

IN THE HIGH COURT OF SIERRA LEONE**(GENERAL & CIVIL DIVISION)****BETWEEN:**

ADMINISTRATOR OF THE ESTATE OF - PLAINTIFF
DR. EGERTON FAHOLE LUKE

AND

MR. E. NASSER - 1ST DEFENDANT
DESMOND E. FASHOLE LUKE

COUNSEL

M.R.O. Garber Esq. & D. Beoku-Betts Esq. for the Plaintiff

E. T. Koroma Esq. for the 1st Defendant

RULING DELIVERED ON 12TH OCTOBER 2021

1. The Plaintiff by a Judges Summons dated 11th December 2020 applied for judgment against the 1st Defendant for the reliefs prayed in the Writ of Summons to wit:
 - i. Declaration that the piece and parcel of land situate lying and being at 6 Pump Line, Wilberforce Loop, Freetown is jointly owned as tenants in common by the Plaintiff, the late Palmyra Emilda King and the 2nd Defendant.
 - ii. An Order terminating the leasehold interest of the 1st Defendant.
 - iii. An Order for Possession in favour of the Plaintiff against the 1st Defendant and permitting the issuance of a writ of possession by the Plaintiff against the 1st Defendant.

- iv. An Order compelling the 1st Defendant to pay directly to the Plaintiff and the Administrator of the Estate of Palmyra Emilda King (co-owner of the property) two thirds (2/3) of the rent paid for use and enjoyment (mesne profits) of the property situated at 6 Pump Line, Wilberforce Loop Freetown from April 2021 to date.
 - v. Alternatively, damages in the sum of US\$58,080 being the rent owed to the Plaintiff and his co-owner (the Administrator of the estate of Palmyra Emilda King) for the 8 years period from April 2012 through to April 2021 reflecting 2/3rds of the alleged and agreed annual rent of US\$11,000 per annum (that is \$7,260 per annum) due and payable by the 1st Defendant to the 2nd Defendant.
 - vi. Damages in such amount as this Court may find due and owing as the market value annual rents for the use and occupancy of the premises and other losses caused by the 1st Defendant for the period April 2012 to date.
 - vii. Interest and Costs
 - viii. Any further orders that the Honourable court may deem just.
2. An affidavit in support of the application sworn to by Derek Beoku-Betts on 11th December 2020 exhibited the Writ of Summons, an affidavit of service thereof on the 1st Defendant, a judgment in default of appearance, letter dated 22nd April 2015 to the 1st Defendant, Notice of Motion to set aside the Writ, Court orders which included an order on 22nd February 2017 that the 1st Defendant pays the sum of Le5,000,000 in costs, Order dated 22nd January 2020 setting aside the judgment dated 1st May 2015 and giving the 1st Defendant leave to defend the action and to pay costs earlier ordered, way book showing service of the Order of 22nd January 2020 on both the Solicitor of the 1st Defendant and Defendant, the conveyances and will relating to ownership of the said property.
 3. According to the deponent, the 1st Defendant is in occupation of the premises, owing and refusing to pay rent and by his own admission has not paid rent and cannot be occupying the premises on any legal basis free of charge. In paragraph 10 of his proposed defence he states that he is willing and ready to pay his rent to anyone the Plaintiff, the 2nd Defendant or any other beneficiary. Mr. Beoku-Betts states in the affidavit that the 1st Defendant has no valid defence and is not in possession of a tenancy agreement nor has he paid rent.
 4. He further stated that the 1st Defendant owes to date the sum of \$58,080 to the Plaintiffs representing 2/3rd of the annual rent previously agreed to. He further stated that Counsel for the 1st Defendant/Respondent has consistently failed to appear on this matter, has stalled the proceedings by failing and refusing to lodge the proposed defence, has failed to pay the costs as ordered by this Court and has adopted a delaying tactic designed to permit the 1st Defendant to continue staying in the Plaintiff's premises without paying any rent.
 5. Ellie Nasser, the 1st Defendant in this matter swore to an affidavit in opposition on 4th February 2021. He stated that if the application is granted it would occasion gross injustice on his part as he is a mere innocent tenant who is not challenging the title of anyone, save that he knows the 2nd Defendant as his landlord who placed him in occupation of the said

premises. In paragraph 6 he states that as stated in his proposed defence he has no reservation to pay to anyone that the court may order him to be paying his rents and he exhibited his proposed defence.

6. He further stated that rightfully an interlocutory ^{order} should have been sought restraining the 2nd Defendant or his Agent, Servant or privy from demanding rent from him but he has been innocently paying rent to one Monica W. Luke on the instructions of the 2nd Defendant. He exhibited three receipts all signed by the said Monica W. Luke dated July 10th 2020, 30th September 2020 and December 9, 2020 respectively, each for Le10,000,000 and being part payment of four years arrears of rent at Pump Line Spur Loop Wilberforce.
7. In reply is the affidavit of Kwame Fashole Luke sworn to on 11th March 2021. Mr. Kwame Fashole Luke is the brother of the Plaintiff and person tasked with monitoring the property belonging to the Estate and interfacing between the various beneficiaries of the estate on behalf of the Plaintiff herein. He referred to the meetings he had with the 1st Defendant in April 2012 explaining to him that the property he was renting belonged to 3 families and that he should apportion the rent between them. This was followed by letters to the 1st Defendant from the Plaintiff dated 16th December 2013 and 30th May 2014 respectively urging him to regularize the rent situation and giving him one month's notice to vacate the premises. The Plaintiff by letter dated 30th May 2014 forwarded to the Defendant's Solicitor at the time a copy of the conveyance and title documents relating to the property as requested by the said Solicitors in a letter dated 6th January 2014, and that notwithstanding same the 1st Defendant continued paying the rent monies directly to his late Uncle Desmond Fashole Luke (the 2nd Defendant) in sporadic installments and he was constantly in arrears even with those payments. He further stated that his said Uncle was too frail to monitor the non-payment of rents, he was financially challenged and accepted whatever amount the 2nd Defendant paid over to him.
8. He also referred to a letter from the 2nd Defendant Hon. Justice Desmond E. Fashole Luke dated 20th April 2019 addressed to Solicitors of the Plaintiff in which the said 2nd Defendant confirmed his authority to the said Solicitors, to take all necessary steps to evict Mr. Eli Nasser the 1st Defendant due to the arrears of rent he owned.
9. He stated that it was further resolved that the Plaintiffs would no longer pursue the action against the 2nd Defendant as substantial rent arrears were also due and owing to him from the 1st Defendant. He referred to the receipts issued to the 1st Defendant recently submitted by the 1st Defendant to the Court which show that the 1st Defendant was 4 years in arrears of rent and at an average annual rent of \$12,000 per annum. He maintained that this confirms that the 1st Defendant owed at least the sum of \$48,000 as of November 2020 and has elected to exploit the family structure of the owners of the property to stay in the residence for a prolonged period of time without paying rent and in the absence of any rental agreement between him and all the property owners. He maintained that the Defendant's willingness to pay the rent is fallacious as he could have paid monies into court if he was unsure of whom to pay to. He stated that the 1st

Defendant is in gross breach of any tenancy agreement he had with the 2nd Defendant, is simply a holdover tenant or a squatter and has admitted that he is owing rent for 4 years entitling the property owners to determine the lease.

10. He concluded that the proposed defence for the 1st Defendant is of no merit and that he is not a fit and proper person to remain in occupation of prime property for which he has deprived the family of the financial fruits of their labour for over 8 years from April 2012 when he was informed of the joint ownership of the property in question to date.
11. Counsel for both the Plaintiff and the 1st Defendant made submissions along the lines of the issues deposed in the respective affidavits of the parties. Counsel for the Plaintiff pointed to the fact that to date no lease has been tendered, that the 1st Defendant owes at least \$48,000 as of November 2020 and that his proposed defence was frivolous and intended to delay the proceedings which is over 5 years now whilst he continues to occupy the premises without paying rent. Counsel for the 1st Defendant submitted that it was in the interest of justice for the matter to go to trial as ^{he} ~~he~~ paid rents and is willing to do so.

Analysis and Decision

12. A Plaintiff can apply to the Court under Order 16 of the High Court Rules 2007 for summary judgment, where a defendant has been served with a statement of claim and has entered appearance, on the ground that the defendant has no defence to a claim in the Writ or to a particular part of the claim except as to the amount of damages claimed. In this matter the Plaintiff is entitled to apply for judgment as he believes there is no defence in this action. Order 16 gives the Court an opportunity to dispose of certain matters expeditiously to save time and costs and the court can competently make orders and directions which may be just and equitable in the circumstances
13. On the substantive matter, the Plaintiff claims a declaration in respect of the ownership of the property at 6 Pump Line, Wilberforce Loop, Freetown. According to the Last Will and Testament of Sir Emile Fashole Luke dated September 1975 and registered at Volume 31 page 22 in the Office of the Registrar-General in Freetown the aforesaid property was devised to his children, namely Egerton Maximillian Fashole Luke, Palmyra Emilda King and Desmond Edgar Fashole Luke as tenants in common and ^{they} ~~he~~ were also appointed Executors and Trustees of the said Will.
14. Even though the property was owned by the above children, over the last six or more years the 2nd Defendant has single handedly rented the said premises to the 1st Defendant and had been collecting rents without accounting to the other co-owners of the property. Letters were written by and on behalf of the other co-owners to the 1st Defendant demanding their share of the rent and to the 2nd Defendant demanding an account and their share of the rent proceeds. Both Defendants failed to respond and the 1st Defendant continued to deal with the 2nd Defendant in relation to his occupancy of the said premises disregarding the other co-owners claims.

15. All of the owners of the property are now deceased and the 2nd Defendant died whilst this matter was pending in court. Based on the evidence even though the other two co-owners were not a party to the agreement between the 1st Defendant and the 2nd Defendant, did not benefit from its proceeds, they are nevertheless co-owners and this is not in dispute.
16. However because both Defendants did not countenance or recognize the interest of the other two co-owners, it has become necessary for this Court to grant the declaration prayed for that the interest of the other two co-owners though deceased still subsist. All beneficial owners of the said property named in the Will are dead and their interests now vests in their respective Estates.
17. All the other reliefs prayed for relate to the tenancy of the 1st Defendant in which termination is claimed as he is in arrears. It is important to note that the 1st Defendant was put in lawful possession of the premises and did pay rents to the 2nd Defendant and Mrs. Monica W. Luke. The terms of the agreement are not known and the Defendants should be compelled to disclose them. This Court should be given account of this tenancy arrangement, payments made so far and arrears owing and both 1st Defendant or his Estate as well as Mrs. Monica W. Luke who received the latest rents paid in December 2020 must provide these accounts to the Court as well as to the other co-owners to ascertain what is due and owing to them. The 1st Defendant's is clearly in breach of his tenancy in terms of payment of his rent. However his tenancy has to be terminated lawfully as he maintains he is a lawful tenant of the 2nd Defendant. The resolution by the Plaintiff and other co-owner to discontinue the action against the 2nd Defendant will indeed be prejudicial to the 1st Defendant and this Court will not grant that application. It is therefore premature at this stage to grant the other orders prayed for against the 1st Defendant and directions for the speedy disposal of this matter will be in the interest of justice.
18. Order 18 Rule 6 (2)(b) of the High Court Rules provides that at any stage of the proceedings the Court may on such terms as it thinks just and either of its own motion or on application, order any person to be added as a party where such a person ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter to be effectually and completely be determined. This is to bring all parties to a dispute relating to one subject-matter before the Court at the same time so that the dispute may be determined without the delay, inconvenience and expense of separate actions and trials. See Supreme Court Practice 1999 at page 219.
19. It has also become necessary for the Writ to be amended to include a claim for an account from both Defendants and Monica F. Luke who recently issued receipts to the 1st Defendant for the rents paid. The personal representatives or persons entitled to the interest of the three deceased co-owners should be parties in this matter, their names and their capacity should be clearly stated on the face of the Writ which should be

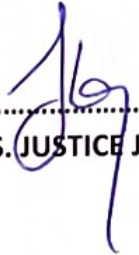
amended accordingly. This will enable the Court to resolve the issues in dispute between the parties and all the parties must be clearly identified.

20. This matter was instituted in 2014 and the 1st Defendant has been largely responsible for the unreasonable delay in this matter and going forward he must abide by all the court deadlines. He will no longer be given any extension which will result in a further delay in resolving the dispute. Any failure on his part will result in immediate judgment for the Plaintiffs.
21. In view of the above there shall be Judgment for the Plaintiff in respect of the ownership of the said property as follows:
 1. This Court declares that the piece and parcel of land situate lying and being at 6 Pump Line, Wilberforce Loop, Freetown is jointly owned as tenants in common by Egerton Maximillian Fashole-Luke, Palmyra Emilda King and Desmond Edgar Fashole-Luke as per the Will of Sir Emile Fashole Luke.
 2. The interests of the co-owners above now deceased devolve on their Estates and personal representatives or devisees as the case may be who are each entitled to 1/3 of the proceeds of the rent in respect of the said property and shall each issue and acknowledge receipt for rents received.
 3. Mrs. Monica W. Luke is hereby restrained from collecting rents from the 1st Defendant or dealing with him in any way in relation to the aforesaid premises pending the hearing and determination of this action.
 4. The 1st Defendant shall with immediate effect pay all rents due and owing in respect of the above premises by paying the same into Court within 15 days of this Order and file with the court evidence of payments made.
 5. That within 7 days of this Order, both the 1st Defendant and Mrs. Monica F. Luke shall separately swear to an affidavit exhibiting an account in respect of the rents paid by the 1st Defendant, rents due and owing and details about the rent and other terms of the tenancy and file same with the Court. Failure to comply with this order will amount to contempt of the court.

Directions for trial of this matter pursuant to Orders 28 and 40 of the High Court Rules 2007 are given as follows:

6. That within 3 days of this Order, the 1st Defendant shall pay the Le5,000,000 owing as costs and file the proposed defence.
7. Mrs. Monica W. Luke shall be added as 3rd Defendant and represent the 2nd Defendant who is now deceased and the Writ shall be amended by the Plaintiff accordingly.
8. That Mrs. Monica W. Luke is at liberty to file a defence within 7 days of this Order
9. The Administrator or Executor of the Estate of Palmyra Emilda King shall be added as a Plaintiff and all of the names of the Plaintiffs and their capacity shall be clearly stated on the face of the Writ which should be amended accordingly.
10. The ^{reliefs} in the Writ shall be amended to include a claim for an account from the 1st, 2nd ^{defendant} and Mrs. Monica W. Luke in respect of the proceeds from the said property and the terms of the tenancy and occupancy of the 1st Defendant.

11. That within 10 days from the date of this Order, the matter shall be entered for trial and the Defendant shall forthwith identify to the Plaintiff those documents central to his case which should be included in the Court Bundle.
12. That at least 7 clear days before the date fixed for the trial, the Plaintiff shall lodge two bundles consisting of one copy of each of the following documents:
 - a. witness statements which have been exchanged and expert's reports which have been disclosed, together with an indication of whether the contents of such documents are agreed;
 - b. those documents which each party wishes to have included in the bundle and those central to each party's case and
 - c. a note agreed by the parties, failing agreement a note by each party given in the following order;
 - i. a summary of the issues involved;
 - ii. a summary of any propositions of law to be advanced together with a list of authorities to be cited; and
 - iii. a chronology of relevant events
13. If a party fails to comply with any of the directions above within the time stipulated an order will be made against the defaulting party in accordance with Order 40 Rule 10 of the High Court Rules.
14. In the event where any of the Defendants default, final judgment will be immediately entered for the Plaintiffs.
15. The matter is adjourned to 1st November 2021 to fix a date for trial and trial is to last no more than 5 days.
16. This order is to be served on the personal representative of Palmyra King, 1st Defendant and Mrs. Monica W. Luke.
17. Costs of this application to the Plaintiff to be paid by the 1st Defendant assessed at Le7,500,000.


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HON. MRS. JUSTICE JAMESINA E. L. KING