

IN THE HIGH COURT OF SIERRA LEONE
(FAMILY AND DPROBATE DIVISION)

BETWEEN: -

HAJA FANTA KABBA -PLAINTIFFS/RESPONDENTS
JAKA KABBA

AND

JABBIE OMAR KABBA – DEFENDANT/RESPONDENT

RABIE RAZAT

- INTERVENER/APPLICANT

(Intervener through his lawful Attorney

SHEKU KAMARA)

A. F. Serry Kamal Esq. for the Plaintiffs

M. P. Fofanah Esq. for the Intervener/Applicant

RULING DELIVERED THE 18th DAY OF December, 2012

By Judges Summons dated 9th July 2012, the Intervener/Applicant herein seeks Judgment to be entered against the Plaintiffs and the Defendant in this action pursuant to Order 16 rules 1 and 3(1) of the High Court Rules 2007 for the reliefs prayed for in the Intervener’s Counterclaim dated 28th March 2012. The reliefs prayed for are as follows

1. Specific performance of the contract between the said Intervener and the Defendant for the sale of property situate at Juba Hill, Juba Freetown for which the Intervener paid a deposit of US\$ 50,000 to the Defendant.

2. In the alternative, that an Order for the refund of the said deposit be made by the Estate of **NFAJI KABBA** (Deceased) Intestate plus interests thereon at the rate of 35% per annum from the 2nd December 2011 until payment.

In support of the application is the affidavit of **SHEKU KAMARA**, the lawful Attorney for the Intervener sworn to on 9th July 2012. He deposed to the facts leading to the application which are briefly that the Intervener on 2nd December 2011 paid the sum of US\$ 50,000 as deposit for the purchase of property situate at Juba Hill, Juba Freetown. The said amount was paid to the Defendant herein who is the administrator of the estate of **NFAJI OMARR KABBA** (Deceased) Intestate, his father. The said property was vested in the said Defendant by Vesting Deed dated 30th November 2011.

By writ of Summons dated 26th November 2011 the Plaintiffs herein who are sisters of the Defendant instituted the present action seeking *inter alia*, an Order for the removal of the Defendant as Administrator of the estate of **NFAJI OMARR KABBA** (Dcd) Intestate. The Defendant failed to file a Defence to the action and since the Intervener was made a party to the action and he thereafter filed a Defence and Counterclaim, the Plaintiffs and the Defendant have failed to proceed with the action. He alleged that this caused him financial loss. He believes he is an innocent purchaser for value without notice, and is entitled to the reliefs prayed for in the said Judges Summons.

The Plaintiffs filed an affidavit in opposition sworn to on their behalf by A. F. Serry Kamal Esq. Solicitor. He deposed that the Intervener is neither the Plaintiff nor the Defendant in this matter and the provisions of Order 16 rule 1 and rule 3(i) of our High Court Rules 2007 do not give an Intervener the right or authority to apply to the court for summary judgment against the Plaintiff and the Defendant. He went on further to depose that summary judgment is only granted against a defendant on the ground that the defendant has no defence to a claim included in a writ. Further that the Plaintiffs have filed a Reply to the Intervener's Defence and Counterclaim in which they have put up several defences to the said Counterclaim so that even if the Intervener were a Plaintiff and entitled to bring the application he would not be entitled to summary judgment as the Plaintiffs have raised triable issues.

He further emphasized that the Plaintiffs do not have a contract with the Intervener which the court can enforce and of which the court can grant specific performance.

With regards the assertion that the Intervener is an innocent purchaser for value without notice, counsel for the Plaintiffs submitted that he cannot be regarded as such as the Plaintiffs put up a notice to the public and advertised in newspapers warning that properties belonging and forming part of the estate of their father was the subject of litigation. He concluded that the Intervener could not be entitled to summary judgment as there are various issues and questions in dispute which ought to be tried.

From the facts of this case it is clear that the action relates to estate of the Plaintiff's father, **MR. NFAJI OMARR KABBA** (Dcd) Intestate. The Intervener having shown that he has an interest in certain property forming part of the estate of the said Deceased Intestate has been ordered to be joined as a party to the action.

The question is therefore having been joined as an Intervener in the action, is he entitled to summary judgment?[?] Counsel for the Plaintiffs submitted that he is not. His contention is that that process is only available to a party who is a Plaintiff or Defendant as provided for by Order 16 rule 1 and Order 16 rule 3(i) of the High Court Rules 2007. I agree with this submission.

The Intervener has come into the matter because he has shown that he has an interest in certain property belonging to the estate of the Plaintiff's father. As counsel for the Plaintiff has submitted that does not give him the right to obtain judgment against the Plaintiffs and the Defendants even where the Defendant has filed no defence. The Plaintiffs have filed a Reply and Defence to the Intervener's Counterclaim. They have raised questions and issues which are to be determined. There therefore ought to be a trial. Furthermore counsel for the Plaintiff has argued that there is no contract between the Plaintiffs and the Intervener which the court can enforce or of which it can order specific performance and counsel for the Intervener has conceded to this argument.

Having said that, even if it is said that the Intervener acts as a Plaintiff with regards this counterclaim, the property being part of an estate and the action being a probate matter, summary judgment is not available and the matter will have to go to trial.

In my judgment the Plaintiffs have satisfied the court that this is not a case where the provisions of rule 1 or rule 3(i) of Order 16 can be applied. They have raised issues which ought to be tried even between the Plaintiffs and the Intervener.

In the circumstance the application is refused with costs.

A Showers

SIGNED: - A. SHOWERS 18/12/2012
JUSTICE OF COURT OF APPEAL