MISC 472/2020 2020 N. N0.9

In the High Court of Sierra Leone

(Land, Property and Environmental Division)

Between:

Daniel Norman - Plaintiff/Applicant

22 Maxwell Street

Freetown

And

Victoria Ajuna Norman - 1st Defendant/Respondent

2 Barlet Street

Off Syke Street

Freetown

Beatrice R. Norman - 2nd Defendant/Applicant

2 Barlet Street

Off Syke Street

Freetown

Counsel:

S.T.N. Navoa Esq. for the Plaintiff/Applicant

C. P. Vandy Esq. for the Defendant/Respondent

Final Judgment on the Action Commenced by Originating Summons for the Sale or Partition of Property Known as 22 Maxwell Street, Wellington, Freetown in the Western Area of the Republic of Sierra Leone, Delivered by the Honourable Justice Dr. Abou B. M. Binneh-Kamara, J. on Wednesday 10th January 2024.

1.1 Background and Context

Order 5 Rule 3 (1) of the High Court Rules 2007, Constitutional Instrument N0.8 of 2007 (hereinafter referred to as The HCR 2007) regulates the commencement of civil proceedings begun by originating summonses. The provision inter alia establishes that actions which

remedies are rooted in statutes are to be begun as such. The remedy which counsel for the plaintiff seeks is clearly embedded in statute. So, in congruence with this categorical imperative S.T.N. Navoa Esq. appropriately commenced this action by an originating summons, dated 16th November 2020. The specific orders prayed for are thus serialised as follows:

1. That the property situates lying and being at 22 Maxwell Street, Freetown in the Western Area of the Republic of Sierra Leone (hereinafter referred to as the property) be partitioned amongst the beneficiaries.
2. That if the partitioning of the property is not possible, an order be made that it be sold by private treaty or auction.
3. That the proceeds of the sale be distributed among the parties after the deduction of solicitor's cost at 15% and valuer's fee at 3% of the proceeds and other expenses.
4. That the solicitors of the parties do have conduct for the sale of the property.
5. That the Master and Registrar of the High Court of Sierra Leone, do execute a conveyance in favour of the purchaser (s).
6. That this Honourable Court grants possession to the purchaser.
7. That this Honourable Court grants any further order that it deems just.
8. That the cost of the application be borne out of the proceeds of the sale.

The summons is strengthened by a torrent of clearly deposed facts, sworn to by Daniel Norman of 22 Maxwell Street, Wellington, Freetown in the Western Area of the Republic of Sierra Leone. Certainly, the most salient facts in the affidavit that would guide the Bench in arriving at its decision are:

1. That I am the plaintiff/applicant herein and a beneficiary of Christian Duncan Norman (Deceased Intestate).
2. That the land and house at 22 Maxwell Street, Freetown was originally the property of my father Christian Duncan Norman that acquired it by virtue of a Deed of Conveyance dated 6th September 1962 made between AUGUSTA EKUN JOHNSON (The Vendor herein) of the one part and CHRISTIAN DUNCAN NORMAN (Deceased Intestate) of the other part and duly registered as N0. 470/62 at page 87 in Volume 205 in the Record Books of Conveyances kept in the Office of the Administrator and Registrar-General at Roxy Building Freetown.
3. That the said Christian Duncan died on the 25th December 2002 and was survived by three children Victoria Ajuna Norman, Daniel Norman and Beatrice R. Norman.
4. That I am the second child of the said Christian Duncan Norman and the 1st defendant/respondent herein is my elder sister while Beatrice R. Norman is my younger sister.
5. That after the death of Christian Duncan Norman, his estate was administered by Mrs. Rebecca Charlotte Norman and the property subsequently vested to Victoria Norman, Daniel Norman and Beatrice Norman by virtue of a Vesting Deed dated 11th April 2013 and registered as N0. 856 at page 129 in Volume 708 in the Record Books of Vesting Deeds kept in the Office of the Administrator and Registrar-General at Roxy Building, Freetown. A copy of the said Vesting Deed is exhibited and marked DN2.
6. That sometime in 2019 without my knowledge and that of the other beneficiaries the 1st defendant/applicant rented the property and has since refused to account for the proceeds

of the rent despite having been asked to do so via a letter written by my solicitor demanding same. A copy of the said letter is exhibited and marked DN3.

7. That I have not been able to realise my own share or any benefit from the said property.
8. That it will be in the interest of justice and of all the beneficiaries if the said property is partitioned or in the alternative sold and the proceeds be distributed among the parties.

Procedurally, on the 24th November 2020, Charles C. Vandy Esq. of Margaretta Chambers of 91 Campbell Chambers Street, Freetown, filed a notice of appearance and a memorandum of notice of appearance on behalf of the defendants/respondents, but did not file any affidavit in opposition to the affidavit filed by S.T.N. Navo Esq. in support of the originating summons of 16th November 2020. The action was then set to proceed for hearing..

1.2 <u>The Proceedings</u>

Unfortunately, Charles C. Vandy Esq. after having filed the appearance and memorandum of appearance did nothing for the trial to be expedited. The matter was previous assigned to The Hon. Mr. Justice A. K. Musa. The learned Judge was magnanimous enough to grant so many judgments, whilst sending out a welter of notices of hearing to the defendants/respondents and their counsel, but neither the clients nor their counsel ever appeared before the learned Judge, until the matter was eventually resigned to this Honourable Court. Upon receipt of the file, this Bench instantaneously made an order for notices of hearing to be served on the parties. Thus, the notices were accordingly served on the respective solicitors. The affidavits of services in the file confirm this. Out of deference for the court and in fulfilment of his obligations to his client, S.T.N. Navo Esq. responded to the notices of hearing and appeared before the Bench on 2nd February 2023. Since, counsel on the other side was not in court, the matter was gracefully adjourned to 9th February 2023.

Meanwhile, the court's records depict that so many other adjournments where taken at the instance of Charles C. Vandy Esq. between 9th February – 9th March 2023. The numerous affidavits of service on file can as well confirm this. Counsel did and could not come to represent his clients, even though several other notices of hearing were subsequently served on him within this period as well. In fact, counsel could not of candour write to neither the Bench nor his colleague, to confirm the reason for his conspicuous absenteeism. What really became infra dignitatem of the Bench was when Charles C. Vandy Esq. was in another court; he was politely called upon to come attend to this matter; he gave his word and said he was coming, but chose not to do so. Therefore, on 29th March 2023, the Bench allowed S.T.N. Navo Esq. to address the court on the contents of the application. The application was incisively made, pursuant to Order 37 Rule 1 of The HCR 2007. Thus, the facts in the application's supporting affidavit, summarised in 1.1 were systematically and pedantically presented in a way that matches clarity with rigours.

1.3 <u>The Law</u>

There are two aspects of the law that are cognate with this application. The first, is adjectival (procedural) and it resonates with the provisions in Order 37 Rule 1 of The HCR 2007. And the other is the substantive law, rationalised in section 4 of the Partition Act, 1868. This very old

statute, which was not passed by even the immediate post-independence Parliament of Sierra Leone is still applicable in our jurisdiction by virtue of section 74 of the Courts Act N0.31 of 1965. Significantly, it would be legally and rationally expedient, to examine both legal regimes and subsequently determine their relevance to the application. This is what would determine whether the application should or should not be granted. Thus, Order 37 Rule (1) of The HCR 2007 states:

> 'Where in any course or matter in court relating to any land it appears necessary or expedient for purposes of the cause or matter that the land or any part thereof should be sold, the court may order that land or part to be sold, and any party bound by the order or in the possession of that land or part, or in receipt of the rents, and profits from the land may be compelled to deliver such possession or receipt to the purchaser or to such other person as the court may direct'.

This coruscating provision is quite clear. It does not require any elucidation. Meanwhile, Sub rule (2) of same clarifies what is meant by 'land' in the rules. Land here includes any interest or right over land. The remaining six rules of this order, seek to clarify everything underpinning the process of sale. Rule 2 concerns the manner of sale. Rule 3 deals with the certification of the result of sale. Rule 4 extends to mortgage, exchange, or partition under order of court. Rule 5 is germane to reference of matters to conveyancing counsel. Rule 6 is pertinent to the objections to the conveyancing counsel. And rule 7 is relative to obtaining counsel's opinion on reference. Thus, a through scrutiny of the pleadings indicates that they accordingly dovetailed with the requisite provisions in Order 37 of The HCR 2007. I will now proceed to unpick the applicable substantive law. Section 4 of the Partition Act, 1868, states that:

> 'If … the party or parties interested, individually or collectively, to the extent of one moiety, or upwards … request sale … instead of a division of the property … the court shall, unless it sees good reason to the contrary direct sale …'

This provision regarding sale is mandatory as long as such indication has come individually or collectively from the co-owners. So, the courts are obliged to make the requisite orders as prayed, when such applications are made. Against this backdrop, it behoves the defendants/respondents to show good reasons why the courts should deny such applications. When compelling reasons to the contrary are established, the courts are constraints to make such orders. Thus, Beoku-Betts J. in the locus classicus of Basma **v.** Basma, 1950-1955 ALR S.L. 165 at page 166, established in paragraph 30 'Good reason against a sale would exist if it were shown that great hardship would be inflicted on one of the parties, or that the party requesting the sale was actuated by vindictive motives, or that the property was unsaleable by reason of a right of entry, or that the value would depreciate, or on other grounds'. These juristic considerations that would prevent the courts from making orders of sale under the Partition Act 1868, are born in the womb of the contrary evidence, that should be adduced by the parties opposing the sale.

1.4 <u>The Analysis</u>

Unfortunately, the defendants/respondents only entered appearance, but could not file any opposing affidavit to the application. Therefore, the court is obliged to mono focally unpick

the affidavit evidence adduced by the plaintiff/applicant to determine whether the application should or should not be granted.

First, there is nothing in evidence to establish that should the order of sale be granted, that would occasion hardship for the defendants/respondents. As it stands, the plaintiff/applicant, who is also a beneficiary of the property is deprived of the proceeds in rents which are being collected monthly. And he is neither living in the property nor directly benefitting anything from it. Therefore, refusing the application would rather cause greater injustice to him; whilst the defendants/respondents will continue to benefit. Secondly, there is absolutely nothing before court to establish that the plaintiff/applicant's action here is ill-conceived or actuated by vindictive motives. Thus, the torrent of instances, in which vindictiveness can be manifested, are not discernible in the evidence. Rather, the plaintiff/applicant clamours for justness, fairness and reasonableness, as a bona fide beneficiary of his deceased father's estate. Thirdly, the property is not unsaleable, because there is as well no evidence, depicting that any person is entitled to any right of re-entry therein; and one does not see any depreciation in value that the proposed sale would occasion.

1.5 <u>The Conclusion</u>

In consideration of the above analysis, I hereby order as follows:

1. That the property situates lying and being at 22 Maxwell Street, Freetown in the Western Area of the Republic of Sierra Leone be sold by private treaty or auction.
2. That the proceeds of the sale be distributed among the parties after the deduction of solicitors cost at 15% and valuer's fee at 3% of the proceeds and other expenses.
3. That the solicitors of the parties do have conduct for the sale of the property.
4. That the Master and Registrar of the High Court of Sierra Leone, do execute a conveyance in favour of the purchaser (s).
5. That this Honourable Court grants possession to the purchaser.
6. That the cost of the application be borne out of the proceeds of the sale.

I so order.

The Hon. Justice Dr. Abou B.M. Binneh-Kamara, J.

Justice of Sierra Leone's Superior Court of Judicature