

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE ESTATE OF MAKALAY TURAY (DECEASED
INTESTATE)

AND

IN THE MATTER OF THE ESTATE OF ALWALION NABIE TURAY
(DECEASED INTESTATE)

AND

IN THE MATTER OF ADMINISTRATION OF ESTATES ACT, CAP 45 OF THE
LAWS OF SIERRA LEONE

BETWEEN:

THE ADMINISTRATION AND REGISTRAR GENERAL – APPELLANT

AND

ALUSINE SUMAH	1 st RESPONDENT
ALHASSAN SUMAH	2 nd RESPONDENT
JENEBA FOFANAH	3 rd RESPONDENT
NGADIE SUMAH	4 th RESPONDENT

AND

MORLAI TURAY (BY HIS ATTORNEY KANDEH YANSANEH)	5 th RESPONDENT
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AND

IBRAHIM KAMARA (AS ATTORNEY FOR IBRAHIM TURAY)	6 th RESPONDENT
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CORAM:

Hon. Justice G. Thompson JSC - Presiding
Hon. Justice A. B. Halloway JSC
Hon. Justice M.F. Deen- Tarawally JSC
Hon. Justice A.I. Sesay JA
Hon. Justice K. Kamanda JA

Mr. P.M. Lambert for the Appellant

Mr. E.E. C. Shears-Moses for the 1st to 4th Respondents

Mr A. E. Manly -Spain for the 6th Respondents on record

Judgment
Delivered ^{20th} day of June 2023
G. Thompson JSC:
Introduction

Historical Background

1. Makalay Turay, Susu by tribe and a Muslim died intestate on the 31st August 1981. She had no natural children and at the time of her death was the freehold owner of 12 Free Street, Freetown. After her death members of the Sumah family produced a will dated 3rd January 1981 purported to have been made by Makalay Turay and registered at page 127 in Volume 31 in the Book of Wills kept at the Office of the Administrator and Registrar General. The same family also produced a Deed of Gift for the same property dated 18th July 1981 and registered as No 21/81 at page 4 in Volume 60 in the Book of Voluntary Conveyances kept in the office of the Administrator and Registrar General. These gifts they claim were in appreciation of their services to the deceased whilst alive as her wards. The 1st, 2nd, 3rd and 4th Respondents herein are the members of the Sumah family.
2. On the 3rd February 1981, Alwalion Nabie Turay the eldest surviving brother of Makalay Turay was granted Letters of Administration to administer the estate of Makalay Turay in accordance with Cap 96 of the Laws of Sierra Leone (Mohammedan Marriage Act). He then instituted an action in the High Court challenging the validity of the Will and the Deed of Gift.
3. On the 31st December 1986, the High Court presided by Hon. Justice R J.B. Thompson gave judgment in favour of Alwalion Nabie Turay and set aside both the Will and the Deed of Gift. The High Court's judgment was upheld by the Court of Appeal in a judgement delivered on the 16th July 1991 by Justice E. C. Thompson-Davis.

The road to the present proceedings

4. With the Letters of Administration having been restored to Alwalion Nabie Turay, he remained the Administrator until he died intestate on the 10th March 2003. After his death, his son Ibrahim Sorie Turay applied for and was granted Letters of Administration to administer his estate on the 7th July 2003. He further applied for Letters of Administration *de bonis non* in respect of the estate of Makalay Turay by virtue of that which had been granted to him to administer the estate of his father, Alwalion Nabi Turay.

5. On the 9th July 2003 Morlai Turay entered the fray. He claimed to be the son of Makalay Turay according to Susu customary law and he was also granted Letters of Administration to administer her estate.
6. The Sumahs (the 1st to 4th Respondents) then instituted an action by Originating Summons in the High Court on the 15th October 2007 against Ibrahim Kamara and Morlai Turay, seeking determination to the following issues:
 - i. That the only person entitled to administer the estate of Makalay Turay is the Administrator and Registrar General;
 - ii. That the Administrator and Registrar General is the only person entitled to receive the proceeds from the property at 12 Free Street, Freetown and distribute the proceeds equally;
 - iii. That the Plaintiffs (The Sumahs) are beneficiaries of the estate of Makalay Turay and as such are entitled to equal portions of the estate; and
 - iv. That if there is no proven beneficiary of the estate of Makalay Turay apart from the Plaintiffs then the property at 12 Free Street should be vested in them as sole beneficiaries.
7. Bash-Taqi JA gave judgement on the 8th June 2007. She ruled that:
 - a. On the facts and circumstances in the case the Administrator and Registrar General was not competent to take over the management and control of the estate.
 - b. The Administrator and Registrar General should have nothing to do with the said estate.
 - c. It was for the 1st defendant (Morlai Turay) to determine who the beneficiaries of the estate were and that the plaintiffs (the Sumah family) not being the natural children of Makalay Turay could be considered as beneficiaries of the estate of Makalay Turay on equitable and moral grounds.
8. Being dissatisfied with the judgment of the High Court, Morlai Turay appealed to the Court of Appeal on grounds that inter alia the Learned Judge erred when she held that the 1st Defendant, Ibrahim Turay was the most competent person to take out Letters of Administration, the person to determine the beneficiaries of the estate, and that the plaintiffs can be considered on equitable and moral grounds as beneficially interested persons.

9. The Court of Appeal in its judgment on the 23rd June 2011, ordered as follows:

- i. That the judgment of the High Court dated 8th June. 2007 be set aside
- ii. That the Letters of Administration granted to the Appellant Morlai Turay on the 9th July 2003 be revoked
- iii. That the Administrator General be granted Letters of Administration in respect of the estate of Makalay Turay left unadministered.
- iv. The Administrator General identify and ascertain the beneficiaries of the estate of Makalay Turay deceased, in accordance with the provisions of the law.
- v. That all rents or monies collected in respect of 12 Free Street, Freetown since the date of judgment of High Court be fully accounted for and paid to then Administrator and Registrar by the person that was in control throughout the period this matter was on appeal.

10. On the 16th December 2011, Letters of Administration were granted to the Administrator and Registrar General (ARG). On the 12th January 2012, the Administrator and Registrar General and Appellant herein, wrote to the Susu Tribal Headman, Alhaji Kandeh Kabiri Sesay (hereinafter the Headman). In that letter she stated "*I have been ordered to ascertain those beneficiaries entitled under her estate. Her estate is being administered under section 9 (2) Cap 96 of the Laws of Sierra Leone.*" A second letter dated 20th September 2012 was sent to the Headman with the same request.

11. By a letter dated 12th July 2013, the Headman responded. That letter, stated that he had convened a meeting on the 29th May 2013 at his residence to which he invited "*both parties.*" He also invited the Deputy Susu Tribal 'Chief' - Chief F. M. Kamara, Alhaji Mustapha Kamara - Chief Imam Boyle Street Susu Mosque and Alhaji Morlai Sillah, Chief Imam Regent Street Mosque. At that meeting the judgment of the Court of Appeal was read out and explained to "*both parties*" who agreed that they fully understood. The letters from the Administrator and Registrar General's office was also read out and explained to both parties and they confirmed that they understood.

12. The Headman stated that the Court of Appeal judgment did not make **any reference to the Sumahs** and that's what the meeting looked into. He noted that the High Court had set aside the will and deed of gift and

that “*the rulings of the Appeals Court the judgment of the high Court was set aside meaning that the Will and Deed of Gift still stand by law.*” He concluded as follows: “*To the best of my knowledge, the Sumahs should be the rightfully beneficiaries the property situated at 12 Free Street, Freetown.*” (sic).

The present proceedings

13. The Appellant did not adopt the recommendations of the Headman and she set out her reasons for not doing so in a letter dated 28th September 2012 to Messrs Shears -Moses and Co. I shall deal with these reasons later, suffice it to say that this precipitated an application to the Court of Appeal by a Notice of Motion by Messrs Shears-Moses for the 1st to 4th Respondents herein. The application dated 19th December 2014 was ostensibly for the Court to order the Appellant to comply with the Court of Appeal’s order of the 23rd June 2011. The Court of Appeal determined inter alia:

- a. that the advice of the Susu Tribal Headman be complied with within 6 weeks;
- b. that the beneficiaries could only be ascertained by native law and custom; and
- c. since the Administrator and Registrar General did not respond, there was no way for the court to know whether she approved or disapproved of the response by the Susu Tribal Headman.

The Court expressed the view that the Administrator and Registrar General had not been helpful to the court to put an end to this long outstanding matter.

14. It is this judgment that the Appellant challenges and which is the subject of the appeal to this court. The grounds of appeal which I shall paraphrase are as follows:

- i. That the Court of Appeal having ordered on the 23rd June 2011 that: “*The Administrator and Registrar General shall identify and ascertain the beneficiaries of the Estate of Makalay Turay Deceased in accordance with the provisions of the law*” which said decision had not been appealed against and still subsists erred in law in ordering on the 9th February 2016 that – “*that in complying with Order 4 (sic) of Exhibit AS2, the advice of the Susu Tribal Headman who was invited by the Administrator and Registrar General to assist in ascertaining the beneficiaries be complied with by*

the Administrator and Registrar General within six (6) weeks from the date of this ruling”

It is submitted that neither the Administration of Estates Act, Chapter 45 of the Laws of Sierra Leone nor the Tribal Administration Western Area Act, Chapter 78 of the Laws of Sierra Leone empower the Susu Tribal Headman to make a determination which was binding on the Administrator and Registrar General in the case of an intestate who was subject to Mohammedan law and the Court therefore arrived at an erroneous decision.

- ii. That the Court of Appeal erred when it held as follows: *“Firstly on Order 4 the beneficiaries could only be ascertained by native law and custom.”* It was pointed out that the Court of Appeal’s judgment of the 23rd June 2011 has not been appealed and therefore still subsists. That judgment states as follows:

“it is clear in the entire records before me that there is no doubt that the estate of Mackalay (sic) Turay is to be dealt with under Mohammedan law. There is also evidence that the deceased was a Susu. I therefore believe that the following legislation would be very relevant in dealing with the estate of Makalay Turay who was a Susus and (sic) as well as a Muslim.

Section 9 subsections 1 &2 of the Mohammedan Act Cap 96 of the Laws of Sierra Leone.

Section 9 of the Mohammedan Act cap 96 and section 43 of the Administration of Estates Act Cap 45 afford the legal authority and necessary direction to the ‘Official Administrator’ to not only take over the administration of the estate of Makalay Turay but also follow due process to identify and deal with the beneficiaries who may be entitled under Mohammedan law and Susu Customary law.”

This judgment was binding on the Court of Appeal unless successfully appealed against. The Court failed to take cognisance of section 10 of the Mohammedan Marriage Act, which provided as follows:

“In the event of there being a Tribal Authority of a race which is Mohammedan, the Administrator and Registrar General shall in the absence of any direction of the Chief Justice to the contrary, consult such authority as to what is the Mohammedan law as to the distribution. Of an intestate’s estate.”

Thus, arriving at an erroneous decision.

- iii. That the Court of Appeal misdirected itself when it held as follows: *Since the Administrator and Registrar General did not respond there is no means for this court to know whether she approves or disapproves the response of the Susu Tribal Headman who she invited to assist her in ascertaining the beneficiaries in accordance with the law so as to execute Order 4 and 5 of Exhibit AS2. The Administrator and Registrar General has not been helpful to this court to put an end to this long outstanding matter as her response would have helped the court in considering this application for the Applicants*” in that:

The Administrator and Registrar General, the Appellant herein filed a report dated 27th July 2015 in the Court of Appeal (the Report) which said report was exhibited as Exhibit AS13 to further affidavit of Alusine Sumah and referred to by the Court of Appeal itself.

15. Statements of Case were filed by the Appellants, the 1st to 4th Respondents and the 6th Respondent who adopted the case for the Appellant. The 1st to 4th Respondents’ argument is that Susu customary law cannot be ignored and that if the Appellant wanted to act in accordance with the law, she must have had customary law in mind. That as custodian of Susu customary law, the Headman’s advice should have been accepted. That the advice of the Headman was in consonance with the distribution of the estate of the intestate of a Muslim and a Susu and that if there was some doubt the Appellant should have demanded an explanation. That the advice from the Headman is without blemish and based on Susu customary law.

Issues in the Case

16. The issues in the case can be summarised as follows:
- a. Did the Susu Tribal Headman act within his statutory authority when he purported to identify the rightful beneficiaries?
 - b. Can a differently constituted Court of Appeal alter, amend or vary its own orders contained in its judgment or is it bound by its previous decisions?
 - c. Was the Appellant bound by the response of the Susu Tribal Headman?

Grounds 1 and 2:

Did the Susu Tribal Headman act within his statutory authority when he identified the ‘rightful beneficiaries?’

17. In her effort to comply with the Judgment of 23rd June 2011, the Appellant sought the advice of the Susu Tribal Headman. In her letter of 11th January 2012 she stated inter alia *“The said deceased was a native Muslim.....She being seised of freehold property at No 12 Free Street Freetown and I have been ordered to ascertain those beneficiaries entitled under her estate. Her estate is being administered under section 9 Cap 96 of the Laws of Sierra Leone.”* In her second letter she added *“I have been requested by the Court of Appeal of Sierra Leone to ascertain who the beneficiaries are to the estate of Makalay Turay (deceased) according to Muslim law and the susu customary law.....Your assistance in ascertaining the said beneficiaries in this matter will be greatly appreciated.”* The Appellant was correct that she needed to identify the Beneficiaries as ordered by the Court of Appeal. She was administering the property in accordance with Section 9 (2) of Cap 96. Given that the deceased had been identified as a Muslim and Susu the procedure the Appellant had to follow was that set out in section 10 of the Act which is reproduced above in Ground ii of the grounds of appeal.
18. It follows that the request should have been a consultation as to the Mohammedan law for distribution of the estate for the Susu tribe. The second letter with its additional request purporting to request from the Headman the identity of the beneficiaries was clearly wrong. That request exceeded the mandate of Tribal Heads as laid down by law. That said, following the request the Tribal Headman effectively held court. In his own words, he called “both sides” and they were asked to explain. He then looked into the judgment and concluded the court did not *“look into the side of the Sumahs”* so they proceeded to look critically into that area.
19. Alarminglly, wrongly and unlawfully he concluded that the Court of Appeal did not set aside the will and the deed of gift and so they still stand in law. He unlawfully determined that the Sumahs were the rightful beneficiaries. There is no reference to Mohammedan law or to **Section 9(2) of Cap 96**. This was clearly beyond his remit and beyond the statutory powers that he has. His conclusion was without any basis

in law. Pursuant to section 12 of Cap 78 Tribal Administration (Colony) Act “*No Tribal Headman shall exercise jurisdiction, civil or criminal, of any nature whatsoever in respect of the members of his tribe*” The punishment for contravention of this section is also prescribed.

20. The Appellant in a report dated 27th July 2015 rejected the conclusion of the Headman stating that he had exceeded his remit by ignoring section 10 of Cap 96 supra and sections 11 and 12 of Cap 78 supra. Mr Shears-Moses’ (for the 1st to 4th Respondents) response to this is that having not received the advice she wanted, the Appellant, then rejected the advice given. This is misconceived and plainly incorrect. That report sets out clearly what the law is and why the recommendation and conclusion of the Head man could not be accepted. Counsel argued that she must have had in mind customary law as well as Mohammedan law and he relied on section 43 of Cap 45 in support. There is no merit in this submission. There is no evidence that the deceased hailed from any province or chiefdom outside of Freetown. In fact the report states that the deceased was neither a native nor a citizen of Sierra Leone. That has not been challenged nor was there any evidence to the contrary in any of the proceedings. Further to invoke section 43, the Appellant would have to instruct the District Commissioner to ascertain from the Native Court to which the deceased belonged the names of those entitled to the estate.

21. As Mr Lambert, Counsel for the Appellant pointed out, there is no District commissioner or equivalent in the Western Area. There is also no Native Court or equivalent in the Western Area. Section 43 therefore does not apply in this case. I do not accept that the Appellant ignored customary law. Whilst she may have erroneously referred to identifying the beneficiaries in her second letter to the Headman, she was quite clear in her report that section 10 of Cap 96 applied and rightfully so. In any event one would quite rightly expect that the Susu Tribal Headman, knew or ought to have known that Section 10 applied and that there are limitations to his authority. He had no legal authority to reopen any matter determined by the courts and by purporting to do so, inevitably left the Respondents, confused and misinformed as to the claims they have.

Can the Court of Appeal alter, amend or vary its own orders contained in its judgment or is it bound by its previous decisions?

22. Pursuant to section 122 of the Constitution of Sierra Leone 1991, the Court of Appeal shall be bound by its own previous decisions and all Courts inferior to the Court of Appeal shall be bound to follow the decisions of the Court of Appeal on questions of law. Similarly, the Court of Appeal is bound by decisions of the Supreme Court. The Court of Appeal is a creature of statute and its powers are statutory. Mr Lambert for the Appellants has drawn our attention to Halsbury's 3rd edition Volume 22 at Paragraph 1665 which states that "*as a general rule, except by way of appeal, no court, judge or master has power to rehear, review, alter or vary any judgment or order after it has been entered or drawn up respectively, either in an application made in original action or matter or in a fresh action brought to review such judgment or order.*" The court was therefore bound by the orders in its judgment of the 23rd June 2011 as was the Appellant one of which was Order iv to "*identify and ascertain the beneficiaries of the estate of Makalay Turay deceased in accordance with the provisions of the law.*"

23. Justice E. E. Roberts JSC (then JA) helpfully set out the applicable laws, namely Section 9 (2) of Cap 96 and Section 43 of Cap 45. He stated as follows: "*It is clear in the entire records before me that there is no doubt that the estate of Makalay Turay is to be dealt with under Mohammedan law. There is also evidence that the deceased was a Susu. I therefore believe that the following legislation would be very relevant in dealing with the estate of Makalay Turay who was a Susu as well as a Muslim. Section 9 subsection 1 & 2 of the Mohammedan Marriage Act Cap 96 of the laws of Sierra Leone 1960.....*" Indeed, in both her letters to the Susu Tribal Headman the Administrator and Registrar General stated that she was to administer the estate in accordance with section 9 (2) supra. This was in compliance with the judgement of the Court of Appeal

24. For ease of reference, section 9 (1) & (2) state as follows:

'9(1) ".....if any party being unmarried and being at such date a Mohammedan, shall die intestate, the estate real and personal of such intestate shall be distributed in accordance with Mohammedan law.

(2)The following persons shall be entitled to take out Letters of Administration in the order named viz

The eldest son of the intestate if of full age according to Mohammedan law

The eldest brother of the intestate if of full age according to Mohammedan law

The official Administrator”

25. The application before the Court was for the Court to order the Appellant to act in accordance with the order of the Court of Appeal dated 23rd June 2011. Simply put, the Courts enquiry, if one was needed was twofold: firstly, to ascertain whether she had obtained Letters of Administration and if not order her to do so and secondly to ascertain whether she had identified the beneficiaries according to the law and if not order her to do so. It was not open to the Court to vary or seek to vary any of its orders of the 23rd June. The Learned Justices therefore acted ultra vires when they added the second order on the 9th February 2016 that the Appellant was to comply with “*the advice of the Susu Tribal Headman who was invited by the Administrator and Registrar General to assist in ascertaining the beneficiaries.....*” This order did not take into consideration Orders iv and v of the 23rd June 2011 judgment nor did it, as it should have, take Section 9 and 10 of Cap 96 into account.

Was the Administrator and Registrar General bound by the response of the Susu Tribal Headman?

26. In her report referred to above the Appellant states why she rejected the conclusion of the Headman. I have summarised the salient points of those reasons above. The Headman exceeded his statutory authority and proceeded to make a determination which was not only wrong but also impermissibly usurped the powers of the Supreme Court. The Appellant correctly stated that:

“Instead of confining himself to acting within the ambit of the jurisdiction under Caps 78 and 96 of the Laws of Sierra Leone, he instead formed himself into an Appellate Court attempting to review the Court of Appeals (sic) Judgment of 23rd June 2011, wrongly interpreting the said judgment by stating that the said Court set aside the judgment of the High Court, and taking it to mean that they Will and Deed of Gift purported to have been made by Makalay Turay (deceased) in favour of the Sumah family.

While the Court of Appeal in its judgment of 16th July 1991, had upheld the High Court's judgement dated 13th day of March 1987, found no reason to interfere with the findings of the High Court. In doing so, he usurped the powers of the Supreme Court of Sierra Leone."

27. There are laid down penalties for the punishment of a Tribal Headman who exceeds his jurisdiction. It is a criminal offence punishable by a fine or imprisonment (see section 12 of Cap 78). If, as is clearly the case the Tribal Headman acted unlawfully in acting as he did by exceeding his statutory authority, the Appellant could not condone what is effectively an offence. She was not compelled to take or give approval to a procedure and conclusion elevating the status of one party to the proceedings, for which there was no legal basis. The Headman's role was simply to advise on Mohammedan law within the Susu tribe. Under section 10 of Cap 96, he is not mandated to identify the beneficiaries nor can he be asked to do so, as that is the task of the Appellant by law. All the Appellant should have done is "consult" him as to what the Mohammedan law is as to distribution of the estate of Makalay Turay. Nothing more! I therefore reject the argument by Mr Shears-Moses that the Appellant was bound by the conclusions of the Tribal Headman. Neither the Court nor the Appellant could be seen to be supporting the unlawful act of the Headman.

28. For the above reasons Grounds 1 and 2 are upheld

Ground 3

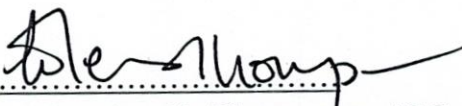
29. The report was an exhibit attached to the further affidavit of the 1st Respondent sworn to on the 4th August 2015 and exhibited as AS13. That affidavit was in support of the 19th December 2014 application to the Court of Appeal. It is clear it was before the court. The criticism levelled at the Appellant by the Court of Appeal is therefore misplaced and without justification. If reference was not made to it, then Counsel whose duty is always to assist the court should have pointed the omission out to the court instead of allowing the court to arrive at a conclusion unsupported by the facts. Ground 3 is therefore upheld.

Conclusion

30. Having upheld the appeal, the judgment of the Court of Appeal dated 9th February 2016 is set aside. The Judgment of the 23rd June 2011 of the Court of Appeal and the report of the Appellant 27th July 2015, stands and must be acted upon accordingly.

31. I thank both Counsel who appeared for the authorities submitted. I must say none was particularly necessary given that this matter turns simply on statutory powers and limitations to the jurisdiction of the Court of Appeal and Tribal Heads. The law is quite clearly set out on these issues and needs no further interpretation.


32. Costs to the Appellant to be taxed if not agreed and should be borne out of the Estate.



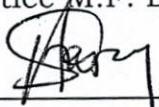
Hon. Justice G. Thompson JSC



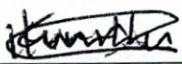
Hon. Justice A. B. Hallway JSC



Hon. Justice M.F. Deen - Tarawally JSC



Hon. Justice A.I. Sesay JA



Hon. Justice K. Kamanda JA