



IN THE COURT OF APPEAL OF SIERRA LEONE
CIVIL DIVISION

CIV.APP.11/14

51/215

MARY HARDING - APPLICANT

AND

MRS. NABA OSAIO KHANU & ORS - RESPONDENT

REPRESENTATION:

VANDIE S. BNABIE ESQ., COUNSEL FOR THE APPLICANT

M.P. FOFANAH ESQ., COUNSEL FOR THE
RESPONDENTS

HON. MR. JUSTICE M.F. DEEN TARAWALLY - JA

HON. MR. JUSTICE R.S. FYNN - JA

HON. MR. JUSTICE A.B.T. HALLOWAY - JA

JUDGMENT DELIVERED ON THE _____ OCTOBER, 2017
M.F. DEEN-TARAWALLY - JA.

The matter before this Honourable Court is an appeal by the Appellant Mary Harding. The appeal was filed by the Appellant against the Judgment/Orders of the High Court delivered by Hon. Justice M.D. Kamara dated the 15th day of July, 2015.

According to the said Judgment the following Orders were made:

1. That the 1st defendant be relocated by Mr. Daniel s. Khanu's Attorney until the return of Mr. Khanu
2. That the 1st Defendant should vacate No.39 Edmas Drive on or before the 10th day of August, 2015
3. That the Plaintiff hereby return to her matrimonial home on or before the 10th day of August, 2015.
4. That the Plaintiff shall occupy the ground floor with her infant daughter and other persons she may wish to accommodate therein until the return of her husband
5. All other dependants who were dependants of Mr. & Mrs. Khanu who are presently occupying the said apartment may stay until the return of Mr. Khanu provided they are of good behavior
6. That the Plaintiff shall treat all members of her husband family with respect provided they communicate with her with candor
7. Disobedience of the order shall attract the alleged contemnor to be proceeded against under Order 51 of the High Court Rules captured contempt of Court
8. That the contents of the Order shall be communicated to all occupants and visiting family members on both sides.

The Plaintiff shall be held vicariously liable for the exercise of all relatives and or friends on the premises similarly, the Attorney of Mr. Khanu shall be held vicariously liable for the excesses of all occupants who are family

member of Mr. Khanu and /or friends on the premises. There should be mutual respect and corporation between and amongst them the premises. The said orders can be found at pages 56-57 of the Book of record.

The 1st Defendant now appellant became dissatisfied with the said Judgment/Order supra and decided to appeal to this Honourable Court by Counsel V.S. Nabieu.

The grounds of appeal are:-

1. That the learned trial Judge erred in law in granting the Plaintiff's application in that:-
 - a. The Plaintiff is not competent to seek the eviction of the 1st defendant as she does not sue as owner of the property or agent thereof.
 - b. No formal notice was given to the 1st defendant to quit and vacate the said premises and/or the same copied the Mr. Daniel Khanu.

The said grounds of appeal are contained at page 59 of the book of records. The Appellant sought as a relief that this court set aside the judgment of Hon. Justice M.D. Kamara, JA, delivered on the 15th day of July, 2015. For the said reliefs see page 60 of the book of records. Now at this junction, it is important to state certain facts about this matter according to the compiled record book of Appeal.

Firstly, it is crystal clear that the Plaintiff Mrs. Naba Osio Khanu is lawfully wedded to Mr. Danie Santos Khanu. The said marriage took place on the 16th day of December, 1995 at Makeni at the Wesleyan Church of Sierra Leone. The said marriage certificate is exhibited and marked exhibit 'A' attached to her affidavit in support of originating summons the vehicle of the action. See page 3 of the book of record of the appeal.

Secondly, that the plaintiff/Respondent and her husband aforementioned had lived at a property known as No.39 Edmas Drive, Malama Lumley, Freetown.

Thirdly, that the 1st defendant now the Appellant like all the other Defendants had been living together with Mr. and Mrs. Khanu as occupants/defendants at the same address at No.39 Edmas Drive, Malama, Lumley on to the date of the delivery of the said Judgment/Order appealed by the Appellant.

Fourthly, the Plaintiff/Respondent according to her address for service was residing at No.7 Smart Farm, Off Wilkinson Road, Freetown which clearly indicates that she was not residing at their usual residence at 3 Edmas Drive, Malama Lumley, Freetown up to the date of the institution of the action. Also according to the records the husband was reported ill seriously and was undergoing medical treatment in the United States of America.

Fifthly, the said property at 3 Edmas Drive, Malama is registered on the single name of the husband Mr. Khanu. Mr. Khanu owing to his absence from the jurisdiction of Sierra Leone granted a power of Attorney to one Martha Davies of No.12 Hill Top, Hill station, Freetown. Also supporting the Power of Attorney is an attestation ownership of the property at 39 Edmas Drive, Malama Lumley Freetown. A copy of the said Power of Attorney and attestation can be found at pages 12-16 of the Book of record.

Finally, according to Plaintiff/Respondent the marriage with Mr. Khanu had three issues (children). Copies of their birth certificates were exhibited by her affidavit in support of the originating summons marked exhibit B1-B3 as contained at page 4 in the book of records. It is important to state at this stage that the marriage relationship between the Plaintiff/Respondent Naba Osio Khanu and husband. Mr. Daniel Santos Khanu was in crisis, as evident in paragraphs 7-12 of the affidavit in support of the originating summons before the High Court. The said affidavit is contained at pages 3-5 of the book of record.

It is more important to note that the action instituted by the Plaintiff/Respondent was against a third party (relatives) AKA dependants and not her husband Mr. Khanu. It is clear that she instituted the action without the support of her estranged husband. All of them were residing at

No. 39 Edmas Drive, Malama Lumley, Freetown. She and her husband and three children lived on the top floor whilst the Dependents lived on the ground floor.

The said action was brought by originating summons in which the Plaintiff as wife of Mr. Daniel Khanu sought to recover immediate possession of property situate and known as No.39 Edmas Drive, Malama Lumley Freetown which according to her is the matrimonial property of herself and husband. The said action was instituted pursuant to Order 7 Rule 3 of the High Court Rules 2007. It states as follows:-

“Every originating summons shall include a statement of the question on which the Plaintiff seeks the determination or direction of the courts, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or cause of action in respect of which the Plaintiff claims the relief or remedy”.

There are two outstanding features of the said action brought by the Plaintiff/Respondent which are:-

- a. Recovery of possession
- b. Eviction of Defendants.

This Court is under a duty to determine the legal status of the defendants (Dependents) as to ascertain whether the orders of the High Court viz a viz Order 7 Rule 3 were legitimate in the circumstances.

Now according to the affidavit in support of the Plaintiff/Respondent. These were Dependants (relatives) who were permitted to reside on the ground floor of No. 39 Edmas Drive, Malama Lumley Freetown. They were put

inoccupation by herself and her husband willingly rent free. No terms or conditions express or implied were given to them for staying on the said ground floor. Impliedly, it was left with them to determine the tenancy at any give time. So automatically herself and her husband at law became landlords. See "**The Law of real property**" by "**Megary and Wade**" Third edition under the rubric "Tenancies at Will". "A Tenancy at will arises whenever a tenant with the consent of the owner, occupy land as tenant (and not merely as a servant or agent on the terms that either party may determine the tenancy at any time". See the old English case of MAYHER V. SUTTLE (1854) 4 and B at page 347.

Now according to their affidavits before the Court all of them went into occupation of the said property simultaneously. The Defendant/Appellant occupied a whole floor (flat) to the exclusion of the Respondent and lhusband who occupied the top floor.

How is a Tenancy at will determined. Could it be determined by an application pursuant to Order 7 R3 or by a notice to quit.

Clearly by the supporting affidavit of the Plaintiff/Respondent, she instituted the action in her capacity as wife of the husband in whose name the said property was registered as contained at pages 62-68 of the record book. Now M.P. Fofanah Counsel for the Plaintiff/Respondent in the Synopsis filed before this Court. He submitted that his client the Respondent in the Synopsis filed before this Court. He submitted that his client the Respondent as wife has an equitable interest (estate) in the said property as her matrimonial home and the husband with the legal interest (estate). In any case that seems to be the position of the law as exemplified by decided case both English and local case law. English case such **A GISSING VS. GISSING IAER 10431, McFarlane VS. McFarlane 2006, JONES VS. MAYNARD (1951) IAER 802** also the local case of **NATHANIEL ELEADY COLE & ANOR. VS. JOANNE PIERRE ELEADY COLE (CIV.APP.6/73)** unreported. All of which supports a wives equitable interest in a property which had been with a common intention to be held jointly with the husband. The property is to be

held in trust by the husband on behalf of the wife. These authorities go to support the right of a wife over a matrimonial property with the husband.

It is however important to state categorically that all the authorities mentioned superintends to support the rights of wives and husbands to a property which has been viewed as a matrimonial home for them. However, the said plethora of cases must be distinguished from the instant case, which is about recovery of possession and eviction of a third party, which also have their own rights when it comes to possession and eviction.

The positions of the law about the 1st Defendant/Appellant Mary Harding have been stated supra. These are no evidence to show or to the contrary that they were not tenants at will. So in so far as they can be viewed by the law as tenant at will. The determination of their tenancy, which was indefinite, should have been effected by a notice to quit albeit 7 days notice in our jurisdiction. The argument of Counsel for the Plaintiff/Respondent that the Defendant/Appellant was under the control of the Plaintiff/Respondent is unsubstantiated by evidence. It sounds ridiculous to say that the Appellant a sister-in-law can be under the control of the Plaintiff/Respondent. The position would have been viewed differently had they shared the same top floor where she had resided with her husband. In the Sierra Leone case of **METZGER VS. METZGER 1964-1966 ALR SL556** it was held by Cole J. that since there was no clear proof of service of a written notice on the Defendant, the son of Mr. Metzger, a tenant at wills the relief for possession be refused. This was the submission made by V.S. Nabieu Esq., counsel for the 1st Defendant/Appellant.

In my opinion proof of ownership to property is only a step to evict an occupant of a property. What the Plaintiff needs to prove is a landlord and tenant relationship between the parties. There has to be acknowledgement of the tenancy by both parties, apparently to re-enter or re-gain possession of a property from an occupant. The prerequisites must be complied must complied with, which is the service of a notice to quit contingent the category of tenancy. Such actions can take the form of Recovery of

possession, eviction pursuant to the summary ejectment Act Cap.49 of the Laws of Sierra Leone 1960 (which is only applicable in the colony (Freetown)). There is no evidence before the Court by affidavit exhibit that a notice to quit were served on the 1st Defendant/Appellant in this matter. Now by reason of the foregoing supra this appeal is hereby upheld and the Judgment of the Hon. Justice M.D. Kamara - JA delivered on the 15th day of July, 2015 and all subsequent Orders of the said Judgment are hereby quashed or set aside.

The Court shall now make the following Orders pursuant to Rules 31 and 32 of the Court of Appeal Rules of 1985 as amended.

1. That the Defendant/Appellant Mary Harding to re-enter possession of the premises she uses to occupy at No.39 Edmas Drive, Malama Lumley Freetown.
2. That the Plaintiff/Respondent remains on the floor of their matrimonial home at 39 Edmas Drive, Malama Lumley, Freetown.
3. That all the other Defendants remain in occupation as before the delivery of the Judgment of Hon. Justice M.D. Kamara - JA on the 15th of July, 2015.
4. That the Plaintiff/Respondent pays cost of Le 2,000,000/00 to the 1st Defendant/Appellant as cost of the proceedings.

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HON. JUSTICE M.F. DEEN-TARAWALLY, JA

HON. MR. JUSTICE R.S. FYNN - JA

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HON. MR. JUSTICE A.B.T. HALLOWAY - JA

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