

THE HONOURABLE MR JUSTICE FISHER J

Kadiatu Kolenten Sankoh v Alhaji Umar Sankoh

Neutral Citation Number CC 304/22 S27

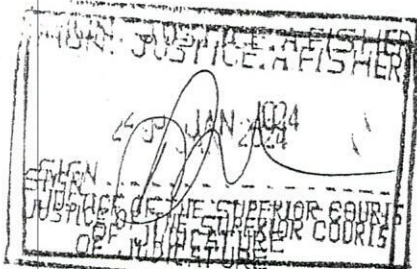
Family and Probate Division

Case No: Misc.App 304 /2022

IN THE HIGH COURT OF JUSTICE
HOLDEN AT FREETOWN
GENERAL CIVIL DIVISION

Law Court Building
Siaka Stevens Street
Freetown

Date: 29 January 2024



Before:

THE HONOURABLE MR JUSTICE FISHER J

Between:

Mrs Kadiatu Kolenten Sankoh

Plaintiff

-and-

Alhaji Umar Sankoh
Sheku Sankoh
Kadie Sankoh
Fatmata Sankoh (1)
Fatmata Sankoh (2)

1st Defendant
2nd Defendant
3rd Defendant
4th Defendant
5th Defendant

Representations: EEC Shears-Moses of the plaintiff

Hearing date: 4 May 2023

APPROVED JUDGEMENT

THE HONOURABLE MR JUSTICE FISHER J

The Honourable Mr Justice Fisher J:

1. By way of an originating notice of motion dated the 4th day of June 2022, the plaintiff seeks the following orders:
 1. An order that the applicant being the surviving spouse of Pa Alimamy Kolenten Sankoh is to choose and take her own share of the estate.
 2. That the respondents being the children of Pa Alimamy Kolenten Sankoh (deceased) be allotted portions of the estate as between the surviving spouse.
 3. That the applicant be given her own share of rents and other benefits to the estate since the death of her husband.
 4. That each party bears its costs.
2. The application is supported by the affidavit of Kadiatu Kolenten Sankoh, sworn to on the 4th day of June 2022, with three exhibits attached. In summary, she swore to the following matters:
 1. That she is a widow of Alimamy Kolenten Sankoh(deceased) of 6b Martin Street, who died on 26th August 2004.
 2. That before the death of Pa Alimamy Kolenten Sankoh, they were blessed with two children, who are Isata Kolenten Sankoh and Alima Kolenten Sankoh.
 3. That after the death of Pa Alimamy Kolenten Sankoh, she was granted letters of administration of her deceased husband intestate's estate as he left no will.
 4. That her husband had three children before they were married, who are Alhaji Umar Sankoh, Sheku Sankoh, Kadie Sankoh, Fatmata Sankoh (1) and Fatmata Sanoh (2).

5. That they both cohabited at 6b Martin Street, Freetown with their children before the death of her husband.
 6. That during the lifetime her late husband, he acquired properties at 6b Martin Street, Freetown, 3 Cow Yard, 18 Magazine Wharf, 2d Magazine Wharf, 22 Magazine Wharf and 6b Guard Street.
 7. That since the death of her husband, she has not enjoyed anything from his estate as the children who are the respondents have deprived her of the benefits of the estate.
 8. That soon after the death of her husband the respondent beat her up and through her out of the compound at Martin Street and currently lives in rented apartments which she maintains from her petty trading earnings.
 9. That the respondents have put in tenants in the properties who pays rent to them for parts of the estate. She has made efforts to get the respondent to see reason but have refused to see reasons.
 10. That her solicitors tried to get the tenants at 6 b Martin Street to vacate the property but the Respondent s instructed them to ignore her. Several meetings were arranged but the respondent did not turn up.
 11. The 1st respondent has since refused to take calls from her solicitors, and she has been advised that she is the administratrix of the estate and should be in charge.
 12. She had offered to take 6b Martin Street for herself and her children, but the respondents have refused and have shown a determination to put her and her children out of the estate.
3. I have carefully considered the plaintiff's case. Mr Shears Moses for the plaintiff based his application on section 9(5) of the Devolution of Estates Act 2007. Mr Shears Moses had earlier made an application for substituted service

on the defendants pursuant to order 10 rule 5 of the High Court Rules 2007, which I had granted. The orders sought by Mr Shears Moses were subsequently initiated by way of an ex parte notice of motion dated 27th February 2023, with an affidavit in support, sworn to by Kadiatu Kolenten Sankoh on the same day. In summary, she swore to the following matters:

1. That an action was commenced against the defendants dated 4th July 2022.
2. That service of the originating notice of motion was served on the respondents by publication in a newspaper on two occasions.
3. That no appearance was entered on behalf of the respondents and prays for the court to grant the orders prayed for.
4. The respondents have not entered an appearance to this action and in accordance with the provisions of Order 13 rule 5 of the High Court Rules 2007, the plaintiff is entitled to judgement. Further the plaintiff has complied with the provisions of Order 13 rule 1 and to that extent has provide an affidavit of service and search which have been exhibited. Exhibit KKS 3 is a copy of the order I granted on the 29th day of November 2022.
5. Section 9(5) of the Devolution of Estates Act 2007 provides as follows:

“(5) Where there is more than one surviving spouse all such spouses and the children shall agree among themselves as to the allocation of the houses but if, for any reason, they are unwilling or unable to agree, the court having jurisdiction in relation to such estate, shall upon application, determine which of those houses shall devolve to the surviving spouse or child or both of them.”
6. Section 9(5) of the Act requires that where a surviving spouse and children have been unwilling or unable to agree with respect to the allocation of

houses, the court shall determine which of those houses shall devolve to the surviving spouse or child or both of them.

7. Having reviewed the affidavit in support, I make the following findings of fact:

1. That the plaintiff is the wife and next of kin of the deceased and to whom letters of administration were granted as per exhibit KKS2.

2. That the plaintiff and the deceased had two surviving children before his death who are named as follows:

1. Isata Kolenten Sankoh.

2. Isata Kolenten Sankoh

3. That her deceased husband also had children before they were married and who he defendants and are named as:

1. Alhaji Umar Sankoh

2. Sheku Sankoh

3. Kadie Sankoh

4. Fatmata Sankoh (1) and

5. Fatmata Sankoh (2)

4. That the deceased estate consisted of the following:

1. 6b Martin Street

2. 3 Cow Yard

3. 18 Magazine Wharf

4. 2D Magazine Wharf

5. 22 Magazine Wharf

6. 6B Guard Street

8. The above represents 7 children between the plaintiff and the remaining five were children before the marriage who are also beneficiaries.
9. I have not seen any evidence of the extent of the deprivation by way of rents to which the plaintiff has been deprived and to that extent I have insufficient evidence before me to enable me to make a determination as to the extent of deprivation suffered by the plaintiff with respect to rents paid to the estate of the deceased intestate.
10. The deceased died on the 26th August 2004 and the plaintiff laments that she is yet to enjoy anything of her deceased spouse's estate. The evidence reveals that the plaintiff was residing at 6b Martin Street which for all intents and purposes was the matrimonial home prior to the death of her deceased husband. It is not known to what extent the respondents have benefited from the estate of the deceased since his death and the extent of their benefits is a matter that has to be taken into account in determining which of the houses shall devolve to the Respondents.
11. I am however satisfied that 6b martin Street was the matrimonial home from which she was disposed by the respondent and there is no reason as to why she should not be able to return to her matrimonial home. With respect to the other properties and in the light of the fact that it is alleged by the plaintiff that for the past twenty years the respondents have benefitted from these properties, I shall take that into account in determining how the remaining properties should be apportioned.
12. In the circumstances, I shall make the following orders:
UPON HEARING EEC Shears Moses Esq for the Plaintiff and

UPON CONSIDERATION of the *ex parte* notice of motion and the Originating notice of motion and the affidavits in support,

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the following properties shall devolve to the plaintiff and Isata Kolenten Sankoh and Alima Kolenten Sankoh, absolutely, with effect from the date of this order.

1. 6B Martyn Street
2. 6B Guard Street
3. 3 Cow Yard

2. That the following properties shall devolve to the Respondents as tenants in common, with effect from the date of this order:

1. 18 Magazine Wharf
2. 20 Magazine Wharf
3. 22 Magazine Wharf

3. The Respondent shall swear and file a joint affidavit detailing the amounts of rents received with respect to all properties belonging to the estate of the Alimamy Kolenten Sankoh, deceased intestate, within fourteen days of the date of this order.

4. The costs of this application summarily assessed at nLe50000.00 shall be borne by the Respondents jointly and severally and paid to the plaintiff within fourteen days of the date of this order.

5. There shall be liberty to apply within 14 days of the date of this order.

