

IN THE SUPREME COURT OF SIERRA LEONE
(SUPERVISORY JURISDICTION)

BETWEEN:

AIAH MOMOH

APPELLANT/APPLICANT

AND

SAHR SAMUEL NYANDEMOH -

RESPONDENT

CORAM:

HON. MRS. JUSTICE S. BASH-TAQI – JSC

HON. MRS. JUSTICE V.A.D. WRIGHT – JSC

HON. MR. JUSTICE G.B. SEMEGA-JANNEH – JSC

COUNSEL:

SAHID M. SESAY ESQ. FOR APPLICANT

N.D. TEJAN-COLE ESQ. FOR RESPONDENT

RULING DELIVERED ON THE 2nd DAY OF JULY 2009

S EMEGA-JANNEH - J.S.C.

On the 9th of June 2008, this Court delivered its judgment in this suit. In the majority judgment, the Hon. Justice Rhodes-Vivour JSC made the following orders:

- (a) *The Judgment of the High Court (A.N. Stronge JA) given on the 9th February 2001 is hereby set aside.*
- (b) *The Judgment of the Court of Appeal delivered on the 11th July 2006 is hereby set aside.*
- (c) *All the monies in Account No.20322189 of the Sierra Leone Commercial Bank Limited shall remain in the said Account pending the final decision of the Courts on the ownership of No.37 Malama Thomas Street, Freetown, in the Western Area of the Republic of Sierra Leone.*

(d) Trial shall proceed afresh by Writ of Summons and statement of claim if the parties decide to resolve the issue of ownership of No.37 Malama Thomas Street, Freetown, in the Western Area of the Republic of Sierra Leone.

(e) Each party shall bear its own costs.

The minority judgment delivered by myself concluded by setting aside "the judgment of the trial Judge given on the 9th day of July 2001, and that of the Court of Appeal delivered on the 11th day of July 2006, without prejudice to the sale of the premises, No.37 Malama Thomas Street, Freetown, which was executed pursuant to orders of Court, with liberty to either Mr. Nyandemoh or Mr. Momoh, to issue a writ the proceeds of sale to remain in the custody of the Court, and in the savings account numbered 2032189 at the Sierra Leone Commercial Bank Limited in which the proceeds of sale have been deposited pursuant to the orders of Court to await further orders of the Courts".

It is against this background that the Applicant on the 7th October 2008 filed a motion on notice of the same date, praying for the following orders:

1. *An order that the conveyance of the sale of No.37 Malama Thomas Street, Freetown be set aside on the ground that the order for sale was null and void.*
2. *That the purported purchaser of the said property do give up possession of the said property forthwith to the Applicant not later than the 14th days of this order.*
3. *That the purported purchaser do give an account of all rents and outgoings in respect of the said proceeds.*
4. *That the net sum be deducted from the amount held at Sierra Leone Commercial Bank Limited Siaka Stevens Freetown, and the same to be paid to the applicant herein on his written undertaking to return the same or part of the same as ordered by the Court.*
5. *The balance of the amount left in the said account should be re-paid to the alleged purchaser.*

6. *That the costs of and incidental to this be borne by the Respondent.*
7. *That all sums of money paid to the Respondent or his solicitor out of the above account be repaid forthwith.*
8. *Such further or other order as this Honourable Court shall deem fit.*

On Monday, the 2nd day of March 2008, Mr. Sahid M. Sesay, on behalf of the Applicant, moved the motion.

When the matter came up for further hearing on the Friday, the 13th March 2008, Mr. N.D. Tejan-Cole, of counsel, raised what appears to me a preliminary objection to the hearing of the application on the ground that the Court cannot review or vary its judgment delivered by the full bench of five. In support of the ground of the objection, Mr. N.D. Tejan-Cole argued that the Court derives its authority and powers under the Constitution, 1991, of Sierra Leone, under the following sections:

- (1) *Section 122 – which gives the Court power to hear appeals from the Court of Appeal;*
- (2) *Section 124 – which gives the Court original jurisdiction in matters relating to enforcement and interpretation of any provision of the Constitution 1991, and references made to it on constitutional issues of interpretation arising in the lower Courts;*
- (3) *Section – 125 which gives the Court supervisory jurisdiction or power over all other Courts and adjudicating authority.*

Mr. N.D. Tejan-Cole further argued that some of the Courts power are also reflected in the Supreme Court Rules 1981 in which:

1. *Rule 6 – deals with appeals from the Court of Appeal to the Court;*

2. *Rule 88 – deals with the supervisory powers of the Court over the lower Courts in specific situations; and*
3. *Rule 89 – deals with the manner in which the original jurisdiction of the Court may be invoked.*

Mr. N.D. Tejan-Cole, in conclusion, submitted that the power to review or vary the Court's judgment must be an expressed provision; and that there is no such expression in the Constitution 1991, and the Supreme Court Rules, 1981.

Despite his powerful argument, it seems to me that Mr. N.D. Tejan-Cole was not pressing his objection as he proceeded to argue against the substance of the application even before Mr. Sahid M. Sesay could move his application. Suffice it for me to say that the application, in effect, revolves around the interpretation of the orders (judgment) of the Court.

In my judgment there is an incomprehensible misunderstanding of the orders of the Court resulting in the application. The orders of the Court are stated in logical and chronological sequence. The orders are to be read in its entirety and as a whole; one order is not divorced from the other. The orders contained in of the majority judgment are, in substance, the same as that the minority judgment, agreed to by both counsel and of which orders (a) (b) and (d) of the majority judgment are encapsulated in one sentence on the minority judgment thus, bringing out clearly the meaning of the Orders of the Court. Both judgments concluded that the proceeds of sale remain with the Court until ownership is determined/or await further orders of the Courts. The Judgment leaves it to either party to issue a writ to resolve the situation. The Court in its Orders merely set aside the judgments of the lower Courts (without any attendant consequence) and allows for ownership of No.37 Malama Thomas Street, Freetown, to be determined in a fresh suit at the instance of either party while the proceeds of sale of the said No.37 Malama Thomas Street, Freetown, aforesaid remains in the custody of the Court to await the determination of the anticipated suit and/or further orders of Court.

In any event the Court is not in the position to grant the orders prayed for in the circumstances of the application.

In the premises the application is hereby dismissed with costs against the Applicant.

G.B. Semega-Janneh

HON. MR. JUSTICE G.B. SEMEGA-JANNEH - JSC

I AGREE:

S. Bash-Taqi

HON. MRS. JUSTICE S. BASH-TAQI - JSC

I AGREE :

V.A.D. Wright

HON. MRS. JUSTICE V.A.D. WRIGHT - JSC

REF: G.B.SJ/HJ