Be that as it may, I feel Mr. Doe Smith could have informed the court that he had had no notice of the hearing for May 21st, 1964 and requested the magistrate to have adjourned the case, which the magistrate might have done. He knew that the case was on the hearing list for that day because Mr. During told him so. With that knowledge and instead of acting as any reasonable person would have done, he walked out of court without informing the magistrate that he had not received any notice of that hearing. The case being on the magistrate's cause list for that day had to proceed, Mr. Doe Smith's absence notwithstanding.

This I do not consider is good cause for extending the period for appealing in this matter. The matter proceeded in the absence of Mr. Smith through the fault of no other person but Mr. Doe Smith himself. After all, magistrates are entitled to be given some consideration by solicitors practising in their court and if the magistrate's attention had been drawn to the position by Mr. Doe Smith he would not have proceeded with the case as he did.

I dismiss the application with costs to be paid by the applicant-defendant to the plaintiff. Costs to be taxed.

*Application dismissed.*

---

## WRIGHT *v.* ALIEU MUSTAPHA and ABU HAIDAR

SUPREME COURT (Cole, J.): November 13th, 1964
(Civil Case No. 21/62)

[1] **Conveyancing—fraudulent and voidable conveyances—undue influence—independent advice—duty of legal practitioner advising:** Where an intending donor takes independent advice from a legal practitioner, the legal practitioner should satisfy himself that the donor understands the transaction and wishes to carry it out and that the gift is one which it is right and proper for the donor to make in all the circumstances (page 176, lines 8–13).

[2] **Conveyancing—fraudulent and voidable conveyances—undue influence—undue influence is to be proved where no relationship from which presumed:** Where there exists between the parties to a voluntary conveyance no relationship of confidence from which undue influence can be presumed, the onus of establishing undue influence lies on the person alleging it (page 176, lines 31–35).

[3] **Conveyancing—leases—preparation and costs of lease—lessor's solicitor prepares lease, lessee pays costs:** It is the custom for a lessor's legal practitioner to prepare the lease and for the lessee to pay all costs incidental to the preparation and execution of the lease (page 176, lines 19–22).

[4] **Gifts—undue influence—undue influence to be proved where no relationship from which presumed:** See [2] above.

[5] **Jurisprudence — custom and usage—conveyancing—preparation and costs of lease—lessor's solicitor prepares lease, lessee pays costs:** See [3] above.

[6] **Legal Profession—relationship with client—gift by client to third party —duty of legal practitioner advising:** See [1] above.

[7] **Legal Profession—remuneration—remuneration by usage—lessee bears costs of lease prepared by lessor's solicitor:** See [3] above.

[8] **Legal Profession—retainer—not implied between lessor's legal practitioner preparing lease and lessee paying costs:** Where a lessor's legal practitioner prepares the lease and the lessee pays the costs of and incidental to the execution of the lease, this by itself does not give rise to the relationship of legal practitioner and client between the legal practitioner and the lessee (page 176, lines 19–24).

The plaintiff brought an action against the defendants to have a conveyance set aside on the grounds of fraud and undue influence.

The plaintiff who was the administrator of the estate of a deceased intestate sought to have a conveyance of land in favour of the defendants made by the intestate set aside on the grounds of fraud and undue influence. Since no fraud was alleged in the statement of claim nor evidence of fraud given at the trial this part of the plaintiff's claim failed. The plaintiff alleged that the defendants had gained dominion over the intestate who suffered poor health and had induced the intestate to execute a conveyance in their favour. The plaintiff also alleged that the intestate had not received independent legal advice in making the conveyance. The defendants denied these allegations entirely. Prior to her death the intestate had leased the property in question to the first defendant for two consecutive periods and while the second lease was running, the intestate executed a deed of gift of the property to both defendants to hold to the use of the intestate for life, remainder to the defendants jointly for life, remainder to their children in fee simple. The gift was made in consideration of services which the defendants had rendered and were continuing to render to the intestate and of natural love and affection. The second lease and the deed of gift

were prepared by the intestate's legal adviser who explained fully to the intestate the consequences involved in making the gift and satisfied himself that she wished to make it and that it was one which it was right and proper for her to make in the circumstances.

*Buck* for the plaintiff;
*Candappa* for the defendants.

COLE, J.:

The indorsement of the plaintiff's claim on the writ of summons issued on June 6th, 1962 reads as follows:

> "The plaintiff's claim as administrator of the estate of Lauretta Wright Marsh deceased is that a deed of conveyance dated March 5th, 1958 registered as No. 31/58 in Vol. 42, p.24 of the Record Books of Voluntary Conveyances in the office of the Registrar General for Sierra Leone in the year 1961 and purporting to be made by the said Lauretta Wright Marsh of the one part and the defendants of the other part be set aside with all proper consequential orders and directions on the ground of undue influence or fraud."

In the statement of claim no fraud was alleged nor was any evidence of any fraud given at the trial. That aspect of the plaintiff's claim therefore fails.

According to the plaintiff's statement of claim the plaintiff seeks to set aside the deed of conveyance in question on the following grounds:

> "3. At all material times the intestate was in a poor state of health and the defendants were in the habit of giving to the intestate presents from time to time.
>
> 4. By virtue of the relationship between the intestate and the defendants the defendants gained dominion over the intestate and induced the intestate to execute the deed of conveyance mentioned in para. 2 of this statement of claim.
>
> 5. The intestate did not have the advantage of being advised in the matter of the said deed of conveyance by an independent legal adviser."

The defendants by their defence deny these paragraphs of the statement of claim and state:

> "(a) That the said Lauretta Wright Marsh was at the time of making the said gift of sound mind and body.

(b) The gift was a spontaneous act of the donor and the result of a free exercise of the donor's will.

(c) That the donor in any event had independent advice from a lawyer and freely gave instructions to her lawyer for the preparation of the said deed of gift.

(d) That the defendants at no time exercised any influence over or induced the donor to execute the deed of gift."

Let me state straight away that throughout the trial no evidence was given relating to the allegation contained in para. 3 of the plaintiff's statement of claim, that is to say, that "the defendants were in the habit of giving to the intestate presents from time to time."

The "intestate" referred to in the plaintiff's statement of claim was a Mrs. Lauretta Wright Marsh, late of No. 8 Wilkinson Road, sister of the plaintiff, who died at Freetown, intestate, on December 7th, 1961. Letters of administration of her estate were granted by this court to the plaintiff on January 19th, 1962. Some time before her death she was possessed of certain property at Little East Street, Freetown, commonly known as No. 33 Little East Street, Freetown. She leased this property on October 1st, 1951 to the first defendant Alieu Mustapha for 10 years from October 1st, 1951 at a yearly rental of £66.

On July 1st, 1957 she again leased the same property to the first defendant Alieu Mustapha for 21 years commencing from July 1st, 1957 at a yearly rent of £100 with an option to renew for a further term of not less than 15 years to commence from and after the expiration of this second lease, which is Exhibit D in this case.

On March 5th, 1958, whilst the second lease was still running, she executed a deed of gift, Exhibit E, of the same premises, as beneficial owner conveying the said premises to the defendants:

"To hold the same unto and to the use of the donor for the term of her natural life and after her death unto and to the use of the donees during their joint lives and after the death of either of the said donees unto and to the use of the survivor of them for the term of his or her natural life, and after the death of such survivor of the donees aforesaid unto and to the use of all the children born by the said donees during their joint lives in fee simple."

The "donor" was the intestate herself and the "donees" are the defendants. The gift was made:

". . . in consideration of the services which the donees have rendered and continue to render towards the donor and

of the natural love and affection which the donor hath and beareth towards the donees."

The lease of July 1st, 1957 was prepared by Mr. Edward Jackson McCormack a practising solicitor in Sierra Leone of about nine years' standing and so was the deed of gift. Mr. McCormack gave evidence. In the course of his evidence he deposed that the intestate had been his client since 1957 up to her death and he had done a lot of work for her. About the preparation of the deed of gift Mr. McCormack said:

"I see Exhibit E, a deed of gift dated March 5th, 1958 from the deceased to the defendants in respect of 33 Little East Street, with a gift over to the children born of the defendants [during their] joint lives. I took instructions from Mrs. Lauretta Wright Marsh and I discussed the matter fully with her. The discussions took place at my chambers. She was alone when she gave me the instructions. She gave me the instructions of her own free will. She told me why she was making Exhibit E. I had some discussion with her over the preparation of the deed Exhibit E because it was soon after the lease Exhibit D had been drawn and she told me certain things relating to her family and relating to the deed Exhibit E."

Later on Mr. McCormack added:

"She told me that she had no child of her own and that this property was property bought with her own separate money. She also referred to her family property which she said she had been deprived of. She said she was making the gift to the children of the two defendants because they were born on the land and she regarded them as her own children. She said the children should be children of the two defendants and no other wife. She said she wanted that done knowing that the first defendant was a Muslim and could put away the second defendant at any time."

Under cross-examination Mr. McCormack said:

"I gave her my own independent legal advice on the matter of the execution of Exhibit E. She took some time to think over it. I did not consider her conduct strange. I satisfied myself that her instructions were genuine and that no influence of any sort was being exercised over her. I took her to task about the gift. It was then she gave me the family history. I see recitals. They were her instructions regarding the services rendered by the defendants to her. The love and affection she had for the

children are included in the recitals. I thought her behaviour about her love and affection for the children of the defendants normal."

Mr. McCormack's evidence, which I accept in its entirety, is the only evidence I have before me showing the circumstances in which the deed of gift was made. I am satisfied on the evidence that the intestate had the advantage of being advised in the matter of the making of the deed of gift in question by an independent legal adviser. I am also satisfied on the evidence that not only did Mr. McCormack discharge his duty by satisfying himself that the intestate understood and wished to carry out the matter of the making of the particular gift, but also by satisfying himself that the gift was one which it was right and proper for the intestate to make under all the circumstances.

Mr. Buck, counsel for the plaintiff, made the point that since it was the first defendant who paid Mr. McCormack for the preparation of the lease of July 1st, 1957, Mr. McCormack was a solicitor also for the first defendant. He also argued that in those circumstances Mr. McCormack's legal advice to the plaintiff could not have been independent. With the greatest respect, it is elementary knowledge that it is the custom for the lessor's solicitor to prepare the lease, and for the lessee to pay all costs incidental to the preparation and execution of the lease. This by itself does not in any way raise a solicitor and client relationship between the solicitor and the lessee, in this case between Mr. Cormack and the first defendant. Furthermore, the evidence, which I accept, is that it was the intestate who paid for the preparation of the deed of gift in question.

The only relationship between the first defendant and the intestate at the time of the transaction which came out in evidence was that of landlord and tenant. There was no evidence of any special or other relationship between the intestate and the second defendant. In the circumstances it is my view that the parties were not at the time of the transaction in any particular relationship of confidence with each other. Undue influence in the circumstance is therefore not presumed. The onus is therefore on the plaintiff to establish that undue influence existed. On the evidence before me I find that this has not been established.

It was further alleged in the statement of claim that at the material time when the gift was made, the intestate was in a poor state of health. On this point I find on the evidence that the intestate was invariably indisposed with high blood pressure. The evidence does not, however, satisfy me that this fact in any way

made the gift in question not her spontaneous act or that it was not made under circumstances which enabled her to exercise an independent will.

In the circumstances the plaintiff's claim is dismissed with costs.

*Judgment for the defendant.*

---

GABISI and OTHERS *v.* ALHARAZIM and OTHERS

COURT OF APPEAL (Ames, P., Dove-Edwin, J.A. and Marke, J.):
November 16th, 1964
(Civil App. No. 6/64)

[1] **Civil Procedure—appeals—appeals against ex parte judgments—appeal lies from Supreme Court to Court of Appeal:** An appeal lies to the Court of Appeal from a judgment of the Supreme Court obtained on an *ex parte* application (page 179, lines 18–26).

[2] **Civil Procedure—judgments and orders—ex parte orders—not to be set aside as if obtained in absence of party:** While the Supreme Court may set aside a judgment obtained in the absence of a party, it cannot so deal with a judgment or order obtained on an *ex parte* application, which in this respect is no different from any other judgment or order of the court not obtained in the absence of a party (page 179, lines 14–25).

[3] **Civil Procedure—review—Supreme Court has no jurisdiction to review own judgments or orders:** The Supreme Court has no jurisdiction to review, rehear or reconsider its own judgments or orders (page 179, lines 18–25).

[4] **Courts—Court of Appeal—jurisdiction—appeals from ex parte judgments—court has jurisdiction:** See [1] above.

[5] **Courts—Supreme Court—review—no jurisdiction to review own judgments or orders:** See [3] above.

The appellants applied to the Supreme Court by motion on notice to the respondents to set aside an order of the court obtained by the respondents on an *ex parte* summons and to rehear the matter.

The appellants filed their motion after the *ex parte* order had been drawn up and filed. The motion was dismissed on the ground