has exhibited. Exhibit AN5 which shows a value of \$300,000.00. This valuation was done at the instance of the Respondent who indicated his willingness to exercise the first option to purchase the property.
20. This offer was however not mentioned by the Respondent in his affidavit and his Counsel in his oral submission stated that the Respondent had no objection to the Applicant exercising the first option.
21. In his oral submission, Counsel for the Applicants argued that the present value of the property is above that in Exhibit AN5. This was also sworn to in paragraph 10 of the affidavit of Arlett Ngobeh.

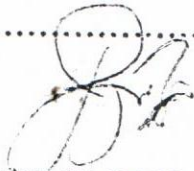


22. Charles Vandy Esq. contended that the Respondent had undertaken huge expenditure on the property for which he should be compensated. The Applicant on the other hand is arguing that the Respondent has not given any account of rent collected since 2005. To my mind this dispute could be settled by the Respondent giving a just and true account of all rents collected and expenditure therefrom since January, 2005.

In the present case, where there is only one property constituting the Estate, there is no possibility of partitioning. The only option is to order the sale of the property.

**In the circumstance, I order as follows:-**

1. That the Applicants and the Respondent jointly appoint a valuer to value the property lying, situate and being at No. 26 Siaka Stevens Street, Freetown with a view to fixing the reserve price.
  2. That the after fixing the Reserve price, the said property at No 26 Siaka Stevens Street, Freetown be sold by private treaty or public auction with the Applicants having the first option of purchasing it and the proceeds of the sale distributed among the beneficiaries; less any amount due by the Estate to any of the beneficiaries or vice versa.
- The sale of the property shall be conducted by both the Applicants and the Respondents or their agents (s).
3. That the Respondent do render a just and true account of all rents collected in respect of the property at No 26 Siaka Stevens Street, Freetown since January, 2005
  4. That the costs be costs in the cause.



Hon. Mr. Justice Sengu Koroma (JSC)

In his circumstance, it will be fair and just for the Applicants and Respondents to commission a new valuation of the property.

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**Hon. Mr. Justice Sengu Koroma (JSC)**