

CC.187/20

2020

J. NO. 18

IN THE HIGH COURT OF SIERRA LEONE

(LAND AND PROPERTY DIVISION)

BETWEEN:-

FUSTINA PATRICIA FOSTER-JONES - PLAINTIFF/APPLICANT

33E OFF MAIN ROAD, CALABA TOWN

FREETOWN

AND

ALHAJI IBRAHIM JALLOH - DEFENDANT/RESPONDENT

C/O 26 FREE STREET

FREETOWN

BEFORE HON. MR. JUSTICE A.K. MUSA(J)

DATED THE <sup>21<sup>st</sup></sup> DAY OF FEBRUARY 2024

COUNSEL: - A. Boyzie Kamara Esq for the Plaintiff/Applicant and

J.T Mansaray Esq for the Defendant/Respondent

BACKGROUND

1. The plaintiff/Applicant hereinafter referred to as the "Applicant" by notice of motion dated the 10<sup>th</sup> day of November 2021 sought before this Honourable court certain questions for determination to wit:
  - i. Whether on the true construction of the document intituled 'Deed of Gift' dated the 28<sup>th</sup> February 2020 and registered as NO. 83/2021 at volume 142 page 132 of the Books of conveyances kept at the Office of the Administrator & Registrar General in Freetown, it could be said that the plaintiff/Applicant herein lawfully conveyed her entire interest in the property at Off Pipe Line, Juba Hill Freetown in the Western Area of the Republic of Sierra Leone to the Defendant/Respondent herein having regards to the provisions and requirements of the Registration of Instruments Act Cap 256 of the Laws of Sierra Leone?

If the answer to the answer is the above is in the negative, then this court is humbly asked to grant the following reliefs:

- a. A declaration that the signature of the plaintiff/Applicant as it appears on the said deed is a fraudulent creature.

PARTICULARS OF FRAUD

- ii. That the plaintiff/Applicant was not in Sierra Leone when the document was executed and there is no evidence on the document that it was signed by her outside the country.
  - iii. The report by the scientific support Department of the Sierra Leone Police concluded that the signature of the plaintiff/Applicant was brought into the document.
  - iv. The plaintiff/Applicant has denied ever signing the said Deed of Gift in favour of the said Defendant/Respondent.
  - b. A cancellation of the said Deed of Gift dated the 28<sup>th</sup> February 2020 and registered as No.83/2021 at volume 142 page 132 of the Books of conveyances kept in the Office of the Administrator & Registrar General in Freetown.
  - c. A declaration that the plaintiff/Applicant is the fee simple Owner of the entire piece and parcel of land situate at Off Pipeline, Juba Hill Freetown.
  - d. An order that the said deed be expunged from the records.
  - e. An order that the Defence and counterclaim filed by the Defendant/Respondent in this action be struck out.
  - f. An order that the plaintiff/Applicant takes immediate possession of all that piece or parcel of land the situate, lying and being at Off Pipeline, Juba Hill, Freetown aforesaid.
  - g. A perpetual injunction restraining then Defendant/Respondent whether by himself, his privies, agents or assigns from entering upon and remaining in the plaintiff's/Applicant's property at Off Pipeline, Juba Hill, Freetown.
2. May I point out at the onset that the application before the court seeks an expeditious determination of the matter without full blown trial if the question posed is answered in the negative in favour of the plaintiff/Applicant and/or vice versa.
3. The Applicant in support of the application filed an affidavit in support sworn to on the 10<sup>th</sup> November 2021 by ALPHA BOYZIE KAMARA and to which is attached several exhibits.



4. On the other hand, the Defendant/Respondent hereinafter referred to as the "Respondent" in opposing the application herein filed an affidavit in opposition sworn to on the 17<sup>th</sup> November 2021 by John T. Mansaray Esq and to which is attached several exhibits.
5. May I underscore at this stage that I will not set out the respective exhibits on either side but will however, do so under the summary of various arguments and/or issues and findings and as the need arises. Thus, at this juncture before delving into the issues proper I will set out summary of the respective arguments and /or submissions creating a clear pathway into the issues at hand.

SUMMARY OF SUBMISSIONS AND/OR ARGUMENTS BY COUNSEL  
FOR THE PLAINTIFF/APPLICANT

6. Counsel for the Applicant A. Boyzie Kamara Esq in making his application relied on the entirety of the affidavit in support and the exhibit attached thereto. He inter alia submitted that on the totality of the pleadings filed, the only contentious issue for determination is whether or not the Applicant executed a deed of gift dated the 28<sup>th</sup> day of February 2020 exhibited as exhibit "F" in the affidavit in support. That in the event the issue of the authenticity of the said deed is determined it will dispose of the entire action. He furthered on this score that there is evidence in exhibit "G" that at the time exhibit "F" was executed the Applicant was out of the jurisdiction and there is no evidence to show that the same was executed by the Applicant as she was in the U.K.
7. He further argued that there is a report which is exhibit "H" in the affidavit in support from the Scientific Support Department of the Criminal Investigation Department (CID) of the Sierra Leone Police Force stating inter alia that the purported signature in exhibit "F" was brought into the document. That the Applicant has vehemently denied ever executing the said exhibit "F" thereby referring to exhibit "K&L" of the affidavit in support which are copies of sworn statements from the same contesting those facts. He relied on the case of FREEMAN vs. LUKE, court of Appeal 1972 unreported.
8. He concluded, that in view of the afore cited authority, the matter herein is suitable for determination on a point of law. He craved that the orders sought be granted.

SUMMARY OF SUBMISSIONS AND/OR ARGUMENTS BY COUNSEL  
FOR THE DEFENDANT/RESPONDENT

9. In response to the application and submissions by counsel for the Applicant, counsel for the Respondent J.T Mansaray Esq in making his submissions and/or arguments relied on the affidavit in opposition filed supra and made a litany of submissions.
10. Firstly, he submitted that the matter is not one suitable for determination on a point of law. That the purported question for determination is not couched in a way to allow the court to make legal interpretation on point of law as there was no reference to a particular section on the face of the notice of motion for consideration. That what counsel for the Applicant has done is to send the court on a wide goose chase. He furthered that a fundamental requirement on application of this nature is that the question must be suitable for determination on a point of law as per order 17 rule 1(1) (a) of the High court Rules supra. He pointed out that the issues raised are factual. That what counsel for the Applicant has done on the face of the notice of motion is to seek for the court to make a declaration that the signature of the Applicant as it appears on the said deed is of a fraudulent creature. He highlighted that issues of fraud are factual issues that must be tested at the trial.
11. Secondly, he argued that counsel for the Applicant has relied on an expert opinion as in exhibit "H" in affidavit in support for which no term of reference was set for the said expert, his qualification, whether or not he is qualified in the said field. That further, over, and above, the said expert has not indicated how he arrived at his findings. He concluded on this score that these are all issues to be tested at the trial.
12. Lastly, on the question of the Applicant been out of the jurisdiction at the time the Deed of gift was signed as submitted by the Applicant, he submitted that the Applicant on the face of the action is named Faustina Patricia Foster-Jones and exhibited a passport with the name Faustina Patricia Smiley. That in his opinion the two are distinct and separate individuals not one and the same. He concluded that the court refuses the application.



SUMMARY OF SUBMISSIONS AND/OR ARGUMENTS IN ANSWER  
BY COUNSEL FOR THE PLAINTIFF/APPLICANT

13. In answer, counsel for the Applicant submitted inter alia that the question before the court is one for the construction of legal instrument and not necessarily one on a point of law. On this score, he referred to order 17 rule 1(1) of the High court Rules supra. That his application is made under the second limb of the aforesaid rule. That the Applicant has submitted document to the court to wit: deed of gift to show that at the time the same was purportedly executed, the Applicant was out of the jurisdiction and that there is nothing in the same to show that she executed same in the U.K. He then relied on sections 14(1) © and 18 of the Registration of Instrument Act Cap 256 of the Laws of Sierra Leone 1960.
14. On then question of the matter not been suitable for determination on a point of law as submitted by counsel for the Respondent, counsel for the Applicant in answer submitted that the question is whether the issue is a question suitable for determination. That in the event the said question is answered in the affirmative, it will dispose of the matter without recourse to trial.
15. On the question of the different names both on the face of the action and the passport, he referred to paragraph 2 of the Deed of gift. That the two names aforesaid refer to the one and same person as the one is her marital name whilst the other is her maiden name.
16. On the question of the issues raised by expert witness, he submitted that the court under order 32 rule 1 has the power to summon an expert witness to come before it and make a deposition on any report as the details of the author is on the report.
17. He then craved the indulgence of the court to grant application.

THE LAW

18. It is noteworthy to state that the law pursuant to which the instant application is made is order 17 of the High court Rules 2007. Thus at this stage of the ruling it is incumbent on my part to set out relevant provision of the above in a bid to ascertain whether in the first place the application has met the benchmarks and is well suited for an order 17 Judgment.



Order 17 rule 1 (1) (a) & (b); of the High court Rules supra state:

(1) " The court may on the application of a party or of its own motion determine any question of law or construction of a document arising in any cause or matter at any stage of the proceedings where it appears to the court that: -

(a) the question is suitable for determination without a full trial of the action; and

(b) the determination will finally determine subject only to any possible appeal, the entire cause or matter or any claim or issue in the cause of a matter.

(2). Upon the determination the court may dismiss the cause or matter or make such order or judgment as it thinks fit"

19. Hence in view of the above provisions as set the court is mandated to hear and determine applications which aim is to determine questions suitable on a point of law and/or construction of document arising in a cause or matter without a full-blown trial.

#### ISSUES AND FINDINGS AND/OR ANALYSIS OF THE FACTS TO THE LAW

20. Now at this juncture, without venturing at this stage into determining the issues raised under the various submissions by both counsel it is but prudent for the court to first determine whether the real question posed for determination and from which certain orders are sought is suitable for determination on a point of law and/or construction.

21. I must state that before determining the aforesaid for clarity of purpose it will be expedient to set out the said questions again to wit: "Whether on the true construction of the document intituled 'Deed of Gift' dated the 28<sup>th</sup> February 2020 and registered as NO. 83/2021 at volume 142 page 132 of the Books of conveyances kept at the Office of the Administrator & Registrar General in Freetown, it could be said that the plaintiff/Applicant herein lawfully conveyed her entire interest in the property at Off Pipe Line, Juba Hill Freetown in the Western Area of the Republic of Sierra Leone to the Defendant/Respondent herein having regards to the provisions and requirements of the Registration of Instruments Act Cap 256 of the Laws of Sierra Leone"?



22. How can the court ascertain in the first place that the questions posed are suitable for determination on a point of law or construction? I must state that such could only be ascertained by having recourse to the pleadings from which the questions posed could become apparent giving the facts pleaded. May I reiterate that although an application for the determination of a question(s) on a point of law and/or construction of a document could be made at any stage of the proceedings as provided for by Order 17 rule (1) of the High court Rules supra, same could only be made, if the issue to be determined was pleaded by either of the party in their respective pleadings. On the above preposition of law see Order 14A/2/5 at page 200 of the Supreme Court Practice 1999 otherwise known as the Annual practice 1999 under the rubric "**Suitable question of law or construction**", where four parameters were laid of which the first would be considered. It states to wit: "The ambit of Order 14a (our Order 17 of the High court Rules) was considered by the court of Appeal in Koso Finance Establishment Ansalt vs. John Wedge (unreported February 15, 1994, C.A Transcript No. 94/387. The following principles are laid down thereby: (1) An issue is "a disputed point of fact or law relied on by way of claim or defence" ....."
23. Now the question at this stage is has the disputed point of fact or law now raised by counsel for the Applicant to wit: the provisions and requirements of the Registration of Instruments Act Cap 256 of the Laws of Sierra Leone upon which the title deed of the Defendant is challenged being pleaded by way of a claim or defence of the parties? An answer to the above leaves the court with some other questions to answer to wit: what are these provisions under consideration? has the question for construction formulated in a clear, careful, and precise terms without obscurity or ambiguity? Attempts would be made to answer these questions, which answers will shed light on whether to proceed in answering the question for determination supra on the merits or to dismiss the application for failing to meet the threshold required for bringing same before the court.
24. May it be noted that in regard the first question to wit: whether or not the provisions and requirements of the registration of Instruments Act Cap 256 upon which the title deed of the Defendant is challenged was pleaded in the claim or defence of the parties? It is pertinent in a bid to answer the said question for recourse to be made to the pleadings filed which are found in exhibits "A" the writ of summons herein; exhibit "C" the



Defence and counterclaim, and exhibit "D" the Reply to Defence and Defence to Counterclaim.

25. Does exhibit "A" the writ of summons herein and/or the claim in this action refers to the provision supra vis- 'a vis the title of the Defendant? I have taken the pains to peruse the entire content of exhibit "A" but stop short to say that there is no such reference of the provisions supra.
26. Does exhibit "C" the Defence and counterclaim filed by the Defendant refer to the provision supra vis- 'a vis the title of the Defendant? I must say again that having perused same I am stop short to say that there is no reference of the provision supra in the said defence and counterclaim.
27. Again, does exhibit "D" which is the Reply to defence and defence to counterclaim makes any reference to the said provisions above? I have again painstakingly perused the same but could find no reference in the same of the said provisions.
28. Having reached the conclusion that there is no reference of the provision or requirements in the Registration of Instrument Act supra upon which the question for determination is hinged in any of the pleadings as set out, the question now for determination is what are these provisions? I have again taken the pains to peruse the face of the application herein to glean what specific provisions counsel for the Applicant is referring to, however, all that is set out is just reference to the Registration of instrument Act Cap 256 of the laws of Sierra Leone. Could this be a proper citation of the said provisions? The answer, certainly not!
29. Now, the last question for determination under this ambit is to wit: " has the question for construction formulated in a clear, careful and precise terms without obscurity or ambiguity? For an answer to the above, I will refer again to Order 14A/2/5 at page 201 of the Supreme Court Practice 1999 otherwise known as the Annual practice 1999 again under the rubric **"Suitable question of law or construction"**, it inter alia states to wit: "The question of law or construction to be determined by the court under the order should be stated or formulated in a clear, careful and precise terms, so that there should be no difficulty or obscurity, still less any ambiguity about what is the question that has to be determined ( See Allen vs. Gulf Oil Refining Ltd (1980) Q.B 156; (1979) 3 ALL E.R. 1008 C.A. 101 (1981) 1



ALL E. R. 353), and this is all the more important since the determination will be final (See paragraph 1(i) (b))". Thus, in view of the above, could it be said that the question posed for determination without specific provisions of the statute referred to be considered as a question that is clear, careful, and precise? Could same be said to be free from obscurity? I must state that from perusal of the question for determination, same is fraught with unclarity, imprecision and obscurity. Therefore, the question for determination is wanting on a key threshold.

30. Thus, contingent on the above analysis on the thresholds to be satisfied before a question could be determined on a point of law or construction, it is my considered view that I hold that the question posed for construction herein has not met a fundamental benchmark to wit: the question posed was not pleaded neither in the claim or defence and/or counterclaim nor under reply to defence or defence to counterclaim. Further, and above, the same lacks clarity and precision on the specific provisions relied upon as the springboard for the question for determination.

31. Furthermore, may I state emphatically that it will be foolhardy for the court to proceed to the next step in considering the question proper when one of the fundamental requirements for same to be considered in the first place has not been met and/or satisfied. Such fundamentals should be complied with failing which the application must fail.

32. In conclusion, by reason of the analysis supra, I hereby make the following orders:

1. Application dated the 10<sup>th</sup> November 2021 is wholly refused.
2. That the matter herein be proceeded with to trial.
3. Costs to the Respondent to be borne by the Applicant assessed at NLe 10,000/00 (Ten thousand new leones).
4. That I hereby order for speedy trial from the date of this order and give directions to wit:
  1. That each party serves upon the other a list of all documents to be relied upon in this action within 10 days from this order.
  2. That each party serves on the other party copies of all documents to be tendered, used and relied upon at the trial within 10 days of this order.

3. That the plaintiff shall 7 days before the date fixed for trial, prepare the usual court bundle for use at the trial which bundle shall include the following:
  - a. Copies of the pleadings and any amendments thereto;
  - b. List of issues in dispute;
  - c. Admission of facts (if any) arising out of the issues;
  - d. Nature of the evidence to be relied upon (Oral or Documentary) and including any agreed evidence.
  - e. A list of proposed witnesses to be called at the trial by each party;
  - f. Witness statements.
  - g. Those documents which each party wishes to have included in the bundle and those central to each party's case.
  - h. A summary of any propositions of law to be advanced before me with a list of documents to be cited.
  - i. A chronology of event.
4. That 14 days before the date of trial, the Plaintiff shall identify to the Defendant other documents to his case which he wishes to include in one bundle and set down the action for trial.
5. That each party shall lodge with the court two (2) copies of the skeletal argument not less than 7 clear days before the hearing of this action.
6. There shall be liberty to restore the summons for further directions.
7. That these directions shall be placed before the trial Judge on Tuesday 26<sup>th</sup> day of March 2024 with a view of assessing compliance and pre-trial issues and for a date to be fixed for trial.
8. Matter adjourned to Tuesday the 26<sup>th</sup> day of March 2024.

Signed .....

Hon. Justice Mr. Augustine K. Musa(J).