

C.C. 1/12

2012

T.NO. 1

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

IN THE MATTER OF THE ESTATE OF JAMES JENKINS  
THOMAS (DECEASED)

BETWEEN: -

MOHAMED TALIB

- PLAINTIFF

As Beneficiary of the Estate of James  
 Jenkins Thomas (Deceased)

AND

KENNETH AKINSOLA THOMAS

(Administrator of the Estate of James Jenkins Thomas  
 (Deceased)).

AND

VERA DENISA BUCKLE

- DEFENDANTS

(Administrator of the Estate of James  
 Jenkins Thomas  
 (Deceased))

A.F. Serry Kamal Esq. for the Plaintiff

E. E. C. Shears Moses Esq. for the 1<sup>st</sup> DefendantJ. B. Jenkins Johnston Esq. for the 2<sup>nd</sup> Defendant

RULING DELIVERED THE 11<sup>th</sup> DAY OF June 2012

Counsel for the 1<sup>st</sup> Defendant in this action, Mr. E. E. C. Shears Moses has raised a preliminary objection to the court hearing the Notice of Motion dated 10<sup>th</sup> February 2012 filed on behalf of the Plaintiff herein. His ground of objection is that the Plaintiff has no *locus standi* to bring the action before the court on the bare claim that he is a beneficiary of the estate of **JAMES JENKINS THOMAS** (Deceased). He submitted that the said Plaintiff is not the son of the deceased and in the absence

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of a lawful next of kin only the Administrator and Registrar General can bring an action relating to the estate of the deceased.

Counsel for the 1<sup>st</sup> Defendant maintained that the Plaintiff cannot be heard as a beneficiary bringing an action on behalf of the estate and that he can only apply to the court if he is a beneficiary, through the

Administrator and Registrar General who is seised with power to investigate the estate of a deceased person.

Counsel for the 2<sup>nd</sup> Defendant endorsed the objection and adopted the submissions made by counsel for the 1<sup>st</sup> Defendant.

In response to these submissions counsel for the Plaintiff submitted that counsel for the 1<sup>st</sup> Defendant has not raised a preliminary objection but rather has made an application to set aside the writ. He submitted that firstly, where a writ is issued and appearance is entered there is a time limit to raise an objection as to non-compliance with the rules. He referred to Order 2 rule 1 (1) –(3) and rule 2(1) of the High Court Rules 2007 which prescribe that such applications must be made before a fresh step has been taken in the matter and must also be made within a reasonable time. He contended that the rules provide the method to approach the court and that counsel ought not to come by preliminary objection.

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He submitted that the objection is not properly before the court as it should have been made by Motion or Summons.

Secondly, Counsel for the Plaintiff submitted that Counsel for the 1<sup>st</sup> Defendant filed a Notice of Motion dated 23<sup>rd</sup> February 2012 which was met with the same objection. He argued that in this matter there is a Will which must be proved in solemn form but the Defendants have proceeded to obtain a grant of letters of administration in a non-Contentious manner.

He submitted that the preliminary objection lacked merit.

The objection to the hearing of the application, to my mind, relates to the capacity of the Plaintiff to bring the action. Counsel for the 1<sup>st</sup> Defendant has argued that the Plaintiff has no locus to bring an action as a beneficiary of the estate of the said **JAMES JENKINS THOMAS** (Deceased).

It is my view that the issue of the Plaintiff's right to bring an action against the Defendants has not been addressed by counsel for the Plaintiff.

The action clearly relates to the estate of the deceased. The question is: Can the Plaintiff as a beneficiary of the estate of the deceased **MR. THOMAS**, not being his son or next of kin bring an action against the Defendants?

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Counsel for the 1<sup>st</sup> Defendant says he cannot and submitted that he can only bring the action through the Administrator and Registrar General as Plaintiff.

Section 10 (i) of the Administration of Estates Act, Cap 45 of the Laws of Sierra Leone provides for the situation where an application for a grant of Letters of Administration may be made by the Administrator and Registrar General. There is no provision therein for a beneficiary to do so.

Looking at the provisions of s. 10(1) of the said Act, I believe the Plaintiff herein ought to have brought to the knowledge of the Administrator and Registrar General the fact that the deceased died in Freetown leaving a Will and the executors named therein have failed to obtain probate of the deceased's estate within six months from the death of the testator. See s. 10(i) (v) of the said Act. It would then be incumbent on the Administrator and Registrar General to take the necessary action as provided for by the Act.

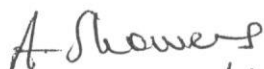
I therefore agree with counsel for the 1<sup>st</sup> Defendant that the Plaintiff not being a lawful next of kin of the Deceased cannot bring the present action against the Defendants.

The submissions relating to setting aside the writ for non-compliance with the rules made by counsel for the Plaintiff in answer to the objection herein are in my view misconceived.

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There is no irregularity in the writ caused by failure to comply with the requirements of the rules of practice.

The objection is upheld. The Plaintiff has no *locus standi* to bring the present action and the writ is accordingly struck out, with costs of Le 3 million to be borne by the Plaintiff.



SIGNED: - A. SHOWERS

11/6/2012

JUSTICE OF COURT OF APPEAL