

Defendants' Plaintiffs' Counsel, May 24/2022

C.C. 419/03

2003

H No. 15

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

SALIM HUBALLAH

- PLAINTIFFS

(as Administrator of the estate of
MALIK HUBALLAH, Deceased)

and

MIRA HUBALLAH

ZINA HUBALLAH (both jointly as Trustees
for the beneficiaries of the estate
of MALIK HUBALLAH, deceased)

AND

ALIMAMY FOFANAH

- DEFENDANTS

SHEKOU KAMARA

SIMEON SMITH

MOHAMED BOBO BAH

- APPLICANT

COUNSEL:

J B JENKINS-JOHNSTON ESQ, (now deceased) later, L JENKINS-
JOHNSON ESQ, and now N MACAULEY ESQ for the Plaintiffs

CENTUS MACAULEY ESQ for the 1st and 3rd Defendants

The 2nd Defendant was unrepresented

O JALLOH ESQ for the Applicant, MOHAMED BOBO BAH

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF THE SUPREME COURT

JUDGMENT DELIVERED THE 22 DAY OF FEBRUARY, 2022.

JUDGMENT AND ORDERS MADE ON 11TH APRIL, 2016

1. On 11th April, 2016, I gave judgment in the action herein in the following terms:
 - i. The 1st Plaintiff's claim against the Defendants is dismissed for want of proof of capacity to sue.

- ii. The 2nd and 3rd Plaintiffs succeed in their suit. There shall therefore be Judgment in favour of the 2nd and 3rd Plaintiffs on their joint claim.
- iii. Consequently, this Honourable Court Adjudges and Orders that the 2nd and 3rd Plaintiffs are entitled to recover possession of the properties situate at and known as 11 and 13 Lumley Street, Freetown from all present occupants and/or persons claiming to have the right to possession thereof.
- iv. This Honourable Court Grants an Injunction to the 2nd and 3rd Plaintiffs, restraining the Defendants and their servant and/or agents from entering the said properties situate at and known as 11 and 13 Lumley Street, Freetown.
- v. The Plaintiffs' joint claim for Damages for wrongful deprivation of use of the said properties is dismissed, as there is no proof either or all of the Defendants were responsible for their failure to take possession of the said properties.
- vi. As each side, has not succeeded on the whole of its respective claims, each party will bear his or her own Costs.

THE ACTION

2. The 1st Plaintiff, Salim Huballah, brought that action as the Administrator of the estate of the late Malik Huballah, who died intestate in Freetown on 27th September, 1997 (not 1977, as appears in paragraph 1 of the particulars of claim). The 2nd and 3rd Plaintiffs, Mira Huballah and Zina Huballah, brought the action in their respective capacities as beneficiaries of the estate of the deceased intestate. The writ of summons was issued on 15 April, 2003. Their joint claim was this: that by virtue of a deed of lease dated 29 January, 1993, and duly registered as No. 16 at page 89 in volume 87 of the Books of Leases kept in the office of the Registrar-General, Freetown, properties situate and known as 11 & 13 Lumley Street, Freetown were leased to Malik Huballah, now deceased intestate, for a term of 25 years certain. Notwithstanding the said demise, the Defendants had remained in possession of both properties. The Plaintiffs therefore prayed for possession to be granted to them, together with an Injunction, and Damages for wrongful deprivation of the use of the properties. The writ of summons, it appears, was later amended.

DEFENCE AND COUNTERCLAIM & REPLY & DEFENCE TO COUNTERCLAIM

3. It was only on 24 October, 2009 that the 1st and 3rd Defendants eventually filed a defence and counterclaim pursuant to an Order of Court. The substance of that defence was that the 1st Defendant was the eldest son of Abu Fofana, who died intestate seised of the said property. He was also a beneficiary of Abu Fofana's estate and was therefore entitled to ownership of the properties at Lumley Street.
4. On 19 December, 2009, the Plaintiffs filed a Reply and Defence to Counterclaim. The substance of the same was that both properties at No 11 and 13 had been leased to the late Malik Huballah by virtue of the registered deed, and that the 1st and 3rd Defendants were not entitled to possession of both properties. And that the reason why rent had not been paid was that the Plaintiffs had been denied or had been deprived of possession of both properties.

THE TRIAL

5. The trial commenced before TUNIS, J in 2006, but went into abeyance for various reasons. It was resurrected and assigned to me in 2009. For various reasons explained in the judgment, the case was only concluded in April, 2016 a few months before Mr J B Jenkins-Johnston sadly passed away.

ISSUES IN DISPUTE

6. In paragraph 4, supra, I have set out the issues which were contested before me. At no time was ownership of both properties situate at and known as 11 and 13 Lumley Street, Freetown in contention. It was for that reason that the judgment made no pronouncement on who was the true owner of the property. I did adjudge and order that the Plaintiffs in the action were entitled to recover possession of these premises. That Order was based on the conclusion reached in paragraph 11 of my judgment that the lease between the Plaintiff and Abu Fofanah and Mailk Huballah commencing 1st January, 1993, was to run for a period of 25 years certain. That term expired on 31st December, 2017, or, 1st January, 2018 at the latest. It was on that basis that I ordered that the Plaintiffs were entitled to recover possession of both properties and to retain possession of the same for the duration of the term created by the Lease. We are now in 2022. That Lease expired by effluxion of time in 2018 as I had intimated in that judgment.

There was an option for renewal, but in view of matters I shall refer to below, it was clearly not renewed. Any orders made prior to that Judgment are automatically subsumed under the terms of the final judgment. It follows that the Injunction granted to the Plaintiffs on 3 December, 2014 was discharged by the terms of the final judgment. The injunction granted the Plaintiffs in paragraph 13(iv) thereof, became the final injunction granted, and was quite limited in its intent and its purport. It was that: The Defendants and their servants and/or agents were restrained from entering the said properties - i.e. 11 and 13 Lumley Street. No other persons were restrained from dealing with the properties. Nothing was said about selling or leasing the properties because the Plaintiffs' lease still had, in 2016, less than two more years to run.

7. In paragraph 12 of my judgment, I did opine that the beneficiaries of the estate of Fatu Harounah Tarawally might be the persons entitled to the beneficial interest in both properties. She had died intestate on 2nd April, 1987, and Abu Fofanah, her brother, and also father of 1st Defendant, had taken out a grant to administer her estate. I did no more than express an opinion therein. I did not adjudge and order that Fatu Harounah Tarawally was indeed the true fee simple owner of both properties, because I had no such evidence before me.

THE CASE BEFORE SHOWERS, JA

8. Two years later, it was brought to my attention by Mr Osman Jalloh, Counsel for the Applicant Mohamed Bobo Bah, that SHOWERS, JA had given judgment in the action: CC 1120/89 1989 T No. 56: BETWEEN: SAMBA DEMBA TARAWALLY (Administrator of the estate of MUCTARR TARAWALLEY, Deceased, ADMINISTRATOR of the estate of HAROUNA RASHID TARAWALLEY deceased - PLAINTIFF and ABU FOFANAH (Administrator of the estate of FATU HAROUNA)
9. In her judgment delivered two years before mine, on 25th April, 2012, SHOWERS, JA, adjudged and ordered as follows:
 - i. A declaration that the property situate lying and being at Nos. 11, 11A and 11B Lumley Street, Freetown forms part of the estate of HAROUNA RASHID TARAWALLY.
 - ii. An Injunction to restrain the Defendant by himself, his servants and agents and privies from entering upon and remaining or continuing to remain upon the Plaintiff's said land.

- iii. Recovery of possession of the said property by the Plaintiff.
 - iv. The Defendant is ordered to take steps within 30 days of this judgment to apply for the re-sealing of the grant of Letters of Administration of the estate of FATU HAROUN TARAWALLY by omitting the said Nos 11, 11A and 11B Lumley Street from her estate.
 - v. Costs of the action to the Plaintiff to be taxed if not agreed.
10. Clearly, SHOWERS, JA had adjudged and ordered that Fatu Harouna Tarwally was not the true owner of the properties situate at, and known as 11, 11A & 11B Lumley Street, Freetown. It follows from that judgment, that the 1st Defendant in the action herein, Alimamy Fofanah, who claimed to be the son of Abu Fofanah and therefore entitled to possession of the property at 11 Lumley Street, one of the properties in respect of which SHOWERS, JA had given judgment, had no locus in the action herein. Unless he had appealed against that judgment to the Court of Appeal, and won his appeal, he had no claim to 11 Lumley Street.
11. I am disappointed that Counsel who appeared before me on both sides between 2012 and 2016 when I gave judgment, did not bring this matter to my attention. Correspondence dealing with the proceedings in that matter had been exchanged between them. However, this should not really affect my judgment because, I merely granted possession to the Plaintiffs herein for the unexpired portion of the lease dated 29th January, 1993 and duly registered; and the term granted therein has expired by effluxion of time. But due to the fact that question of ownership has been determined by SHOWERS, JA, had that lease not expired by effluxion of time, it would have been rendered nugatory by the terms of that judgment. In effect, SHOWERS, JA had decided not only that Abu Fofanah was not the owner of the property at No. 11; but a fortiori, that he could not lease out the same.

MOTION DATED 6TH MAY, 2016 AS AMENDED FILED BY APPLICANT

12. I now turn to the Application before me. It is dated 6th May, 2016 and was filed on behalf of Mr Bah. It was amended with leave of the Court, on 12th May, 2016. At the initial hearing on 19th May, 2016, I asked Counsel on both sides to address me on the preliminary issue of whether a judgment given against deceased parties can be enforced. I gave Counsel time to address the Court on this issue as appears on pages 23 et seq of my minutes. Mr O Jalloh did address the issue. I adjourned for Mr J B

Jenkins-Johnston to do so until he passed away in September, 2016. Thereafter, Mr L Jenkins-Johnston and Mrs F Forster appeared for the Plaintiffs. I must add also that the Plaintiffs, through Mr J B Jenkins-Johnston had filed an application for leave to issue a writ of possession against the Defendant by way of Notice of Motion dated and filed on 13th May, 2016. That Application was not heard, however, because of the pendency of Mr Bah's application dated 6th May, 2016.

13. To return to Mr Bah's Application, he applied, firstly, to be added as a party to the proceedings in which judgment had already been given. Secondly, he asked that my judgment be set aside *ex debito justitiae* on several grounds. Thirdly, he asked that the said judgment be set aside on the ground that the Plaintiffs Lessor, Abu Fofanah had no title to the property he had purported to lease out by way of deed dated 29th January, 1993 and duly registered. Fourthly, he asked that execution of the judgment of this Court be stayed pending the hearing of the application herein, and, pending an appeal with the leave of the Court, to the Court of Appeal. The additional orders sought in the Notice dated 12th, but filed on 16th May, 2016 were that no order for leave to recover possession of the property at No. 11 should be made as SHOWERS, JA had two years earlier adjudged and ordered that that property did not belong to Fatu Harouna Tarawally, and as such, could not have belonged to her brother, Abu Fofanah. In the event, the application for recovery of possession was not pursued by the Plaintiffs. Exhibited to the affidavit of a Solicitor Mohamed Adam Timbo, in support of the Motion, was a copy of the proposed Notice of Appeal. I have read the proposed grounds. I Have set out above the full import of my judgment. I did not validate the title of the Plaintiffs herein, nor, the 1st Defendant herein's claim to the various properties at 11 Lumley Street. All I said was that based on the Deed of Lease tendered before me, Plaintiffs were entitled to possession of No. 11 as well as No. 13. My judgment did not confer title on the 2nd and 3rd Plaintiffs; nor did it validate any claims made by the 1st Defendant through his deceased father, Abu Fofanah. The question of ownership had been settled by SHOWERS, JA in 2012. The Plaintiff's lease expired on 31st December, 2017, or, 1st January, 2018. Unless the Lease was renewed by the Plaintiff in the action adjudged by SHOWERS, JA, or, by any other person acting for and on behalf of, or, through him, the Lease is now at an end. The 2nd and 3rd Plaintiffs have no further claim to the

property. Recovery of possession of the property at 11, 11A, 11B and 11C Lumley Street, was granted and ordered by SHOWERS, JA in favour of the Plaintiff in the action before her. I am of the view that the proper course of action is for the Applicant, Mohamed Bobo Bah to seek leave to recover possession of the property or properties as Ordered by SHOWERS, JA. The issues in dispute in the litigation before me have nothing to do with the Applicant's claim to the property, which claim is based on the success of the Plaintiff in the action before SHOWERS, JA. The Plaintiff therein was declared the owner of the property. He had a right to dispose of it as he thought fit. He has since disposed of it to the Applicant herein. Until that deed of conveyance is set aside by a Court of Law, it remains valid and enforceable. I should have thought that this would be obvious to Counsel on both sides.

14. I must add that Salim Huballah, Administrator of the estate of the deceased Malik Huballah, the 1st Plaintiff herein, did on 17 January, 2017, depose and swear to an affidavit in opposition to the Applicant's Motion. I am rather surprised he did this, as he lost the action. I adjudged and ordered that he had no locus standi. The first Order I made is to this effect. Contrary to what he deposes to in his paragraph that: *"The judgment of the High Court dated 25th April, 2012 does not affect the later judgment of the High Court dated 11th April, 2016, both Courts being of co-equal jurisdiction"*; I believe, it is the other way round: My judgment, having come much later in time, and not having dealt with the issue of ownership, does not affect the earlier judgment of SHOWERS, JA which came much earlier, and did settle the question of ownership.
15. Mr Osman Jalloh has cited many authorities to the Court, but I have not found it necessary to refer to any of them in this decision. This decision is based on a simple reading and understanding of the contents of the judgment delivered by SHOWERS, JA.

CONCLUSION

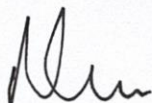
16. I think I should once more make myself clear. I did not declare that the 1st Defendant herein was owner of the property at nos 11 and 13 Lumley Street, Freetown. I ordered that the 2nd and 3rd Plaintiffs were entitled to recover possession of those premises for the duration of the lease which was tendered before me. That Lease has expired, and has not been

renewed to my knowledge. The 1st Defendant is not also entitled to possession of any of those properties based on the judgment of SHOWERS, JA against which there has been no appeal according to the documents filed herein. The injunction I granted on 3rd December, 2014, being interlocutory in nature expired on the date judgment was given herein, i.e. on 11th April, 2016. It has no more relevance as far as ownership and the right to possession of the properties at Nos 11 and 13 Lumley Street, Freetown, are concerned.

17. In the premises, I do not find it necessary to order that the Applicant herein be made a party to these proceedings. Much time has elapsed between the making of the Application and this Ruling. I had thought that good sense would prevail, and that the terms of the Judgment and orders made by SHOWERS, JA, were in the clearest terms, and would be complied with. It seems, this did not happen, requiring me to recall the file to deliver this Ruling. The Plaintiffs and Defendants are at fault. They knew all along, and were conversant with the terms of the judgment delivered by SHOWERS, JA, but pretended ignorance. The Applicant's remedy is to seek leave to issue a writ of possession against the present occupiers of the property situate at and known as 11, 11A, 11B and 11C Lumley Street, Freetown pursuant to the Judgment of SHOWERS, JA.

18. In conclusion, I ORDER as follows:

- (1) The Applicant Mohamed Bobo Bah is directed to file an application for leave to issue a writ of possession against all occupiers of the properties situate and known as 11, 11A, 11B and 11C Lumley Street, Freetown in order to enforce the terms of the judgment delivered by Mrs Justice A Showers on 25th April, 2012.
- (2) The injunction granted on 3rd December, 2014 expired on the date final judgment was entered in the action herein, i.e. 11th April, 2016. It has not been renewed, nor revived by any Court.
- (3) The Plaintiffs and the Applicant will each shall bear their own Costs. The Defendants did not participate in these proceedings and so are not entitled to Costs, nor, to pay Costs.
- (4) Liberty to Apply.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE