

CIV APP 13/2007

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

HASSAN WATFA - APPELLANT

AND

MORLAI TURAY - RESPONDENT

CORAM:

HON. JUSTICE P.O. HAMILTON - JSC

HON. V.M. SOLOMON - JA

HON. JUSTICE A.H. CHARM - J

SOLICITORS

A.E. Manley-Spain Esq. for the Appellant

V.V. Thomas Esq. (on record) for the Respondent

JUDGMENT DELIVERED ON THE 22nd DAY OF November, 2012

HAMILTON - JSC

This is an Appeal against the judgment of the High court delivered by Hon. Justice A. Showers on 23rd April, 2007.

The Plaintiff (hereinafter referred to as the Respondent) claim against the defendant (hereinafter referred to as the Appellant) was for the following reliefs:

- (i) An Order to set aside a lease agreement dated 4th June, 2003 between Ibrahim Kamara as Attorney for Alwalion Turay and the Appellant herein on the ground that on the date of the Lease agreement the

said Alwalion Turay was dead and the lessor purported to act as Attorney for the deceased.

- (ii) An Order directed to the Administrator and Registrar-General to expunge from the Books of Leases the said lease agreement.
- (iii) Possession of the shop and store premises occupied by the Appellant at No.12 Free Street, Freetown.
- (iv) Mense profit for the period 17th March, 2003 until possession is delivered at the rate of US2,500 or its equivalent at the commercial rate per year.

The Particulars of Claim avers that the Plaintiff/Respondent brings this action as Administrator of the Estate of Makalay Turay who died on the 31st August, 1981 by his Attorney Kandeh Yansaneh. She is seised of property No.12 Free Street, Freetown. A nil grant Letters of Administration was granted in respect of the Estate to Alwalion Turay on the 3rd February, 1982. Alwalion Turay died in Conakry Guinea on the 10th March, 2003 intestate and Letters of Administration of his estate was granted to his son Ibrahim Sorie Toure on the 9th July 2003 Letters of Administration *de bonis non* of the Estate of Makalay Turay left administered was granted to Morlai Turay the respondent herein. Letters of Administration was granted to the respondent herein as the son by "Susu Customary Law" and next of Kin of the said deceased.

The issues in this matter can be summarized as follows:— By a lease agreement dated the 4th June, 2003 which was made between Ibrahim

Kamara as Attorney for Alwalion Turay and the Appellant herein, a shop and store premises No.12 Free Street, Freetown was leased to the Appellant for a period of five (5) years. The respondent contends that the lease was invalid and ought to be set aside since on the date the agreement was made Alwalion Turay was dead therefore Ibrahim Kamara had no power to act as Attorney for the said deceased.

The respondent further contended that the property at No.12 Free Street, Freetown was not owned by Alwalion Turay during his life time and was never vested in him as owner nor was it brought into the administration of the Estate of Makalay Turay after he had obtained a nil grant in respect of her estate on the 3rd February, 1982.

The respondent further avers that by a letter dated 4th May, 2004 his Solicitor informed the Appellant that as occupier of No.12 Free Street, Freetown he should not deal with any person other than the respondent or his agent. The Appellant's Solicitor replied that he did not recognize the respondent as the Administrator of the Estate and there was no possibility for the appellant to conclude any arrangement with the respondent or his agent.

The Appellant in his defence averred that the respondent cannot in law be the Administrator of the Estate of Makalay Turay and even if he were lawfully so the Plaintiff has failed to comply with the Rules of Court relating to the institution of proceedings in the probate jurisdiction. He claimed that the Letters of Administration *de bonis non* which was granted to the respondent was not lawfully granted and ought to be set aside. He further

averred that the Appellant has a valid lease until the year 2007 as he entered into a valid *bona fide* agreement and further contend that the proper defendant ought to be Ibrahim Kamara the lessor of the said lease and Ibrahim Sorie Toure the Administrator of the estate of Alwalion Turay and that the Appellant was the wrong Defendant.

On the basis of these issues, judgment was given in favour of the respondent. It is this judgment that the Appellant has now appealed to this Court on the following grounds:-

1. *That the Learned Trial Judge was wrong in law to hold/decide that the Letters of Administration granted to the Respondent Morlai Turay was lawfully and regularly obtained from the High Court and that the respondent can maintain the action as Administrator.*
2. *That the Learned Trial Judge was wrong in law to hold that the Defendant/Appellant was obliged to sue the Lessor one Ibrahim Kamara as Attorney for Alwalion Turay by way of third party proceedings.*
3. *The Learned Trial Judge failed to consider or consider properly the submissions of Counsel for the Appellant regarding the obligation of the respondent to sue both the Appellant and one Ibrahim Kamara who let the premises to the Appellant by the agreement dated 4th day of March, 2003.*
4. *That the Learned Trial Judge did not consider or consider properly the evidence led by the defendant having regard to his prior tenancy*

of the premises and his payment of rents for the premises and the receipts tendered in support thereof

5. *The Learned Trial Judge was wrong in law to hold that the respondent was a proper Plaintiff and to find in his favour thus discounting the fact that on the face of the records and on the evidence the Plaintiff was not entitled by law to be Administrator of the Mohamedan estate.*

6. *The judgment is against the weight of the evidence.*

Considering all the grounds of appeal raised by the appellant it is my considered opinion that grounds 1 and 5 ought to be considered together as they are the *gravamen* of this appeal.

I shall re-state the two grounds again in Order to deal with the grounds properly.

1. *That the Learned Trial Judge was wrong in law to hold/decide that the Letters of Adminstration granted to the respondent Morlai Turay was lawfully and regularly obtained from the High Court and that the respondent can maintain the action as Administrator.*

2. *The Learned Trial Judge was wrong in law to hold that the respondent was a proper Plaintiff and to find in his favour thus discounting the fact that on the face of the records and on the evidence the Plaintiff was not entitled by law to be the Administrator of the Mohamedan estate.*

Counsel for the Appellant in his synopsis submitted that the capacity of the Plaintiff/Respondent as administrator (*de bonis non*) of the Estate of Makalay Turay was contested and challenged by the Appellant in that the deceased being a Muslim the Letters of Administration (Exh. D and D1) should not have been granted to the respondent who claims to be a son of the deceased by "Susu Customary Law". Counsel further submitted that the appellant did challenge the right of the respondent to institute the action and his entitlement to the claims in the writ.

The Learned Trial Judge at Page 68 lines 30 to Page 69 lines 1 to 7 said:

"..... it seems to me that the question to be determined is whether the Plaintiff can maintain the action as Administrator de bonis non of the estate of Makalay Turay Let me now deal with the issue raised by Counsel for the 1st Defendant that the Plaintiff by law cannot be administrator of the estate of Makalay Turay (deceased). He claims that the Administrator, the Plaintiff herein to whom the grant of Letters of Administration has been given by the Master and Registrar ought never to have been given such a grant. Counsel for the Plaintiff response to this contention has argued that there are laid procedures when one objects to a grant of letters of administration and Counsel cannot challenge a grant which is lawfully in the possession of the Plaintiff. I agree with this contention. The Letters of Administration having been obtained lawfully and regularly from the High Court are valid until they are revoked. This Court is not in a position in these proceedings to pronounce on the validity or otherwise of the said Letters of Administration de bonis non"

Learned Counsel for the Appellant submitted that the Learned Trial Judge was wrong in law to hold that the Letters of Administration (*Exhs. D and D1*) were lawfully and regularly obtained from the High Court and was valid until revoked. He further submitted that validity of the Letters of Administration was raised by the Appellant but the Learned Trial Judge failed to recognize his claim and decide on it.

However, it must be noted that this issue on the validity of the said Letters of Administration has now been considered by this Court (the Court of Appeal) in Civ. App. 25/2007 in the case of in the matter of the Estate of Makalay Turay (Deceased) Testate – Morlai Turay (By his Attorney Kandeh Yansaneh) and Ibrahim Kamara (As Attorney for Ibrahim Turay, Alusine Suman, Alhassan Sumah, Jeneba Fofana, Ngadie Sumah, The Administrator and Registrar-General in which judgment was delivered on 23rd June, 2011. The Court of Appeal made the following Order that the Letters of Administration granted to the Appellant Morlai Turay on the 9th July, 2003 are hereby revoked which Letters of Administration is *Exh. D* in this Appeal. It has been declared null and void and set aside.

As regards the other grounds of appeal it is my considered opinion that since grounds 1 and 5 have been exhaustively dealt with it will not be necessary to consider the remaining grounds as the grounds discussed above are enough to dispose of this appeal.

Counsel for the respondent on record V.V. Thomas, Esq. did not submit his synopsis but instead wrote to the Court a letter dated 24th September, 2012 in which he stated

1. *"That the attorney for the Appellant who consulted me in this matter died in March, 2011 and I have not been briefed by anyone else to proceed with this appeal.*
2. *That in view of the judgment of the Court of Appeal of Sierra Leone delivered on the 23rd June, 2011 in the appeal intitled Civ. App 25/2007 Between Morlai Turay (by his Attorney) v. Ibrahim Kamara and Ors"..... The Court inter alia adjudged that the Letter of Administration granted to the Respondent Morlai Turay are hereby revoked and that the Administrator-General be granted Letters of Administration in respect of the Estate left unadministered of Makalay Turay deceased, I have no further role to play in this appeal before the Court as the locus standi of the Respondent has been revoked by the Court".*

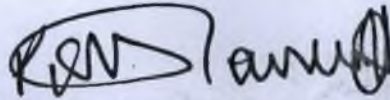
Based on the judgment of the Court of Appeal in Civ. App 25/2007 the Respondent had no locus standi in this matter.

In the final result therefore the appeal succeeds and is allowed. The judgment of the trial Court dated 23rd April, 2007 is set aside. No order as to costs.



HON. JUSTICE P.O. HAMILTON

- JSC



HON. JUSTICE P.O. HAMILTON

- JSC

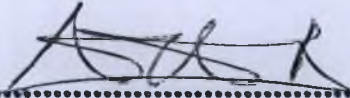
I AGREE:.....



HON. JUSTICE V.M. SOLOMON

- JA

I AGREE:.....



HON. JUSTICE A.H. CHARM

- J

REF: POH/HJ