

93
CIV. APP 73/2013

IN THE COURT OF APPEAL OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)

IN THE MATTER OF THE ESTATE OF GERTRUDE ROSETTA LANCE
(DECEASED) INTESTATE

AND

IN THE MATTER OF AN APPLICATION FOR THE SALE OF PROPERTY
SITUATE LYING AND BEING AT 42 UPPER BROOK STREET, FREETOWN

BETWEEN:

HANNAH BUNTING (Nee Rogers-Wright) - APPELLANT
(Beneficiary of the Estate of Gertrude Rosetta Lance (Decd))
42 Upper Brook Street
Freetown

And

DANIEL KOI - RESPONDENT
(Administrator & Beneficiary of the Estate of Gertrude
(Deceased Intestate)
42 Upper Brook Street
Freetown

Counsel:

L. JENKINS-JOHNSTON ESQ. for the Respondent
TEJAN-COLE, YILLAH, BANGURA & CO. for the Appellant

RULING DELIVERED ON THE 20TH DAY OF JUNE, 2015 BY THE HON.
JUSTICE A. H. CHARM JA

The Respondent herein has applied to this Court by a Notice of Motion dated the 15th day of January, 2015 for the following orders:

1. That the Appeal numbered Civ App 73/2013 intituled

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AND
IN THE MATTER OF AN APPLICATION FOR THE SALE OF PROPERTY SITUATE
LYING AND BEING AT 42 UPPER BROOK STREET, FREETOWN

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be struck out or dismissed on the grounds that same was filed irregularly in that the purported Appellant was dead at the time the said Appeal was filed and no one had the legal right to present themselves at that time as acting on behalf of a dead person.

2. That the costs of this application be borne by the Solicitors acting for the purported Appellant at the time Messrs Macauley, Bangura & Co and or the person that instructed them to file the irregular Appeal.
3. Any further or other order as the Court may deem just in the circumstances.

On the 27th of November, 2013 judgment was given on Misc. App 298/11 2011 K. No. 51 by the Hon. Mrs. Justice Musa D. Kamara J. The Appellant herein being dissatisfied with the said judgment has appealed to the Court of Appeal by Notice of Appeal Dated 19th December 2013. On the 16th of January 2015 the Respondent filed this application praying for the orders as stated above.

The supporting affidavit to this application is deposed and sworn to by the Respondent Daniel Koi on the 15th of January, 2015. There are five exhibits annexed to the said affidavit.

On the 29th of January, 2015 leave was granted to Counsel for the Respondent/Applicant to move his application as there was evidence that notice of hearing was served on Solicitors/Counsel for the Appellant who did not only fail to attend Court but also did not file any affidavit in opposition. The matter was adjourned to the 5th of February 2015 for Counsel for the Appellant/Respondent to respond. When the matter came up again for hearing on that day, Counsel for the Appellant/Respondent was absent and the file was withdrawn for ruling.

The thrust of Counsel for the Respondent/Applicant's argument is that the Notice of Appeal filed herein is irregular in that the purported Appellant died some nine (9) months before the judgment appealed against was delivered and at the time the appeal was filed there was no application to have the said Appellant substituted as required by the Rules.

Our Rules make provision for substitution of parties in the event of death or bankruptcy. See rule 9 of Order 18 of the High Court Rules. I have quoted the High Court Rules 2007 in this case because from the records it is clear that the Appellant died long before the application giving rise to the judgment which has been appealed against was determined. The application proper was heard between the 6th November 2012 and the 5th of July 2013. See pages 358 and 368 of the records. That being the case, Solicitor/Counsel for the Appellant should have applied for the Appellant who was then the Respondent to have been substituted before the conclusion of their submissions and the delivery of the judgment/decision.

It is not in contention that the Appellant herein died on the 5th of March, 2013. See exhibits DK9 and DK10. The Notice of Appeal filed on the 19th of December, 2013 read in part:

"TAKE NOTICE that the Appellant being dissatisfied with the Judgment of the Honourable Mrs. Justice Musu D. Kamara J dated the 27th November, 2013 in the

9/6
Civil Action intituled Misc. App 298/11 2011 K. No. 51 doth hereby appeal to the Court of Appeal upon the grounds set out...."

This is in compliance with Rule 9(1) and Civil Form 1 to Appendix A of the Court of Appeal Rules 1985.

If the Appellant as is canvassed by Counsel for the Respondent/Applicant and supported by the exhibits attached to the affidavit in support died before the judgment appealed against was delivered, who then is dissatisfied with the judgment of the 27th of November, 2013? Obviously not the dead Hannah Bunting (Nee Rogers-Wright). Hannah Bunting (Nee Rogers-Wright) having died on the 5th of March, 2013, couldn't obviously have instructed the filing of this appeal. And as there was no application for the substitution of the said Hannah Bunting (Nee Rogers-Wright) before the delivery of the judgment and the filing of the Appeal, this application therefore succeeds. For there to have been an appeal, an application for substitution of the deceased Hannah Bunting (Nee Rogers-Wright) should have been made before the filing of the appeal. I opine that, it is that application that should have preceded the filing of the appeal.

In view of what I have said, the appeal herein is accordingly dismissed. I will, notwithstanding the 2nd prayer of the Respondent/Applicant not order cost against the erstwhile Solicitors for the purported Appellant/Respondent herein.


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HON. JUSTICE ABDULAI H. CHARM - JA