

IN THE HIGH COURT OF SIERRA LEONE  
FAMILY AND PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF SILVANUS JAMES MACAULEY  
(DECEASED) TESTATE

AND

IN THE MATTER OF AN APPLICATION FOR THE SALE OF PREMISES AT 43  
CIRCULAR ROAD FREETOWN

BETWEEN:

OTHANIEL WARDLOW

- APPLICANT

AND

CLAUDIUS WUSU

-RESPONDENTS

WINSTON MACAULEY

SAMUEL MACAULEY

ESTINA MADDY

JULIAN SAWYERR

COUNSEL:

ROLAND A NYLANDER ESQ for the Applicant

S K KOROMA ESQ for the Respondents

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE,  
JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 29 DAY OF JUNE, 2012.

1. This is an Originating Summons dated 5 June, 2012 filed on behalf of the Applicant Othaniel Wardlow. He is asking that this Court make several Orders, viz: (i) that this Court appoint him Executor of the Will of the late Silvanus Macauley, who died testate in Freetown on 7 November, 1940; (ii) that this Court do Order the sale of the property situate at and known as 43 Circular Road, Freetown by private treaty at a minimum price to be fixed by the Court, and that the proceeds of sale be shared out between the beneficiaries of the estate; (iii) that the Applicant and his Solicitor do have conduct of the sale and that Solicitors' Cost be paid out of the proceeds of sale; and lastly, that this Court makes any other Order it may think fit.

2. The evidence in support of the Originating Summons is to be found in the affidavit of the Applicant also deposed and sworn to on 5 June, 2012. The deponent deposes that that himself and the Respondents are the biological grand-children of the deceased testate and are the beneficiaries of his estate. He is the son of one of the daughters, Theresa Macauley. His birth certificate is exhibited as "OW3." The deceased testate died on 7 November, 1940 living his last Will and Testament made on 29 August, 1940. The deceased testate's death certificate is exhibited as "OW1", and his Will as "OW2". The Deceased testate devised the property at 43 Circular Road, to his children Samuel Macauley, Matilda Macauley, Theresa Macauley, Elston Macauley and Mildred Macauley for the children's sole and separate use, and to my daughters without interference by any husband. No limitation is stated in the devise, and so it appears it was an absolute gift to the devisees.
3. The Executors named in the Will were the testate's son, Samuel Macauley, and Marcus Chamberlain Grant. Neither Executor took out Probate during his lifetime, and both of them are now also deceased. The property has been rented out in the past for small sums of money, and is in a dilapidated state, and requires considerable repairs which are beyond the means of the current beneficiaries, who are all over the age of 60 years. Mr Wardlow believes it would be in the interests of justice that the property be sold now. He has exhibited as "OW4" a copy of a Valuation Report and Certificate, prepared and signed by Mr Franklyn Kenny of Kenlice General Services. He appraises the value of the property at Le150million.
4. Appearance was entered on behalf of the Respondents by S K Koroma esq on 12 June, 2012. The 2<sup>nd</sup> Respondent deposed and swore to an affidavit on his own behalf, and on behalf of the other Respondents, on 19 June, 2012. Himself and the other Respondents are grandchildren of the deceased testate. He confirms that the property at 43 Circular Road is in a bad state of repair. They, the Respondents put the Applicant in charge of the property. They believe that it would be beneficial to all of them that the property be sold and the proceeds shared amongst them. They therefore support the Application. Exhibited to his affidavit is a document addressed to whom it may concern. It reads: "*WE, the undersigned who are beneficiaries of the estate of SYLVANUS JAMES*



*time and mode of any sale of land.....and generally in regard to the administration of the land for the greatest advantage of all persons interested."* In the instant case, all the beneficiaries have consented to the sale of the property, but an Order of this Court was necessary because of the demise of the immediate devisees. The intestacy arose because of their demise. The other Orders and Reliefs prayed for will be granted in the manner set out below:

- (1) This Honourable Court Grants Letters of Administration with the Will Attached to the Applicant herein, OTHANIEL WARDLOW, to administer the estate left un-administered of SILVANUS JAMES MACAULEY who died testate in Freetown on 7 November, 1940.
- (2) This Honourable Court Grants the Applicant herein OTHANIEL WARDLOW, QUA Administrator of the estate of SAMUEL JAMES MACAULEY, an Order to sell the property situate at and known as 43 Circular Road, Freetown by private treaty at a minimum or reserved price of Le150million.
- (3) The sale shall be conducted by the Applicant and his Solicitor. The result of the sale shall be certified to the Court jointly by Solicitors on both sides.
- (4) The Applicant and the Respondents are, individually and collectively entitled to purchase the property at the highest price that could be obtained in the open market.
- (5) The gross purchase price shall be paid into Court.
- (6) Solicitors on either side shall submit for the Court's approval, their respective Bills of Costs within 3 days of the sale of the property.
- (7) Applicant's Solicitor shall submit for approval of the Court, the Valuer's fees within 3 days of the sale of the property. This shall be done by way of affidavit filed in Court.
- (8) After the full purchase price has been paid into Court, and the same certified by the Solicitors as directed above, the Court shall hold a hearing in chambers for the purpose of making payments out of the same to: (i) the Applicant and the Respondents; (ii) Solicitors on both sides; (iii) the Valuer; (iv) and for any incidentals which may have arisen out of the sale or out of this Order; and for the purpose of making any other Order that any party may request


*MACAULEY (deceased) hereby give our consent for the sale of all that property situate lying and being at 43 Circular Road, Freetown." All five beneficiaries are named in the document, and they all affixed their respective signatures to the same.*

5. As I have said above, the devise contained no limitation. It was an out and out gift to the devisees. The devisees died without disposing of their respective interests in the property whether by Will, or otherwise. In this respect, an intestacy arose in the case of each of them. Their children are respectively, the Applicant and the Respondents herein. There is no evidence before me that there are other persons who have a greater or better right to the estate of each of them as result of each of them dying intestate. The Applicant and the Respondents, respectively, are thus the person who are entitled to the share each devisee had in the property devised by the testator in his Will.
6. As regards the first Order prayed for, the Court cannot replace an Executor. An Executor can only be appointed by Will. Where an Executor dies, or both Executors die, their Executors, and if none, their Administrators, succeed to their duties. They take over the responsibilities the original Executors bore. There is no evidence before this Court that the parents of the Applicant and of the Respondents died testate. The presumption therefore is that they died intestate. Though the Testator died testate, because his Will was not probated, in order to administer his estate, a grant cum testament annexo (with the will annexed) ought to be made to the Applicant Mr Wardlow, he being a grandchild of the Testator, Silvanus Macauley. The only legal provision which applies to a situation of this nature, where the owners of the property die intestate, is that to be found in Section 23 of the Administration of Estates Act, Chapter 45 of the Laws of Sierra Leone, 1960. It provides as follows: "(1) *No land forming part of the estate of an intestate shall be sold by the Administrator and Registrar-General 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. (2) On the Application of the.....Administrator or any person beneficially interested, and after previous notice to other persons interested, the Court may Order and direct the course of proceedings which shall be taken in regard to the*



relating to the continued occupation, or evacuation of the property by the present occupants.

- (9) The sale shall be conducted and concluded within 14 days of today's date, subject to the right of any party to apply for an extension of the time.
- (10) The Court appointed Administrator OTHANIEL WARDLOW shall execute a Deed of Conveyance in favour of the successful purchaser, and the purchaser shall be responsible for the payment of stamp duty and any other fees payable by virtue of the transaction.
- (11) Liberty to Apply.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL