

MISC.APP 345/08 2008 C. NO. 27

IN THE HIGH COURT OF SIERRA LEONE
(PROBATE JURISDICTION)

IN THE MATTER OF THE INTESTATE ESTATE OF AHMED TEJAN CAREW.

AND

IN THE MATTER OF SECTION OF THE HIGH COURT RULES, 2007

AND

IN THE MATTER OF AN APPLICATION FOR THE DISTRIBUTION OF THE ESTATE OF AHMED TEJAN CAREW

AND

IN THE MATTER OF AN APPLICATION FOR THE SALE OF PREMISES NO. 29 SAVAGE SQUARE, FREETOWN.

BETWEEN:-

SAIDU TEJAN CAREW -PLAINTIFFS/APPLICANTS
29, SAVAGE SQUARE
FREETOWN

- 1. REMELEKU CATES**
- 2. DEMINGER ADDO**
- 3. MRS. AMINATA KANDEH**
BANJUL THE GAMBIA

AND

MRS. SAPTIEU RAHMAN -1ST DEFENDANT/
RESPONDENT

AND

THE ADMINISTRATOR AND REGISTRAR
GENERAL FOR THE ESTATE OF
ADIATU COLE -2ND DEFENDANT/RESPONDENT
ROXY BUILDING
FREETOWN.

L. Jenkins Johnson Esq. for the Plaintiff/Applicant
J. K. Lansana Esq. for the Defendant/Respondent.

RULING DELIVERED THE 21st DAY OF November 2012.

This is an application by Notice of Motion dated 26th June 2012 filed on behalf of the Plaintiff/Applicant herein for the following Orders.

1. That the sum of Eight hundred Million Leones (Le800,000,000) ordered by the court as the reserved price for the sale of property situate at No. 29 Savage Square, Freetown be revised downwards to Six hundred and fifty million Leones (Le650,000,000).
2. That the expenses of the Applicant **MR. CAREW** be deducted from the proceeds of sale.
3. That the shares of **AMINATA KANDEH** and **MRS. REMELEKU CATES** be paid to the Applicant herein.
4. Any other Order (s) that this Honourable Court may deem fit and just.
5. That the costs of this application be costs in the cause.

In support of the application is the affidavit of **SAIDU TEJAN CAREW**, the 1st Plaintiff/Applicant herein sworn to on 26th June, 2012. He deposed to the facts leading to the application. They are briefly that by Order of court dated 13th December 2010 the court ordered the sale of property situate at 29 Savage Street Freetown

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forming part of the estate of **AHMED TEJAN CAREW** (Deceased) Intestate. The court further fixed the reserved price at Eight hundred million Leones with the 1st Plaintiff being given the first option to purchase the property at the reserved price within a period of one month of the date of the Order which was the 14th March 2011. Since the said valuation only one offer has been made for the purchase of the property at Le650, 000,000. This offer was communicated to the solicitor for the Respondents with a request to notify the solicitor for the Plaintiff of the receipt of a higher offer. No response was received from the solicitor.

The 1st Plaintiff in his affidavit in support of the motion explained that he had expended his personal funds in travelling from the United Kingdom to Freetown as a result of the 1st Defendant's challenge and has also incurred administrative legal and managerial costs in maintaining the property and that he rebuilt the house after it was burnt down during the rebel war. He produced receipts of his several expenditures in support of his claim. He also exhibited the Power of Attorney given to him and a letter from solicitors for **MRS. REMELEKU CATES** and **MRS. AMINATA KANDEH** requesting that payment of their share of the estate be made to the said 1st Plaintiff. He prayed for the Orders to be granted.

The 1st Defendant opposed the application and swore to an affidavit in opposition on 2nd October 2012 which was filed on her behalf. The main ground for opposing the application is that the 1st Defendant had the property valued without consultation with her or her solicitor though the court had ordered that the conduct of the sale be by both solicitors.

Further that there is no documentary evidence that **MRS. REMELEKU CATES** and **MRS. AMINATA KANDEH**, co-plaintiffs in the matter are in support of the application for a variation.

The 1st Defendant also filed a Supplemental affidavit in opposition in which she deposed that she had also expended personal funds in the reconstruction of the house and showed a receipt for the sum of Le12, 000,000 paid to the contractor.

She further deposed that the Order for sale of the property was made over a year ago and that ample time was given the 1st Plaintiff to exercise the option which he failed to do. She complained that there are five beneficiaries and that if the house is sold for Le650 million, the share derived by each beneficiary would be most inadequate bearing in mind that they would have to move out of the premises and find alternative accommodation.

The principal issue here is whether or not to vary the reserved price fixed for the property. The reason given by the 1st Plaintiff is that since the Order for the sale and the valuation of the property, there has only been made one offer for the purchase at the sum of Le650 million. The reserved price was fixed over a year ago when the property was put on the market. The question is ought the parties to wait indefinitely for a better offer, particularly as the 1st Defendant who is opposing the application has not come up with any other offer? I think not.

The Order for sale of the property has been made and this court has no power to rescind it and order that the house is not to be sold.

The application is for a variation of the reserved in the light of the fact that only one offer has been made at the said price. It is therefore necessary to consider whether or not the court has powers to vary the reserved price fixed by the court. It is my view that the nature of the Order renders it necessary for subsequent applications to be made to the court for assistance. In these circumstances the order carry with it liberty to apply. **In Halsbury's Laws of England**, 3rd ed. vol. 22 paragraph 1223 at page 783 under the rubric "Liberty to apply", it states "All orders of the court carry with them *in gremio* liberty to apply to the court, and there is no need to reserve expressly such liberty in the case of orders which are not final."

The Order of Taylor J dated 14th March 2011 is not a final order. It is clearly an Order which reserves liberty to apply by its very nature, although such liberty is not expressly stated. In that light therefore the Plaintiff is entitled to make subsequent application to the court of assistance as he has done in this case. The court therefore has powers to vary the reserved price fixed but not the power to rescind the Order for sale of the property.

In my judgment the Plaintiff having received a firm offer for the purchase of the property at a lower price, the property having been in the market for over a year, there is justification for the court to accede to the application for a variation of the reserved price to the price offered.

With regard the prayer for the refund of the expenses incurred in reconstruction of the property in issue. The evidence that the 1st Plaintiff used his personal funds to rebuild the house has not been controverted save for the allegation that the 1st Defendant also expended her own personal funds. She has exhibited a receipt for the amount of Le12, 000,000 she alleged she paid to **MR. TENGBEH** the contractor.

Counsel for the 1st Plaintiff has contested this allegation and argued that the Applicant was sending several amounts to the 1st Respondent around the same date that the receipt was issued by **MR. TENGBEH** and which the said 1st Respondent signed for. I have perused the said receipt and there is no evidence that the amount was paid to Mr. Tengbeh by the 1st Respondent.

It is my view that the 1st Respondent has not sufficiently proved that the amount of Le12, 000,000 paid to **MR. TENGBEH** was paid out of her personal funds for which she ought to be reimbursed out of the estate. Her claim is disallowed.

The 1st Plaintiff has claimed refund of his expenses in rebuilding the house also legal and managerial costs in maintaining the property to which I believe he is entitled. He has shown sufficient proof of such expenditure. However the 1st Plaintiff is normally resident in the United Kingdom and he has claimed huge travelling fees. He has in his affidavit stated that he has incurred these travelling expenses as a result of the 1st Defendant's challenge.

There is evidence that there are five beneficiaries of this estate. Four of them are not opposed to the sale of the property. Only the 1st Respondent has opposed it. In those circumstances I do not think it fair for the others who have not opposed to bear the costs of the 1st Plaintiff's travelling. I am therefore minded to allow him the cost of one return fare London-Freetown and back.

With regards the claim for the shares of the Plaintiffs, **MRS. AMINATA KANDEH** and **MRS. REMELEKU CATES** to be paid to the 1st Plaintiff herein. There is sufficient evidence that he has a power of attorney granted to him by the said two Plaintiffs respectively. In addition there is a letter written by their solicitor in the Gambia to the effect dated 30th March, 2010. There is no evidence before the court that the said instruction from the said solicitor has changed.

In the circumstance the application is granted. I make the following Orders

1. That the sum of Le800,000,000 (eight hundred million Leones) ordered by the court as the reserved price for the sale of the property situate at No. 29 Savage Square, Freetown be revised downwards to Le650,000.000 (Six hundred and fifty million Leones).
2. That the expenses of the Plaintiff/Applicant **MR. SAIDU TEJAN CAREW** in respect of the administrative, legal, managerial costs and his return fare London-Freetown/London amounting to £20,000

(Twenty Thousand Pounds Sterling) be deducted and paid to him out of the proceeds of sale.

3. That the respective shares of **MRS. AMINATA KANDEH** and **MRS. REMELEKU CATES**, beneficiaries of the estate of **AHMED TEJAN CAREW** be paid to the Plaintiff/Applicant herein.
4. Costs in the cause.

A. Showers
SIGNED: - A. SHOWERS 21/4/2012
JUSTICE OF THE COURT OF APPEAL.