

Civ. App. 15/2008

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

MOHAMED SALLIEU JALLOH	
MR. BANGURA	
MR. OSMAN KABIA	
MR. IDRISSE CONTEH	
MR. GIBRILLA A. KAMARA	- APPELLANTS
AND	
MR. ABDUL BANGURA	- RESPONDENT

CORAM:

Hon. Mr. Justice S.A. Ademosu	-	J.A.
Hon. Mr. Justice E.E. Roberts	-	J.A.
Hon. Mrs. Justice A. Showers	-	J. (as she then was)

Advocates:

Eke Halloway Esq. for the Appellants
David G. Thompson for the Respondent

JUDGMENT DELIVERED ON 13th DAY OF July 2010.

ADEMOSU, J.A.

This is an appeal against the judgment of Hon. Mr. Justice A.B. Halloway dated 28th day of February 2008 given in favour of the Respondent for the following orders:

1. That the Plaintiff recovers immediate possession of the premises at No. 33H, Guard Street, Freetown from the 1st, 2nd, 3rd, 4th and 5th defendants and all those whom they allowed occupation thereof.
2. That the Plaintiff recovers from the said Defendants arrears of rents in respect of their occupation of the said premises from the 10th May 2004 to the 30th June 2006 the same to be assessed.
3. That the Plaintiff recovers from the said defendants mesne profits in respect of their occupation of the said premises from the 30th June 2006 until possession thereof is delivered.

4. That the plaintiff recovers from the said defendants the costs of this action the same to be assessed.

The Appellants being dissatisfied with the decision of the High Court, have appealed to this court on the following grounds:

1. That the Learned Trial Judge erred and/or misdirected himself in law and in fact in holding that:
 - (a) "The uncontroverted evidence therefore of that continued occupation of the premises in question as yearly tenants paying rents to the widow of their former Landlord are actions on their part indicating an outright challenge to plaintiff's authority as landlord to the premises in question".
 - (b) "I found that the said action of the said defendants is tantamount to an outright challenge of the plaintiff's authority as landlord of the premises in question by the said defendants the facts herein show that the said defendants denied the plaintiff's title as landlord of the premises in question asserting that Haja Fatmata Kamara is the true landlord".
2. The Learned Trial Judge erred and/or misdirected himself in law and in fact in holding that the plaintiff is entitled to forfeit the tenancies of the said defendants and that Exhibit D which is a (1) one month notice to the defendants to quit the premises in question..... is sufficient notice to the said defendants to quit the said premises.
3. That Learned trial Judge erred and/or misdirected himself in law and in fact in wrongly applying the facts of this case to the law as stated in *Wisbech St Mary Parish council vs. Lilly* 1956 1 WLR, 121.
4. The Learned Trial Judge erred and/or misdirected himself in law and in fact in holding that Counsel for the 5th defendant ought to have taken steps to have the 5th defendant substituted rather than "dispense in is testimony"..... The plaintiff testimony against the 5th defendant remains unchallenged and hold that he is entitled to his claim against him for all the reliefs set out in the Statement of Claim.
5. That the judgment is against the weight of the evidence.

Brief Background

The premises subject matter of this action were owned and built by one Alhaji Abdul Rahman D. Kamara (now deceased) who died intestate at Freetown on 2nd November 1997. According to the records the deceased was survived by one Sheik Ibrahim Kamara the eldest son and other children resident abroad.

The plaintiff is the Uncle of Sheik Ibrahim Kamara the eldest son of Alhaji Abdul Rahman D. Kamara who gave him a Power of Attorney to take out Letters of Administration to administer the estate of the said Alhaji Abdul Rahman D. Kamara (deceased) intestate.

The request to take out Letters of Administration was consented to by all the children of the late Alhaji Kamara and which was granted to the plaintiff, Mr. Abdul Bangura by the High Court in its Probate Jurisdiction on the 10th day of May 2004.

One Haja Fatmata Kamara is a widow of the Alhaji Kamara. (deceased) Intestate

The Defendants/Applicants are setting up Haja Fatmata Kamara as their Landlady in respect of the property in question at 33H, Guard Street, Freetown. The learned Trial Judge held that the defendants/appellants continued occupation of the premises in question paying rents to the widow of their former landlord amounted to an outright challenge or denial of the plaintiff's authority as landlord of the premises. Hence the appeal.

ISSUES FOR DETERMINATION.

The records reveal that certain facts are not in dispute. Among them is that the Alhaji Abdul Rahman D. Kamara died intestate on the 2nd of November, 1997 survived by children and wife or wives among them is Haja Fatmata Kamara. The Administration of Estates Act Cap. 45 applies to every person who dies intestate any where in Sierra Leone whose estate is not within the sole jurisdiction of the Local Courts and therefore applies to Mohammedans. See Section 9 of Cap 45 as amended which reads in part as follows:

'9(1) The estate of every person dying intestate after the date of the operation of this Act shall devolve upon the Administrator and Registrar General.

Provided that, upon the grant of letters of administration under the provisions of this Act, the estate shall be divested from the Administrator and Registrar General and be vested in the person or persons to whom letters of administration have been granted as aforesaid.

If a Mohammedan dies in Sierra Leone his or her property which is not within the sole jurisdiction of the Local Courts, vests in the Administrator Registrar-General and on grant of Letters of Administration it vests in the administrator: See *Biakieu v Sankoh* (1970 -71) A.L.R. 47 lines 20 – 27. C.A. per Dove-Edwin Ag. P. and *Mamo v Ramutta* Court of Appeal. Civ. Case No. 4/69 (unreported).

In the Estate of Turay, *Turay v. Carew* (1972 – 73) ALR SC.1 177 at p.191 O.B.R. Tejan J (as he then was) stated as follows:

Mohammedan Law is customary law applicable to those who profess Moslem faith. Section 9(2) as amended of the Mohammedan Marriage Act (cap. 96) states that:

“ the following persons shall be entitled to take out Letters of Administration in the order named viz:

- (a) The eldest son of the intestate, if of full age according to Mohammedan Law;
- (b) The eldest brother of the intestate, if of full age according to Mohammedan Law;
- © The Administrator and Registrar General.”

The law is clear that from the date of death of Alhaji Abdul Rahman D. Kamara (deceased) Intestate his estate devolved on the Administrator and Registrar General and that upon the grant of letters of Administration on the 10th of May 2004 to the Plaintiff/Respondent; the estate became divested from the Administrator and Registrar General and became vested in the Plaintiff/Respondent to whom Letters of Administration have been granted by virtue of the Power of Attorney given to him by the eldest son with the consent of the other children. The Plaintiff/Respondent became the landlord of the Defendants/Appellants by virtue of Section 2 of Summary Ejectment Act Cap. 49 of the Laws of Sierra Leone 1960 and not Haja Fatmata Kamara the widow.

The evidence of the Respondent in the Court below revealed that upon his appointment as the Administrator of the Estate of Alhaji Abdul Rahman D. Kamara (hereinafter referred to as “the Deceased”) he did inform the Appellants and that by then C.F. Edwards, Esq. was his Solicitor. That his solicitor demanded from the Appellants payment of rent to him, but there was no response and after that he himself went to the premises and had a meeting with them in

the premises and this was in the presence of his former Solicitor. That after the said meeting nothing changed notwithstanding the Appellants being told that he is the Administrator and that rents should be paid to him. He concluded that they never paid rents. This being the position of things, I am of the opinion that a case of disclaimer of Landlord's title clearly arises by reason of the conduct of the Appellants. The evidence is clear that they had set up Haja Fatmata Kamara as their Landlady, by wrongly putting her in the shoes of the Deceased. Without any hesitation. I would say Haja Fatmata Kamara in law is a perfect stranger vis a vis Landlord and tenant relationship and I so hold. On that finding of the Learned Trial Judge with which on the evidence, I entirely agree it seems to me that the ground of appeal complaining about insufficiency of notice is of no avail. The Appellants by operation of the law became tenants of the Respondent and which they refused to acknowledge.

It is note worthy that even in the Defence filed all the Appellants averred that they had no Landlord and tenant relationship with the Respondent. The 1st, 2nd, 3rd and 4th Appellants categorically averred that they are tenants of Haja Fatmata Kamara, the widow of the Deceased. There is evidence before the Court that the erstwhile solicitor of the Respondent had previously served six (6) months notice to quit on the Appellants to which they paid no heed and followed by one month notice by the present solicitor now Counsel for the Respondent. The law is settled if a tenant denies his Landlord's title as by asserting that he or some one else is the true landlord, the landlord is forthwith entitled to forfeit the tenancy. This is now trite law for which no authority need be cited. The Appellants have by their words and actions claimed that Haja Fatmata Kamara is their true Landlady. By reason of the foregoing they have no right to claim protection of the law which they have brazenly flouted.

They contend that they are not going to abide by the law then they cannot be heard to say that they are entitled to demand proper Notice to be served on them by the Respondent who they have disclaimed as their landlord. For this reason I hold that the submissions made before the learned trial judge as regards the statutory notice is without merit. I am of the view that the learned trial judge was right in his well considered judgment.

The decisive consideration in this matter is the clear intention of the appellants. See *Booker v Palmer* (1942) 2 All E.R. 674. Lord Greene M.R. delivering the judgment of the Court in a landlord and tenant action stressed that the decisive consideration in this type of case is the intention of the parties.

In another case of *Isaac v Hotel de Paris Ltd* (1960) 1 All E.R. 348 it was held that the intention of the parties and the conduct of the parties must be the deciding factor whether a tenancy has been created. Applying the above principle to the case in hand; the Appellants here have clearly demonstrated that the Respondent was not their landlord and yet because they paid their rent to somebody who has no business with him they are entitled to six months notice for the one year rent they paid to somebody else. This to my mind is a gross misapprehension of the law. The law is well settled that in such a situation the Respondent is entitled to forfeit their tenancy forthwith and I so readily hold.

As regards the death of the 5th Appellant, the law is that a tenancy does not determine by the death of the lessee or a tenant, but will vest in his legal representative. What the Plaintiff/Respondent should have done was that he should have applied to the court for the defendant's personal representatives to be made a party and for an order that the proceedings be carried on against him. But not having done so, there is nobody the present judgment of the Lower Court can be enforced against. See order 18 r (1) of the High Court Rules 2007.

On the totality of the evidence in the Court below and the arguments of counsel on both sides, it is clear to me that the appeal of the 1st, 2nd, 3rd and 4th Appellants has no vestige of merit. For the reasons stated. I dismiss the appeal and confirm the judgment of the learned trial judge. Appeal is dismissed accordingly. I order that the Respondent recovers from the 1st, 2nd, 3rd and 4th Appellants immediate possession of the premises situate and known as No. 33H, Guard Street Freetown. Costs of this appeal here and the Court below to be paid by the above mentioned Appellants jointly and severally and such costs to be taxed.

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Hon. Mr. Justice S.A. Ademosu - Justice of Appeal

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Hon. Mr. Justice E.E. Roberts - Justice of Appeal

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Hon. Mrs. Justice A. Showers - Justice of Appeal