

CC 310/08      2008      S.      NO.38

*Ruling*

In the High Court of Sierra Leone  
(Land and Property Division)

Between:-

Santigie Mohamed Ulaba Samura      -      Plaintiff/Applicant  
(Suing by His Attorney Aminata Samura)

8 Main Motor Road

Kossoh Town

Freetown

And

Brima Kamara and Others      -      Defendants/Respondents

Mrs. Emma Edwards      -      Interested Party

Executor of the Estate of Crispin

Fio Edwards (Deceased Intestate)

IMATT Drive

Counsels:

A. R. Kamara Esq. and M.P.H Sesay Esq. for the Plaintiff/Applicant.

**Ruling on a Preliminary Objection to an Application for the Determination of Specific Questions of Law, Pursuant to a Notice of Motion, dated 2<sup>nd</sup> September, 2020, delivered by The Hon. Dr. Justice A. Binneh-Kamara, on Tuesday, 16<sup>th</sup> December, 2020.**

**1.0 The Background and Context of the Preliminary Objection.**

It is befitting that a background to the circumstances that culminated in the preliminary objection, on which this ruling is premised, be given. The Plaintiff of this action is Santigie Ulaba Samura, who resides in the United States of America. Since he is not domiciled in Sierra Leone; and could not have originated this action in person, he instituted it via a writ of summons, dated 16<sup>th</sup> October 2008 (see Exhibit AS2), through her Attorney (see Exhibit AS1) Aminata Samura, who happens to be his biological sister. Meanwhile, on the 25<sup>th</sup> October, 2013, the High Court of Justice, presided over by The Honourable Justice Vivian M. Solomon, JA (as she then was) made a number of specific orders on behalf of the Plaintiff, represented by Crispin Fio Edwards Esq. (deceased).

Of the orders granted, the most salient were, a declaration of title of the very realty, that constituted the crux of this action, recovery of possession, perpetual injunction against the Defendants, their agents and/ or privies, and cancellation of the Defendants' purported statutory declaration, dated 12<sup>th</sup> June, 2006 and registered as NO. 47/2006 at page 24 in Volume 50 of the Record Books of Statutory Declaration kept at the Office of the Administrator and Registrar General (see Exhibit AS3). Moreover, on the 3<sup>rd</sup> April, 2014, The Honourable Justice Solomon, granted an application for a writ of assistance and possession combined, pursuant to the orders of 25<sup>th</sup> October, 2013. Furthermore, on the 7<sup>th</sup> November, 2019, M.P.H Sesay Esq., filed in notices of appointment of solicitor and change of the Plaintiff's solicitor, pursuant to Order 59 Rules



1 and 2 of Constitutional Instrument N0.25 of 2007, the High Court Rules, 2007 (hereinafter referred to as The HCR, 2007). And on the 14<sup>th</sup> November, 2019, the said Counsel, filed in a notice of intention to proceed; apparently in compliance of Oder 41 Rule 9 of The HCR, 2007. However, the said notice of intention to proceed (as filed), conspicuously contravene the provision of the rule, pursuant to which it was filed. The rule thus states:

When twelve months have elapsed since the last steep taken in any cause or matter, the party who wishes to proceed shall give to every other party not less than 28 days' notice of the intention to proceed.

It cannot be disputed that the foregoing provision is mandatory (not directory) by virtue of the operative linking verb 'shall' that is embedded in it. And in constructing the notice of intention to proceed, I reckoned, that it is dated 14<sup>th</sup> November, 2019, a week after the notices of the change of solicitor and the appointment of the Plaintiff's solicitor, had been filed. Thus, it cannot be denied that the aforesaid provision in The HCR, 2007, was undeniably flouted. However, since the other side, did not raise any objection, it was presumed that the said irregularity had been accordingly waved {see Order 2 Rule 2 of The HCR, 2007}. Meanwhile, pursuant to a notice of motion, dated 15<sup>th</sup> December, 2019, this Honourable Court, made an order for the renewal of the writ of assistance and writ of possession combined, dated 17<sup>th</sup> December, 2019, against the Defendants and all other occupants of Main Motor Road, Kondoloh, Rokel Village, in the Western Area of the Republic of Sierra Leone; by virtue of a conveyance, dated the 5<sup>th</sup> May, 1979, and registered as N0. 453 of 1979, at page 13 in Volume 309, delineated in Survey Plan LS 637 of 1979, dated 12<sup>th</sup> April, 1979.



Furthermore, A.R. Kamara, Esq. of Bangura, Kamara and Co. (Yoni Chambers), on 14<sup>th</sup> August, 2020, pursuant to the same Order 59 Rules 1 and 2 of The HCR, 2007, filed in another set of notices of change of solicitor and appointment of the Plaintiff's solicitor. This in effect means that, both M.P.H Sesay, Esq. and A. R. Kamara, Esq. by virtue of the papers filed on the 7<sup>th</sup> November, 2019 and 14<sup>th</sup> August, 2020, respectively, are now representing the Plaintiff, who is out of the jurisdiction, but there is a contention, regarding the actual solicitor who should do the representation. This contention is rooted in the glaring discrepancy in the papers filed, as to who is the actual representative; replacing Crispin Fio Edwards Esq. whose representation came to an end by death. Nevertheless, it cannot be denied that the Plaintiff is indeed the owner of the fee simple absolute in possession, in respect of the realty, for which the High Court of Justice, has made a clear declaration. However, on 2<sup>nd</sup> September, 2020, M.P.H Sesay Esq., filed in a seriously loaded notice of motion, praying for a plethora of substantive and subservient orders, which determination are very central and crucial to the completion of this matter. Thus, it was when this motion, was being moved, that A.R. kamara, Esq. raised a number of jurisdictional objections.

### **1.1 The Objection and its Purports.**

Counsel said the application for the numerous orders, which M.P.H Sesay, Esq., filed is unfounded and preposterous for the following reasons:

1. That M.P.H Sesay Esq., who filed the application does not represent the Plaintiff in this matter. Therefore, he has no business filing the very motion, which this court should discountenance. That he (A. R. Kamara, Esq.) represents the Plaintiff (see notices of change of

solicitor and appointment of the Plaintiff's solicitor, dated 14<sup>th</sup> August, 2020).

2. The Attorney, has not appointed M.P.H Sesay, Esq. as a solicitor representing her. The Attorney, has not signed and filed any notice of a change of solicitor, indicating that M.P.H Sesay, Esq., should represent the Plaintiff.
3. That he was not served with any notice of a change of solicitor, filed by the Applicant.
4. That M.P.H Sesay Esq., has not produced any authority, establishing that he was appointed as a lawyer, by the Principal Santigie Ulaba Samura, who is the Attorney's biological brother.
5. The argument that the Power of Attorney, of the Attorney, had been revoked is neither here, nor there. Counsel invites the Court to patiently and technically scrutinize the document for the following reasons:
  - i. The power of Attorney dated 1<sup>st</sup> July, 2019, registered as NO.505/2019 in Volume 139 at page 133 in the Record Books of Power of Attorney, kept at the Office of the Administrator and Registrar General, is expired.
  - ii. The notarizing is faulty.
  - iii. The document has no legal effect in Sierra Leone, because there is nowhere in it, in which Sierra Leone as a state is mentioned.
  - iv. Compare the signature in that Attorney, with the one that is revoked.
  - v. The Commissioning on the revocation is hand-written.



## **1.2 The Oppositions to the Objection.**

Contrary to the aforementioned submissions, M.P.H. Sesay Esq., canvassed the following arguments, in justification of why he thinks, this Honourable Court, should discountenance the objections raised to the motion of 2<sup>nd</sup> September, 2020:

1. Aminata Samura does not have the capacity to litigate or give instructions as an agent of the Principal Santigie Samura, who is factually the Principal and Plaintiff in this matter. The reason being that her power of Attorney, has been revoked.
2. The revocation is notarized and this is consistent with a precedent before this court, which states that powers of attorney made out of the jurisdiction, must be notarized by notary publics in the jurisdictions, where they are made, prior to their registration, pursuant to Cap. 225 and 256 of the Laws of Sierra Leone, 1960. The Principal communicated the revocation personally to the Agent, informing her she no longer has any powers to represent the Principal, on issues touching three sets of properties: 2 off Wilkinson Road, Cockrill, Freetown, 6 Lumley Street, Freetown, and the subject matter of this litigation. The first two properties as identified above, are in the custody of Renner-Thomas and Co.
3. Counsel now represents the Principal in respect of the property, which is the subject matter of this litigation, by virtue of a registered power of attorney granted to Abubakarr Samura and Mohamed Ulaba Samura, who is the sub-agent.
4. Finally, the purported preliminary objection has no merit; as it has been over taken by an order dated 2<sup>nd</sup> April, 2020, in which the objection, ought to have been raised by the Firm of Solicitors, representing the interested party.

### **1.3 The Analysis**

The issue which appears quite intriguing and simultaneously contentious, to this Honourable Court, is why should there be two distinctively different law firms, representing the Plaintiff, when either has failed to acknowledge either's representation on behalf of the very Plaintiff, no whose behalf this action was originated. It is clear from the papers filed that the signatures in the documents, authorizing M.P.H Sesay, Esq. and A.R. Kamara, Esq., to represent the Plaintiff in this matter, are quite clearly different. So they could not have been signed by the same person, authorizing both solicitors, to replace the Late Crispin Fio Edwards, Esq., who originated the action and eventually got all the orders, as prayed for in the writ of summons, dated 25<sup>th</sup> October, 2013. Thus, because the signatures are conspicuously different, it logically follows that either one of them is authentic; or both are inauthentic.

However, this preliminary objection cannot be ruled on, pursuant to the authenticity of the signatures in the notices authorizing the change of solicitors and appointments of the Plaintiff's solicitors alone. There are a number of other issues raised and argued that must be put into context as this analysis unfolds. The first is the submission that the Attorney neither appointed M.P.H Sesay, Esq. as her solicitor; nor has she appointed him as the solicitor, representing the Plaintiff. There are a number of legal issues, germane to this submission, that worth very clear clarifications. The first, revolves around the current capacity of Aminata Samura, whose capacity to still litigate on behalf of the Plaintiff, is being challenged on the basis of the revocation (5<sup>th</sup> December, 2014) of her Power of Attorney, dated 27<sup>th</sup> August, 2004.

Thus, it cannot be denied that this action was initiated in the Plaintiff's name, with Aminata Samura as his Attorney, pursuant to the Power of



Attorney, which the Plaintiff, executed out of the jurisdiction and registered, in accordance with the provisions of Cap.255 and 256 of the Law of Sierra Leone, 1960, at the Office of the Administrator and Registrar General, at Walpole Street, Freetown {see **Exhibit AS1 and Santigie Kamara v Millicent Mansaray (Nee Kamara-Taylor, Lyndon Kamara-Taylor and Raymond Kamara-Taylor (Civ. Appeal 48/2010), Edmund Asante v Madam Kate Amponsah Suit NO. CA J4/34/2007, 20<sup>th</sup> NOV. 2008, Prosper Tawanda v Tholakele Ndebele Judgment NO. HB 27/06 and Zainab Vandy v Mohammed Bangura and Others, CC 225/19 2019 V. NO.3).**

Furthermore, she remained the Attorney, throughout the period, for which the trial subsisted; and continued in that capacity, up to when The Honourable Justice Vivian Solomon, made the orders, referenced above, on the 25<sup>th</sup> October, 2013. Her capacity as Attorney, even went beyond that period; it subsisted until it was revoked on the 5<sup>th</sup> December, 2014 (see Exhibit MPH3). What is the fundamental ramification of the revocation of Aminata Samura's Power of Attorney of 27<sup>th</sup> August, 2004? The answer is simple and straightforward. The revocation (Exhibit MPH3) symbolizes the ultimate end of her authority to serve as the Plaintiff's attorney. This in effect presupposes that she is estopped, henceforth, from doing anything, relating to the authority, which she hitherto exercised on behalf of the Plaintiff.

In this vein, she would not have had any authority to appoint M.P.H. Sesay Esq. as neither her solicitor; nor that of the Plaintiff. Again, she would not have signed and filed any notice of a change of solicitor, indicating that M. P. H Sesay, Esq., should represent the Plaintiff. Also, the said revocation conclusively precludes her from even soliciting the services of A.R. Kamara, Esq. to represent her or the Plaintiff, because she no longer has the legitimate authority to do so. Therefore, A.R kamara's representation, is a nullity; and is even void, since the very day,



he filed his notices of change of solicitor and appointment as the Plaintiff's solicitor. However, I will fully unravel this point as the analysis unfolds. Meanwhile, the other argument canvassed by A. R Kamara, Esq. which should be clarified is whether he ought to have been served with any notice of a change of solicitor, filed by the Applicant.

First, consequent on the reasonable inference that is drawn from the foregoing analysis, Counsel on the other side was not bound to serve A.R. kamara Esq., with the requisite notices of change of solicitor and appointment of the Plaintiff's solicitor. Secondly, the evidence before this Honourable Court, indisputably settles A.R. Kamara's concern. The initial notices of change of solicitor and appointment of the Plaintiff's solicitor, were first filed by M.P.H Sesay Esq., on the 7<sup>th</sup> November, 2019. Those of A. R. kamara Esq., were subsequently filed on the 14<sup>th</sup> August, 2020. It is clear that Emmanuel Teddy Koroma, who represented the Defendants in this action, was served with those initial processes, filed by M.P.H Sesay, Esq. Since, A.R. Kamara, Esq., was not on records at that time, it would have been impossible for him to have been served with the said processes.

The next point that should be addressed is that M.P.H. Sesay Esq., has not produced any authority, establishing that he was appointed as a lawyer, by the Principal. Again, the available evidence, depicts that he filed the requisite processes, alluded to in the preceding paragraph, in accordance with Order 59 Rules 1 and 2 of The HCR, 2007, indicating a change of solicitor and that he is now representing the Plaintiff, who is still living out of the jurisdiction. Further, his representation was not contended, when this Honourable Court handed down its ruling on the 17<sup>th</sup> December, 2019, on another application, which it was bound to determine.

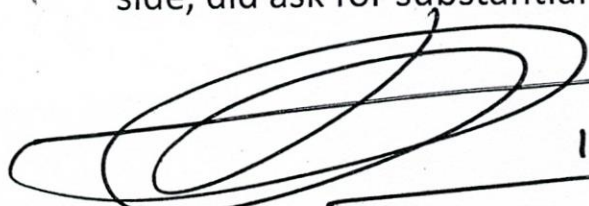


Circumspectly, A.R. Kamara, Esq. strongly contends the authenticity of the revocation of the Power of Attorney of Aminata Samura and the subsequent Power of Attorney, which the Plaintiff executed out of the jurisdiction, on behalf of Abu Bakarr Ulaba Samura, and duly registered in Sierra Leone, on 1<sup>st</sup> July, 2019 (see Exhibit MPH2) in accordance with the aforementioned provisions of Caps. 255 and 256. In deconstructing Counsel's protestations on the authenticity of the foregoing legal and registrable instruments, I reckon that the principal thrust of his controversial concerns are founded on allegations of fraud. My reading of his fifth argumentation, clothed in five (5) distinctively different points, canvassed in 1.1 above, is implicitly unconnected with the submission that the documents, were fraudulently executed and registered; so this Honourable Court, should not base its decision on this preliminary objection, on the legality of such legal and registrable instruments that have been duly registered.

On this point, I will remind Counsel about the presumption of regularity. There is evidence that Aminata Samura's Power of Attorney, was accordingly revoked on 5<sup>th</sup> December, 2014. And the documentation, concerning the revocation is legitimately registered, pursuant to the apposite law, canvassed above. Again, Abubakarr Ulaba Samura's Power of Attorney, is also accordingly registered. This presumption of regularity is based on the idea that every court of competent jurisdiction, is bound to receive them as relevant and admissible evidence, if they are cognate with the specific facts or facts in issue of any matter it is called upon to determine. However, the foregoing legal position does not presuppose that the authenticity of the texts, though registered cannot be contended. Thus, if Counsel is very optimistic about his submissions, regarding the doubts, which he has expressed about the authenticity of the foregoing documents, those concerns cannot be left to fester unaddressed. Nonetheless, the legality of registrable instruments,



regarding their cancellation, cannot be successfully challenged, pursuant to a notice of motion. Counsel must originate a process, to address those concerns, which are not devoid of the cancellation of the foregoing legally registrable instrument. Since it has already been established that A.R. Kamara's representation is a nullity, I will first order that Counsel's notice of motion, dated the 14<sup>th</sup> August, 2020, alongside the affidavit in support, sworn to and dated on the same date, together with the exhibits attached thereto, are hereby expunged from the records of this action. Further, I will dismiss the preliminary objection and allow Counsel on the other side to proceed with the motion of 2<sup>nd</sup> September, 2020. I will make no other as to cost, even though the said Counsel on the other side, did ask for substantial cost. I so order.



15/12/2020

The Hon. Dr. Justice A. Binneh-Kamara, J.

Justice of the Superior Court of Judicature  
of Sierra Leone.