CIV.APP.15/93

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

REBECCA JOHNSON & ROBERT JOHNSON
(ON BEHALF OF THEMSELVES AND
THE CHILDREN OF CHARLES JOHNSON
TEDDY JOHNSON (DECEASED) TWO OTHER
BENEFICIARIES OF THE ESTATE OF HENRY
NATHANIEL KING (DECEASED)

AND

FREDERICK JOHNSON

AND

APPELLANTS

THE ADMINISTRATOR & REGISTRAR-GENERAL

AND

SULAIMAN ZUBAIRU

AND

MR. BENJAMIN (AS AGENT OF SULAIMAN ZUBAIRU

AND

MARIATU ZUBAIRU

RESPONDENTS

CORAM:
Hon. Justice U.H. Tejan-Jalloh, JSC
Hon. Justice A.N.B. Stronge, JA
Hon. Justice S. Bash-Taqi, JA

Hearing: 7th November, 2006.
Judgment: 22nd Feb. , 2007

Advocates:
A.F. Serry-Kamal Esq., for the Appellants
C.C.V. Taylor Esq.; for the 1st Respondent
M.E. Michael Esq. for the 2nd & 4th Respondents

JUDGMENT

Delivered this 22nd day of February 2007.

TEJAN-JALLOH JA: This is an appeal against the Decision of Hon. Mrs. Justice L.A.E. Marcus-Jones dated16th day of February, 1993.

The appellant's claims inter alia is

1. Cancellation of the Conveyance made in favour of the 2nd and 4th Respondents or any other person in respect of property situate at 13 Circular Road, Freetown.

2. Order of mandamus compelling 1st Respondent to carry out the order of the Court dated 24th day of March, 1986 by allowing the appellants or any of them to purchase the said property, or alternatively that the order of the Court and subsequent proceedings be set aside for irregularity in that the Originating Summons was not personally served on Teddy Johnson.

It has to be noted that the order of the Court being sought to be set aside was contained in CC 582/85 1985 R. No.8, whereas the matter on appeal is CC 386/87 1987 J. No.19 dated 14th May 1987. The learned trial Judge held that she could not consider the Order in the proceedings. She agreed with Counsel for the Respondents that it should be a matter of appeal.

On the issue whether she could cancel the Conveyance in favour of the 2nd and 4th Respondents, the learned trial Judge held that as far as the purchasers were concerned, they had a right to infer that the Administrator and Registrar-General was acting fairly in the execution of his duty. That there was no evidence that they were aware of any irregularity if any. She concluded that she could not say

that the purchasers acted in collusion with the Administrator and Registrar-General. Judgment was entered in favour of the Respondents.

The Appellants being dissatisfied with the above decision of the Court dated 16th February 1993 appealed to the Court. The grounds of Appeal as amended by Notice dated 12th November 2002 reads:-

1. The decision is against the weight of the evidence.

2. The learned trial Judge acting on wrong principles in arriving at her decision in favour of the defendants.

3. The learned trial Judge misdirected herself or erred in-law when she ruled that she could not consider the evidence of Frederick Johnson.

4. The learned trial Judge failed to consider the case of the defendant, Frederick Johnson that he was not served with the papers leading to the Order of the sale of the property. Thus depriving the Plaintiff of an opportunity of having the Order of the Court dated 24th March 1986 set aside and allowing him to contest the granting of the aforesaid property.

5. The learned trial Judge failed to consider that the matter of Frederick Johnson and her children and grandchildren after her death had been in full and undisturbed possession of this property without paying any rent or acknowledging the title of any other person thereto for a total of 70 years. It was their family home. The Administrator-General was clearly with people whose title came after that of their parents. He simply treated the property as

part of the estate of Nathaniel King (deceased). That property was no longer part of that estate.

A.F. Serry-Kamal's contention if it can be summarized is that this action was brought to set aside the Order of the High Court dated 24th March, 1986 and all proceedings leading to it for irregularity. The Order for sale is CC582/85 and it was this Order that gave the 1st Respondent the authority to sell the property by public auction or private treaty. We share the view that the learned trial Judge was right in refusing to grant the application to set aside the Order in question. The appellants should have applied to intervene in the matter CC582/85 instead of taking a fresh action. The law is very clear where somebody's proprietary interest is affected; the person can apply for leave to be added as a defendant. An application may also be made after judgment if it is intended to set aside the judgment:

Jacques v Hamson (1983) 12 QB D 136.
See also *Order Ord.15/6/16 in the Supreme Court Practice 1999 or Order 52 rule 3 of the Annual Practice 1960.*

Mr. Serry-Kamal placed great reliance on a passage in *Halsbury Laws of England 3rd edition Volume 22 paragraph 1665 at page 785 under the rubric "After judgment or Order drawn up".* He relied particularly on the passage which reads:

"or *in a fresh action brought to review such judgment or Order".*

What the learned authors stated here, cannot with respect, be practised in this jurisdiction, because a Court of co-equal or concurrent jurisdiction cannot set aside a judgment or order of another Court in separate and distinct action like the appellants did in the matter on appeal. This therefore disposes of part of the argument advanced in support of Ground 3. As regards the other issues raised and the following authorities:

Re May (1883) 25 Ch.D.
Re Harrison's share under a settlement,
Harrison v Harrison (1985) 1 All E.R. 185,

Re Scott and Alvarez's Contract Scott v Alvarez (1985) 1 Ch. 596 C.A.

Re Nazaire Co (1879(12 CR 288 CA at page 291.

It is sufficient to state that all these are sound propositions of law and I opine that they would have been applicable in appropriate cases and I repeat, not where one has instituted a fresh action.

In the famous case of *Graig v Kanseen (1943) All ER 108,* it was held that the failure to serve the summons upon which the Order was made, was not a mere irregularity, but a defect which made the Order a nullity and that an order which is a nullity is something which the person affected by it is entitled to have set aside ex debito justitiae.

Lastly, it was held that the Court in its inherit jurisdiction can set aside its own order and an appeal is not necessary. This authority clearly indicates that it is the Court that one must apply to and not to initiate another action in the High Court to set aside an Order in another High Court.

Mr. Serry-Kamal stated in his brief as well as in his argument that the two plaintiffs are persons affected by the Order dated 24th March, 1986 but that they were not served. A point which ought to be borne in mind is that it is good law that entering Judgment against a dead person or non-existent company can be a nullity, see *Lazard Brothers & Co.v Banque Industrielle de Moscon (1932) 1KB 617 CA at Page 624 on appeal sub nom Lazard Brothers Midland Bank (1933) A.C. 289 296.*

Mr. Serry-Kamal argued that the Administrator and Registrar-General (1st Respondent) had no authority to fix time limit within which the property was to be sold. He added that Section 21(2) of Cap.45 enjoined the 1st Respondent to protect the interest of the beneficiaries. He submitted that the 1st Respondent acted in an arbitrary manner and in gross violation of Administration of Estates Act Cap 45 of the Laws of Sierra Leone.

Finally, he submitted that on the basis that one of the beneficiaries was not served the appeal ought to be allowed.

The dividing line between the Appellant's Counsel and Counsel for the 1st Respondent is that Mr. Taylor put in the fore front of his argument and as well as in his synopsis that the appellant should not have instituted a fresh action to challenge an Order affecting her made in the different action. For the reasons we have already stated we are in agreement with him on the authorities relied upon in support of it. Mr. Taylor drew our attention to the findings of the learned trial Judge, which are that she saw no irregularity in the proceedings leading to the sale of the property. He submitted that the Court cannot disturb the findings of fact of the trial Judge, unless it is plainly unsound or it appears unmistakenly from the evidence, that he has not taken proper advantage of having seen or heard the witnesses or has failed to appreciate the weight and bearing of circumstances admitted or proved. In support of the proposition, he relied on the decision of the House of Lords in the famous case of *Watt or Thomas v Thomas (1946) A.C.484.*

The case of the 2nd and 4th Respondent as presented by Mr. Michael is simply that assuming that the Order of the Court dated 24th March 1986 in the proceedings CC 582/83 which gave the Administrator and Registrar-General (1st Respondent) authority to sell the property at 13 Circular Road Freetown, should or could have been set aside for irregularity, his submission is that the setting

aside of that Order would not in anyway affect or interfere with the title or interest of the 2nd and 4th Respondents who purchased the property in question because according to him they are bona fide purchasers for value without notice. Mr. Serry-Kamal's contention is that they the buyers must have visited the property and that if they did they would have found the first Plaintiff and her brothers and sisters and cousins residing there.

In support of his submission Mr. Michael placed great reliance on the decision in the matter of the Estate of William Charles During v The Administrator-General, where Beccles-Davies J.S.C. (as he then was) delivering the Judgment of the Court of Appeal dated 10th July, 1980 said at Page 4:

> *"The revocation of a grant of letters of Administration would not affect the title of a purchaser, who has acquired any interest in real or personal property pursuant to an Order made under any Statutory power of the Court."*

Mr. Michael also submitted that a purchaser from a personal representative obtains a good title irrespective of any irregularities in the administration of the estate unless he is a party to a breach of trust. In support of his proposition he cited the case of:

Camara v Macauley (1920-36) ALR S.L. 150 at page 153,

where it was held that a purchaser from a personal representative obtains good title despite irregularities in administration unless he is a party to the breach of trust. Mr. Michael argued that the appellant did not plead or allege that there was a beach of trust and therefore the 2nd and 4th Respondents cannot be deprived of the property they have acquired. He also relied on *Harlsbury Laws of England 3rd Edition Volume 16 at Page 361 and 363* where the learned authors say as follows:-

"The purchaser from the representatives has the right to infer that the representative is acting fairly in the execution of his duty. And it rests upon the person seeking to impeach the validity of the transaction to prove that the purchaser has notice of the true state of affairs."

He argued that the appellants have failed to prove that his clients had any notice of any irregularity. In the light of the above authorities and being aware of the provisions of Section 70(i) of the Conveyancing and Property Act 1881, which are to the effect that the Orders of the Court are conclusive and that a sale cannot be invalidated on the ground of want of jurisdiction; want of any concurrence, consent, notice or service whether the purchaser has notice of any such want or not, we dismiss the appeal with costs.

Hon Justice U.H. Tejan-Jalloh JSC.....

Hon Justice A.N.B. Stronge JA: A.N.B. .....

Hon Justice S. Bash-Taqi: JA.....