

C.C. 722/2005 2005 A. NO. 13
IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: -

MARCUS SIGISMOND ROBERTS **-PLAINTIFF**
(As Administrator of the Estate of
OWEN ATERE ROBERTS (Deceased))

AND
IRENE MOMOH **-DEFENDANT**

E. E. C. Shears-Moses Esq. for the Plaintiff
J. Fornah Sesay Esq. for the Defendant

JUDGMENT DELIVERED THE 27th DAY OF January, 2012

The Plaintiff's claim against the Defendant is for a declaration that he is the owner in fee simple of land and premises situate lying and being at 4 Dougan Street, Freetown and for possession of same from the Defendant. He also claims the revocation of the Deed of Gift dated 31st January 1996 made between the Plaintiff as Donor and the Defendant as Donee and registered as No. 25/96 in volume 86 at page 79 of the Books of Voluntary Conveyances in the Office of the Registrar General Freetown.

In his particulars of claim, the Plaintiff averred that he is the owner in fee simple of the land and premises at 4 Dougan Street, Freetown which was devised to him by his late father **MARCUS SIGISMOND ROBERTS** in his Will dated 4th October 1973. The Defendant was his tenant in respect of the said premises. In 1997 he fell ill and was admitted at Dr. Cole's hospital and since then the Defendant stopped paying rent to him and refused to quit the said premises despite several demands made for her to do so.

The Defendant now claims that the property belongs to her having been given to her by the Plaintiff by Deed of Gift. The Plaintiff denied ever executing a Deed of Gift in her favour and averred that if the Defendant is in possession of any such Deed, it was not executed by him or on his instructions. The Plaintiff pleaded that the Defendant is now a trespasser and ought to be evicted from the premises as the original tenancy has been terminated.

The Defendant entered appearance and filed a defence in which she denied the Plaintiff's claim and stated that she acquired the property by virtue of a Deed of Gift dated 31st January 1996. She averred that the Deed of Gift was given to her in return for the valuable services she rendered to the Plaintiff and referred to a letter dated 8th December 1995 written by the said Plaintiff in which he acknowledged the services she had rendered him for which he had made a gift to her of the said property. She further pleaded that as a result of the Deed of Gift which made her the owner of the property she was no longer required to pay rent to the Plaintiff and she accordingly stopped paying him rent. She stated that the Plaintiff freely and voluntarily executed the said Deed of Gift in her favour.

At the trial the Plaintiff testified on his own behalf but the Defendant failed to attend court and her counsel too did not attend to cross-examine the said Plaintiff. After several adjournments judgment was entered against the Defendant and she was later evicted from the premises.

The Defendant subsequently had the said judgment set aside and the matter eventually proceeded. In the meantime the Plaintiff, **OWEN ATERE ROBERTS** died and **MARCUS SIGISMOND ROBERTS** the present Plaintiff was substituted for the deceased Plaintiff. He was also the administrator of the estate of **OWEN ATERE ROBERTS** (Deceased).

MARCUS SIGISMOND ROBERTS, PW1 testified that his late father **OWEN ATERE ROBERTS** was the owner of the property in issue, 4 Dougan Street and that it was devised to his late father by the Will of his late grandfather. He told the court that the Defendant was a tenant of his father and that it was after she was given notice to quit that she claimed the property had been given to her by the said **OWEN ATERE ROBERTS**.

Under cross-examination, the witness said inter alia that in 1996 his father was working with the Rent Assessment Committee and attended its sittings regularly. He denied that there was any other relationship between the Defendant and his father apart from landlord and tenant. When shown Exhibit "J", the Deed of Gift he stated that his father did not give the said Deed of Gift to the Defendant.

The next witness for the Plaintiff was **CLAUDIUS ATERE ROBERTS, PW2** the older brother of **MARCUS SIGISMOND ROBERTS PW1**. He confirmed that his father owned premises No. 4 Dougan Street and that the Defendant was a tenant of his late father.

He too did not know that there was any other relationship between the Defendant and his late father and that he was not aware of his father's disposition of the said property to the Defendant.

He was cross-examined on his testimony and when shown Exh "J" he said that the only problem he has with it is his father's signature and told the court further that he would know if his father signed the document even though he was not present. He was also shown Exh "K1 and K2" receipts issued to the Defendant and he stated that they were not signed by his late father. He stated that he is familiar with his father's signature. He also denied that the Defendant was taking care of his father prior to 1997 or at any time. He stated that it was when his father gave the Defendant notice to quit that they fell out.

The third witness for the Plaintiff was **RAYMOND NEVILLE**, the nephew of **OWEN ATERE ROBERTS** (Deceased). He stated that he was put in occupation of the premises in issue by the late **OWEN ATERE ROBERTS** and that he is aware that the said **OWEN ATERE ROBERTS** never gave the said property to the Defendant as a Deed of Gift. He told the court that **MR. ATERE ROBERT'S** children took good care of him until his death in 2008 and that he was present together with the witnesses when **MR. OWEN ATERE ROBERTS** executed his Will on 9th March 2007 in which he gave the said property to his two sons, **CLAUDIUS** and **MARCUS ATERE ROBERTS**. He stated that he was not aware that the said **OWEN ATERE ROBERTS** gave his property to the Defendant.

and that he is aware that the said **OWEN ATERE ROBERTS** never

The witness was cross-examined on his testimony

That ended the case for the Plaintiff.

The Defendant first gave evidence on her own behalf and told the court that she came to know **MR. OWEN ROBERTS** around 1987 and 1988 and used to exchange greetings and jokes with him. She stated that once during Christmas season she gave him a gift of money and he was very grateful to her. Later he told her that he had five children who were not taking care of him. She said she felt sorry for him and decided to be helping him out and when it transpired that she needed accommodation he rented a portion of his premises at 4 Dougan Street to her in 1991 at an initial rent of Le50,000 monthly. She stated that she was a tenant from 1991-1995 and that in December 1995 he gave her a Deed of Gift written in his own handwriting and asked her to accompany him to the office of the late **MISS. YVONNE THOMAS**. He then asked **MISS THOMAS** to get him a solicitor to prepare a Deed of Gift of 4 Dougan Street. **MISS. THOMAS** advised him to get a surveyor to prepare a site plan of the property in the Defendant's name.

The Defendant told the court that **MR. OWEN ATERE ROBERTS** in due course got a Surveyor who went to the premises and in her presence carried out the survey whilst the said **MR. ATERE ROBERTS** pointed out the boundary. **MR. ATERE ROBERTS** later brought the survey plan to her and asked her to go with him to the office of **MISS THOMAS** where the Deed of Gift was prepared. It was signed in the presence of **MR. SAMUEL COLE**, Solicitor who has also since died.

She stated further that **MR. OWEN ATERE ROBERTS** read over the document before signing it and **MISS THOMAS** witnessed it before it was signed by **MR. COLE**, the Solicitor. She said **MR. ATERE ROBERTS** then asked the Solicitor to register the document and he asked her to collect it in three weeks. She stated that she collected it after two months and she occupied the premises until she was evicted therefrom in 2007 by Bailiffs of the High Court.

Under cross-examination the Defendant confirmed her evidence in chief and identified Exh "G" as the letter written to her by **MR. ATERE ROBERTS** before the Deed of Gift was prepared. She stated that she had no knowledge of Exh "C", the Will of **MR. OWEN ROBERTS**, Exh "E", the Letters of Administration with the Will annexed obtained by the Plaintiff in respect of **OWEN ATERE ROBERTS** estate and Exh "F", the Vesting Deed in respect of 4 Dougan Street in favour of the Plaintiff and his brother. She identified Exh "H", a letter dated 19th February 1997 written by **MR. OWEN ATERE ROBERTS** to the Administrator and Registrar General asking him to revoke the Deed of Gift made to her.

The Defendant further told the court that she used to visit **MR. OWEN ATERE ROBERTS** at his house almost daily and during such visits she saw his children but never discussed with them their father's complaint that they neglected him and did not take care of him. She stated that **MARCUS ROBERTS** used to take messages from his father to her. She also said she was well acquainted with **MR. ATERE ROBERTS** signature.

She confirmed that she stopped paying rent when she received the Deed of Gift and that she paid rent from 1991 to 1995. She stated that she gave him Le50,000 monthly for rent and for his welfare but could not recall how much was meant for rent and what was meant for his welfare. When shown Exh "K1, and "K2" she confirmed that the receipts only referred to rent.

MR. LANSANA FODAY BANGURA DW2 was the other witness for the Defendant. He described himself as Detective Police Inspector attached at the Questioned Documents Section of the C.I.D. His duties include the verification of disputed signatures or handwriting. He confirmed receiving 5 documents from the Defendant's solicitor to verify whether the signatures on the Will of **OWEN ATERE ROBERTS** – Exh "C" are the same as those on Exh "G" the handwritten letter by the said **OWEN ATERE ROBERTS**, Exh "H" – letter written by the said **MR. ATERE ROBERTS** to the Administrator and Registrar General, Exh "J" – Deed of Gift to the Defendant and Exh "K1 and K2" - the receipts issued to the Defendant by the said **MR. ATERE ROBERTS**.

The witness told the court that the documents were examined with the aid of an optical instrument and the signatures were examined and analyzed and a report prepared containing the observations and conclusions of the officers who carried out the exercise. Their findings and conclusions were read out by the witness.

They are as follows:

1. "That all signatures allegedly representing **OWEN ATERE THOMAS** on documents "A" (his last will and testament) and "E" (receipts dated 30th April and 12th May 1993 respectively) are similar in features therefore it is highly probable that those signatures could have been executed by the same person.
2. On the other hand, the signatures on documents "D" (the Deed of Gift) allegedly written by **OWEN ATERE ROBERTS** when compared with documents "A", (his last will) "B" (his handwritten letter), "C" (his letter to the Administrator and Registrar General and "E" (receipts) show dissimilarities in features, therefore, it is highly probable that different persons could have executed those signatures" (words in parenthesis mine)

That ended the case for the Defendant.

Both counsel submitted written closing address.

From the evidence adduced before the court, the issue to be determined is the authenticity of the Deed of Gift in favour of the Defendant. The original Plaintiff, **MR. OWEN ATERE ROBERTS** denied ever making the Deed of Gift.

His two sons, PW1 and PW2 also denied all knowledge of the said Deed of Gift or being aware that their father had disposed of the property by Deed of Gift to the Defendant. Their testimony is that they became aware of the Defendant's claim of ownership of the property when she was given notice to quit by their father. **MR. NEVILLE, PW3** who was put in occupation of the premises and acted as its caretaker also confirmed this piece of evidence.

The Defendant for her own testified as to how the Deed of Gift came about. In a bid to establish the authenticity of the said Deed of Gift the Defendant called in expert witnesses to aid the court.

Counsel for the Defendant has drawn the courts attention to Exh "G" which is a letter showing the intention of **MR. ATERE ROBERTS** to make a Deed of Gift of his property situate at 4 Dougan Street Freetown to the Defendant and also to the Deed of Gift itself which he submitted was properly prepared, executed and registered. He maintained that the ownership of the property passed from **MR. ATERE ROBERTS** to the Defendant.

With regard Exh "H", a letter written by **MR. ATERE ROBERTS** to the Administrator and Registrar General requesting him to revoke the said Deed of Gift. It is my view that it is important to look at this piece of evidence, as the contents show that the said **MR. ATERE ROBERTS** appeared not to know how the Deed of Gift came about. The question therefore which arises is whether the said Deed of Gift can be regarded as his deed.

When **MR. ATERE ROBERTS** signed the said Deed of Gift was he fully aware of his act? Counsel for the Defendant has asserted that **MR. ATERE ROBERTS** was a free man and went with the Defendant to the office of **MISS THOMAS** to get the said Deed prepared and even hired the services of a Surveyor to prepare the site plan. These acts were all done he submitted without the knowledge of the children but of his own accord.

In the light of these pieces of evidence can it be said that the Deed of Gift was not the deed of **MR. ATERE ROBERTS**? It is clear from the evidence that **MR. ATERE ROBERTS** has denied ever making the Deed and the Plaintiff's witnesses have attested that they are familiar with the signature of **MR. ATERE ROBERTS** and that the signature on the Deed of Gift, Exh "J" is not his. From the contents of Exh "H", it is plain that **MR. ATERE ROBERTS** has shown doubts about the existence of or how the said Deed of Gift came about.

Counsel for the Defendant has relied on a number of cases which can be distinguished from the present case as the said **MR. ATERE ROBERTS** insists that he never executed the said Deed of Gift nor did he give instructions for it and he consequently made several attempts to have it revoked.

CHAPTER 10: THE DEED OF GIFT FROM THE CONTENTS OF EXHIBIT J, IT IS PLAIN THAT

Further there is evidence that he instituted actions in the Magistrates Court to evict the Defendant from the premises. It is also clear that the said **MR. ATERE ROBERTS** continued to discountenance the said Deed of Gift ~~from~~ which is quite apparent from the contents of his Will, ~~of the said~~ Exh "C" in which he devised the said property to his two sons, thereby indicating that he still regarded the property as belonging to him.

In this case there is sufficient evidence to raise doubts about the authenticity of the signature of the Donor in the said Deed of Gift. Consequently the testimony of the expert witness is crucial to establish whether indeed the said Deed of Gift is the act of the said **MR. ATERE ROBERTS**. In this regard, the Defendant called an expert in the verification of disputed signatures in the person of **MR. LANSANA FODAY BANGURA, DW2**. The report he tendered, Exh "Q" disclosed that when the signatures on the documents supplied to him were examined, the signature on the Deed of Gift, Exh "J" shows that different persons could have executed the signature. In other words, there is no certainty that **MR. OWEN ATERE ROBERTS** executed the Deed of Gift.

In my judgment therefore the testimony of the expert witness settles the issue of the lack of authenticity of the Deed of Gift. The Deed of Gift is therefore not the act of the said **MR. OWEN ATERE ROBERTS**. The Plaintiff has therefore proved his case on a balance of probabilities and judgment is given in his favour.

I therefore make the following Orders:

1. The Plaintiff is entitled to possession of premises No 4 Dougan Street Freetown.

2. A revocation of the Deed of Gift dated 31st January 1996 between the Plaintiff and the Defendant and registered as No. 25/96 in volume 86 at page 79 of the Books of Voluntary Conveyances in the office of the Registrar General Freetown.

3. No order as to costs.

A. Showers
27/1/2012

SIGNED: - A. SHOWERS
JUSTICE OF COURT OF APPEAL