

CIV APPEAL NO41/2014

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN

MAGID BASMA

-

APPELLANTS

HAIDAR ISHMAEL

AMER MOKANNA

HUSSEIN ANTAR

ALIEU OSMAN THOMAS

FADLU THOMAS

ABDUL L THOMAS

LAMBRIATU ALGHALI (NEE Thomas)

ADAMA THOMAS

AND

HASSAN BAYDOUN & Sons

-

RESPONDENTS

JUDGMENT Delivered By:- Hon Musu D.KAMARA JA

Dated: 15th April 2019

Dated: 23rd October 2018.

This is an Appeal brought by way of Notice of Appeal filed on the 31st of July 2014, by the Apellants against the Judgment of Edwards J as he then was delivered on the 29th day of May 2014.

PROCEEDINGS IN THE HIGH COURT

By writ of summons dated the 15th of November 2013, the plaintiffs herein now Respondents commenced an action against the 1-4th Defendants seeking the following reliefs

1. Immediate recovery of possession of portions of the premises situate lying and being at No16B Pipeline, Spur Road Freetown in the Western Area of the Republic of Sierra Leone, occupied by the defendants (now Appellants).
2. Mesne profits.
3. Any further relief/s that this Honourable Court may deem fit and just. and
4. Costs

Alhaji Abdul Osman Thomas (hereinafter referred to as the deceased intestate) had died on the 28th of May 2009 intestate siesed inter alia of the property herein the subject of this action. Jurainatu Kaimondo Sonsiama (nee Thomas) and Ibrahim Osman Thomas, two of the next of Kins of the deceased intestate took out Letters of Administration in respect of the estate of same and proceeded to sell the premises situate at 16B Pipeline Spur Road the subject of this action which formed part of the Estate of the deceased intestate as Administratrix and Administrator respectively to ~~the respondents herein.~~ ✓

A Conveyance dated 21st May 2012 expressed to be made between Mrs Jurianatu Kaimondo Sonsiama (nee Osman Thomas) and Mr Ibrahim Osman Thomas (the said Administrators) as vendors therein, registered as No 1042/12 in volume 689, at page 106 of the records books of conveyances kept in the office of the Administrator and Registrar General in Freetown was executed and registered in favour of the respondents.

When the respondents sought to take possession and evict the tenants the 1st-4th defendants/now appellants praying for the reliefs as set out above, the 5th -9th defendants/Appellants asked to be joined in as parties. By a Court Order dated 19th December 2013 the 5th -9th Appellants were joined as parties to the action.

The case was adjudged to be considered under point of law and the court posed the following questions for determination viz,

"Whether in light of the provisions of section 21(1) of the Administration of Estates Act Cap 45 of the Laws of Sierra Leone 1960 which states: "No land forming part of an Intestate shall be sold by the official administrator or any administrator without the consent of all persons, beneficially interested, or the order of the Court or judge thereof for that purpose first obtained," 'having not

obtained the consent of all the beneficiaries as claimed by the defendants, the plaintiffs could be said to have obtained an indefeasible title to the property situate lying and being at 16B Pipeline, Spur Road Freetown sold by the administrators of the Estate of Osman Thomas ('deceased Intestate') ? Put in other words, Whether the purported sale of premises situate at No 16B Pipeline, Spur Road Freetown is valid in law? Whether the premises situate at 16B Pipeline, Spur Road Freetown still forms part of the Estate of Osman Thomas (deceased) intestate ? Whether the plaintiffs are entitled to possession of all that piece and parcel of land and hereditaments situate lying and being at 16B Pipeline Spur Road Freetown, in the Western Area of the Republic of Sierra Leone "

It is in the answering of these questions that the learned Hon Justice D.B. Edwards J, as he then was, adjudged on the 29th May 2014 in favour of the Respondents that the respondents had obtained an indefeasible title to the property ; that the sale by the administratrix and administrator to the respondent could not be invalidated or made void ab initio notwithstanding the lack of consent of all the beneficiaries and an order of court being first obtained and that the respondents were bonafide purchasers for value without notice.

Consequently the court ordered as follows

1. Immediate recovery of possession of portions of the premises situate lying and being at No16B Pipeline, Spur Road Freetown in the Western Area of the Republic of Sierra Leone, occupied by the defendants(now Appellants)
2. Mesne profits from 2013 until delivery of possession at the rent payable under the old tenancy
3. Costs to be taxed

It is against this Judgment that the appellants have now appealed.

The first ground is that the learned judge erred in law and misdirected himself when he held that the Respondents had obtained the indefeasible title to the property the subject matter of this Appeal notwithstanding the lack of consent of all the beneficiaries of the estate of Alhaji Abdul Osman Thomas (deceased intestate) for the sale of the property or an order of court being first obtained for the sale of the said property

Particulars

- i) Having held that all the beneficiaries of the estate of deceased intestate never consented to the sale of the property the subject matter of this Appeal, the learned judge was wrong to have held that the vendors, the administratrix and administrator respectively of the said property had a valid title to the said property to pass to the respondents
- ii) That the learned judge erred in law and in fact and was wrong to have held that Ibrahim Thomas and Jurainatu Kaimondo Sonsiama (nee Thomas) had taken Letters of Administration in respect of the estate of the deceased intestate that made them owners of the legal estate in so far as the property the subject matter of the Appeal is concerned hence they can pass valid title to the respondents.
- iii) The construction placed on section 21(1) of CAP45 by the learned Trial Judge failed to appreciate or appreciate fully that taking out letters of administration does not ipso facto confer title on the administrators to property comprising the estate of the deceased intestate.

On the above, I would say Title of the Administrators to sell is not based on consent or lack of consent; the consent to sell is an administrative requirement which even if absent does not nullify the title to the property. It is whether the deceased owner Alhaji Abdul Osman Thomas had a good title so that what the administratrix & administrator obtained when they stood as personal representative was a good title that mattered as to whether they obtained an indefeasible title and passed on same. There was no issue of the deceased owner not being the owner of the property in question or he having a bad title. Administrators are personal representatives and next of kins of the deceased. When they assume the office at his death they attain what the deceased had before he died, the legal estate, which even if they intend to pass to themselves must be by a vesting Deed from Administrators as legal owners/personal representative to the Administrators as beneficiaries. There cannot therefore be doubt that what they attained having obtained the Letters of administration of 17th November 2010 and made administratrix and administrators respectively, was

equivalent to the legal estate of the whole Estate of Alhaji Abdul Osman Thomas with a valid title to pass. I cannot agree more with what was said in pages 268 - 269 of the records. The vendors/ administrators did not only obtain a valid indefeasible title but were able to pass on same to the respondents.

To say the construction placed on Section 21(1) of CAP45 by the learned trial judge failed to appreciate or appreciate fully that taking out letters of administration does not ipso facto confer title on the administrators to property comprising the estate of the deceased intestate, is not correct. There is nothing to suggest that the learned judge was of the view that taking out letters of administration, all by itself, conferred title. As stated it is whether the deceased intestate had a good title which he did have that was the basis for the administrators' having title. The Letters of Administration on the other hand was evidence that title had been so conferred on them and the authority given by the court for the Administrators to administer, deal with and account for the property that has been so vested into their hands.

Regarding the second ground this court notes the conclusion which the trial judge arrived at namely that the use of the word "shall " in section 21(1) in Cap 45 is directory and not mandatory. But it looks as if careful consideration was done to arrive at that conclusion see pages 269-274 of the records. The appellant has argued as if there is no way it is possible to give an interpretation whereby an administrator can sell without the consent of the other beneficiaries as this would open the flood gates. I disagree with him. Each case must be handled within its own peculiar circumstances. The considerations as seen in pages 269-274 of the records show that there were justifiable reasons inclusive of those founded on the object of the statute, lack of penalty and the administrators office or duty being a public duty to come to that conclusion. I therefore strongly disagree that the judgment was done per incuriam and uphold the conclusions reached on this point that section 21 (1) is directory and not mandatory

In LAHAI TAYLOR V THE SHERIFF & ZIZER 1968/69 ALRSL pages 35-44 the Court of Appeal of Sierra Leone was faced with to decide whether the use of the word 'shall' in sections 9 and 10 of the EXECUTION AGAINST REAL PROPERTY

ACT CAP 22 OF THE LAWS OF SIERRA LEONE was directory or mandatory. The Court of Appeal held it was only directory. Those sections provided as follows:

9. Where executions shall issue under the provisions of this ordinance against the goods and chattels, lands and tenements of any defendant, if such defendant shall have goods and chattels which may be come at and levied upon sufficient to satisfy such debt, damages and cost recovered, the lands and tenements of the said defendant shall not be levied upon; and when there shall not be goods and chattels sufficient to satisfy such debts, damages and costs, and the lands tenements and real estate shall be taken in execution, the sheriff or other officer shall not proceed to the sale of any such land tenement until he shall have given the notice herein after required, or unless by the desire of the defendant signified to him in writing for that purpose.

10. Before any sale shall be made by virtue of this Act by any sheriff or other Officer, of the houses, lands hereditaments or other real Estate of any person, save as in the last preceding section provided, he shall first advertise in 3 or more of the most public places of the town or place where such houses lands hereditaments or other real estate are, the time and place of such intended sale at least 3 months before he shall make the same, and then and there between the hour of 12 and 5 in the afternoon shall sell the same to the highest bidder

To come to the conclusion that the word "shall" in these sections were directory and not mandatory, the Court of Appeal took into consideration the case of MONTREAL STREET RAILWAY CO V NORMANDIN (1917) AC Page 170 where Arthur Campbell said

" the question whether provisions of a Statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject would be found collected in Maxwell on Statutes 5th Edition p 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such as to hold null and void acts done in neglect of that duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same

time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only the neglect of them though punishable, not affecting the validity of the acts done'

In the course of the judgment his lordship Tambah JA said "there is no reason for me to hold that if there is non-observance of a public duty by the Sheriff to advertise the property he has to sell in a particular way, a bonafide purchaser, who has no control over the actions of the sheriff should suffer prejudice."

In the same way there is no reason for me to hold that if there is non-observance of a public duty by an administrator appointed by the courts and given power to administer deal with and to account with respect to the property so vested and they themselves being beneficiaries too, fail to obtain the consent to sell from some beneficiaries interested, a bonafide purchaser who has no control over the actions of the administrator should suffer prejudice.

I therefore uphold the decision of the learned trial Judge Justice Edwards on this point.

The 3rd ground states that the learned judge erred in law and misdirected himself in holding that the respondents in so far as the property the subject matter of this appeal is concerned are bonafide purchasers for value without notice. I would note that for this ground the appellants are putting heavy reliance on the fact that the representative of the plaintiff said under cross examination "I knew Osman Thomas deceased very well. I paid rent to Mr Osman Thomas before he died. I used to go to his house next to UNDP once a year. I understand he had wives and children"

From the facts as presented in the record it is clear he knew Mr Osman Thomas deceased as he had met him before. But he visited him only once in a year. This was likely just to pay the rent. He understood he had wives and children; not know for certain that he had several wives and several children or the number of children. But he was dead and that was the very reason the estate appointed administrators and administratrix to stand as personal representatives of the deceased. Those administrators represented that they were in charge of their father's estate. That the estate had since been vested in them and that they were representing all

beneficiaries. In that very cross examination the plaintiff representative now respondent representative said, "I know ONLY 3 members of the family as named above. I do not know others. Based on the letters I had come to deal with 2 of them. I never enquired into who these beneficiaries were. They represented to me that they obtained the consent of other beneficiaries. I did not go beyond to find out whether in fact they had done so "

It is also from the records a fact as gleaned from the affidavit of the plaintiff representative now appellant that meetings were held between the plaintiff and the administratrix and administrators in which they made express representations that they were the administratrix and administrator of the estate of the late Alhaji Abdul Osman Thomas Deceased intestate. Also that in one of those meetings administratrix and administrator expressly informed the plaintiff that they had obtained the consent of the other beneficiaries for the sale of the said piece and parcel of land See paragraph 7 of the affidavit of HASSAN BAYDOUN. Further, that Fadlu Thomas who was one of the nominated appointee for administrator wrote a letter addressed to JB JENKINS JONSTON ESQ stating that he intended his sister Jurainatu Sonsiama (nee Thomas) to stand as administrator in his stead. See exhibit HB3. That in actual fact, JURAINATU THOMAS and IBRAHIM THOMAS were granted Letters of Administration on the 17th of NOVEMBER 2010. It is my finding based on the records that it was those representations that convinced the respondent to scoop out of its resources and part with the sum of US\$60,000.00 to purchase the property in question. In *PILCHER V RAWLINS* 1872 LR CH. 259 at 268 Sir W.M James LJ said *"I am of the opinion that whatever may be the accident by which a purchaser has obtained a good legal title and in respect of which he has paid his money and is in possession of the property, he is entitled to the benefit of that accident".*

EMMET'S NOTES ON PERUSING TITLES AND ON PRACTICAL CONVEYANCING 15TH EDITION AT PAGE 125-126 under the rubric "Investigation of title" says there is no onus/burden on the plaintiff to have taken reasonable care to discover that the representations made were untrue. He puts it thus:

"An express representation by a vendor in regard to his title to the land relieves the purchaser from an investigation of the facts of the case as he is entitled to

rely on such statement, and its no defence to say that he the purchaser had the means of discovery and might with reasonable care have discovered that the statement was untrue "

In the case of LAHAI TAYLOR V THE SHERIFF AND ZIZER 1968 Tambiah JA p35-44 at page 43 said that where there is no scintilla of evidence to show that there has been a collusion or fraud in the sale of property, the purchaser becomes a bonafide purchaser for value.

Similarly in the case of TURAY V KAMARA AND JARRET 1968/69 it was held that 'the Deed executed by the exercise of fraud is only voidable and if the grantee of such a Deed sells the legal estate to a purchaser for value who has no notice of the fraud , the purchaser gets good title."

In the case of REBECCA JOHNSON AND OTHERS V SULAIMAN ZUBAIRU Supreme Court Civ App 2/2007 unreported Justice Hamilton JSC in delivering his Judgment referred to the case of CAMARA V MACAULEY 1920-36 ALRSL 150 at 153 where Butter-Lloyd CJ cited the case of CASER V CARTWRIGHT LR 8CH at p976 and said

"Where a person advances money by way of purchase or charge on an estate so vested in the hands of a trustee, unless that person is absolutely a party to a breach of trust he cannot be deprived of the estate he has acquired ... the reason for the existence of this principle is as clear as the principle itself namely, that in its absence no one would be safe in purchasing from a personal representative."

All these cases point to the fact that in the absence of fraud which has not been raised nor proven in this case, the buyer gets a good buy. Against the forgoing the Appeal dated 31st July 2014 is unsuccessful. The judgment of the High Court dated 29th May 2014 is upheld.

Costs of this Appeal to be borne by the Appellants such costs to be taxed.

MUSU D. KAMARA JA

MUSU D. KAMARA JA

JUSTICE A. B. HALOWAY JA

JUSTICE K. KAMANDA J

I hereby dissent and uphold the Appeal dated 31st Feb 2014
reasons for which will be supplied at a later date.

Byellman JSC

2-04-2019