

IN THE COURT OF APPEAL OF SIERRA LEONE

KENNETH PONSFORD ELEADY-COLE

- **APPELLANT**

VS.

CLEMENTINA A HARDING

- **RESPONDENT**

Coram:

Hon. Justice Reginald Sydney Fynn JA (sitting alone)

Counsel:

Drucil Taylor Esq of BMT Chambers for the Appellant

Ransford Johnson Esq of Lambert & Partners for the Respondent

RULING DATED 12th January 2021

Fynn JA

1. The present application before the court is made by Notice of Motion dated 4th November 2020 in which the principal request is for the court to allow the applicant to adduce new evidence during the hearing and consideration of the appeal. The evidence which is sought to be admitted is a lease agreement dated 23rd December 2013 it is exhibited in the affidavit in support of the motion as RJ3. The application is made pursuant to Rule 27 of the Court of Appeal Rules of 1985 and the applicant also relies on Rule 31 and the wide powers the court has there under.
2. The applicant argues that one of the answers given by the Learned Trial Judge (LTJ) in the judgment being appealed, and the orders made therein will only be complete if this lease agreement (RJ3) which was not before the court below can now be put before this court, especially considering that appeals are also a rehearing of a case.
3. Applicant's counsel, Johnson Esq. argues that one of the prayers below was for an account to be rendered. However the LTJ could not make any such order related to that prayer as there was no lease before the court and this lease is now available which though in existence at the time had not been put before the court.
4. Respondent's counsel, D. Taylor Esq. has not filed an affidavit in opposition but in reply relied on the case of **Ladd v Marshall** 1954 3AER 745 and the principles therein stressing that the document that is sought to be adduced does not meet any of

those principles. Counsel submits that this exhibit RJ3 is a document which is available in the public registry. He submits that with diligent search RJ3 could have been found and brought before the court below. He urges also that the document does not relate to any cause which is before the court.

5. Respondent counsel also relies on Zukerman's Principles of Civil Procedure submitting that even where the **Ladd v Marshall**, principles may have been satisfied the court is not obliged therefore to allow the evidence sought. An appellate court may still find that the evidence in question ought not to be allowed as the court is generally reluctant to admit fresh evidence at the appellate stage.
6. In his answer counsel for the applicant submits that whilst the law in **Ladd v Marshall** as well as in O59R10 of the English rules may be applicable in our jurisdiction they must be read subject to Rule 27 of the Court of Appeal Rules of 1985. Counsel submits that Rule 27 is less restrictive and much wider than the English provisions in that the Sierra Leone R27 provides for adducing new evidence "for the furtherance of justice". Counsel urges further that the ambit of R31 of the Court of Appeal Rules is such that the Court may make any orders it may deem necessary.
7. I cannot but immediately agree with Johnson Esq. for the applicant in his submission that our rules provide greater scope to deal with an application such as this one. We are not limited by the three "fields" set out in Marshall. Without doubt the fields in Marshall remain good law and an important guide. However even as the court can still refuse to allow the adducing of new evidence though the Marshall fields are fully satisfied similarly so, it is my considered opinion that even in the absence of the Marshall fields, our court is empowered by R27 to allow the adducing of new evidence if the same is deemed necessary "for the furtherance of Justice".
8. The applicant does not appear to contend that his application falls outside the fields set out in Marshall. It is very clear that not one of these fields is satisfied by the application. It is therefore, upon the generous consideration in our rules relating to "the furtherance of justice" that the applicant appears to solely rely for the success of this application.
9. "*The furtherance of justice*" however may prove to be amorphous and shifting depending many a time on the specific circumstances of the given case. In my opinion a party relying solely on this limb must show specifically, how the interests of justice will be advanced by adducing the proffered new evidence. Such a party will be expected to demonstrate that if the evidence proffered is not adduced, the court

will certainly fail in its quest to do justice to the parties. In my opinion the bar must be very high under this limb.

10. I venture to opine further that it can only be in very special circumstances that the court will act relying solely on this limb. Such reliance will only result where the question *“What would further the cause of Justice in the given situation?”* has been satisfactorily answered. In the search for a satisfactory answer and this being an appeal I must turn my attention to the Notice of Appeal and the questions it raises.
11. The grounds set out in the Notice of Appeal turn wholly on questions touching the validity of the will of one Teddy Kenneth Eleady-Cole. The appellant contends that the Learned Trial Judge (LTJ) erred in law and had misdirected herself in finding the said will to be valid even in the face of certain alterations on the will. It is on these issues alone that the appeal has been advanced. The justice of this appeal must lie in the quest to provide answers to these issues of validity of the will.
12. I have asked myself whether exhibit RJ3, the lease agreement will assist the court in any way in finding an answer to the appellate questions. Put differently I have enquired of myself whether the validity of Teddy Eleady-Cole’s will depends on anything in the lease agreement which is RJ3 or whether there could be anything in said RJ3 that could throw light upon the validity of the said will. I have on both enquiries had to conclude in the negative. This agreement RJ3 cannot be of help to deciding the questions in the appeal.
13. Whilst I agree with counsel, that appeals are by way of rehearing and that Rs 9 & 31 do say so in express terms, it is my opinion nonetheless that these rehearing provisions do not *carte blanche* invite everything in a judgment to be reopened and for every issue to be re - determined. Granted in specific circumstances this may well be the case but not so in every appeal. R31 though seemingly of extremely expansive latitude in my opinion is not bereft of a boundary.
14. The rule provides and I quote that:

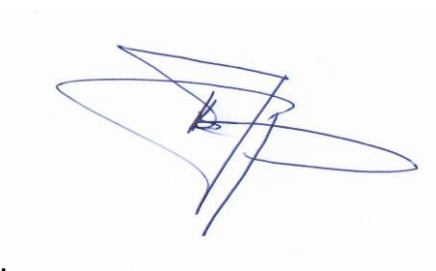
*The Court may from time to time make any **order necessary for determining the real questions in controversy** in the appeal and..... may rehear the whole case, or may remit it to the Court below to be reheard or to be otherwise dealt with as the court may direct. (Emphasis mine)*
15. Whilst the court in its discretion may rehear or make any orders among the several things mentioned in that rule; it only does any of those things if they *“are necessary for determining the real questions in controversy”*. It is my opinion therefore that an

order which will not lead towards resolving the issues before the court need not be made nor is there a need for a rehearing of evidence or any portion of the case which is not relevant to the *“real questions in controversy in the appeal”*.

16. Having perused RJ3 carefully, I am not convinced that RJ3 will assist the court in any way in deciding the appeal as presented in the Notice of Appeal of 13th December 2016. I note the notice of appeal does not include any ground touching RJ3 nor have I found any remote possibility by which the validity or otherwise of Teddy Eleaday-Cole’s Will (which is the issue in dispute in this appeal) can be resolved with the help of the lease-RJ3.

17. In my opinion allowing the present application, to adduce new evidence-RJ3, in this appeal will not be *“for the furtherance of justice”* as envisioned by R 27 of the rules of this court. I will therefore refuse the application and make orders and give directions as follows:

- a. The application to adduce new evidence is refused.
- b. The respondent shall have the costs of this application same to be agreed upon by counsel and if not so agreed to be taxed.
- c. The parties shall file synopsis of their submissions on the substantive appeal as follows:
 - I. The appellant no later than 27th January 2021
 - II. The respondent no later than 16th February 2021
 - III. Oral submissions will be heard on 23rd February 2021.
(35 minutes each side)

A handwritten signature in blue ink, appearing to be 'Reginald Sydney Fynn', written over a light blue grid background.

Reginald Sydney Fynn JA.....