

IN THE HIGH COURT OF SIERRA LEONE

PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF JONATHAN BUXTON JOHNSON
(DECEASED INTESTATE

AND

IN THE MATTER OF THE DEVOLUTION OF ESTATES ACT, 2007

AND

IN THE MATTER OF AN APPLICATION FOR SALE OF LAND AND PREMISES
AT 12 LAWSON LANE, FREETOWN

BETWEEN:

AYO JOHNSON - PLAINTIFF

AND

JOKO JOHNSON - DEFENDANTS

ABIOSEH JOHNSON

COUNSEL:

ALHAJI KAMARA for the Plaintiff

ELVIS KARGBO ESQ for the Defendant

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF APPEAL

RULING DELIVERED THE 5 DAY OF JUNE, 2015

1. On 19th August, 2014 I noted in paragraph 16 of my Judgment, as follows:
"As the Defendants have through their Solicitor and Counsel, Mr Kargbo, withdrawn their opposition to the sale, the Court has no alternative but to give Judgment in terms of the Orders prayed for in the Originating Summons herein dated 27 May, 2014."
2. I also made the following Orders:
 - i. That all that piece or parcel of land and the buildings and structures thereon, situate, lying and being at 12 Lawson Lane be sold at a reserve price of Le375million by private treaty.

- ii. The Plaintiff, as well as each of the Defendants is entitled to buy the property at the said reserve price unless a higher price can be obtained from either of them or, from a third party, or, third parties. Unless otherwise Ordered, the said option to purchase given to each of the parties, shall be exercised within one month of the date of this Order. On its expiration, or sooner determination, the property shall be sold to the person offering the highest price over and above the reserve price.
 - iii. The said sum of Le375million or any higher amount of money the property may be sold at, shall be paid into Court by the purchaser after obtaining a paying-in slip from the Registrar of this Court. The Master and Registrar shall execute a deed of conveyance in favour of the successful purchaser on proof of payment of the said purchase price.
 - iv. As soon as the said sum of money has been paid into Court, a date shall be fixed for a further hearing to be held in Chambers to determine the manner of sharing the proceeds of sale, determining Solicitors' respective Costs, Valuer's fees, all of which shall be paid out of the proceeds of sale, and any other matter requiring the Court's attention.
 - v. After all of these issues have been determined by the Court, a further hearing shall be held to determine when vacant possession of the property shall be given to the successful purchaser.
 - vi. Liberty to Apply.
3. That was about 10 months ago. By Notice of Motion dated 29th May, 2015, the Plaintiff applied for an Order to be made that the reserve price be reduced to Le200million as none of the parties had exercised the option to purchase, and none of them had been able to get anybody to buy the property at the reserve price of Le375m.
 4. The Application is supported by the affidavit of Mr Kamara, deposed and sworn to on 29th May, 2015. A copy of the Order of Court of 19th August, 2014 is exhibited to it as "A". He deposes that despite strenuous efforts made to secure a buyer of the property, none could be found. Further, that he has been informed that a potential buyer is prepared to buy the property at Le200m. He therefore asks that the Orders prayed for in the Motion be granted.
 5. At the first hearing of the Motion on 1st June, 2015 the parties were absent and the Defendants were unrepresented though Mr Kamara was

present as Counsel for the Plaintiff. I told him, and recorded in my minutes at page 9, that I would have to hear from Counsel for the Defendants before proceeding. I also informed him that he would have to furnish the Court with the name of the prospective buyer by affidavit evidence. I adjourned the hearing to the 2nd instant.

6. On the 2nd instant, I had cause to adjourn the hearing again because of the absence of Counsel for the Defendants. After the adjournment, my Registrar brought to my attention, a further affidavit deposed and sworn to by Mr Kamara earlier that morning. In that affidavit, Mr Kamara deposed that he had been informed, and verily believed, that the name of the prospective purchaser was Adama Sento Kamara. Later still, that same day, the 2nd instant, Mr Elvis Kargbo came to chambers. He apologised for his absence at the hearing. He was told of the reduced offer made for the purchase of the property. He was also told that the hearing had been adjourned to Thursday, 4th instant. He said he would have to consult with his clients and left my chambers.
7. At yesterday's hearing, Mr Kargbo was absent. Mr Kamara was present. No indication was given as to the Defendants' position. I therefore adjourned the hearing to today.
8. At today's hearing, Mr Kargbo was again absent. His clients had been in Court before my arrival, but when the case was called up, they were not present. Mr Kargbo did not send word to the Court as to his intentions. Mr Kamara was present. He had with him a Mr Gassama whom he said was a relative of the purchaser and was representing her in the transaction, and who had in his possession the sum of Le200m and was prepared to pay the same now.
9. An application for a sale below the reserve price is not unusual. And bearing in mind the economic dislocation cause by the ebola outbreak, it is not surprising that the asking price has not been met by potential buyers. I have had cause to Order sales at prices below the reserve price when good and cogent reasons have been proffered for doing so. For instance, in Misc App 322/09 - SALLY TRINITY & ORS v ISHA THOMAS, Ruling delivered 4th March, 2014, the Court was faced with a similar situation. The reserve price of Le1b had not been met over a 4 year period. The Plaintiffs applied for it to be reduced to Le900m as they had found a willing buyer at the lower price. I acceded to their request in the interests of justice to all concerned. On 30th July, 2012 in Misc App 3/12 - HARDING & ORS v HARDING, I had likewise done the same, ordering a

sale at a reduced price of Le500m, the original reserve price having been Le700m, at the request of the Plaintiffs, notwithstanding the Defendant's objections, as no higher offers had been made within a six week period allowed by the Court. In both cases, the opposing parties accepted their share of the proceeds of sale.

10. In the premises, I am of the view that the Defendants having failed to exercise the option to buy which option expired actually in July, 2014, and having failed to find a buyer or buyers to purchase the property at the reserve price of Le375m, it is clear, 10 months after that price was fixed, that they are unlikely to find such a person or persons. Further, no affidavit in opposition has been filed on their behalf. I have given sufficient time to Counsel on their behalf to present their views if any. It is my view that it would be in the interests of justice to all concerned that the property be sold at the price now offered. I will of course grant Liberty to apply to the Defendants.

11. In the premises, I make the following Orders:

- i. The property numbered 12 Lawson Lane, Freetown shall be sold to ADAMA, SENTO KAMARA, as soon as she pays into Court the sum of Le200,000,000 (less respective Solicitors' Costs and Valuer's fees authorised below), the highest price offered for the property after a 10 month waiting period.
- ii. The Master and Registrar is hereby authorised to execute a Deed of Conveyance conveying the property to her, upon submission to him of such a Deed.
- iii. The Solicitor for the Plaintiff and the Solicitors for the Defendants are respectively entitled to be paid out of the said proceeds of sale, 10% thereof: i.e. 10 per centum to each set of Solicitors.
- iv. The Valuer shall be entitled to be paid Le2million as professional fees which shall be deducted from the Plaintiffs' entitlement.
- v. The balance remaining shall be distributed as follows: 1/3 thereof shall be paid to the Plaintiff; 2/3 thereof shall be paid to the 2 Defendants in equal proportions.
- vi. All tenants and occupants shall give vacant possession of the said property to the purchaser ADAMA SENTO KAMARA, four weeks after the date of this Order. In the case of the Plaintiff and the Defendants, they shall do so four weeks after receipt of their respective portions of the proceeds of sale.

vii. Liberty to Apply.

A handwritten signature in black ink, appearing to read 'N C Browne-Marke', written in a cursive style.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT
