

SC. CIV. APP. 2/2007

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

**REBECCA JOHNSON
ROBERT JOHNSON ON BEHALF OF THEMSELVES AND
THE CHILDREN OF CHARLES JOHNSON,
TEDDY JOHNSON (DECEASED) TWO OTHER
BENEFICIARIES, HENRY NATHANIEL RING (DECEASED)**

AND

FREDRICK JOHNSON - APPELLANTS

AND

THE ADMINISTRATOR AND REGISTRAR GENERAL

AND

**SULAIMAN ZUBIARU
MR. BENJAMIN AS AGENT FOR
SULAIMAN, ZUBIARU - RESPONDENT
MARIATU ZUBAIRU**

CORAM:

**HON. MR. JUSTICE P.O. HAMILTON J.S.C.
HON. MRS. JUSTICE V.A.D. WRIGHT J.S.C.
HON. MR. JUSTICE M.E. TOLLA THOMPSON J.S.C.
HON. MR. JUSTICE N.C. BROWNE-MARKE J.A.
HON. MRS. JUSTICE V.M. SOLOMON J.A.**

SOLICITORS

**E.A. HALLOWAY ESQ. FOR THE APPELLANTS
B. MICHAEL ESQ. FOR THE RESPONDENT**

JUDGMENT DELIVERED THIS 7th DAY OF FEBRUARY, 2012

HAMILTON J.S.C.

This is an appeal against the unanimous judgment of the Court of Appeal dated 22nd day of February, 2007.

This action originally commenced by a Writ of Summons dated 14th May, 1987 in which the Plaintiffs (hereinafter referred to as the Appellants) against the Defendants (hereinafter referred to as the Respondents) for an Order of Mandamus compelling the 1st Respondent to carry out the Order of the Court dated 24th March, 1986 by allowing the Appellants or any of them to purchase property No.13 Circular Road, Freetown, the cancellation of any Conveyance made to the 2nd Respondents or any person in respect of the said property and from evicting the Appellants there from and further alternatively that the Order of the Court aforesaid and all subsequent proceedings be set aside for irregularity in that the Originating Summons was not served personally on Teddy Johnson.

The 2nd Respondent entered appearance and filed a defence on 17th June, 1987 and 3rd July, 1987 respectively. By an Order of the Court dated 29th November, 1988 Fredrick Johnson was added as a Plaintiff and by an Order of Court dated 11th May, 1992 Mariatu Zubairu was added as 4th Defendant.

By an Order of Court it was ordered that Letters of Administration be made to the Administrator and Registrar-General to the Estate of Henry Nathaniel Ring (Deceased) which Letters of Administration the Administrator General obtained. An Order was made by the High Court dated 24th March, 1996 wherein it was ordered that property No.13 Circular Road, Freetown be sold by Public Auction or Private Treaty. It was further ordered that any beneficiary with the means to purchase the said property must be given the first option to purchase it.

The Administrator-General (1st Respondent) in consequence of the Order of 24th May, 1986 wrote a letter dated 4th April, 1986 to the Johnsons as beneficiaries of the life tenant Rebecca Johnson informing them of the Order of 24th March, 1986 giving them first option to purchase the said property at 13 Circular Road, Freetown. There was no reply received by the Administrator-General but was seen by one Mr. Caulker who is a relative representing the people to whom the letter was written saying he was going to pay on behalf of the Johnsons. Since he

left he never came back to the Administrator-General. About five weeks after the letter of 4th April, 1986 to the said beneficiaries the Administrator-General sold the property to the 2nd and 4th Respondents.

At the trial in the High Court, Judgment was given in favour of the Respondents on the 16th February, 1993 refusing a cancellation of the Conveyance to the 2nd and 4th Respondents as they were *bona fide* purchasers for value without notice from the Administrator-General having purchased pursuant to an Order of Court dated 24th March, 1986.

There were two findings. Firstly, the Learned Trial Judge held that she could not consider the Order in the proceedings CC582/85 1985 R. No.8 for irregularity and secondly, whether she could grant the other relief prayed for by the Appellants which is the cancellation of the Conveyance to the 2nd and 4th Respondents. She rejected the claims of the Appellants and held that the 2nd and 4th Respondents were *bona fide* purchasers for value without notice.

The appellants then appealed against the judgment of the Learned Trial Judge to the Court of Appeal which dismissed the Appeal.

The Appellants being dissatisfied have now Appealed to this Court on the following grounds:

- (1) The decision is against the weight of evidence.
- (2) The Court failed to consider the Appellants ground of appeal that the High Court failed to consider that the Appellants and their predecessors in title had acquired possessory title over the said property for over fifty (50) years before the application was made to the Court for its sale. At the time it had ceased to be part of the Estate of Henry Nathaniel Ring (deceased). During her lifetime she had always treated it as her personal property and on her death it became part of her estate and was no longer part of the Estate of Henry Nathaniel Ring (deceased) therefore that order ought not to have been made.
- (3) Alternatively, this was a sale by the Court therefore the Order of the Court ought to have been obeyed strictly and directions sought from the Court at every stage of the process.

Counsel for the Appellants, Mr. E.A. Halloway in relation to his arguments on these grounds of appeal in his statement of case adopted the arguments in his synopsis of the Appellants in the Court of Appeal. Mr. Halloway's contention can be briefly summarised that the Order of the Court dated 24th March, 1986 contained in proceedings CC582/83 should be set aside for irregularity since it was this Court order that gave the Administrator-General the authority to sell the property at No.13 Circular Road, Freetown and that the Conveyance made pursuant to that Order dated 12th May, 1986 to the 2nd and 4th Respondents must be cancelled.

Counsel for the 2nd and 4th Respondents Mrs. B. Michael in her statement of Respondents case and reply to Appellants case submitted that even if the Court Order of 24th March, 1986 could or ought to have been set aside for irregularity the setting aside of that Order of 24th March, 1986 would not in any way interfere with the title or interest of the 2nd and 4th respondents as regards the property at No.13 Circular Road, Freetown as the 2nd and 4th Respondents are *bona fide* purchasers for value without notice therefore they take an absolute interest in the said property.

Mr. Halloway's contention and arguments on this is that the buyers (2nd and 4th Respondents) must have visited the property and if they did they would have found 1st Appellant, her brothers, sisters and cousins in possession of the property; therefore the rule caveat emptor applies to the 2nd and 4th Respondents.

Mrs. B. Michael submitted that a purchaser obtains a good title from a personal representative irrespective of any irregularity in the administration of the estate unless he is party to the breach of trust. The Appellants did not plead nor did they allege that there was a breach of trust. There was no evidence that the 2nd and 4th Respondents were even parties to any breach of trust and even if there is a breach of trust there is no evidence on the records that the 2nd and 4th Respondents were parties to such a breach. There is no evidence that 2nd and 4th Respondents acted in collusion with the Administrator-General nor did they have any knowledge of any irregularity in the administration of the said estate.

In the matter of the Estate of William Charles During (Deceased) Between David During v. the Administrator-General, Beccles-Davies JSC (as he then was) of blessed memory said in the Court of Appeal Judgment dated 10th July, 1980 at Page 4 of the printed Judgment:

"The revocation of a grant of Letters of Administration would not affect the title of the Purchaser who has acquired any interest in real or personal property pursuant to an Order made under any statutory power of the Court".

The duty is on the Appellants to establish that the 2nd and 4th Respondent had notice of the true statement of facts In Turay v. Kamara and Jarrette 1968-69 ALR SL 89 it was held therein that even where there is fraud and a purchaser has no knowledge the Deed is only voidable and the purchaser gets a good title.

In Halsbury's Laws of England 3rd Edition at Page 361 to 362 it is there stated:

"The Purchaser from the representative has the right to infer that the representative is acting fairly in the execution of his duty and its rests upon the person seeking to impeach the validity of the transaction to prove that the purchaser had notice of the true state of facts"

In Camarah v. Macualey 1920-36 ALR S.L. 150 at 153 Butter-Lloyd C.J. cited the case of **Carser v. Cartwright** LR 8 Ch. at 976 said:

"Where a person advance money by way of purchase or charge on an estate so vested in the hands of a trustee, unless that person is absolutely a party to a breach of trust he cannot be deprived of the estate he has acquired The reason for the existence of this principle is as clear as the principle itself namely, that in its absence no one would be safe in purchasing from a personal representative".

It is of great importance to note that the appellants relied on *Section 21 of the Administration of Estates Act, Cap 21(1)* which provides:

"No land forming part of the estate of an intestate shall be sold by the Official Administrator or any administrator in without the consent of all persons beneficially

interested, or the Order of the Court or Judge thereof for that purpose first obtained” (Emphasis mine).

In *Mrs. Raife Mahmoud Darwish Basma v. The Official Administrator of Sierra Leone and Mrs. Najibi Basma* (1962) 2 SLLR 97. The facts is one in which the Plaintiff claiming to be a person beneficially interested “sued the Official Administrator to set aside the sale of buildings erected on her late father’s property. In the instant case the building relate to a lease granted to a non native for a term of years. It was held that the sale of the building by the Official Administrator was improper as he failed to obtain consent of all persons beneficially interested or the Order of Court or Judge as required by *Section 21(1) of the Administration of Estate Act.*

In my humble opinion the wording of Section 21(1) of the Administration of Estate Act falls under three ambits and in the alternative. It is either all the persons beneficially interested giving their consent or an Order of the Court or a Judge. In the present proceedings the 1st Respondent obtained an Order of the Court on the 24th March 1986. The Respondent wrote a letter to the Johnsons dated 4th April, 1986 as a result of the Court Order. A grace period of seven (7) days was given to them to pay the purchase price. The Appellants did not pay the purchase price quoted and from the records at Pages 41 to 46 could not afford to buy the said property at No.13 Circular Road, Freetown as such the property was sold on 12th May 1986 to the 2nd and 4th Respondents who are *bona fide* purchasers for value without notice and so acquired a valid and unimpeachable title.

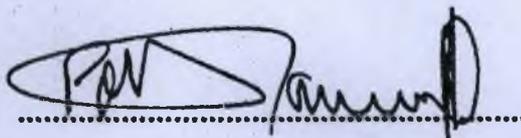
It is worthy to note that the Appellants commenced this action in the High Court on the 14th May, 1987 which is one year after the property was sold to the 2nd and 4th Respondents. The reason for such a lapse in time is even unexplained. However, be that as it may they however did commence this action.

Before the conclusion of this Judgment, it must be noted that the question of irregularity was raised in the Court of Appeal as a ground of appeal but was never brought up in this Court for consideration. However, this Court being the apex Court must consider it. The Order contained in CC 582/88. 1985 R. No.8 is different from the Order Contained in CC 386/87 1987 J. No. 19

since the two are different matters in the High Court. It is clear that one is for the Order dated 24th March, 1986 and the other is for this present appeal.

In my humble opinion therefore the Order by the High Court dated 24th March, 1986 could not be set aside by the High Court in another matter for irregularity since both Courts are of concurrent jurisdiction. The issue was adequately dealt with by the Learned Trial Judge in her Judgment.

On the whole therefore, this appeal lacks merit and is hereby dismissed with cost assessed at Le3,000,000/00.



HON. MR. JUSTICE P.O. HAMILTON J.S.C

I AGREE:..... *Wright*

HON. MRS. JUSTICE V.A.D. WRIGHT J.S.C.

I AGREE:..... *M.E. Tolla Thompson*

HON. MR. JUSTICE M.E.TOLLA THOMPSON J.S.C.

I AGREE:..... *N.C. Browne-Marke*

HON. MR. JUSTICE N.C. BROWNE-MARKE J.A.

I AGREE:..... *V.M. Solomon*

HON. MRS. JUSTICE V.M. SOLOMON J.A.