

IN THE HIGH COURT OF SIERRA LEONE
LAND AND PROPERTY DIVISION
IN THE MATTER OF THE CONVEYANCING AND LAW OF PROPERTY ACT
1881

IN THE MATTER OF THE ESTATE OF GLADYS OKORO- COLE (DECEASED TESTATE)
IN THE MATTER OF THE ENFORCEMENT OF A CONTRACT FOR THE SALE OF A
PIECE OF LAND PROVIDED FOR IN CLAUSE 12 OF THE LAST WILL AND
TESTAMENT OF GLADYS OKORO- COLE

BETWEEN:

HASSAN AROUNI
NO. 30 WALLACE JOHNSON STREET
FREETOWN

- PLAINTIFF/APPLICANT

AND

OLUTUNGIE OKORO – COLE
HAROLDA OKORO – COLE
OLATUNGIE OKORO – COLE
CHRISTOPHER OKORO – COLE
ALL OF 58 ENNISMORE AVENUE
GREENFORD
MIDDLESEX UB6 0JY
UNITED KINGDOM

- DEFENDANTS/ RESPONDENTS


BEFORE HONOURABLE MR. JUSTICE A.K. MUSA (J)
DATED THE DAY OF JANUARY, 2020
COUNSEL: I.S. MANSARAY ESQ for the Plaintiff/Applicant

RULING

BACKGROUND

- by
1. The Plaintiff/Applicant, Notice of Motion dated 18th day of November, 2019 sought before this Honourable court the following reliefs:

- a. That personal service of the originating summons in the action herein be dispensed with and that service of the summons on the Defendants be effected by sending the same as an attachment to the Defendants via email to the email address of the 1st Defendant email address: olutungie230c@gmail.com.
- b. That the time limit within which the Defendants are to enter an Appearance to be fixed by the court.

- c. Any further order (s) that this Honourable court may deem fit and just
 - d. That the costs of this application be costs in the cause.
2. In support of the application is the affidavit of HASSAN AROUNI sworn to on the 18th day of November, ^{sold} to which is attached 12 exhibits and which counsel relied on the entirety of the content of the said affidavit. 
3. However, I will not set out all the exhibits attached to this application but will allude to some when necessary taking into consideration the nature of the application before the court.

THE ARGUMENT OF COUNSEL FOR THE PLAINTIFF/APPLICANT

4. Counsel by paragraph 8 to 19 of the affidavit in support submitted inter alia that by virtue of exhibit "D" which is an agreement in writing the 2nd to 4th Defendants represented by the 1st Defendant agreed to sell to the plaintiff/Applicant the subject matter of this action which is three town lots of land at old York Road Sussex Village.
5. That as a result of the said agreement the plaintiff/Applicant paid off the sum due and owing to the Defendants which receipt of payment is exhibited marked as exhibit "E".
6. He submitted that by paragraph 13 of the affidavit in support the Defendants have continuously prevaricated to put the plaintiff/Applicant in a position wherein his Deed of Conveyance could be signed and notwithstanding efforts by the latter and his Solicitors same who wrote a letter exhibited as exhibit "G" same remains unsigned .
7. Counsel further, submitted that by paragraphs 14, 16 and 17 of the affidavit in support they as solicitors on two occasions requested documents from the 1st Defendant via email in order to enable them complete the conveyance for and in behalf of the plaintiff/Applicant and copies of the said email were exhibited and marked as exhibit "J&K".
8. That the Defendants replied to exhibit "K" the said reply is exhibited and marked as exhibit "L"
9. Counsel finally submitted that personal service be dispensed with and that service of the said summons on the Defendants be effected by sending

the same as an attachment to the Defendants by sending same as an attachment to the Defendants via email to the email address of the 1st Defendant email address: olutungie230c@gmail.com.

10. He made his application pursuant to order 10 rule 5(1) (b) of the High court Rules 2007. Counsel further relied on article to wit: **"Can Facebook ever be substitute for the Real thing? A Review of CMC Woodworking Machinery (PTY) LTD v. Pieter Odendaal Kitchens 2012 5 SA 604 (KZD) and the case of In re CONAN DOYLE'S WILL TRUSTS HARWOOD v. FIDES UNION FIDUCIAIRE 1971 D. NO 359**

THE LAW

11. It must be noted that the law in our jurisdiction has not developed in such a way to cover the social media but rather limited to the circumstances stated under order 10 rule 5(1) (a) & (b). However, for the purposes of this application counsel for the plaintiff/Applicant relied on order 10 rule 5(1)(b) which reads for ease of reference to wit: **" If a document is required to be served on any person and it appears to the court (b) that it is otherwise impracticable for any reason to serve the document personally, the court may make an order for substituted service of that document"**

ISSUS AND FACTS

12. It must be noted that the gravamen of this application is for service of originating process herein be effected on the Defendants by way of same been sent to the same by attachment to the email of the 1st Defendant.
13. It has been established in exhibit "A" which is the originating summons that the Defendants are ordinarily resident in the United Kingdom and the property which is the subject matter of the action is one in Sierra Leone.
14. It has been established that the 1st Defendant after having been sent an email on two occasions to the 1st Defendant demanding for document in aid to complete conveyance of the Plaintiff/Applicant replied to the latter email. See exhibit "JKL" supra.
15. However, I must hasten to state that notwithstanding reply by the 1st Defendant the Plaintiff/Applicant has not being able to establish that service of the originating process herein in this manner will be able to reach the other Defendants herein although the 1st Defendant being the Representative of the others.

16. Hence, in the absence of such and couple up with the fact that our law has not been amended to cover social media as a substituted means of service it will be unsafe for the court to grant the orders in that nature as prayed as in the instant case the court will not be able to track down whether in fact the person to whom the email was sent read the content although the court may be able to ascertain to a particular email had been sent.
17. I note the argument of counsel that we are living a world of technology and the authorities presented. In regard the case of **re CONAN DOYLE'S WILL TRUSTS HARWOOD v. FIDES UNION FIDUCIAIRE 1971 D. NO 359** an order was made by the court for service of a copy of writ on the Defendants by substituted means to wit by posting. In the article "Can Facebook ever be substitute for the Real thing? A Review of CMC Woodworking Machinery (PTY) LTD v. Pieter Odendaal Kitchens 2012 5 SA 604 (KZD)" it was concluded to wit **"personal service of legal process is at the cornerstone of due process and the fundamental of audi alterem partem. In these circumstances, it is hard to envisage a situation where legislators would dispense with this tried and tested methodology. However in the realms of substituted service, the development of communication technologies has yet to be fully harnessed in the legal environment. Granted the speed of development and change makes it difficult for legislators to keep abreast of current happenings, but it has now become hard to ignore the gravitational pull of social media. It is submitted that South Africa will do well to incorporate similar legislation to that in the State of Texas with its draft bill regarding social media substituted service. Moreover, recently promulgated Superior courts Act dictate that urgent changes are required in our uniform rules of court. The foregoing, notwithstanding, service of process via Facebook and other social media network is possible in certain circumstances, provided that best practice outlined above is followed"**.
18. I must state that the authorities relied on cannot realistically help the case of the plaintiff/Applicant as an order was not giving for substituted service via the means counsel is seeking before this court.
19. I note the argument of counsel that it is impracticable to effect personal service on all the Defendants but rather by substituted means as their addresses are out of the jurisdiction.
20. I further note that the application herein is a notice of motion rather than ex parte notice of motion. However, I will discountenance same and treat same as an irregularity and admonish counsel to pay rapt attention to his papers before filing.

CONCLUSION

21. In conclusion in view of the submissions, canvassed by counsel the law and the authorities cited it is my considered view that the application for substituted service should be granted and I hereby grant same and make the following orders:

- a. That service of the originating summons herein issued on the 14th day of November, 2019 be served on all the defendants herein by registered post at their address at No.58 Ennismore Avenue, Green ford, Middlesex UB6 0JY, United Kingdom.
- b. That the Defendants/Respondents shall enter an appearance within 21 days from the date post was delivered.
- c. That the plaintiff/Applicant shall duly file an affidavit of service of the originating summons stating by whom it was posted, the registered number of the letter in which were the originating summons, the address where they were posted and the certificate of posting issued by the post office shall be exhibited with the affidavit.
- d. That costs of this application be in the cause.