

**IN THE HIGH COURT OF SIERRA LEONE**  
**LAND AND PROPERTY DIVISION**

LEYINDE PABS-GARNON

- PLAINTIFF/APPLICANT

AND

MANTRAC SIERRA LEONE LTD.

- 1<sup>st</sup> DEFENDANT/RESPONDENT

THE ADMINISTRATOR & REGISTRAR GENERAL

- 2<sup>ND</sup> DEFENDANT/RESPONDENT

**CORAM;**

*HON. MR. JUSTICE REGINALD SYDNEY FYNN JA*

*Walter Nicol Esq. for the Applicant*

*Editayo Pabs-Garnon Esq. for the Respondent*

**FYNN JA**

1. THE Applicant has come by originating Summons dated 27<sup>th</sup> May 2016 as amended by court order dated 18<sup>th</sup> May 2016 for various orders touching property situate at 8 Wilberforce Street, Freetown including the following:
  - a. That the property be partitioned or sold
  - b. That a fit and proper person be appointed to represent the deceased lessor and/or owner or owners of the portion of the property delineated as plot 2 in survey plan LS 356/16 who could not be easily ascertained
  - c. A declaration that the plaintiff holds the property on trust for the estate of Baanah-Washington deceased and for the unascertained lessor owner as beneficial tenants in common in equal shares
  - d. That person so appointed to represent the unascertained estate do act as a Trustee of the said property jointly with the plaintiff
  - e. That the conveyance to the purchaser be signed by the Master and Registrar

- f. An order that the 1<sup>st</sup> Defendant do pay to the plaintiff such amounts as is found due by way of rent as provided for in the lease dated 11<sup>th</sup> day of April 1927 and the supplemental thereto dated 22<sup>nd</sup> May 1985
  - g. An order that the 1<sup>st</sup> Defendant do pay to the Freetown City Council such amount as is found for outstanding due in respect of City Rates for the said property under the lease mentioned
2. Pursuant to the court's orders of 18<sup>th</sup> May 2016 the Administrator and Registrar General was served with a copy of the Originating Summons as the 2<sup>nd</sup> Defendant and the court appointed representative of the Estate of Frederick Samuel Rowland. On 15<sup>th</sup> June 2016 the 2<sup>nd</sup> Defendant entered appearance but did not attend the hearings nor did she take out or file any further processes.
  3. The subject matter of this application touches two plots of land upon which at some point a building was erected bestriding both. Plot 1 belongs to the plaintiff/applicant's family and Plot 2 to other persons including the Estate of F S Rowland (whose interests I have ordered the Administrator and Registrar General to represent).
  4. The application is supported by the affidavits of Andrina Rosa Coker who is also the Lawful Attorney of the plaintiff: Leyinde Pabs-Garnon. In her affidavits sworn to on 27<sup>th</sup> May 2016 and 8<sup>th</sup> July 2016 (the latter being supplemental) Ms. Coker deposes to the following facts among others: She says that her principal Leyinde Pabs Garnon is the lawful Administratrix of the estate of Bannah Washington Davies. That Bannah Washington Davies had devised 8 Wilberforce Street to his wife who had survived him but who also died on 12<sup>th</sup> March 1980. There was a lease of the property prior to Bannah Washington Davies' demise dated 11<sup>th</sup> April 1927. This lease was made in favour of African and Eastern Corporation Limited Company. The plaintiff asserts that the 1st defendant (Mantrac) is the successor-in-title of the African and Eastern Corporation Limited and the person responsible for fulfilling the contractual obligations in the 1927 lease.
  5. Ms Coker deposes further that she has since reentered the property subject of the lease and has secured a valuation of the same. In the second affidavit which in the main answers the second defendants affidavit in opposition, Ms. Coker deposes that Mantrac SL Ltd is the result of a series of change of names from UAC Ltd through Tractor and Equipment and finally to Mantrac SL Ltd. She deposes that Freetown City Council is demanding the payment of rates for the property at 8 Wilberforce Street
  6. The first defendant opposes the application in so far as it relates to imputing any liability on it for the rates rent or any obligations under the lease of 1927. Two (2) affidavits are filed in opposition. The first is deposed to by one Vincent Balogun the 1<sup>st</sup> defendant's CEO. He begins by denying that the 1<sup>st</sup> defendant had any interest at all in 8 Wilberforce Street. He asserts that neither Mantrac nor any of its predecessors in title ie UAC Sierra Leone Ltd etc existed in 1927 when the lease which created the obligations in question was created. In his opinion the supplemental lease was based on some "erroneous and



fundamental misrepresentation of material facts and cannot be explained by the present parties”.

7. The 1<sup>st</sup> defendant then takes recourse to an alternative argument citing the Limitation Act of 1961. He states that the claim even if it was once actionable was now statute barred. He ends with the assertion that the plaintiff cannot sue on behalf of Freetown City Council for the city rates due.
8. In his affidavit, which is the second one in opposition to the application, Mr. Pabs-Garnon deposes that UAC (SL) never assigned 8 Wilberforce Street to the 1<sup>st</sup> defendant. He asserts that in the sale agreement between Unilever and Mansour Group the only property assigned to Mantrac (SL) Ltd was that at Blackhall Road. He maintained that Unilever retained all other properties including 8 Wilberforce Street. A schedule is exhibited to the affidavit as proof of this. Mr. Pabs Garnon also refers to exhibited correspondence, EPG3, EPG4 and EPG5 dated through 2003 to 2007 in which there are discussions between company officials regarding the lease of the subject matter. In one of them Unilever appears to be interested in contacting the owners of 8 Wilberforce Street (who could not be traced) with the intension of buying out the remainder of the 1927 lease.
9. Several exhibits are attached to the various affidavits and I shall refer to them as and when it is necessary to do so.
10. The orders relating to the ownership of the property and for its sale are not in contention. I note that the property has been valued and that Exhibit ARC6 fixes its open market value at \$772,600.00 (seven hundred and seventy two thousand and six hundred United States dollars). I have found no reason to refuse these as exhibits ARC 2 ARC 3 ARC5 and ARC 6 which are the letters of administration taken out by the plaintiff in respect of his estate of Bannah Washington Davies, his last will and testament, the 1927 lease and the supplemental lease agreement in respect of the same; read together these establish the plaintiffs interests.
11. I note that in respect of the other portion of the property diligent search has failed to disclose any persons who are entitled to it.
12. The orders relating to rent and city rates owed by the defendants however need to be considered further.
13. A question that comes up almost immediately has to do with the relationship of Mantrac Co. to the property which is subject matter of this action. Is Mantrac the lessee of the property? Mantrac argues that they are not. The answer to this question will lie in the effect of a company's change of name. This is so because whilst Mantrac does not appear as a party to any of the leases, UAC a company to which it can be traced through a series of name changes doe appear in the supplemental lease.
14. It has been argued that no relationship has been established between UAC Sierra Leone Ltd and the original lessor. I do not think that there is any need for a relationship other than that established by the supplemental lease which is undeniably the act of UAC




- Sierra Leone Ltd. I prefer to rely on the contents of the registered supplemental lease than on the documents generated by the officials of the defendants in their various discussions of the subject matter. Similarly I will find the registered lease more reliable and certain in its stipulations than the memory of the officials of Mantrac which are in exhibits EPG3, EPG4 and EPG5.
15. It is certain that UAC covenanted in the supplemental lease to take up the remainder of the term granted in 1927 and to hold same on specific conditions including the payment of the city rates. UAC covenanted on its own behalf and on behalf of its successors in title.
  16. Exhibits VB3 to VB7 are a string of certificates relating to the name of a company including name changes: VB3 certifies that in 1924 a company named Sherbro Limited was incorporated in Sierra Leone. VB4 certifies that on 23 August 1946, Sherbro Limited changed its name to United Africa (Sierra Leone) Limited. VB5 certifies that on 6<sup>th</sup> May 1958 United Africa (Sierra Leone) Limited changed its name to The United Africa Company of Sierra Leone Limited. VB6 certifies that on 1<sup>st</sup> March 1976 United Africa Company of Sierra Leone Limited changed its name to UAC of Sierra Leone Ltd. VB7 certifies that on 29<sup>th</sup> September 1995 UAC Sierra Leone Limited changed its name to Tractor and Equipment Sierra Leone. The picture is made complete however by Exhibit ARC 10 which certifies that on 18<sup>th</sup> March 2009 Tractor and Equipment Sierra Leone changed its name to Mantrac Sierra Leone Limited.
  17. The string of certificates of name change was meant to establish that there is no relationship between African and Eastern Corporation Limited (the lessee in the 1927 lease) and the defendant in this action. The certificates certainly establish that. More significantly however the certificates also establish the connection between UAC of Sierra Leone Limited (the lessee in the supplemental lease) and the defendant.
  18. When a company changes its name its rights interests liabilities and assets do not disappear. The authors of Halsbury's Laws of England 3<sup>rd</sup> Edition at page 135 under the rubric "*Change of Name*" have taken the following position: *The change of name does not affect any rights or obligations of the company nor does it render defective any legal proceedings by or against it. Legal proceedings continued or commenced against it by its former name may be continued or commenced against it by its new name.*
  19. It is my opinion that UAC of Sierra Leone Limited and the defendant Mantrac Sierra Leone limited are one and the same but for a name change. Consequent upon that finding I hold that the company can properly be sued on the supplemental lease it entered into on 22<sup>nd</sup> May 1985 in respect of the property at 8 Wilberforce Street Freetown.
  20. Mr. Pabs Garnon has argued in the alternative that the claims for rent and rates are statute barred. He adds that the amounts claimed are unliquidated and would require further investigation for them to be ascertained.



21. I have considered the arguments on limitation and I find that they have sufficient merit to exclude some of the amounts due. I find however that the plaintiff is entitled to sue on the lease for the city rates as well as for the rent. I have looked on the amounts (in respect of rent and rates) as individual annual accruals and therefore the portions which fell due only recently cannot be affected by the limitation period at all i.e. to say the rent and rates for the period 2011 to 2016. Also I do not agree that further investigation needs to be done to ascertain the amounts in question. Exhibit ARC 6 fixes the annual rent whilst ARC 11 sets out what the city rates owed for the years in question are.
22. For the avoidance of doubt the rent due is £540 and the rates due is Le 4,342,992.

Upon the foregoing considerations I now make the following orders:

- a. That the property situate at 8 Wilberforce Street Freetown be sold by private treaty at a reserved price of \$772,600 and that the applicant's solicitors shall have conduct of the sale.
- b. That the Administrator & Registrar General shall represent in the sale the deceased lessor and/or owner(s) of the portion of the property delineated as plot 2 in survey plan LS 356/16 who have not been ascertained.
- c. A declaration that the plaintiff holds the property on trust for the estate of Baanah-Washington Davies deceased and for the unascertained lessor owner as beneficial tenants in common in equal shares
- d. That pursuant to Section 16 of the Devolution of Estates Act 2007, portion of the sale due to the unascertained estate shall be paid forthwith into the Consolidated Revenue Fund (subject to the same being claimed at a later date by any competent person(s))
- e. That the conveyance to the purchaser be signed by the Master and Registrar
- f. That the 1<sup>st</sup> Defendant do pay to the plaintiff outstanding rent in the sum of £540 or the equivalent in leones
- g. That the 1<sup>st</sup> Defendant do pay to the Freetown City Council, City Rates in the sum of Le 4, 342,992 in respect of property situate at 8 Wilberforce Street Freetown
- h. That an account shall be filed with this court no later than six months after the date the conveyance in respect of the sale is signed.
- i. The applicant's solicitors are awarded the costs of this application to be borne by the estate of *Washington Davies and F S Rowland* being 10% of the purchase price of the property.



..... The Hon. Mr. Justice Reginald Sydney Fynn JA