

MISC/APP. 40/16

2016

B.

NO. 6

IN THE HIGH COURT OF SIERRA LEONE
(LAND & PROPERTY DIVISION)

IN THE MATTER OF THE ESTATE OF MR. RESTOR WILLIAM WILSON
DECEASED INTESTATE

IN THE MATTER OF LAND AND PROPERTY SITUATE LYING AND BEING AT NO. 3
HEDDLE STREET, FREETOWN

BETWEEN:

SALMA BAH - PLAINTIFF/APPLICANT
(SUING BY HER RIGHTFUL ATTORNEY
LAMRANA JALLOH)
NO. 39C HILLCUT ROAD
FREETOWN

AND

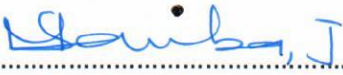
EKUNDAYO WILSON & 9 OTHS - DEFENDANTS/RESPONDENTS
ALL OF 169 CIRCULAR ROAD
FREETOWN

DATED THE 25TH DAY OF FEBRUARY 2016.

BEFORE THE HON. JUSTICE MIATTA MARIA SAMBA J.

I have reviewed the application before me. For completeness of the matter herein, IT IS THIS DAY ORDERED AS FOLLOWS:

1. That Counsel for the Plaintiff/Applicant joins Unisa Conteh as party to the matter herein within three (3) days of this Order.
2. That Counsel for the Plaintiff/Applicant serves upon the said Unisa Conteh all documents relating to the application herein within seven (7) days of this Order.
3. That this matter stands adjourned to 2nd day of March 2016.


.....
Hon. Jst. Miatta M. Samba
Read: 25th February 2016

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AND

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DATED THE 25TH DAY OF FEBRUARY 2016.

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NO. 39C HILLCUT ROAD
FREETOWN**

AND

**EKUNDAYO WILSON & 9 OTHS - DEFENDANTS/RESPONDENTS
ALL OF 169 CIRCULAR ROAD
FREETOWN**

**MR. UNISA CONTEH
C/O A.S.I. ESQ**

**DATED THE DAY OF SEPTEMBER 2016
BEFORE THE HONOURABLE JUSTICE M.M SAMBA, J.**

Counsel:

**Ailara Hamid of Wright & Co Solicitors for the Plaintiff/Applicant
A.S.I. Conteh Esq for the 11th Defendant/Respondent**

1. The application before this Court by way of an Originating Summons is basically for a declaration of title for that piece of property lying and being at No. 3 Heddle Street, Freetown in the Western Area of the Republic of Sierra Leone and for specific performance of a contract between the 1st Defendant/Respondent and Administrator of the property herein and the Plaintiff/Applicant (part-payment receipted) in respect of the said property. The application is supported by the affidavit of Salma Bah sworn to on the 25th day of January, 2016 together with exhibits attached.
2. The evidence before the Court is that the 1st Defendant obtained money from the Plaintiff on his own behalf and on behalf of the other Defendants, as part payment of \$20,000 (Twenty Thousand United States Dollars or its equivalent in Leones) for purchase of property situate at No. 3 Heddle Street, Freetown aforesaid. Relying on the contract between them and part payment therefore, the Plaintiff started the construction of a house

on the said property, which said building was constructed close to roof level.

3. The Plaintiff/Applicant later got to know about one Mr. Unisa Conteh, who laid claims to the said piece of land by virtue of a Deed of Conveyance dated 6th May 2011. The Plaintiff/Applicant spoke to the 1st Defendant/Respondent about the sale of her piece of property to the said Unisa Conteh and had cause to travel to Sierra Leone to claim her property.
4. The Court in its wisdom and in the interest of justice on the 25th day of February 2016 made an Order that the said Unisa Conteh be made party to the action herein and be served all necessary documents and joined as the 11th Defendant/Respondent herein. The Court's Order was complied with and a Notice and Memorandum of Appearance was filed for and on behalf of the said 11th Defendant/Respondent, Unisa Conteh by A.S.I Conteh Esq.
5. The general rule with regards purchase of real property is that once property has passed to an innocent 3rd party purchaser for value without knowledge of any defect in the title of the seller, such 3rd party will be entitled to retain the property. It must however be clearly established that:
 - a. The purchaser was an innocent purchaser
 - b. That the purchase was for value. That is, the property was not sold at a greatly reduced price but at a reasonable market value.
 - c. That the purchaser was totally unaware of any defect in the seller's title.
6. The evidence before this Court is that the said property was sold to the 2nd purchaser with full knowledge on the part of the 2nd purchaser, the 11th Defendant herein, that the Plaintiff/Applicant had made substantial part payment for the property. The 1st Defendant/Respondent told the Court, in the presence of the other Defendants, that the 2nd purchaser induced him to breach the original contract he had with the Applicant.
7. The 1st Defendant told the Court that at the period concerned, he was living with the niece of the 2nd purchaser, Unisa Conteh, one Fatmata Kamara otherwise known as Tutu, at Sumaila Town in Freetown. He told the Court that when he expressed interest in the said property, he told Unisa Conteh that the property was already sold to the Applicant, Salma Bah who by then was living in the United Kingdom. The 1st Defendant, in the presence of all the other Defendants told the Court, that Unisa Conteh prevailed on him to sell him the said property and promised to return the said Salma Bah's part payment and further get him to travel to Australia so that in the event that Salma Bah should take up any Court action against him, he will not be within the Sierra Leone jurisdiction to answer to same in Court.

8. The 1st Defendant told the Court that he presented the receipt of payment and draft Survey Plan in respect of Salma Bah's transaction to the said Unisa Conteh who still insisted he will buy the property.
9. The evidence led by the 1st Defendant, which supports the affidavit of the Applicant, Salma Bah, is to the effect that all that remained, to the knowledge of the said 11th Defendant/Respondent in respect of Salma Bah's transaction, was the execution of a Conveyance.
10. On the 13th day of May 2016, at the request of Counsel for the 11th Defendant, the 1st Defendant/Respondent, Ekundayo Wilson was put on the witness stand to make his statement on oath and was cross examined by A.S.I Conteh Esq, Counsel for the 11th Defendant/Respondent on the contents of his affidavit and his sworn testimony. The 1st Defendant was represented by his Counsel H.A Konto Koroma Esq of Edie Turay & Associates.
11. The Deponent, that is the 1st Defendant/Respondent told the Court that himself and his sister, Wilhemina Wilson, both of whom are Administrators of the estate of their deceased father offered the property at No. 3 Heddle Street, Freetown, for sale to the Plaintiff/Applicant who according to him is a family friend.
12. He said that Letters of Administration was drawn up by Lansana Kortor Kamara Esq in his favour and that of his sister, Wilhemina Wilson as Administrator and Administratrix respectively which said services was paid for from monies sent by the Plaintiff/Applicant.
13. He told the Court that in 2009 and after preparation of the Letters of Administration, he received \$8,000 from the Plaintiff/Applicant through her legal representative, Lansana Kortor Esq, same representing part payment for the property at No. 3 Heddle Street afore referred which said payment he said was receipted. He said no time frame was set for payment of the remaining \$12,000.
14. He said that there was delay in payment of the balance of \$12,000. He said that because he could not afford payment of rent for a place he was occupying at Krootown Road, he moved over to Sumaila Town where he stayed at the house of the 11th Defendant's relative, the said Fatmata Kamara otherwise known as Tutu.
15. The Deponent told the Court that the 11th Defendant/Respondent promised to take him to Australia if he sold the said No. 3 Heddle Street property to him. He said the 11th Defendant/Respondent promised to refund the Plaintiff/Applicant's money already paid to the 1st Defendant and he reiterated that the 11th Defendant promised that if any litigation in respect of the property were to arise, he, the 11th Defendant would have gotten the 1st Defendant to Australia. The negotiated price for the said property was Le. 100,000,000/00 (One Hundred Million Leones).

16. He told the Court that he accepted what ever was said and offered in respect of the property because he lived with the 11th Defendant's family and because he, the 11th Defendant had promised to refund the Plaintiff's money.
17. He accepted to have received Le. 45,000,000/00 (Forty Five Million Leones) as in Exhibit A from A.S.I Conteh Esq on behalf of the 11th Defendant as part payment for the said property.
18. He told the Court that together with the 11th Defendant and the said Mr. Abu he went to the home of A.S.I Conteh Esq where Conteh Esq asked him about the sale of the said property to the Plaintiff. According to the 1st Defendant, Conteh Esq told him he had been informed by Lansana Kortor Kamara Esq about the sale of the property to the Plaintiff.
19. The 1st Defendant told the Court that the 11th Defendant promised to help him leave for Australia and give him some more help; that the 1st Defendant recorded his willingness to sell the property to him to which effect he signed certain documents given him by Conteh Esq but that all that was done with the 11th Defendant's full knowledge that he had sold the property to the Plaintiff.
20. The 1st Defendant told the Court he received a second payment of Le. 55,000,000/00 (Fifty Five Million Leones), as in Exhibit B at Conteh Esq's house having been picked up and driven there by the 11th Defendant in the company of Mr. Abu hereinbefore referred. He said he signed a Conveyance Exhibit C (1-4), in favour of the 11th Defendant based on promises made to him even though he, the 11th Defendant knew the property was already sold to the Plaintiff.
21. He said the 11th Defendant broke down the structure that was being constructed by the Plaintiff/Applicant and started putting up his own structure. He said the Plaintiff arrived in Freetown sometime in 2011/2012. He approached the 11th Defendant on promises made for him to travel to Australia but the said promise was never met. He was invited by the police and detained at the CID where he made a statement to the police.
22. The 1st Defendant/Respondent told the Court that the 11th Defendant went to his new place at Grafton and threatened to lock him up if he sided with the Plaintiff/Applicant in respect of the sale of the property herein. He said the 11th Defendant made a report against him at the CID for forgery and false pretences and he was detained at the CID for about five (5) hours.
23. The 1st Defendant told the Court that he was taken to the law offices of Edie Turay & Associates and was introduced to one Konto Koroma Esq by Mr. Momodu hereinbefore referred. He was shown the Plaintiff's affidavit

in support of the application herein and advised to contradict what the Plaintiff deposed to in the said affidavit. Even though there is an affidavit which was withdrawn by Konto Koroma Esq, in the name of the 1st Defendant, the Court notes that the 1st Defendant denied ever signing the said affidavit in the law offices of Edie Turay & Associates. The 1st Defendant told the Court that he feels intimidated.

24. The 1st Defendant referred the Court to Exhibit D and told the Court that in the presence of the 11th Defendant and Mr. Momodu hereinbefore referred, he was asked by Conteh Esq to sign Exhibit D at Lamina Sankoh Street by the side of Conteh's black jeep. My understanding of this piece of evidence is that Exhibit D was signed out on the street. The 11th Defendant must have been very desperate to prove the property was unencumbered but these efforts, in my opinion, points to knowledge of previous dealings with that property to another person. The 1st Defendant agreed with A.S.I Conteh Esq that his statement to the CID be made available to the Court.
25. Having cross examined the 1st Defendant on the 17th May 2016, Counsel for the 11th Defendant informed the Court that though he ought to have filed an affidavit in opposition to the affidavit of the 1st Defendant which he did not do, he wanted the Court to allow him to ask the 1st Defendant some more questions in respect of the affidavit filed by the 1st Defendant. In the interest of justice, Counsel's request was granted.
26. Counsel referred the 1st Defendant to Exhibit SB2 attached to the affidavit of Salma Bah, that is the Letters of Administration in the names of Ekundayo Wilson, the 1st Defendant herein and Wilhemina Wilson, to point out that it is not true that the Plaintiff's name is on Exhibit SB2. I see no relevance to that line of cross-examination in light of the issue before the Court. In any event, the 1st Defendant told the Court that he has no idea about legal documents.
27. The 1st Defendant in answer to cross-examination reiterated that he agreed to move in to Fatmata Kamara when she offered him space in her home. He said the said Fatmata Kamara and Mr. Abu Sesay, (the brother in-law of the 11th Defendant) told him that the 11th Defendant was willing to buy the property at a higher price. The question remains, higher than which or whose price? It could only mean higher than an earlier price agreed on with the Plaintiff/Applicant.
28. He reiterated that he agreed to sell the property to the 11th Defendant just because he, the 11th Defendant had promised to get him to Australia and get him off any litigation with the Plaintiff in respect of the property, if at all.
29. The 1st Defendant reiterated in answer to cross-examination by Counsel for the 11th defendant that Counsel knew he had sold the property herein to the Plaintiff before he made payments to him on behalf of the 11th

Defendant. He disagreed with Conteh Esq that he advised him to put aside the Plaintiff's money for refund to her. I wish to state that this line of cross examination defeats Counsel's objective; it rather supports the evidence of the 1st Defendant to wit: Counsel and his client, the 11th Defendant knew the property had already been sold to the Plaintiff and had encouraged the 1st Defendant to refund the Plaintiff's part payment.

30. He denied paying Le. 10,000,000 (Ten Million Leones) as refund of the Plaintiff's money to the CID. He said, upon report made by the Plaintiff against him at the CID, he was arrested and detained and it was Counsel for the 11th Defendant who sent in Le. 10,000,000 (Ten Million Leones) as part of refund of the Plaintiff's money.
31. The 1st Defendant again confirmed in answer to cross-examination by Counsel for the 11th Defendant that upon being forced to attend the law office of Edie Turay & Associates, an affidavit was prepared which said affidavit was in opposition to the affidavit of the Plaintiff. He said he did not sign the said affidavit. It is no wonder Konto Koroma Esq filed a notice of discontinuance in respect of the said affidavit and indeed of his services for and on behalf of the Deponent, the 1st Defendant herein. It is the opinion of this Court that the whole transaction in respect to the sale of the property to the 11th Defendant herein is viciated with so much fraud. The least said about the conduct of Counsel as has come out in testimony the better. I will make no further comment in respect of Counsel's conduct.
32. Counsel for the 11th Defendant informed the Court that he has no intention to cross-examine the Plaintiff on the contents of her affidavit and that he intends to call a witness from the CID to tender the statement of the 1st Defendant made to the CID. Counsel for the Plaintiff objected to Counsel's application on the basis that the application before this Court is by way of Originating Summons and not a full trial.
33. She argued that the issues before the Court must be determined based on affidavit evidence before the Court. The Court gives merit to the point raised by Counsel for the Plaintiff but in the interest of justice, the Court granted the application made by Counsel for the 11th Defendant; that is, that he brings in his proposed witness from the CID in respect of the matter herein who would tender the statement made to the CID by the 1st Defendant/Respondent herein.
34. On the 24th day of June 2016, Counsel for the 11th Defendant made an application that this Court lacks jurisdiction to hear the matter herein which demonstrates a substantial dispute of fact dealing with ownership of property. Counsel submitted that the proper way the Plaintiff ought to have commenced this action was by way of a Writ of Summons. Counsel referred the Court to Order 5 of the High Court Rules, 2007 under the rubric 'Mode of beginning civil proceedings in the Court'. He asked that the matter be struck off.

35. In her reply to Counsel's application, Counsel for the Plaintiff submitted that the application is time-barred, wholly immaterial and fundamentally flawed. She referred to Order 2 Rule 1(1) of the High Court Rules, 2007 and argued that even where the Court decides that there is an irregularity in the proceedings or in the content of the papers filed, the Court could not nullify the whole proceedings but rather give directions as to what ought to be done.
36. She argued that the application before the Court is to determine whether or not there is a valid contract between the Plaintiff and the 1st Defendant; that it was the Court in its wisdom which gave an Order that the 11th Defendant be added as an interested party to the action herein. She referred to the Notice and Memorandum of Appearance filed on behalf of the 11th Defendant by his Counsel. She also referred to the affidavit in opposition filed on behalf of the 11th defendant by his Counsel. She pointed to Counsel's request to cross-examine the 1st Defendant on the content of his affidavit. She submitted therefore that ousting the jurisdiction of this Court which Counsel has subjected himself to will be a waste of the Court's time and an abuse of process. Counsel for the Plaintiff referred to Order 2 Rule 1(3) and submitted that the proceedings by which this matter was begun was in no way faulty. I agree with Counsel's submissions.
37. On the 5th day of August 2016, at the request of Counsel for the 11th Defendant/Respondent, Sierra Leone Police Representative, Mathew Jibao Karimu who informed the Court on oath that he supervised the complaint against the 1st Defendant made at the Criminal Investigations Department, availed himself to this Court pursuant to a subpoena issued by this Court on the Inspector General of Police. Karimu tendered in evidence the statement of the 1st Defendant/Respondent to the Sierra Leone Police as said, same marked, Exhibit E.
38. In Exhibit E, the 1st Defendant/Respondent admits the following: receiving part payment in respect of purchase of property situate at No. 3 Heddle Street, hereinbefore referred; receiving a receipt for the said payment; the Plaintiff/Applicant paid for preparation of the Letters of Administration in respect of the said No. 3 Heddle Street; that the 11th Defendant was introduced to him in 2011 by his niece, Fatmata Kamara aka Tutu with whom he lived being that he could not afford accommodation for himself; that Tutu and Mr. Abu negotiated with the 11th Defendant on behalf of the 1st Defendant who finally agreed to sell that portion of No. 3 Heddle Street already sold to the Plaintiff/Applicant for Le. 100,000,000/00 payable in two installments.
39. The 1st Defendant/Respondent in Exhibit E said he was interviewed by Counsel for the 11th Defendant, A.S.I Conteh Esq, as to the authenticity of the documents presented in respect of the property. Conteh Esq revealed to the 1st Defendant that he learnt from his colleague, Kortor Kamara Esq

that the 1st Defendant had initially sold the property herein to the Plaintiff; the 1st Defendant admitted to have done so; nonetheless, Conteh Esq advised the 11th Defendant to go ahead with the purchase of the property herein. It was only after his knowledge of the 1st Defendant's dealings with the Plaintiff/Applicant that the 11th Defendant through his Counsel, Conteh Esq, made part payment for the same portion of property as that sold to the Plaintiff herein. At page 12 of Exhibit E, the 1st Defendant told the police that the 11th Defendant advised him to refund the Plaintiff's part payment made to him in respect of the property herein though at page 15 of same he stated that he did not tell the 11th Defendant that he had sold the property to the Plaintiff.

40. The evidence before this Court is as follows:

- a. There was actually an agreement between the 1st Defendant/Respondent and the Plaintiff/Applicant for the sale of property situate at No. 3 Heddle Street, Freetown, Sierra Leone at the cost of \$20,000 (Twenty Thousand United States Dollars) or its equivalent in Leones. A part payment of \$8,000 which was receipted was made to the 1st Defendant/Respondent through Counsel for the Plaintiff/Applicant.
- b. There was delay in payment of the balance of \$12,000 because the Survey Plan had not been signed nor had a Conveyance been executed in favour of the Plaintiff/Applicant.
- c. The 1st Defendant/Respondent who was badly in need of a place to live stayed with the niece of the 11th Defendant/Respondent who had offered him a place a stay.
- d. In desperation, the 1st Defendant/Respondent agreed to sell property situate at No. 3 Heddle Street hereinbefore referred to the 11th Defendant at Le. 100,000,000.00 (One Hundred Million Leones).
- e. The 1st Defendant/Respondent informed the 11th Defendant/Respondent and his Counsel, A.S.I Conteh Esq about the sale of the said property to the Plaintiff/Applicant but they still went ahead and paid money to the 1st Defendant/Respondent for purchase of the same property.
- f. The 11th Defendant promised, among other things to help the 1st Defendant/Respondent leave Sierra Leone for Australia in order to avoid possible litigation in respect of the said property.
- g. The 11th Defendant/Respondent damaged the partial construction done on the said property by the Plaintiff/Applicant.
- h. The matter came before this Court by way of Originating Summons.
- i. By the Orders of this Court, the 11th Defendant was made party to this action. All necessary documents were served on him. He entered an appearance yet filed no affidavit in opposition to the affidavit of Salma Bah, the Applicant herein. The Applicant's affidavit was not contested and remained unshaken.
- j. The 1st Defendant, Ekundayo Wilson was cross-examined at the request of Counsel for the 11th Defendant/Respondent. All said in summary by Mr. Wilson to this Court on oath is to the effect that he

sold No. 3 Heddle Street to the 11th Defendant/Respondent, Mr. Unisa Conteh with the full knowledge of both Mr. Unisa Conteh and his Counsel A.S.I Conteh Esq that he had previously sold the same property to the Plaintiff/Applicant, Salma Bah; that both Unisa Conteh and Conteh Esq encouraged him to refund the Plaintiff's part payment; that he agreed to sell the said property to Mr. Unisa Conteh because of his situation then and his relationship with his niece, Fatmata Kamara aka Tutu.

41. It is my holding that it has been proven by the 1st Defendant/Respondent that the transaction of sale of the property hereinbefore referred between the 1st Defendant/Respondent and the 11th Defendant/Respondent who had the capacity to influence the 1st Defendant was unduly influenced and ought to be set aside. See *Bank of Credit & Commerce International South Africa v Aboody & Another* (1992) 4 AER 955-982. See also *Allcard v Skinner* (1887) 36 Ch. 145.
42. I hold therefore, that the 11th Defendant/Respondent, Unisa Conteh was not an innocent 3rd party purchaser and that he was very much aware of the transaction between the Plaintiff/Applicant Salma Bah and the 1st Defendant/Respondent.

In the circumstance, I hold as follows:

1. That the property situate, lying and being at No. 3 Heddle Street, Freetown is the same property referred to in the Letters of Administration dated 23rd day of July 2010.
2. That the Plaintiff/Applicant be at liberty to pay the remaining sum of Le. 50,000,000/00 (Fifty Million Leones) to the Defendants as final payment for the property situate at No. 3 Heddle Street, Freetown aforesaid and that a Deed of Conveyance and all other necessary documents for the transfer of title be prepared in the name of the Plaintiff/Applicant.
3. That upon payment of the remaining Le. 50,000,000/00, the Plaintiff/Applicant shall become the fee simple owner free from all encumbrances of all that piece or parcel of land situate, lying and being at No. 3 Heddle Street, Freetown in Freetown aforesaid.
4. That the Master and Registrar of the High Court of Sierra Leone shall execute a Conveyance in favour of the Plaintiff/Applicant.
5. That the Defendants/Respondents jointly and severally whether by themselves, their servants, agents and privies or howsoever or otherwise called are restrained from selling, renting, mortgaging, entering, remaining, parting with possession and/or in anyway whatsoever from disposing, interfering with the said piece or parcel of land or any part thereof.
6. Cost of the application to be borne by the Plaintiff/Applicant at Le. 500,000/00.


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Delivered on:

sold No. 3 Heddle Street to the 11th Defendant/Respondent, Mr. Unisa Conteh with the full knowledge of both Mr. Unisa Conteh and his Counsel A.S.I Conteh Esq that he had previously sold the same property to the Plaintiff/Applicant, Salma Bah; that both Unisa Conteh and Conteh Esq encouraged him to refund the Plaintiff's part payment; that he agreed to sell the said property to Mr. Unisa Conteh because of his situation then and his relationship with his niece, Fatmata Kamara aka Tutu.

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3. That upon payment of the remaining Le. 50,000,000/00, the Plaintiff/Applicant shall become the fee simple owner free from all encumbrances of all that piece or parcel of land situate, lying and being at No. 3 Heddle Street, Freetown in Freetown aforesaid.
4. That the Master and Registrar of the High Court of Sierra Leone shall execute a Conveyance in favour of the Plaintiff/Applicant.
5. That the Defendants/Respondents jointly and severally whether by themselves, their servants, agents and privies or howsoever or otherwise called are restrained from selling, renting, mortgaging, entering, remaining, parting with possession and/or in anyway whatsoever from disposing, interfering with the said piece or parcel of land or any part thereof.
6. Cost of the application to be borne by the Plaintiff/Applicant at Le. 500,000/00.


Delivered on: 28/09/16