

IN THE HIGH COURT OF SIERRA LEONE
(FAMILY AND PROBATE DIVISION)
IN THE MATTER OF THE ADMINISTRATION OF THE ESTATES ACT CAP 45 OF THE LAWS OF
SIERRA LEONE
AND
IN THE MATTER OF THE ESTATE OF STEPHEN JAMES JONES (DECEASED INTESTATE)

BETWEEN:

DESMOND ADE JONES - PLAINTIFF
(ADMINISTRATOR OF THE ESTATE OF GUY
STEPHEN JONES (DECEASED) INTESTATE

AND

MRS. VIOLET JENNIFER KAMARA - DEFENDANT
(ADMINISTRATRIX OF THE ESTATE OF
STEPHEN JAMES JONES (DECEASED) INTESTATE

BEFORE THE HONOURABLE JUSTICE MIATTA MARIA SAMBA, J.S.C
DATED THE 29TH DAY OF JULY 2021

Counsel:

M.G. Conteh Esq for the Plaintiff
E.T. Koroma Esq for the Defendant

Judgment:

This matter commenced by way of Writ of Summons dated the 5th day of December 2011 against the Defendant herein for the following orders:

- a. The revocation and nullification of the 'illegally' obtained grant of Letters of Administration issued on the 3rd day of September 2010 to the defendant out of the Probate Registry of the High Court.
- b. A declaration that the Plaintiff and his brother and sisters, the children of Guy Stephen Jones are the sole surviving beneficiaries of the estate of Stephen James Jones.
- c. A declaration that the property known as 11 Hagan Street, Freetown belongs to the three remaining great grand-children of the deceased testator.
- d. A declaration that the Plaintiff is solely entitled to take out Letters of Administration with the Will annexed the estate of Stephen James Jones (deceased).
- e. A perpetual injunction to restrain the Defendant from interfering with the use and enjoyment of the said property at 11 Hagan Street, Freetown.
- f. Recovery of possession of all that property known as 11 Hagan Street, Freetown from the Defendant.
- g. Any further and other relief that this Honourable Court deems fit.

On file is a Notice and Memorandum of Appearance dated the 15th day of December 2011 and a Defence dated the 24th day of February 2012, filed for and on behalf of the Defendant herein. Upon an application made by Ms. Wara Serry-Kamaj, Counsel for the Plaintiff on the 16th day of May 2013, the Learned Trial Judge, the Honourable Justice Abdulai Charm, on the



29th day of May 2013 issued summons for direction in respect of hearing and determination of the matter herein. Court Bundles were served and filed by Counsel for both the Plaintiff and the Defendant respectively. This matter was first mentioned on the 7th day of June 2012 and heard between the 7th day of June 2012 and the 6th day of February 2018 before the Honourable Mr. Justice Abdulai Charm, J as he then was. This file was reassigned to me on the 13th day of February 2020 by the Honourable Mr. Justice N.C Browne-Marke, J.S.C.

It is not in dispute that the No. 11 Hagan Street, the property in dispute herein was owned in fee simple by Stephen James Jones who died testate on the 2nd day of September 1942 as seen on page 13 of the Plaintiff's Court Bundle. It is also not in dispute that the said Stephen James Jones was the grand-father of Guy Stephen Jones who died intestate on the 10th day of July 2008 as seen at page 12 of the Plaintiff's Court Bundle. It is also not in dispute that Stephen James Jones (Deceased) was the father of Ada Jones and Sarah Moore-Samba as seen in the Defendant's Court Bundle. It is also not in dispute that Desmond Leslie Jones, Denis Raymond Jones and Gladys Mariam Yamide Jones were children born to Guy Stephen Jones as seen in the Plaintiff's Bundle of Court Documents marked 14, 16 and B1-3.

It is the Plaintiff's case that Ada Jones had but one issue, Omo, who predeceased her mother Ada in 1975; this fact was not contested by the Defendant. It is also the Plaintiff's case that Sarah Moore-Samba died on the 15th day of March 1984 as in Exhibit H1-2 of the Plaintiff's Court Bundle; she died without any issue; that Ada Jones never had a child by the name of Ina Thomas as averred by the Defendant and that rather, Ina Thomas Ada Jones' ward.

The Defendant denies that a citation was issued against her to revoke the Letters of Administration issued to her by the Probate Division of the High Court. I refer to Exhibit AFSK1 attached to the Affidavit of Abdul Frankly Serry-Kamal sworn to on the 2nd day of May 2012 in the Plaintiff's Court Bundle which shows a stamped citation calling-in the Defendant's Letters of Administration in respect of the estate of Stephen James Jones.

It is the Defendant's case that Ada Jones died survived by three (3) children namely, Yomi Thomas, Ina Thomas and Omo Peters and that she is one of the grand-children of Ina Thomas. By the Defendant's testimony, she is one of the great grand-children of Stephen James-Jones, the original fee simple owner of No. 11 Hagan Street.

It is also the Defendant's case that pursuant to the last Will and Testament of Sarah Moore-Samba, copy of which is in the Defendant's Court Bundle, herself and her siblings have beneficial interest in the property situate and being at No. 11 Hagan Street, Freetown, same which was originally owned by Stephen James Jones, the biological father of the said Sarah Moore-Samba and Ada Jones and grand-father of Guy Stephen Jones.

Analysis

The general rule is that 'he who asserts must prove'. The Plaintiff claims that Ina Thomas was not a child of Ada Jones. The Defendant claims that Ada Jones is the biological mother of Ina Thomas, her biological mother. In this circumstance and this being a civil action, the burden which is on a balance of probabilities shifts to the Defendant. The Court sees this piece of evidence as a positive fact subject to proof only by the Defendant. It is my opinion that the



Defendant bears the burden to prove that Ada Jones (Deceased intestate) was the biological mother of Ina Thomas, the biological mother of the Defendant herein.

I have looked at the testimonies on oath on file before the Learned Trial Judge, Hon. Mr. Justice Abdulai H. Charm J, as he then was. I have also looked at the documentary evidence on file.

I refer to the testimony of PW1 Samuel Koker on the 4th day of March 2015. His statement is dated the 26th day of June 2013. He told the Court that he lived at No. 11 Hagan Street for over 50 years and that the Plaintiff is one of the children of Guy Stephen Jones (Deceased). He said that the Defendant is in no way related to the Plaintiff nor is she related to Guy Stephen Jones (Deceased), the Plaintiff's late father. Mr. Coker told the Court in testimony that the Defendant was born at No. 11 Hagan Street to Ina Thomas, a ward to Ada Jones (Deceased); that the Defendant lived at No. 11 Hagan Street. In answer to questions put to him in re-examination, PW1 told the Court that the three beneficiaries to the Estate of Stephen James Jones were Guy Stephen Jones, Ada Jones and Sarah Moore-Samba. He said Ada Jones had one child, Omo, who pre-deceased her mother and that Sarah Moore-Samba had no issue. He told the Court that Stephen Guy Jones had three issues: Desmond Ade Jones, Gladys More and Ina Yamide Jones.

PW2 was Desmond Leslie Ade Jones, the Plaintiff herein, son of Guy Stephen Jones (Deceased). He said the property in contention was devised by his grand-father, Stephen James Jones to his father and his two daughters, Ada Jones and Sarah Moore-Samba by way of a Will. He told the Court that he has no blood relationship with the Defendant; he said the Defendant is not related to his aunties Ada Jones, who had only one child, Omo and Sarah Moore-Samba who died without having any child. PW2 told the Court that the Defendant's mother was brought to No. 11 Hagan Street by his aunty Ada Jones as her ward.

In answer to questions put to her in cross examination, PW2 told the Court that the Defendant lived at No. 11 Hagan Street with her mother, Ina Thomas and with his aunty Ada Jones. He said Ina Thomas, the mother of the Defendant, is not the daughter of Ada Jones.

I refer to the statement of Saidu Bangura dated the 17th day of November 2015 in the Plaintiff's Court bundle marked Exhibit R on file. He told the Court on oath that he used to pay rent for part of the property at No. 11 Hagan Street to Guy Stephen Jones; that he was a tenant at the said property for some 24 years beginning 1992. He said the Defendant's mother, Ina Thomas, was a ward at No. 11 Hagan Street

He told the Court that upon the demise of Guy Stephen Jones, he was summoned to Court by the Defendant to have him evicted from the property. He said that the Defendant failed because she provided no documentary evidence to prove to the Court that she was a beneficiary of the Estate of Stephen James Jones; that the Defendant and her sister, Melrose, have no blood relationship with the Guy Stephen Jones lineage.

I have looked at a copy of the signed judgment on file by the late J.O Wellington, Principal Magistrate as he then was, when he said in Exhibit R attached to the Plaintiff's additional documents, that:



It is impossible for me to consider this submission by Counsel for the Applicants as no documentary evidence has been tendered in this Court to show that the Applicants are entitled in reversion. Taking the evidence as a whole for the Applicants and the Respondents, I find as follows:

- i. That no documentary evidence has been led in this Court to show that any or all of the Applicants are direct beneficiaries of the estate occupied by the Defendants (i.e. Saidu Bangura et al).*
- ii. That no evidence has been led by the Applicants to show that they have the necessary legal powers to act on behalf of Mr. Guy Janes (deceased).*

I refer to Clause 3 of the Last Will and Testament of Stephen James Jones which reads:

I give and bequeath to my daughters Ada Janes, Sarah Moore-Samba and my grandson Stephen Guy Janes my dwelling house ... at No. 11 Hagan Street, Freetown ... for the term of their natural lives and after their death to their legitimate and illegitimate children in equal un-divided shares

Clause 3 of the Last Will and Testament of Stephen James Jones is quite specific and very clear. The relationship between the Testator Stephen James Jones and that of Guy Stephen Jones, Ada Jones and Sarah Moore-Samba must be understood in this light: that Guy Stephen Jones was his grandson; Ada Jones and Sarah Moore-Samba were his daughters, all three specifically provided for in his Will Exhibit C1-2 especially Clause 3 thereof.

Based on the Plaintiff's evidence and analysing Clause 3 of Exhibit C1-2, upon the death of Stephen James Jones, the direct beneficiaries must be his grandson, Guy Stephen Jones and daughters, Ada Jones and Sarah Moore-Samba for their life time and after their death to their children, legitimate or illegitimate in equal undivided shares.

The Defendant's evidence is that she and her siblings are great grand-children of Stephen James Jones it is clear to the Court from Exhibit C1-2 that the Defendant is not a beneficiary, her not having been born by either Ada Jones nor Sarah Moore-Samba. The Defendant must not make a mistake by claiming as a beneficiary based on her being a 'supposed' grand-child of Ada Jones because the Plaintiff is a grand-child of Guy Stephen Jones. The Plaintiff as a grand-child is specifically provided for under the Will of Stephen James Jones. The Defendant on the other hand, even if I were to accept her testimony that her mother Ina Thomas was the daughter of Ada Jones, which is subject to proof, she must be a great grand-child of Stephen James Jones. There is as I have said, no provision for great grand-children of Ada Jones and Sarah Moore-Samba under Exhibit C1-2.

I note that the Defendant makes a claim to the property under the Will of Sarah Moore-Samba. I will deal with that claim later. The question may be asked then what happens to the property at No. 11 Hagan Street if, assuming the direct beneficiaries, Guy Stephen Jones, Ada Jones and Sarah Moore-Samba died without having any child/children of their own. The law is that the property then becomes State property-*bona vacatia* but of course, that is not the position here; there are children born to Guy Stephen Jones, one of the direct beneficiaries of the Will of Stephen James Jones, who no doubt, are beneficiaries pursuant to Clause 3 of



the Will hereinbefore referred to. The Court understands 'children' referred to in Clause 3 of the Will to mean biological children, born in or outside wedlock.

The Plaintiff's evidence is that Ada Jones had only one child in her lifetime named Omo. The evidence before the Court is that Omo died before Ada Jones and this was not disputed by the Defendant. The gift to Ada Jones, through the Will of Stephen James Jones could only have taken effect upon the death of Ada Jones since hers was for her life time.

The evidence before the Court is that Ada Jones died on 30th December 1977 at 86 years as per Exhibit F1-2 marked in red ink; Sarah Moore-Samba died on 18th May 1984 at 87 years as per Exhibit H1-2 marked in red ink; both Ada Jones and Sarah Moore-Samba died before Guy Stephen Jones who died on 10th July 2008 as in Exhibit 12 marked in red ink. These Exhibits are in the Plaintiff's Court Bundle. I remind myself that the property at No. 11 Hagan Street was devised and bequeathed to Ada Jones, Sarah Moore-Samba and Guy Stephen Jones for their life time. It is the Court's position that upon the death of Ada Jones and Sarah Moore-Samba, the said property passed on to Guy Stephen Jones who was still very much alive.

The Defendant did not dispute the father and son relationship between Guy Stephen Jones and his children Desmond, the Plaintiff herein, Gladys and Ina Yamide Jones. Accordingly, if I accept the Plaintiff's testimony and evidence before this Court, upon the death of Ada Jones and Sarah Moore-Samba (who it is argued died with no issue surviving them) and upon the death of Guy Stephen Jones, based on Clause 3 of the Last Will and Testament of Stephen James Jones, the property at No. 11 Hagan Street must pass on to the Plaintiff herein and his siblings who by their birth certificates as in Exhibit marked 14, 16 and B1-3 in red ink and attached to the Plaintiff's Court Bundle are the biological children of Guy Stephen Jones as referred to or defined in Clause 3 of Exhibit C1-2.

I note the Defendant's evidence that Ada Jones had three children in her lifetime, one of who was her mother Ina Thomas. The Court notes that whether Ina was the biological daughter of the said Ada Jones is subject to proof by the Defendant appreciating further the stringent provisions of Clause 3 of Exhibit C1-2 in respect of the beneficiaries of property at No. 11 Hagan Street. Even if it is proven by the Defendant that her mother was a biological daughter of Ada Jones, does the Will provide for great grand-children to benefit therefrom? I am afraid not.

The Defendant opened her defence on 1st day of July 2016. She identified the Plaintiff as her cousin. She told the Court that the original owner of the property, the subject matter hereof was Stephen James Jones who she identified as her great grand-father. She referred to Exhibit BC1-2, the last Will and Testament of Stephen James Jones by which she said her great grand-father devised the property herein to Guy Stephen Jones, Ada Jones and Sarah Moore-Samba for their life time. She identified Ada Jones as her grand-mother, mother of her mother, Ina Viola Thomas.

She referred to the grant of Letters of Administration issued in her name as in Exhibit E1-16 in respect of the property of Stephen Guy Jones on the 3rd September 2010. She referred to the Plaintiff's Letters of Administration issued on the 27th September 2010 which is in the Plaintiff's Court Bundle.



c. *That I am one of the beneficiaries ... of the deceased.*

I note that the above documents including sworn Affidavits by the Defendant were in support of an application to the Probate Division of the High Court by the Defendant to take out Letters of Administration for the estate of Stephen James Jones. The above referred sworn documents in support of the said Letters of Administration and the Letters of Administration issued to the Defendant for the estate of Stephen James Jones are marked 5 in red in the Plaintiff's Court Bundle.

I refer to the Affidavit of Festus Jones sworn to on the 3rd day of September 2010 in support of the Letters of Administration hereinbefore referred to, taken out by the Defendant. It is an Oath of Attesting Relative marked red as 8 in the Plaintiff's Court Bundle where he said at paragraphs 1, 3 and 4:

"1. That my great grand-father Stephen James Jones (Deceased) Testate ... died on the 2nd day of September 1942 leaving a Will.

3. That I was informed by my great grand-father of the said Will deposited at the Office of the Administrator and Registrar-General.

4. That Viola Jennifer Kamara (Nee Callier) his great grand-daughter is one of the beneficiaries mentioned in his Will."

At the risk of repeating myself, I refer to Exhibit DLJ4, the Last Will and Testament of Stephen James Jones attached to the Affidavit of Desmond Leslie Jones and note that the said Will was not challenged by either of the parties herein. The appointed Executor and Executrix of the said Will were Guy Hebron Jones, Ada Jones and Sarah Moore-Samba. I refer to Clause 3 of the Last Will and Testament of Stephen James Jones which reads:

I give and bequeath to my daughters Ada Jones, Sarah Maare-Samba and my grandson Stephen Guy Jones my dwelling house ... at No. 11 Hagan Street, Freetown ... for the term of their natural lives and after their death to their legitimate and illegitimate children in equal un-divided shares

I see nothing ambiguous in the provisions of the said Will. So, referring to the Festus Jones' and the Defendant's depositions in the several Affidavits and other documents mentioned above, I see nowhere in the Last Will and Testament of Stephen James Jones where the Defendant's name is mentioned as a beneficiary.

In respect Festus Jones' averment in paragraph '1' above referred to that his great grand-father died leaving a Will, I have said that there is no dispute that Stephen James Jones died testate; whether or not he was a grand-son of the deceased Stephen James Jones can only be supported by evidence. There is no such proof before the Court. To my mind, what is important is the wording and meaning of Exhibit C1-2.

I refer to paragraph 3 of Festus Jones' deposition where he said, on oath, that his great grand-father, Stephen James Jones informed him about his Last Will and Testament deposited at



the Office of the Administrator and Registrar-General. I recall that the evidence before this Court is that Stephen James Jones died on the 2nd day of September 1942. In line with this piece of evidence, I refer to the Exhibit marked 10 in red ink in the Plaintiff's Court Bundle which are copies of identity cards of Viola Jennifer Collier, the Defendant herein, Charles Ajebola Macfoy and the said Festus Jones. I refer especially to the identity card of Festus Jones and note that he was born on the 16/01/1945 (*sic*), which was well after the demise of Stephen James Jones. The Court finds it very impossible for Stephen James Jones to have given Festus Jones any of such information relating to his Will because based on the documents on file, Stephen James Jones had died long before Festus Jones was born.

I refer again to the identity cards marked 10 in red ink hereinbefore referred to in the Plaintiff's Court Bundle and again to the contents of the Administration Bond marked 16 and 17 in red ink in the Plaintiff's Court Bundle and note that there is nothing before the Court to prove that the signatories on exhibit marked 16, the said Charles Ajebola Macfoy, Festus Jones and Viola Jennifer J. Kamara are sons/daughter of Stephen James Jones as they allege by the content of the said Administration Bond. The evidence before the Court is that Ada Jones and Sarah Moore-Samba are the daughters and that Guy Stephen Jones was the grandson of Stephen James Jones (Deceased) Testate. The Defendant, Festus Jones and Charles Ajebola Macfoy therefore acted unlawfully in swearing to the said Administration Bond as children of Stephen James Jones knowing fully well that they were not.

The Court refers to the birth certificates of the children of Guy Stephen Jones to wit: Desmond Jones, Denis Raymond Jones and Gladys Mariam Yamide Jones, attached to the Plaintiff's Court Bundle. The Court notes that the Defendant was questioned as to her birth certificate and that of her mother's, and that she had all the opportunity to exhibit birth certificates of herself and her siblings and that of her mother's appreciating that an important issue before this Court is firstly to determine whether or not Ina Thomas is the daughter of Ada Jones. This is a Court of records and determinations or judgments in probate matters cannot be made primarily by taking the words of a litigant let alone where these said words are challenged. In the absence of any documentary proof that the Defendant's mother, Ina Thomas was born by Ada Thomas, I cannot hold that the Defendant is a grand-daughter of Ada Jones. I have also held that the Will of Stephen James Jones is unambiguous and even if I hold that the Defendant's mother was the biological daughter of Ada Jones, that will not make her a beneficiary under the Will of Stephen James Jones. The gift in the Will, must go to Ina Thomas after the death of Ada Jones as per the Will of Stephen James Jones. There is however no proof before the Court that Ina Thomas was the daughter of Ada Jones. Clearly, the benefit to the property at No. 11 Hagan Street is made pursuant to the Will of Stephen James Jones simpliciter.

I refer to the testimony of DW2 where she told the Court that Sarah Moore-Samba left her interest in the Hagan Street property to the Defendant and her siblings. I refer to paragraph 5 of Exhibit CFE5, the Last Will and Testament of Sarah Moore-Samba in the Defendant's Court Bundle where she said:

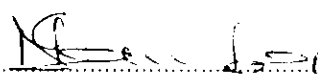
I give and bequeath my share in my property at No. 11 Hagan Street, Freetown ... to Ronald Cole, Agibola Macfoy, Melrose, Viola, Murietta Yvonne and Alpheus Collier in equal shares.



I again refer to Clause 3 of the Last Will and Testament of Stephen James Jones which provision I reiterate was very specific. The gift to the said Sarah Moore-Samba, in No. 11 Hagan Street, was for her life time after which the property was to devolve on her children, if any. In essence, the gift to any child of Sarah Moore-Samba was to take effect after her death pursuant to the Last Will and Testament of Stephen James Jones as in Exhibit C1-2 and not pursuant to the Last Will and Testament of Sarah Moore-Samba as in Exhibit CFE5. I have said that there is no evidence before the Court that she had any issue during her lifetime. Upon her death therefore on 18th May 1984 after the death of Ada Jones on 30th December 1977, the property, by Exhibit C1-2 devolved on Guy Stephen Jones as hereinbefore stated. Sarah Moore-Samba (Deceased) Testate could therefore not have devised No. 11 Hagan Street to the persons named in paragraph 5 of Exhibit CFE5. The provision in paragraph 5 of the Last Will and Testament of Sarah Moore-Samba therefore must fail.

In light of the above, it is my view that the Plaintiff has proved his case against the Defendant on a balance of probability for which **I DECLARE AND ORDER AS FOLLOWS:**

- a. That the Letters of Administration issued to the Defendant out of the Probate Registry of the High Court is hereby revoked and nullified.
- b. That the Plaintiff and his brother and sisters, the children of Guy Stephen Jones are the sole surviving beneficiaries of the estate of Stephen James Jones.
- c. That the property known as No. 11 Hagan Street, Freetown, belongs to the three remaining great grand-children of Stephen James Jones, (Deceased Testate).
- d. That the Plaintiff is solely entitled to take out Letters of Administration with the Will annexed of the estate of Stephen James Jones (Deceased Testate).
- e. A perpetual injunction restraining the Defendant from interfering with the use and enjoyment of the property at No. 11 Hagan Street, Freetown aforesaid.
- f. Recovery of the property at No. 11 Hagan Street, Freetown from the Defendant.
- g. Costs to be borne by the Defendant at Le. 50,000,000.00 (Fifty Million Leones).


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Hon. Jst. Miatta Maria Samba, J.S.C
Delivered on 11/07/21

