

~~GH5.9.2~~

2/1963

No. 37 of 1961

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
19 JUN 1961  
25 RUSSELL SQUARE  
LONDON, W.C.1.

74054

IN THE PRIVY COUNCIL

O N A P P E A L  
FROM THE COURT OF APPEAL OF  
SIERRA LEONE AND GAMBIA

B E T W E E N :-

10

IBRAHIM MOMORDU ALLIE  
(Administrator of the Estate  
of Alhaji Antumani Allie,  
deceased Appellant)

- and -

HAJAH FATMATT A KATAH  
Respondent

CASE FOR THE APPELLANT

20

30

1. This is an appeal against a Judgment of the Court of Appeal of Sierra Leone and Gambia dated the 14th April, 1961, allowing an appeal against a Judgment of the Supreme Court of Sierra Leone dated the 23rd February, 1961, whereby it was ordered in favour of the Appellant (hereinafter called the Plaintiff) that certain conveyances of property executed by one Ahmed Alhadi, Administrator of the estate of Momordu Allie, deceased (hereinafter called the testator) in favour of the Respondent (hereinafter called the Defendant) be declared null and void and set aside on the ground that they were executed by the said Ahmed Alhadi in bad faith and in collusion with the Defendant.

2. The question which arises for

1.

Record.

p. 88.

p. 56.

Record.

- determination on this appeal is whether there was any justification for the Court of Appeal reversing the decision of the Court of first instance, which, having seen and heard the witnesses including the Defendant, pronounced against an alleged Deed of Family Arrangement and certain conveyances intended to carry it into effect, upon the grounds of male fides, collusion and undue influence. As regards the Judgment of the Court of Appeal, the principal issues are (a) whether that Court was wrong in holding that an alleged Judge's Order, alleged to have approved the family arrangement, had been proved by secondary evidence, and (b) whether that Court erred in its view of certain matters of fact. 10
- p. 16. 3. The testator by a Will dated the 30th August, 1946, which was confirmed by a Codicil dated the 19th July, 1947, made various dispositions of property, mainly real estate in Freetown, to members of his family including the Defendant (his wife) and their infant son, Alhadi Antumani, (hereinafter called the son). The Defendant and the son, together with another son of the testator, were appointed to be the Executors and Trustees of the Will. 30
- p. 24. 4. The provisions of the Will relevant to this appeal are the following :-
- p. 16, 1.26. (a) By paragraph 4, the testator devised certain properties in Freetown to the Defendant for her lifetime and after her death or remarriage to his Trustees upon trust for the son his heirs and assigns in fee simple as tenants in common. These properties included No. 8, Magazine Street, No. 23, East Street, No. 6, Magazine Cut, and No. 2, Kissy Road, Freetown. 40
- p. 17. 50

- 10 (b) By paragraph 13, the testator devised certain other properties including Nos. 46 and 50, East Street, Freetown, to the use of the Defendant for and during her lifetime and so long as she remain his widow, and after her death or remarriage to his Trustees upon trust for the son and any other child or children of his born to the Defendant in equal shares and as tenants in common. Record.  
p. 18.
- 20 (c) By paragraph 20, the testator devised properties, including Nos. 17 and 17A, Martin Street, Freetown, to the Defendant absolutely.
- (d) By paragraph 25, the testator devised two properties, No. 48, East Street and No. 9, Walpole Street, Freetown, upon trust for the son his heirs and assigns as tenants in common. p. 21.
- 30 (e) By paragraph 37, the testator devised and bequeathed the residue of his estate to the Defendant. p. 23.
- 40 5. On the 22nd January, 1948, the testator died. The Defendant and the son (who was the Defendant's only surviving child by the testator) survived him. On the 10th February, 1948, the Defendant, the son and the third person appointed to be Executors and Trustees of the Will renounced probate. On the 10th March, 1948, Ahmed Alhadi, who was the Official Administrator of Estates for the Colony of Sierra Leone, was appointed Administrator of the estate of the testator with the Will annexed. p. 33, 1.23.  
p. 33, 1.34.  
p. 5, 1.8.  
p. 5, 1.13.  
p. 27, 1.14.
6. On the 15th July, 1948, at which date the son was still under

Record.  
p. 62, 1.6.

age, five conveyances were executed by Ahmed Alhadi, as Administrator of the estate of the testator, and the Defendant, whereby the following five properties respectively were conveyed, or purported to be conveyed, by Ahmed Alhadi to the Defendant in fee simple :-

p. 109.	No. 23, East Street.	
p. 100.	No. 46, East Street.	10
p. 106.	No. 48, East Street.	
p. 111.	No. 50, East Street.	
p. 103.	No. 6, Magazine Cut.	

It is to be observed that all the said properties except No. 48, East Street, were amongst those devised to the Defendant for her life, with remainder to the son (paragraph 4 of the Will) or to the Defendant for her life or until re-marriage, with remainder to the son (paragraph 13 of the Will). The property No. 48, East Street, was one of those devised upon trust for the son without any prior life interest in the Defendant (paragraph 25 of the Will). However, each of the conveyances recited an alleged "Deed of Family Arrangement", allegedly approved by the Supreme Court on the 14th July, 1948, between the Defendant, the son and Ahmed Alhadi, under which it was alleged to have been agreed that for consideration the Defendant should become seised of the property the subject of the conveyance for an unincumbered estate in fee simple, freed from the estate in remainder vested in the trustees for the benefit of the son, or (as it was recited in the case of No. 48, East Street) "irrespective of the devise" by the Will.

p. 102, 1.10.		20
p. 105, 1.3.		
p. 107, 1.39.		
p. 110, 1.16.		30
p. 112, 1.20.		
p. 108, 1.1.		40
p. 113.	7. There was also a conveyance relating to No. 2, Kissy Road (one of the properties devised to the Defendant for her life, with remainder to the son, under paragraph 4	

- of the Will). This conveyance, executed by Ahmed Alhadi two days prior to the 5 conveyances mentioned above, i.e. on the 12th July, 1948, recited, inter alia, that the testator had contracted to purchase the said property for £3,500 and paid £2,500 as part of the purchase, that Ahmed Alhadi as the Administrator of the testator's estate had paid the balance of the residue, and that the Will devised and bequeathed the residue to the Defendant. The document conveyed, or purported to convey, the said property to the Defendant in fee simple.
- 10
8. On the 4th May, 1959, the son died intestate. The Plaintiff is the Administrator of his estate.
- 20
9. On the 6th August, 1960, by two Writs in the Supreme Court, the Plaintiff instituted

THE PRESENT PROCEEDINGS.

- The first Writ referred to properties including Nos. 23, 46 and 50, East Street, No. 6 Magazine Cut and No. 2 Kissy Road, and claimed a declaration that the conveyances of these properties are void and should be set aside. The second Writ referred only to No.48, East Street, and claimed a declaration that the conveyance of this property also be set aside. In due course the actions commenced by these two Writs were ordered to be consolidated.
- 30
10. By a Statement of Claim in the first action dated the 9th September, 1960, the Plaintiff pleaded inter alia :-
- 40
- (i) The conveyances mentioned above relating to the properties Nos. 23, 46, 48 and 50, East Street, No. 6 Magazine Cut and No. 2, Kissy Road.
- (ii) That at the date of the

<u>Record.</u> p. 5, 1.20.	conveyances the son was an infant, unemployed, dependent upon, and living under and by the aegis of the Defendant.	
p. 5, 1.42.	(iii) That Ahmed Alhadi, in executing the conveyances in favour of the Defendant, acted <u>male fide</u> and in collusion with the Defendant.	
p. 6, 1.8.	(iv) That the effect of the conveyances was to denude the son of his entire patrimony and inheritance.	10
p. 6, 1.29.	(v) That the alleged Deed of Family Arrangement does not exist. That if it does, the Plaintiff puts the Defendant to strict proof that its purported execution by the son, at the time an infant, was free and voluntary and done after he had obtained free and independent advice, since the effect thereof was to convey to the Defendant the patrimony and inheritance of the son.	20
p. 6, 1.40	(vi) That the alleged Deed of Family Arrangement was prepared and engrossed by the legal adviser of the Defendant.	
p. 7, 1.1.	(vii) That no order of the Supreme Court approving the alleged Deed of Family Arrangement dated the 14th July, 1948, was ever obtained, and the Plaintiff puts the Defendant to strict proof thereof.	30
p. 7, 1.5.	(vii) That if such Order was obtained, it was obtained by collusion between the Defendant and Ahmed Alhadi, and by misrepresentation and without due and proper notice to the other parties and next of kin of the son at a time when he was an infant, and was against his interest and ought to be revoked and set aside.	40
p. 7, 1.19.	The relief sought was that the conveyances be set aside and the devise made by the testator be restored, and	

consequential and other relief.

Record.

11. The Defendant by her Defence dated October, 1960, put the Plaintiff to proof of the allegations set out above.

p. 8.

10 12. The Plaintiff filed a Statement of Claim in the Second action, dated the 11th November, 1960 wherein he repeated in substance the allegations contained in the earlier Statement of Claim. The relief sought was that the conveyance in respect of No. 48, East Street, be set aside, and other relief as in the first action. No Defence to this Statement of Claim was filed.

p. 11.

p. 15, 1.30.

20 13. The Plaintiff's claims, as pleaded in both actions, were framed upon the assumption that the son was a party to each of the conveyances the validity of which was challenged, and also to the alleged Deed of Family Arrangement. On this basis, the pleadings contained allegations that the son had been induced to execute these documents by undue influence. However, in the course of the proceedings, after the documents had been produced in evidence and it had become clear that the son had not in fact executed any of them, Counsel on behalf of the Plaintiff intimated that he would not rely upon those parts of the Statements of Claim which allege execution of the documents by the son.

pp. 2, 7, 10,  
14 & 15.

30 p. 47, 1.15.

40 14. At the trial of the consolidated actions in the Supreme Court (cor. S.B.Jones, J.) the Plaintiff adduced evidence of the following, amongst other, facts and matters :-

pp. 25 et seq

(i) That the son was an infant when the conveyances were executed.

pp. 27 et seq

(ii) That prior to the death of the son, neither the Plaintiff, who was the testator's eldest son, nor one Baba Allie, the

p. 33, 1.27.

<u>Record.</u>	second eldest surviving son, nor one Abass Allie, another child of the testator, had any knowledge of any family arrangement or received any notice of any proceedings in Court relating to such matter. The said Abass Allie further stated that, as far as his knowledge went, his other brothers and sisters knew nothing of any such arrangement and received no notice of any proceedings. (It was deposed to, on the 27th January, 1961, that at that date there were 12 lawful children of the testator alive.)	10
p. 33, 1.23.	(iii) That the son lived with the Defendant and was financially dependent upon her, and did no work.	20
p. 34, 1.1. p. 37, 1.19.	(iv) That apart from the official relationship between Ahmed Alhadi, as Administrator of the estate of the testator, and the Defendant as a beneficiary, he and the Defendant had the relationship of "husband and wife"; that Ahmed Alhadi used to sleep at the Defendant's house, formerly the house of the testator; that the children of the testator became annoyed and told him not to come there again, but he still came; that the children ejected him by force from the house and sent his clothes after him.	30
pp. 35 - 36.	The conveyances the subject of the proceedings were produced by a Clerk in the Registrar-General's Office.	40
p. 29, 1.1. pp. 100 <u>et seq.</u>	15. The Defendant adduced evidence which included the following :-	40
pp. 38 <u>et seq.</u>	(i) A clerk in the Registrar-General's office produced a document said to be the alleged Deed of Family Arrangement, dated the 14th July, 1948. This witness also produced certain other documents, viz. a conveyance dated the 18th September, 1954,	40
p. 39, 1.30. p. 115.		
p. 46.		



10 by the son conveying certain property in Martin Street, Freetown, to one Boie Kamara (exhibit K), a conveyance dated the 14th September, 1954, by one Davies as Official Administrator, conveying a property No. 8, Magazine Street to the son (exhibit L) and a conveyance dated the 5th April, 1956, by the son, conveying the said property No. 8, Magazine Street, to one Muctar Kally (exhibit M). The first 2 of these conveyances recited the alleged Family Arrangement and the alleged Court order approving the same, of the 14th July, 1948; the third (exhibit M) recited inter alia the conveyance exhibit L.

Record.  
p. 120.  
p. 121.  
p. 124.  
p. 120, 1.10.  
p. 122, 1.17.

20 (ii) The Master and Registrar of the Supreme Court stated that he had searched for a file C.C.185/48 entitled "In the Matter of the Estate of Mormodu Allie, deceased, In the Matter of Trusts affecting Antumani (an infant)", but it cannot be found. He produced a Cause Book, which contained the following entries under that title:

	<u>Solicitor</u>	<u>No.</u>	<u>Documents</u>	<u>Date</u>	
	E.A.C.John	1.	Affidavit in support	18.6.48	p. 60, 1.13.
	"	2.	Summons to approve of Deed of Family Arrangement	18.6.48	
40	"	3.	Judge's order approving of Deed of Family Arrangement	21.6.48	
	C.O.E.Cole	4.	Affidavit in support	29.6.48	
	"	5.	Summons	29.6.48	
	"	6.	Summons	13.7.48	
	"	7.	Affidavit	14.7.48	

<u>Record.</u>	<u>Solicitor</u>	<u>No.</u>	<u>Documents</u>	<u>Date</u>
	C.O.E.Cole, Esq.	8.	Judge's Order approving Deed of Family Arrangement	14.7.48

(on the opposite page)

<u>Solicitor</u>	<u>No.</u>	<u>Documents</u>	<u>Date</u>
C.B.Rogers- Wright, Esq.	1.	Affidavit in opposition to applica- tion etc.	2.7.48

pp. 42, 43, 45.	(iii) The Defendant stated <u>inter alia</u> that the consideration for the alleged Deed of Family Arrangement was a sum of £1,000 for the purpose of repairing No.9, Walpole Street, one of the properties devised to the son, which was in need of repair, which sum she said she gave to him before the execution of the Deed, and a further sum of £1,500 given to him after the execution thereof. She said that the Deed was signed on the 14th July, 1948, and approved the same day by the Court, and that she was present when the Order was made. As regards her relationship with Ahmed Alhadi, the Defendant stated that they never lived together as man and wife, she admitted that after he was thrown out of her house by the Plaintiff and some of his brothers she took her personal belongings to Ahmed Alhadi's house, but said that she went to live with her sisters.	20
p. 41, 1.42.		30
p. 43, 1.42.		
p. 115.	16. The alleged Deed of Family Arrangement, dated the 14th July, 1948, (i.e. one day before the date of the 5 conveyances mentioned above in paragraph 6) was executed only by the Defendant and Ahmed Alhadi, although the name of the son was inserted as a party thereto. It provided that (a) the Defendant should stand seised of the unincumbered freehold estate in the properties	40
p. 118.		50

	Nos. 23, 46, 48 and 50, East Street, No. 6 Magazine Cut, and (b) Ahmed Alhadi as Trustee of the Will should stand seized of the unincumbered fee simple estate in certain other properties (presumably for the benefit of the son) and the sum of £1,500 for the advancement of the son and £1,000 for repairing No. 9, Walpole Street. The properties thus allocated to the son were the following :-	<u>Record.</u>  p. 118.
10	(i) Nos. 17 and 17A, Martin Street (property devised to the Defendant under paragraph 20 of the Will).	p. 20.
20	(ii) No. 8, Magazine Street (property devised to the Defendant for her lifetime, with remainder to the son, under paragraph 4 of the Will).	p. 17.
30	(iii) No. 9, Walpole Street (property devised to the son, under paragraph 25 of the Will).	p. 21.
	The declared probate values in respect of the properties thus obtained by the Defendant amounted to a total of more than £20,000, whereas those obtained by the son (apart from the cash) had a declared value of £1,740.	pp. 63 - 64.
40	17. The Judgment of the Supreme Court was delivered on the 23rd February, 1961. The learned trial Judge found on the evidence that the son was born in late 1930 and was about 18 years old when the alleged Deed of Family Arrangement and the conveyances were executed. When dealing with this matter the learned Judge expressed his opinion of the Defendant's evidence in the following terms :-	p. 56.  p. 62, 1.5.
	"The question as to the date or time of a child's birth is a matter which ought to be peculiarly within the knowledge of the mother. In this case, however, I regret I cannot accept	p. 61, 1.37.

<u>Record.</u>	the Defendant's version." (The learned Judge gave his reasons for this, then continued:-)	
p. 61, 1.50	"Apart from all this, the Defendant was a most unsatisfactory witness throughout the case, and I find it difficult to place much reliance upon her evidence."	
p. 62, 1.8.	18. The learned trial Judge then considered the alleged Deed of	10
p. 70, 1.19.	Family Arrangement. He held that this was invalid on both the	
p. 62, 1.40.	grounds upon which it had been attacked by Counsel for the	
p. 63, 1.40.	Plaintiff, viz. (i) that by its terms it is not a Family Arrangement,	
pp. 63 - 70.	and (ii) in any event, its terms are unreasonable. As regards the contention put forward on behalf of the Plaintiff that there was undue influence exercised against the son, the learned Judge expressed his view as follows :-	20
p. 70, 1.12.	"I am satisfied that both at the time when the alleged Deed of Family Arrangement was executed and at the time also when (the son) though of full age took benefits under the deed, he was under the influence and dominion of the Defendant."	30
p. 70, 1.22.	19. The alleged Order whereby it was contended that the Court had approved the alleged Deed of Family Arrangement was next considered by the	
p. 70, 1.40.	learned trial Judge. He held that, in view of (a) the failure to produce either the original or an office copy of the Order relied upon by the	
- p. 71, 1.21.	Defendant, (b) the failure to call any of the 3 Solicitors who, according to the Cause book, were concerned in the matter (all of whom were alive) and (c) the references in the Cause book to 2 Orders, the Defendant had failed to prove that the terms set out in the alleged document were in fact those approved in the Order on which the Defendant relies. The question whether such Order was	40
p. 71, 1.16.	obtained by collusion between	50

Ahmed Alhadi and the Defendant, and by misrepresentation, and without due notice to the other beneficiaries under the Will and the son's next of kin, did not therefore arise.

Record.

- 10 20. Finally, the learned trial Judge dealt with the allegation that the conveyances were executed by Ahmed Alhadi male fide and in collusion with the Defendant. On the evidence he found this allegation proved. He therefore ordered that the conveyances executed by Ahmed Alhadi in favour of the Defendant, relating to Nos. 23, 46, 48 and 50, East Street, No. 6, Magazine Cut, and No. 2, Kissy Road, respectively, be set aside. p. 71, 1.22.  
pp. 71 - 72.  
p. 71, 1.39.
- 20 21. The Judgment of the Court of Appeal (Ames P., Benka-Coker, C.J. Sierra Leone and Marke, J. Sierra Leone) dated the 14th April, 1961, whereby the Judgment of the Supreme Court was reversed, rested upon the following two points :- p. 88.
- 30 (1) It was held that the alleged Order approving the alleged Deed of Family Arrangement had been proved by secondary evidence consisting of (a) the Cause book and (b) the recitals in the conveyances of 1954 and 1956 (exhibits K. L and M). The Court therefore drew the conclusion that the Deed was approved by a Judge's Order dated the 14th July, 1948. p. 93, 1.28 -  
p. 95, 1.23.
- 40 (2) As regards No. 2, Kissy Road, it was held that this was rightly conveyed to the Defendant, on the ground that the unpaid purchase-price, which was a charge on the property, had been paid by the Defendant. p. 95, 1.24 -  
p. 96, 1.2.

It is respectfully submitted that on both points the Court of Appeal were wrong both in law and on the facts.

22. On the 15th August, 1961, the p.97.

Record.

Plaintiff was granted Final Leave to Appeal to the Judicial Committee of the Privy Council.

23. The Plaintiff respectfully submits that this Appeal should be allowed with Costs, that the Judgment of the Court of Appeal should be reversed and set aside and the Defendant ordered to pay the Plaintiff's Costs in the Court of Appeal, and that the Judgment of the Supreme Court should be restored, for the following, amongst other 10

R E A S O N S

- (1) BECAUSE the Judgment of the Supreme Court is right for the reasons therein stated.
- (2) BECAUSE on the facts found the Judgment of the Supreme Court is right. 20
- (3) BECAUSE on the evidence the findings of fact in the Supreme Court were right.
- (4) BECAUSE on the evidence the conveyances ought to be set aside.
- (5) BECAUSE the alleged Order approving the alleged Deed of Family Arrangement was not proved. 30
- (6) BECAUSE the Court of Appeal were wrong in law in regarding (a) the Cause book, (b) the recitals in Exhibits K, L and M, as secondary evidence of the alleged Order.
- (7) BECAUSE the Court of Appeal were wrong both in law, and upon the evidence, in drawing the conclusion that the alleged Deed of Family Arrangement was approved by a Judge's Order dated the 14th July, 1948. 40
- (8) BECAUSE the Court of Appeal were

wrong both in law and upon the evidence, in holding that the property No. 2, Kissy Road was rightly conveyed to the Defendant.

- 10
- (9) BECAUSE the Court of Appeal were wrong in fact in finding that the Defendant paid the unpaid purchase price in respect of the property, No. 2, Kissy Road.
- (10) BECAUSE there was no good reason to justify the Court of Appeal in reversing the decision of the Court of first instance in view of the nature of the case, the evidence, and the findings of fact of the latter Court.

RALPH MILLNER.

No. 37 of 1961

IN THE PRIVY COUNCIL

---

---

O N A P P E A L  
FROM THE COURT OF APPEAL OF  
SIERRA LEONE AND GAMBIA.

---

---

B E T W E E N :

IBRAHIM MOMORDU ALLIE  
(Administrator of the Estate  
of Alhaji Antumani Allie,  
deceased Appellant

- and -

HAJAH FATMATA KATAH  
Respondent

---

---

CASE FOR THE APPELLANT

---

---

DARLEY CUMBERLAND & CO.,  
36, John Street,  
Bedford Row,  
London, W.C.1.

Solicitors for the Appellant.