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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.12 of 1973

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

B E T W E E N

ALHAJI MALANG KANTEH (Plaintiff) Appellant

- and -

1. THE ATTORNEY GENERAL

2. OUSMAN MOMADOU WADDA

3. GABRIEL GEORGE

4. ALKALI JARJU (Defendants) Respondents

RECORD OF PROCEEDINGS

WILSON FREEMAN,
6/8 Westminster Palace Gardens,
London, SW1P 1RL
Solicitors for the Appellant

(1)

IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

No. 12 of 1973

O N A P P E A L

FROM THE COURT OF APPEAL OF THE GAMBIA

B E T W E E N

ALHAJI MALANG KANTEH (Plaintiff) Appellant

- and -

1. THE ATTORNEY GENERAL
2. OUSMAN MOMADOU WADDA
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4. ALKALI JARJU (Defendants) Respondents

RECORD OF PROCEEDINGS

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1.

No. 12 of 1973

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF THE GAMBIA

B E T W E E N :

ALHAJI MALANG KANTEH

(Plaintiff)
Appellant

- and -

1. THE ATTORNEY GENERAL

2. OUSMAN MOMADOU WADDA

3. GABRIEL GEORGE

4. ALKALI JARJU

(Defendants)
Respondents

RECORD OF PROCEEDINGS

In the
Supreme
Court

2.

No. 1

WRIT OF SUMMONS

No. 1
Writ of
Summons
22nd
September
1969

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No.220/1969

BETWEEN:

ALHAJI MALANG KANTEH

PLAINTIFF

AND

THE ATTORNEY-GENERAL
CROWN LAW OFFICE
THE QUADRANGLE
BATHURST GAMBIA

1st DEFENDANT

10

OUSMAN MOMADOU WADDA
SEREKUNDA, K.S.M.D.
THE GAMBIA

2nd DEFENDANT

GABRIEL GEORGE
C/O MADI LIMITED
BATHURST GAMBIA

3rd DEFENDANT

ALKALI JARJU
SEREKUNDA, K.S.M.S.
THE GAMBIA

4th DEFENDANT

20

To: The Attorney-General, Ousman Momadou Wadda,
Gabriel George and Alkali Jarju, the above-
named Defendants.

YOU ARE HEREBY COMMANDED in Her Majesty's name
to attend this Court at Bathurst on Thursday the
20th day of November, 1969, at 9 o'clock in the
forenoon to answer a suit by ALHAJI MALANG KANTEH
of 2, Russell Street, Bathurst, against you.

THE PLAINTIFF'S CLAIM is to set aside a
purported sale of his property situated at
Serekunda, K.S.M.D., Gambia, by the Sheriff to
Alkali Jarju, the 4th Defendant, on the 20th
September, 1969.

30

(Sgd) S.H.A. GEORGE
AG.CHIEF JUSTICE

3.

ISSUED at BATHURST, this 22nd day of September, 1969.

In the
Supreme
Court

TAKE NOTICE. That if you fail to attend at the hearing of this suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

No. 1

Writ of
Summons

2. If you have a counter-claim or set-off against the Plaintiff you must file with the Registrar **FOUR CLEAR DAYS** before the Return Day a notice in original with as many copies thereof as there are Plaintiffs containing your names and addresses and a concise statement of the grounds of such counter-claims or set-off and pay such Court fees as may be payable therefor.

22nd
September
1969

(cont.)

10

CERTIFICATE OF SERVICE BY BAILLIFF:

UPON the day of , 1969, this summons was served by me on the defendants. This I did by serving a copy of the above summons (and particulars of claim) on the above-named defendants personally at

20

BAILLIFF OR OFFICER OF THE COURT.

No. 2

STATEMENT OF CLAIM

No. 2

Statement
of Claim

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No.220/1969

Between:

ALHAJI MALANG KANTEH

PLAINTIFF

AND

THE ATTORNEY GENERAL
OUSMAN MOMADOU WADDA
GABRIEL GEORGE
ALKALI JARJU

1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT

30

STATEMENT OF CLAIM

In the
Supreme
Court

No. 2
Statement
of Claim
(cont.)

1. The Plaintiff is a Businessman and carries on his business at Number 2 Russell Street, Bathurst, Gambia.

2. By written agreements dated the 18th days of January, 1969 and 18th February 1969 the 2nd Defendant agreed to sell to the Plaintiff his leasehold property situated at Serrakunda, Kombo St. Mary Division of the Gambia, bearing Registration No.C.9/69 for the sum of £580.4.6 which the Plaintiff paid the 2nd Defendant.

3. That after the receipt of the said sum of £580.4.0 the 2nd Defendant refused to execute an assignment prepared by A.M. Drameh in favour of the Plaintiff. 10

4. Thereupon the Plaintiff sued the 2nd Defendant for specific performance of the said agreement and the Chief Justice in Civil Suit No. 83/69 gave judgment in favour of the Plaintiff on 31st July, 1969 by which the Chief Justice ordered specific performance of the said agreement.

5. That on the 11th August, 1969, the 2nd Defendant and the Plaintiff executed an assignment of the said property by the 2nd Defendant assigning the property to the Plaintiff. The Deed was duly executed, registered and numbered 104/69 (Vol.32 C.D.). 20

6. That the 2nd Defendant also owed the 3rd Defendant who brought an action in the Supreme Court and judgment was entered in the 3rd Defendant's favour for the amount claimed plus costs whereby the 3rd Defendant issued a writ of Fi.Fa. against the moveable and immoveable properties of the 2nd Defendant and cause the property already sold to the plaintiff to be attached and sold to the 4th Defendant for £675 or thereabout on 20th September, 1969, at Serekunda K.S.M.D. Gambia. 30

7. That there was no sale as the property had by then passed to the Plaintiff who has been the owner since 11th August, 1969.

AND THE PLAINTIFF CLAIMS that the sale by the Sheriff be set aside. 40

(Sgd) S.A. N'Jie
Of 19, Buckle Street,
Bathurst, Gambia
Solicitor for the Plaintiff

THE REGISTRAR SUPREME COURT,
BATHURST, AND THE ABOVE-NAMED DEFENDANTS

5.

No. 3

DEFENCE OF FIRST DEFENDANT

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No.220/1969.

BETWEEN:

ALHAJI MALANG KANTEH

PLAINTIFF

AND

THE ATTORNEY GENERAL

1st DEFENDANT

OUSMAN MOMADOU WADDA

2nd DEFENDANT

GABRIEL GEORGE

3rd DEFENDANT

ALKALI JARJU

4th DEFENDANT

In the
Supreme
Court

No. 3

Defence of
First
Defendant

November
1969

10

DEFENCE OF FIRST DEFENDANT

The First Defendant admits Paragraph 1 of the Statement of Claim.

2. The First Defendant neither admits nor denies Paragraphs 2 and 3 of the Statement of Claim.

3. The First Defendant neither admits or denies paragraph 4 of the Statement of Claim.

4. The First Defendant neither admits nor denies Paragraph 5 of the Statement of Claim.

20

5. Save that the First Defendant denies that the property involved was already sold Paragraph 6 of the Statement of Claim is admitted.

6. The First Defendant denies Paragraph 7 of the Statement of Claim.

And the First Defendant states that the Plaintiff is not entitled to have the sale set aside and that the suit be dismissed with costs.

DATED at Bathurst the day of November,
1969.

(Sgd) S.H.A. George

Attorney General's Chambers
Bathurst, The Gambia

SOLICITORS FOR THE FIRST DEFENDANT

30

In the
Supreme
Court

No. 4

DEFENCE OF THIRD DEFENDANT

No. 4

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No. 220/1969.

Defence of
Third
Defendant

Between:

ALHAJI MALANG KANTEH

PLAINTIFF

AND

21st
November
1969

THE ATTORNEY GENERAL

1st DEFENDANT

OUSMAN MOMADOU WADDA

2nd DEFENDANT

GABRIEL GEORGE

3rd DEFENDANT

ALKALI JARJU

4th DEFENDANT

10

DEFENCE OF THIRD DEFENDANT

The Third Defendant admits Paragraph 1 of the Statement of Claim.

2. The Third Defendant neither admits nor denies Paragraphs 2 and 3 of the Statement of Claim.

3. Save that the judgment is void. The Third Defendant admits Paragraph 4 of the Statement of Claim.

4. The Third Defendant neither admits nor denies Paragraph 5 of the Statement of Claim.

20

5. Save that the Third Defendant denies that the property involved was already sold Paragraph 6 of the Statement of Claim is admitted.

6. The Third Defendant denies Paragraph 7 of the Statement of Claim.

7. The Third Defendant will at the trial of this Suit refer to Suit No. 84/1969 between the third respondent and the second respondent and the affidavits filed therein, and also to the affidavit of the third Defendant filed in reply to a motion in this Suit and dated the 25th day of September 1969 and show that the order for specific performance obtained by the Plaintiff was made two months after a writ of Fieri Facias issued against the same property.

30

Dated at Bathurst the 21st day of November 1969.

(Sgd) S.F. N'Jie

Bedford Place, Bathurst,

Counsel of Third Defendant.

40

7.

No. 5

AFFIDAVIT OF A.M. KANTEH

In the
Supreme
Court

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No.S.220/1969

No. 5

Affidavit
of
A.M. Kanteh
26th March
1970

BETWEEN:

ALHAJI MALANG KANTEH PLAINTIFF/APPELLANT

AND

ATTORNEY GENERAL
OUSMAN MOMADOU WADDA
GABRIEL GEORGE
ALKALI JARJU RESPONDENT/DEFENDANT

10

AFFIDAVIT

I, ALHAJI MALANG KANTEH, Gambia, make oath and say as follows:-

1. That I am the applicant in this cause.-
2. That Your Lordship gave judgment in Suit No.S.220/1969 on 24th March, 1970 in favour of the 3rd and 4th respondents.
- 20 3. That the action brought by the applicant was action In Rem and affects property, the sale of which to an innocent person without notice even while an appeal to The Gambia Court of Appeal is pending, will give the purchaser an unavoidable right to the property at Serra Kunda which was the subject matter of the proceedings.
- 30 4. That for over seven days before Your Lordship's judgment was delivered, the property had been visited by would-be-buyers who were sent by Alhaji Saloum Mangasuba who provided the money which enabled the 4th respondent to bid on his behalf at the auction sale of the said property. and those would-be-buyers are ready to purchase as soon as the property is conveyed by the Sheriff to the 4th Respondent.
5. To preserve the status quo until the appeal lodged by the applicant is heard, I would apply most humbly for a stay of
 - (a) the conveyance of the property to the 4th respondent.

8.

In the
Supreme
Court

(b) the payment of the proceeds of sale by
Sheriff to the 3rd respondent until the
determination of the said appeal.

(Sgd) Malang Kanteh

RESPONDENT

No. 5

Affidavit
of
A.M. Kanteh
26th March
1970
(cont.)

SWORN AT BATHURST, this 26th
day of March, 1970

BEFORE ME

(Sgd) R.R.G. Joiner

A COMMISSIONER FOR OATHS

10

No. 6

Notice of
Motion of
Fourth
Defendant

No. 6

NOTICE OF MOTION OF FOURTH DEFENDANT

Civil Cause S.220/1969

BETWEEN:

ALKALI JARJU APPLICANT/4th DEFENDANT

AND

ALHAJI MALANG KANTEH RESPONDENT/PLAINTIFF

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on
Monday the 23rd day of November, 1970, at 9.30
o'clock in the forenoon or so soon therefore as
counsel can be heard by Samuel John Bolla
Mahoney Counsel for the Applicant, that the
Court may be pleased to make an order that:-

20

1. The respondent be order to pay all rents accruing
from the property at Serekunda the subject matter
of the main suit, be paid into Court until the
determination of the main suit.
2. The respondent be ordered to render an account of
all rents received by him since the 20th September,
1969 and pay this amount into Court pending the
determination of the suit.

30

(Sgd) S.J.B. Mahoney

of 15 Buckle Street, Bathurst.

SOLICITOR FOR THE APPLICANT/4th Defendant

The Registrar, Alhaji Malang Kanteh through his
Supreme Court, Solicitor Mr S.A.N'Jie, B.L.
Bathurst. 19 Buckle Street, Bathurst.

9.

No. 7

AFFIDAVIT OF FOURTH DEFENDANT
IN THE SUPREME COURT OF THE GAMBIA

Civil Cause S.220/1969.

In the
Supreme
Court

No. 7

Affidavit
of Fourth
Defendant

17th
November
1970

BETWEEN:

ALKALI JARJU

APPLICANT/4th DEFENDANT

AND

ALHAJI MALANG KANTEH

RESPONDENT/PLAINTIFF

10

I Alkali Jarju of Serrekunda in the Kombo Saint Mary Division of The Gambia make oath and say as follows:-

1. That I am the Applicant in this case.

2. That by the judgment of His Lordship Phillip Bridges Chief Justice dated 24th March 1970, the property at Serekunda K.S.M.D. was to be conveyed to me by the Sheriff.

20

3. That ~~this~~ decision was appealed against and on the 3rd day of June 1970, because of certain irregularities in the proceedings, the main suit was referred to the Supreme Court for trial de novo.

4. Since the date of the sale of the said property on the 20th September, 1969, the property has neither been conveyed to me nor have I been receiving rents accruing from the property. Instead the Respondent has been collecting all rents from the said property.

30

5. That no attempt has been made to pursue the said suit since the decision of the Court of Appeal and that until such time that the matter is settled it is only fair that all rents be paid into court. So long as any party to the suit continues to enjoy the benefit of the rent it is feared that the determination of the suit will not be expedited.

In the circumstances I humbly apply that the Court will be pleased to order that:-

1. All rents accruing from the said premises be paid into Court until the determination of the suit.

40

2. All rents received by the respondent from the 20th day of September, 1970 be accounted for and paid into Court.

(Sgd) A.S. Jarju

SWORN at Bathurst, this 17th day of November,

(Sgd) R.R.G. Joiner

COMMISSIONER FOR OATHS

10.

No. 8

PROCEEDINGS

In the
Supreme
Court

No. 8

Monday the 1st day of March, 1971.

Proceedings

Before the Hon. N.E. Brown Marke, Ag. C.J.

1st March
1971

Mr. S.A. N'Jie for plaintiff.

Solicitor General deputising for Attorney General
1st defendant.

2nd defendant appears in person

3rd defendant represented by Mr. S.F. N'Jie

4th defendant represented by Mr. S.J.B. Mahoney

10

Date fixed for hearing Friday 5th March 1971.

(Sgd) N.E. Brown-Marke

1/3/71.

5th March
1971

FRIDAY THE 5th DAY OF MARCH 1971.

Mr. S.A. N'Jie for plaintiff with Mr. Drammeh

Mr. O. Opene, Estate Counsel for 1st defendant

2nd defendant appears in person

3rd defendant represented by Mr. S.F. N'Jie

4th defendant represented by Mr. S.J.B. Mahoney

Case proceeds.

20

Opene raises preliminary objection, 1st defendant
should not have been made party to proceedings as
they had no interest in the matter. Counsel
informed that the objection should have been
raised in the previous trial.

Plaintiff's
Evidence

No. 9

No. 9

MALANG KANTEH

Malang
Kanteh

P.W.1. Malang Kanteh (S.O.K) (M) 4 New Street
Bathurst. Business man. Business address
2 Russell Street. In 1969 I had some business

Examination

30

with 2nd defendant. He took my money from me when we became friends. The amount £240 in cash. He promised to repay it within two days. He did not pay as promised. He afterwards suggested that we should prepare a document. This is the document which we prepared. Tendered. No objection Exhibit A. There was also another document. I produce and tender it. No objection Exhibit B. The second document was in connection with the pledging of the property previously by 2nd Defendant. After the preparation of the second document and the payment of the outstanding amount by me 2nd defendant gave me another document which I produce and tender. No objection Exhibit C as a result 2nd defendant and I prepared a document for the compound. Prior to the preparation of the last document referred to I received another document from the Government which I produce and tender no objection Exhibit D I produce and tender the assignment to me of the property no objection Exhibit E I knew of no other encumbrance on the property before it was assigned to me. At no time until the preparation of Exhibit E had 2nd defendant objected to transfer the property to me. He only made objection when it was time for him to execute it and I had to take him to Court. I had an order from the Chief Justice which I produce and tender. No objection Exhibit F I had a second order on 11th August 1969 which I produce and tender no objection Exhibit G. By virtue of exhibits F and G, 2nd defendant eventually executed exhibit E. Until date 2nd defendant had never informed me of any encumbrance on the land. After the assignment of the compound to me I met people there selling the compound. The sheriff and other officers responsible. I approached the sheriff and told him that the compound he was selling belonged to me. I produced my documents and the sheriff looked at them. By then he had already sold the compound. He told me that the 4th defendant had bought the property. I then consulted my solicitor and proceedings commenced.

XXm. by Opene.

The first amount I gave 2nd defendant was £240. The total was £480. 4/-. At the time I paid the amount I knew of no transaction between 2nd and 3rd defendants. I did not sign them 2nd defendant requested Mr. Drammeh in my presence to apply to the

In the
Supreme
Court

Plaintiff's
Evidence

No. 9

Malang
Kanteh

Examination

(cont.)

Cross-
Examination
1st
Defendant

In the
Supreme
Court

Plaintiff's
Evidence

No. 9

Malang
Kanteh

Cross-
Examination,

1st
Defendant
(cont.)

Lands Department for permission to assign. I would be surprised to hear that 2nd defendant never instructed Mr. Drammeh to apply for the assignment. At this stage in view of the evidence so far I rule that Mr. Drammeh cannot properly appear with Mr. S.A. N'Jie for the Plaintiff.

(Sgd) N.E. Brown-Marks

Evidence continues:- 2nd defendant instructed Mr. Drammeh to apply for the assignment. I only knew of the transaction between 2nd and 3rd before 2nd defendant executed Exh. E. I heard that 2nd defendant was indebted to 3rd defendant. I did not know that 3rd defendant had obtained judgment against 2nd defendant. I did not know of any interim attachment on the property.

10

I only knew of the interim attachment when the matter was brought to Court. I see an application by me for a release from interim attachment which I produce and tender no objection Exhibit H. This exhibit has a date prior to exhibit E. I proceeded with exhibit H and I got my compound. I deny that I abandoned exhibit H. I gave 2nd defendant £240 tender exhibit A and under exhibit B I paid £340.4.6. The total is £580.4.6. I made a mistake at first when I said the total was £480. 4/- I know the amount I paid to 2nd defendant.

20

Cross-
Examination,

2nd
Defendant

XXm. by 2nd defendant.

I got exhibit E from you and not from my solicitor I do not know that you refused to any other previous assignment. I only know that you pledged the compound to Sugufara (Identified) (court noted that Sugufara had been in court during evidence. He said that he never heard when witnesses were asked to leave. Ordered to leave the Court at this stage) Evidence continues. You asked Mr. Drammeh to apply to the Lands office for a release. You arranged in my presence. Drammeh was my solicitor.

30

Cross-
Examination,

3rd
Defendant

XXm by Mr. S.F. N'Jie.

I first knew that the property was attached when I brought 2nd Defendant before the Court. I do not know the date I only know that I brought him

40

to Court. I cannot tell the date. I cannot read or write. I swore to several affidavits but I do not know the dates (Paragraph 6 of exhibit H read to plaintiff). I remember swearing to it. The matter was heard. It was after I had submitted that paper that the paper for the compound was signed. I knew before I took proceedings that the property had been attached. I did not tell the Judge that the property had been attached. Exhibit A and B were stamped as registered. I only know of my copies of those exhibits. There are other copies with 2nd defendant.

10

XXm. by Mr. Mahoney. None.

RXM.

I received exhibits B and C from 2nd defendant in 1969. I gave money to 2nd Defendant who handed it over to Sugufara. Exhibit B was made at the same time. I also received exhibit C at the same time. Exhibit B is dated 25/2/1969. The date stamp on exhibit H is 17/4/69. At the time I sworn (sic) to the affidavit on exhibit H I had already had in my possession exhibits A, B and C. I had then paid £580.4.6. The documents relate to the purchase of the property from 2nd defendant. He did not ask me any questions during the previous trial. 2nd defendant did not tell me at any time why he refused to sign the assignment. I cannot remember how many documents I swore to. I swore to more than one document. I do not know whether the other properties named in exhibit H were served. Neither 3rd defendant nor his counsel told the Court that they were not served with the document. I did not receive any letter from the 3rd defendant asking for the matter to be dismissed.

20

30

Adjourned to Tuesday 9th March, 1971.

(Sgd) N.E.Brown-Marke.

5/3/71

In the
Supreme
Court

Plaintiff's
Evidence

No. 9

Malang
Kanteh

Cross-
Examination,

3rd
Defendant

(cont.)

Re-
examination

14.

No. 10

PROCEEDINGS

In the
Supreme
Court

Proceedings
9th, 10th
and 11th
March 1971

Tuesday the 9th day of March, 1971.
Wednesday the 10th day of March, 1971.
Thursday the 11th day of March, 1971.

Same representation.

Adjourned to Wednesday 17th March, 1971.

(Sgd) N.E. Brown Marke
11/3/71

17th March
1971

Wednesday the 17th day of March, 1971.

10

Same representation.

Adjourned to Monday 29th March, 1971.

(Sgd) N.E. Brown-Marke
17/3/71.

29th and
30th March
and 1st
April 1971

Monday the 29th day of March 1971.
Tuesday the 30th day of March 1971.
Thursday the 1st day of April 1971.

Before the Hon. N.E. Brown Marke Ag. C.J.

Same representation.

Mr. S.F. N'Jie for plaintiff otherwise engaged.

20

Adjourned to Monday 5th April 1971.

(Sgd) N.E. Brown-Marke
1/4/71

5th April
1971

Monday the 5th day of April 1971.

Same representation

Adjourned to Thursday 22nd April 1971.

(Sgd) N.E. Brown-Marke,
5/4/71.

22nd and
23rd April
1971

Thursday the 22nd day of April 1971.
Friday the 23rd day of April 1971.

30

Mr. S.A. N'Jie for plaintiff
Mr. Opene for 1st Defendant
2nd Defendant in person
Mr. S.F. N'Jie for 3rd Defendant
Mr. S.J.B. Mahoney for 4th Defendant.

No. 11ABDOULIE ALIEU N'JIE

In the
Supreme
Court

Plaintiff's
Evidence

No. 11

Abdoulie
Alieu
N'Jie

Examination

10 P.W.2. Abdoulie Alieu N'Jie (S.O.K) (E) Dippakunda
Kombo St. Mary. Lands Officer. Gambia Government.
I know plaintiff, 2nd defendant and Mr. A.M.
Drammeh I received an application from Mr.
Drammeh in respect of land owned by Mr. Wadda. I
produce and tender the letter. It is dated 28th
February, 1969. Produced and tendered no
objection Exhibit J I replied to that letter. I
produce and tender the reply. It is dated 9th
April, 1969 no objection. Exhibit K I also
received a letter written by Mr. S.F. N'Jie and
dated 12th March 1969. There was no order from the
Court sent to me that nothing should be done to
the property. No body raised an objection to the
permission I granted to 2nd defendant to assign to
plaintiff. On or about 13th January 1970, I
20 received a letter from the Sheriff. I have never
granted permission to any other person to assign
that property.

Adjourned at this stage to Wednesday 28th April,
1971.

(Sgd) N.E. Brown-Marke
23/4/71.

Wednesday the 28th day of April, 1971.

Same representation

30 P.W.2. Abdoulie Alieu N'Jie (S.O.K.) (E)
Examination in chief continues. I have access to
leases and other documents registered in the
Registrar General's Office. We have record of all
our leases in our own office. I had no notice or
order of an incumbrance on the property before or
soon after the assignment. I know Mr. Wadda. He
has never made any objection to the grant or
approval of the assignment.

XXM. Mr. Opene

40 Mr. Wadda applied for permission to assign
through his solicitor. Either the lessee or his
solicitor can apply for the permission I would be

Cross-
Examination,
1st
Defendant

In the
Supreme
Court

Plaintiff's
Evidence

No. 11

Abdoulie
Alieu
N'Jie

Cross-
Examination,
1st
Defendant
(cont.)

Cross-
Examination,
3rd
Defendant

surprised to hear that Mr. Wadda did not instruct Mr. Drameh to apply on his behalf. I cannot remember whether Mr. Wadda was at any time at our office concerning the assignment. I received a letter from the Sheriff concerning the property. I have not got the letter here. We could not trace the file. As a result of the letter, the matter was referred to the Minister for approval of sale of the property. As far as I am aware there was no correspondence about the approval. The letter could not be traced either in our office or in the ministry. Mr. S.F. N'Jie wrote that he was applying for interim attachment of the property. We acted on legal advice that we should be shown a court order the minister could assign. It was months after that I knew that the property had been attached.

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XXM. Mr. S.F. N'Jie.

I see in court the copy of the letter sent to us by Mr. S.F. N'Jie. I have already said that the original cannot be traced. I produce and tender the copy. There was an attachment I produce and tender three documents Exhibits L1, L2 and L3. In spite of L1 I proceeded to assign to the plaintiff. I had legal advice. Applications are made to the minister through me and the answers go through me.

20

Mr. Mahoney. No XXm.

RXM. None.

Adjourned to tomorrow 29th April 1971.

30

(Sgd) N.E. Brown-Marke
29/4/71.

No. 12

Proceedings
29th and
30th April
1971

No. 12

PROCEEDINGS

Thursday the 29th day of April, 1971.

Friday the 30th day of April, 1971.

Same representation

17.

Mr. S.J.B. Mahoney (sick)

Adjourned to Wednesday 5th May, 1971.

(Sgd) N.E. Brown-Marke
30th April 1971

Monday the 3rd day of May, 1971.
Wednesday the 5th day of May, 1971

Same representation.

In the
Supreme
Court

No. 12
Proceedings
29th and
30th April
1971

3rd May
1971

No. 13

10

ABDALLAH MAHAMAD DRAMEH

Plaintiff's
Evidence

No. 13

Abdallah
Mahamad
Drameh

Examination

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P.W.3 Abdallah Mahamed Drameh (S.O.K) (E)
8 Macarthy Square, Bathurst. Barrister and
solicitor of the Supreme Court, I know both
plaintiff and defendant. Between 18th January
and 25th February 1969, the plaintiff showed me
exhibit A and asked me to act for him in connection
with the matter referred to in the exhibit. I
transacted the matter for my client the plaintiff
and concluded on 25th February, 1969. The parties
mentioned in exhibit B and I visited 3 Anglessea
Street Bathurst. There is a shop at this address
operated by one Sugufara. From there we went to
2 Russell Street at the shop operated by plaintiff.
At this shop the plaintiff paid Sugufara in the
presence and with the consent of 2nd defendant the
sum of £340.4.6 being the full and final settlement
between 2nd defendant and Sugufara. 2nd defendant
had in addition to this debt deposited his lease for
his property at Serrakunda to Sugufara and Sugufara
was holding the lease at the time we visited
2 Russell Street and at the time he was receiving
the money from plaintiff. Sugufara went with the
lease to Russell Street 2nd defendant agreed at
that moment that in exchange for the money plaintiff
paid to Sugufara, with his consent was to hand over
the lease to plaintiff and that the sale would be
effective subject to the usual consent of the ministry
of Lands, that is to say, 2nd defendant sold there and

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In the
Supreme
Court

Plaintiff's
Evidence

No. 13

Abdallah
Mahamed
Drameh

Examination

then the lease of property at Serrakunda to plaintiff subject to consent from the Ministry. I made it clear to all the parties that it was important for us to obtain the consent and 2nd defendant agreed that I should take necessary action to write to the Ministry. I then prepared B, 2nd defendant signed it and I witnessed it. Sugufara also signed in Arabic and affixed his mark. The money passed and the lease was handed over to plaintiff and we dispensed. I wrote exhibit J addressed to the Lands officer. Exhibit K is the reply to my letter. I accordingly prepared exhibit E and asked 2nd defendant to sign it. He refused to do so and I had to file a motion in the Supreme Court which was granted and 2nd defendant then signed exhibit E and executed. 2nd defendant had been very difficult and I had sue him in Court. 2nd defendant showed me a letter and asked me to intervene on his behalf to ask for extended time to pay the money. I telephoned Mr. S.F. N'Jie who was solicitor on the other side one Gabriel George and Mr. N'Jie agreed to give 2nd defendant 10 days extension. It turned out that £300 paid by 2nd defendant to Shyben Madi was the sum advanced by Sugufara and that was the reason why I joined Shyben Madi and 2nd defendant in our action brought by Sugufara. The suit was withdrawn because my client received his money. 2nd defendant had no time withdrew his consent for me to apply to the ministry for property to be assigned 2nd defendant had never contested my authority to ask for his consent. I carried out the usual search before asking for the consent of the Ministry. The property was not incumbered in anyway.

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Cross-
Examination,
1st
Defendant

XXm. Mr. Opene

I acted for plaintiff, defendant, and Sugufara in different capacities so that the three of them would be satisfied. They had one interest the sale of the property. They were all satisfied. 2nd defendant refused to sign at first because he said he could get more 2nd defendant instructed me to act for him.

XXm. 2nd defendant. When you signed exhibit B I implied that you intended me to apply to the ministry of Lands for permission action on suit 32/1969 was withdrawn because you settled the amount. Before the action the lease was handed to me by Sugufara. The Court ordered you to execute the document.

In the Supreme Court

Plaintiff's Evidence

No. 13

Abdallah Mahamed Dramah

Cross-Examination, 2nd Defendant (cont.)

XXm. Mr. S.F. N'Jie

Cross-Examination, 3rd Defendant

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When I made application for specific performance I did not know that there was interim attachment of the property. The first time I knew was in an affidavit which I saw sometime later. I do not know whether my aunt knew that the property had interim attachment. I agree that all that is in exhibit A is an agreement to sell. The date of the meeting at Russell Street was 25th February, 1969. I recall the telephone conversation with you but I cannot remember the date. At that time I was acting for 2nd defendant. Exhibit C first came to my hand when Sugufara instructed me to sue 2nd defendant at my office. The only consent I had from 2nd defendant was by exhibit B. I wrote exhibit J. I filed an interpleader concerning this same property when my client and I learnt that you ? half of Gabriel George attached the property. I went to court for the order of specific performance 31st July, 1969.

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XXm. Mahoney. None.

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XXm. I cannot say whether the interpleader action was pursued to the end. 2nd defendant knew at the time I took the specific performance action that I had obtained the consent of the minister.

Re-examination

Adjourned to Friday 7th May, 1971.

(Sgd) N.E. Brown-Marke
5/7/71

In the
Supreme
Court

Thursday the 7th day of May, 1971.

Same representation.

Plaintiff's
Evidence

Abdullah Mohamed Drameh (S.O.K) (E)

No. 13

P.W.3 Evidence continues examined by Mr. S.A.N'Jie.

Abdallah
Mahamed
Drameh

The interpleader that I filed has not been discontinued and was waiting in the Registry for a date to be fixed for hearing. I had got my reply from the Lands Officer before filling the interpleader proceedings.

Re-
examination
(cont.)

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Cross-
Examination,
3rd
Defendant

XXm. by Mr. S.F. N'Jie.

I filed the interpleader on 23rd April 1969.

No. 14

No. 14

Alie Alieu
Ceessay

ALIE ALIEU CEESAY

Examination

P.W.4. Alie Alieu Ceessay (S.O.K.) (E)
60 Lancaster Street Bathurst, Clerk Judicial Department. I have in my custody a writ of summons between Gabriel George and Wadda. Civil Suit No. 35 of 1969. I have an application filed on 12th March 1969, by Mr. Solomon N'Jie for interim attachment of Wadda's property at Serrekunda. The order granting the application was made on 14th March, 1969 I have in my possession the said order Tendered M1, M2, M3 and M4.

20

Cross-
Examination,
1st
Defendant

XXm. Mr. Opene.

I have the interpleader summons filed by Mr. Drammeh on 17th April 1969. According to the record book the matter was not completed. I do not know the reason.

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No XXm by 2nd defendant.

21.

10 XXm. No steps was taken apart from filing. The last note made on the 6th of May was that the matter to be adjourned to 9th of May for Mr. N'Jie to file affidavit in reply. The affidavit in reply was that sworn on 8th May, 1969. Affidavit tendered exhibit E I see the warrant of attachment signed by the Chief Justice Tendered Exhibit M6. In suit 35 of 1969, Judgment was entered in favour of plaintiff for £372.5.6. and costs £13.15.1. Quarter summons fees refundable. Date 9th May, 1969. I see the writ of fi. fa. dated 22nd May, 1969. Tendered M7.

No XXm. Mr. Mahoney

RXm. Mr. Kanteh is not a party to suit 35/1969. I cannot say for certain when the bailiff attached the property.

Adjourned to Monday 10th May, 1971.

(Sgd) N.E. Brown-Marke.

7/5/71.

20 Monday the 10th day of May, 1971.

Tuesday the 11th day of May, 1971.

Same representation.

No. 15

EDWARD LEES

30 P.W.5. Edward Lees. (S.O.B) (E). 7 Denton Street Bathurst. Deputy Sheriff and Superintendent of Police. I have in my possession a letter forwarding an order for the attachment of property owned by 2nd defendant. Produced and Tendered. Mr. Opene objects. Reason letter written in confidence.

Witness said in confidence did not exist as soon as the letter reached him. Tendered Exhibit N.

No. XXm. by Mr. Opene, 2nd defendant.

In the
Supreme
Court

No. 14

Alie Alieu
Ceesay

Cross-
Examination,
3rd
Defendant

Re-
examination

No. 15

Edward Lees
Examination

In the
Supreme
Court

No. 15

Edward Lees

Cross-
Examination,
3rd
Defendant

Cross-
Examination,
4th
Defendant

Re-
examination

XXm. N'Jie. The attachment was effective. There was a subsequent writ of fi.fa affecting the same property. That writ issued from the same suit. The property was sold under the writ of fi.fa and the proceeds of sale paid into Court. I don't know whether the proceeds are still in Court.

XXm. Mr. Mahoney. I cannot remember who bought the property or how much he paid without my records.

RXm. The writ was endorsed and returned after 25th of March. Attachment should operate after I receive the letter.

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Case for the plaintiff.

Defence.

Mr. Opene not calling any witness

2nd defendant elects to give evidence.

Defendant's
Evidence

No. 16

OUSMAN MOMODU WADDA

No. 16

Ousman
Momodu
Wadda

Examination

D.W.1. Ousman Momodu Wadda (S.O.K) (E) Serrekunda Komba St. Mary Div. Business man. Sometime in January, 1969, I had some business with plaintiff. He gave me £240 in money for the supply of eight bundles of corrugated iron sheets which I should obtain from Shyben Madi the supplier. After paying the amount to Shyben Madi. He promised to supply me corrugated iron sheets and other sundry goods but failed to make the supply. I returned to plaintiff and explained to him that I did not get the supply and that the £240 was in the hands of Shyben Madi. He asked me whether I had any property I answered yes. He asked his son to prepare exhibit A dated 18th January, 1969, in

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10 which he said that if I failed to give him £240 up to 10 days I can sell the property to him and he will give me the difference. I agreed and signed. After few weeks plaintiff told me that he had no money because it was the commencement of the trade season and I was having another amount for Mr. Hadim Sugufara of £340 which I gave to Shyben Madi to close my account Shyben Madi took the money and did not give me the goods but asked me to go and see my guarantor. When the guarantor arrived Shyben Madi did not say any correct thing I had given my lease to him. On my return Sugufara was making quarrel about the £240 and Shyben Madi gave him the title deeds when I went to Sugufara he told me that Shyben Madi had given him his title deeds but that he Sugufara did not want it Sugufara asked me whether he can consult a lawyer in order to sue Shyben Madi for breach of contract I told him yes and that if he is ready he could consult a lawyer.

20 Next day when I saw him he told me that he had consulted Mr. Drameh and had given him the title deeds in order to sue Shyben Madi and myself. This was suit No.32/69 but was not pursued. After that I heard nothing about the matter until 25th March 1969, when the plaintiff went to me and asked me to go with him Sugufara. When we left the plaintiff and myself went with Mr. Drameh to Sugufara. Mr. Drameh prepared a document in order to settle the £340 with Sugufara. Both Sugufara and I signed the document. A few days later I received an interim attachment dated 27th March, 1969. I received it on 29th March prohibiting me not to do anything with the property I signed it and kept a copy. On 9th June, 1969, I received a fi.fa. On 9th April, 1969 the plaintiff went to me with an assignment to sign and I refused to sign it on account of the interim attachment I had received I was sued and brought to Court, I explained to the Chief Justice on 14th July, 1969, that the property was attached and for that reason I was unable to sign the assignment. The case however continued until 31st July, 1969 and I was asked to sign. The plaintiff had judgment.

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XXm. by Mr. Opene. I did not at any time engaged the services of Mr. Drameh as Solicitor and I did not at anytime authorise anyone to handover to him my title deeds. I did not authorise Mr. Drameh to obtain any consent to assign. I did not know when

In the
Supreme
Court

Defendant's
Evidence

No. 16

Ousman
Momodu
Wadda

Examination
(cont.)

Cross-
Examination,
1st
Defendant

In the
Supreme
Court

Defendant's
Evidence

No. 16

Ousman
Momodu
Wadda

Cross-
Examination,
1st
Defendant
(cont.)

Cross-
Examination,
Plaintiff

Cross-
Examination,
3rd
Defendant

he applied for the consent of the Minister. I see exhibit B1 three of us signed. The plaintiff did not sign. Me in the exhibit means Sugufara not the plaintiff. The plaintiff knew about the interim attachment before I was sued in Court. I remember the time that Drameh filed an interpleader summons of which I was myself a party but it was not proceeded with. I do not know what eventually happened to the proceeding.

XXm. Mr. N'Jie Exhibit B1 was made on 25th March, 1969. After looking at the exhibit I now say that it was made in February and not March. Sugufara received the £340 the same day. I see exhibit A2 I received £240 on that day. It is correct that Gabriel George obtained judgment against me.

Xm. Mr. Mahoney no question

XXm. I gave evidence before in a previous action between the same parties. I said I signed exhibit A I intended to part with the lease by sale "to the plaintiff I acknowledge exhibit A and B." On 25th February 1969 I had already received monies due on this leasehold property and by that time the plaintiff had the lease. I do not remember the exact date that he had the lease Sugufara did not return the lease. It was with his solicitor Mr. Drameh. In suit 32/1969 Shyben Madi and I were sued. It is not to my knowledge that Shyben Madi cross-summoned Sugufara I only know of the £340 from Sugufara. I deny that Sugufara gave me £340 to pay Shyben Madi and instead I paid it into my own account. I worked for Hassan Farage. I had cause to go for him for supply of cement from Senegal which recently sold to Momodou Masa. Delivery was to be at Basse but we took the wrong route and we arrived at Kuntaur. The ferry could not take vehicle of 20 tons we returned to Farafene with

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10 the two loaded lorries before leaving Dakar it was agreed that the lorry should stop at Kuntaur. The transporter Ousman so agreed. When I arrived at Farafene I phoned to Momodou Musa to tell him that I had arrived and that the lorry could only stop at Kuntaur and it was divided by the brother of Hassan Farage that the cement should be sold. I told him that the lorry could not go to Basso and that it was better to sell the cement. When the cement was sold I left Farafene and returned to Bathurst. When I returned to Bathurst I went straight to Hassan Farage I did not meet him but the wife she asked me for the cement I told her the cement was sold. She asked for the money and I reply that it was with me. The next day I went there again and met the husband who arrived the same day. I told him that I understood he was phoning to Barra etc enquiring about me. I suggested that we should go to the police as the matter had been reported there. The police asked me for the money and I gave them the cheque which I had from Alex Madi. I sold part of the cement I had to Alex Madi I wanted to take the money to go to Senegal and buy a fresh supply of cement. From Farafeni the crossing to the road to Basse is about 2 miles, about 120 miles from where I was. The Sheriff did not meet me at my house on the 29th March, 1969. I met the Sheriff in the law courts but he did not ask me anything about my property. I understood the document dated 27th March 1969. I understood exhibits A and B I did not tell the sheriff bailiff that I had received the last instalment on the property on 25th March, 1969. I had no reason for not telling him although I knew I should have told him. I knew I should have told him. I knew of the permission to assign when I came to Court but I intended to sell the property. I expected plaintiff to get the property by assignment. If it was the action the plaintiff intended to take through Drameh. Drameh did not conceal that it was an assignment that should be executed.

RXm. None.

Adjourned to tomorrow 12th May, 1971.

(Sgd) N.E. Brown-Marke.

11/5/71

WEDNESDAY the 12th day of May, 1971.

Same representation.

In the
Supreme
Court

Defendant's
Evidence

No. 16

Ousman
Momodu
Wadda

Cross-
Examination,
3rd
Defendant

(cont.)

In the
Supreme
Court

No. 17

ALIKALI JAJU

No. 17

Alikali
Jaju

Examination

D.W.4. Alikali Jaju (S.O.K) (M) (sic) Serrekunda. Businessman. On or about 22nd September, 1969, I purchased a compound at Serrakunda. Saloum N'Jie, the Sheriff Bailiff offered the compound for sale by public auction. I paid £675 for the compound I paid it to the clerk of the Court House. The property has not been conveyed to me since I paid and the money has not been returned.

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No other questions.

Cross-
Examination,
1st
Defendant

XXm. I worked as a messenger in the Crown Law Office for three years. I left in 1961 November. I bought the compound for myself. I did not have a permit from the Ministry of Local Government before purchasing the compound.

RXm. None.

Case for defence.

Addresses.

No. 18

No. 18

20

Address of
Plaintiff's
Counsel

ADDRESS OF PLAINTIFF'S COUNSEL

12th May
1971

Mr. S.A. N'Jie. History commenced about 1st January 1969 when Wadda approached plaintiff for loan of £240 Exhibit A2. 25th February 1969. 2nd document was made Exhibit A1. Property to be sold for £580.4.6. 2nd defendant said he agreed to part with leasehold to plaintiff. All that was left was preparation of assignment necessary to obtain Ministers permission for an assignment. Exhibit J approval Exhibit K. 2nd defendant said Mr. Drameh never concealed anything. S.F. N'Jie for 3rd defendant wrote to Lands Officer Exhibit L3. In March Mr. N'Jie filed affidavit Exhibit M2. Order 11 Rules 3 and 5. Property should be specified in the order attachment shall not affect rights of persons not parties to the Suit. Rule 5. Plaintiff not party to suit between Gabriel George and Wadda. English Rules 1967 para 239. Order 18 rule 8. Halsburys 3rd edition vol 30 page 25. Fraud not pleaded. Distinction not between judgment and Order Cap 101

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section 1 Vol.V. Order should have been registered. Wadda said he did not make disclosures of assignment. Two actions 1. Specific Performance Exhibit G & F. The assignee Vol. V Cap 102 section 26. Conveyance exhibit C. Gambia Court of Appeal case No. 7 of 1969. W.A.C.A. Judgments Vol.1 at page 64. Maimuna Gaye Vs. Attorney General. Appeal 6 of 1964. Maurel Freres Vs. Alieu niang and another. Shyben Madi Vs. N'Jie No. 4 of 1965. Sale by 2nd defendant to plaintiff before any other action taken. Interpleader unnecessary Mr. Opene. Plaintiff should not have abandoned Interpleader action. 22nd writ of fi.fa issued. Plaintiff sat on right until writ of fi.fa issued. Legal right must prevail. Application for specific performance right part abandoned by plaintiff. No consent obtained on A1 and A2.

In the
Supreme
Court

No. 18

Address of
Plaintiff's
Counsel

12th May
1971

(cont.)

2nd defendant relies on his defence.

No. 19

ADDRESS OF THIRD DEFENDANT'S COUNSEL

S.F. N'Jie A discloses no agreement but merely gives plaintiff option to purchase B1 contains what may be termed an agreement. Para 3 of amended defence 3rd defendant S.A. N'Jie caught by same omission to obtain permission. Assignment made under void judgment is void. If specific performance is void assignment void. Plaintiff Lands not clean - Had notice of attachment of property and sought to free property from attachment. If order of specific performance marred by Order of non attachment under 11 rule 5. Third parties may go to Court despite lien in the property. 3rd defendant purchased property for £675 Court of Equity would not make order for specific performance. Lands & County etc. Co. Vs Lewis 1882 (21) Chancery 490 C. of A no application for injunction to restrain.

No. 19

Address of
Third
Defendant's
Counsel

12th May
1971

28.

No. 20

In the
Supreme
Court

ADDRESS OF FOURTH DEFENDANT'S COUNSEL

No. 20

Mr. Mahoney. Question of consent. Not other duty of purchaser who should obtain consent but the vendor, in his case the Sheriff. Cap 102 section 14.

Address of
Fourth
Defendant's
Counsel

Judgment reserved.

(Sgd) N.E.Brown-Marke

12th May
1971

12/5/71.

No. 21

No. 21

Judgment

JUDGMENT

10

16th
December
1971

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No.S.220/1969.

ALHAJI MALANG KANTEH

PLAINTIFF

AND

THE ATTORNEY GENERAL

BATHURST GAMBIA

1st Defendant

OUSMAN MOMADU WADDA

2nd Defendant

GABRIEL GEORGE

3rd Defendant

ALKALI JARJU

4th Defendant

20

Mr. S.A. N'Jie for plaintiff.

O. Opene for 1st Defendant.

2nd Defendant in person.

Mr. S.F. N'Jie for 3rd Defendant.

Mr. S.J.B. Mahoney for 4th Defendant.

JUDGMENT

The Plaintiff's claim on the writ of summons is to set aside a purported sale of his property situate at Serrekunda Komba St. Mary, Gambia, by the Sheriff to Alkali Jarju the 4th defendant

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on 20th September 1969.

The plaintiff is a businessman and carried on his business at 2 Russell Street Bathurst.

The statement of claim was filed by Mr. S.A. N'Jie as solicitor. It contained the following.

Para. 2. That by a written agreement the 2nd defendant understood to sell to the plaintiff his leasehold property situated at Serrekunda for the sum of £580.4.6.

10 Para. 3. That after the receipt of the said sum the 2nd defendant refused to execute an assignment prepared by A.M. Drameh in favour of plaintiff.

Para. 4. That the plaintiff thereupon sued the 2nd defendant for specific performance of the said agreement and that judgment was given in his favour.

20 Para. 5. That on 11th August 1969, the 2nd defendant and the plaintiff executed an assignment of the said property to the Plaintiff.

Para. 6. That 2nd defendant also owed the 3rd defendant who brought an action in the Supreme Court and that judgment was entered on 3rd defendants favour for the amount claimed plus costs whereby the 3rd defendant issued a fi.fa against the moveable and unmoveable property already sold to the plaintiff to be attached and sold to the 4th defendant for £675 or thereabouts on 20th September, 1969.

30 Para. 7. That there was no sale as the property had by then passed to the plaintiff since 11th August, 1969.

The first defendant in his defence filed by his solicitor neither admitted nor denied paragraphs 2, 3, 4 and 5 of the statement of claim.

As regards paragraph 6 the 1st defendant denied that the property was already sold. He also denied paragraph 7 of the statement of claim.

The 3rd defendant by his solicitor Mr. S.F. N'Jie neither admitted nor denied paragraphs 2, 3, 4 and 5 of

In the
Supreme
Court

No. 21

Judgment
16th
December
1971

(cont.)

In the
Supreme
Court

No. 21

Judgment
16th
December
1971
(cont.)

the statement of claim but denied that the property involved was already sold. He also denied paragraph 7 of the statement of claim and stated that the plaintiff was not entitled to have the sale set aside and prayed the Court to dismiss the suit with costs.

The plaintiff in evidence said that when 2nd defendant and himself became friends the 2nd defendant received £240 from him in cash and promised to repay it within 2 days. That 2nd defendant failed to fulfil his promise and afterwards suggested that both of them should prepare a document. Exhibit A states. "I Ousman Mamadu Wadda took two hundred and forty pounds cash (£240) from Alhaji Malang Kanteh and if I failed to pay two hundred and forty pounds (£240) cash on 24th of January, 1969 he is allowed to take my compound situated at Serekunda Kombo at value of four hundred and forty pounds. He may refund the change to me from the value of the compound.

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Bearers signature

Bathurst 18th January, 1969

(Sgd) Ousman M. Wadda

This document bears the stamp of the Commissioner for stamp duties for penalty paid.

Exhibit B states "Received the sum of £340.4.6. cash from Alhaji Malang Kanteh 4 New Street Bathurst, being full and final settlement of account between O.M. Wadda and I relating to promissory note dated 20th January, 1969, the subject matter of the proceedings in the Supreme Court due to be mentioned on 27th February 1969. In return for this Mr. Wadda hereby agrees to sell his property at Serrekunda to me for this sum plus what he owes me in i.e. £340.4.6. plus £240.0.0.

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Signed in arabic and

His mark.

This document was witnessed by Mr. A.M. Drameh as solicitor and endorsed by A.M. Wadda. Stamp duty paid.

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The plaintiff said that after the preparation of exhibit B and payment of the outstanding amount, the 2nd defendant gave him exhibit C which is a lease executed on 16th January, 1969, between the ministry responsible for the administration of Lands (Bathurst and Kombo St. Mary) on behalf the Crown on the one part and Ousman Momodu Wadda, the Lessee of the other part under this document the ministry dismissed (sic) the land described in the first schedule to the Lessee for 21 years from 1st August, 1968 on payment of net yearly rent of £4.1.4. clear of all deductions.

In the
Supreme
Court

No. 21

Judgment
16th
December
1971

(cont.)

Exhibit D is a letter dated 9th April, 1969 addressed by the Lands Officer to Alhaji A.M. Drameh. It reads:-

Lease of No.C 58/1969 - Serrekunda

I am directed to acknowledge the receipt of your letter dated 28th February, 1969, and to convey to your client Mr. O.M. Wadda to assign the above mentioned leasehold premises to Alhaji Malang Kanteh of New Street Bathurst.

2. Please note that the Deed of assignment should be submitted to this office for onward transmission to the Registry Office.

I am, Sir,
Your obedient servant
(Sgd) A.M. Jalloh
For Lands Officer.

Exhibit F is the Deed of assignment. It was executed on 11th August, 1969, between 2nd defendant as assignor and plaintiff as assignee and registered Exhibit C was recited and the document went on to state "Whereas the assignor has agreed with the assignee for the sale to the latter of the the said leasehold premises with the prior written approval of the Lands Officer dated the 9th day of April 1969 at the price of £580.4.6.

The indenture witnessed that in consideration of the sum of £580.4.6. paid by the assignee to the assignor the assignor assigns to the assignee the leasehold property as described for the residue now unexpired of the term of 21 years created by the lease.

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The plaintiff went on to say that he knew of no encumbrance on the property before it was assigned to him and that at no time until the preparation of exhibit E did 2nd defendant object to transfer the property to him. That 2nd defendant only objected when it was time for him to execute the transfer and that he (the plaintiff) had to take him to Court. Exhibit F is the order of the Supreme Court which the plaintiff obtained. It reads "Judgment for the plaintiff with costs. There will be an order for specific performance of the agreement for sale of property comprised in Crown Lease No.09/1969 to the plaintiff for the sum of £580.4.6.

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The plaintiff said that he had a second order on 11th August 1969 which is exhibit G. This is in fact the reasons for judgment. It reads.

"On 18th January 1969 the defendant borrowed £240 from the plaintiff promising to pay it back next day. The following day he called on the defendant (which I suggest should read plaintiff) to say he could not pay. He did say however that he had a compound on Crown lease at Serrekunda and left the deed with the plaintiff.

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Later having got into financial trouble with a moor who was suing him for £340.4.6. he sought the help of the plaintiff. The plaintiff paid the moor and the defendant signed a memorandum by which he agreed to convey the lease of his property to the plaintiff for the amount of the debt now £580.4.6. if the defendant had not been repaid within the time specified in the memorandum.

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That time passed without repayment being made and the plaintiff now seeks specific performance of the contract.

The necessary elements are contained in the memorandum and this is a case in which the equitable relief of specific performance may be granted.

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According I give judgment for the plaintiff with costs.

(Sgd) Phillip Bridges.
Chief Justice.

The plaintiff explained that by virtue of exhibits F and G the 2nd defendants eventually executed exhibit E but that the 2nd defendant had never at anytime inform him of encumbrance on the property.

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10 That later on he met the sheriff and others selling the property but that he told the sheriff that the property belonged to him. That he produced his documents and the Sheriff looked at them but he had already sold the property and told him that 4th defendant had bought the property. That he then consulted a solicitor and the action commenced.

20 In answer to Mr. Opene for 1st defendant the plaintiff said that he knew of no transaction between 2nd and 3rd defendants but that 2nd defendant requested Mr. Drameh in his presence to apply to the Lands Department for permission to assign. He said he would be surprised to hear that 2nd defendant never instructed Mr. Drameh to apply for the assignment.

At this stage, in view of the evidence already given Mr. Drameh could not properly appear with Mr. S.A. N'Jie for the plaintiff and Mr. Drameh withdrew.

The 1st defendant was represented by Mr. Opene.

The 2nd defendant appeared in person.

30 The 3rd defendant was represented by Mr. S.F. N'Jie, and the 4th defendant was represented by Mr. S.J.B. Mahoney.

40 The plaintiff answered further that he heard that 2nd defendant was indebted to 3rd defendant but not that 3rd defendant had obtained a judgment against 2nd defendant and that he did not know of any interim attachment of the property until the matter was brought to Court. Exhibit H was an application by summons served on 2nd defendant to answer to a claim that certain property seized under the process of the Court in the suit of 3rd defendant as plaintiff and 2nd defendant as defendant should be adjudged and declared to be the property of Alhaji Malang Kanteh the claimant and delivered to him accordingly. The application was supported by an affidavit sworn by Alhaji Malang

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Kanteh on 18th April 1969.

In answer to 2nd defendant the plaintiff said that he received Exhibit F from 2nd defendant and not from plaintiffs solicitor. That he had knowledge of 2nd defendant's pledging of the property to Sugufara. He identified Sugufara and the Court noticed that Sugufara was in Court when evidence was being given Sugufara explained that he never heard when witnesses were asked to leave. He was ordered to leave the Court.

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The plaintiff also said that he was present when 2nd defendant requested Mr. Drameh to apply to the Lands Officer for a release and that Mr. Drameh was his (the plaintiffs') solicitor.

When cross-examined by Mr. S.F. N'Jie the plaintiff replied that he sworn to several affidavits but could not tell the dates because he could neither read nor write and that he knew before he commenced proceedings that the property had been attached.

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The plaintiff was re-examined. He said that at the time he sworn to exhibit H he had already had in his possession exhibits A, B and G and that he had then paid £580.4.6. that 2nd defendant did not ask him any questions during the previous trial and did not tell him at anytime why he refused to execute the assignment.

The next witness Abdulai Alieu N'Jie, Lands Officer employed by the Gambia Government said that he received from Mr. Drameh an application in respect of land owned by 2nd defendant which he tendered as exhibit J. It reads.

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"I have been instructed by my client Mr. O.M. Wadda of Serekunda to apply to you for permission to assign (by way of sale) the above named leasehold property situate in Serekunda Komba Saint Mary to Alhaji Malang Kanteh of New Street Bathurst.

An early reply will be appreciated."

This exhibit is dated 28th February, 1969. The witness tendered as exhibit K which had already been marked D. the reply in which he conveyed approval for the property to be assigned

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to plaintiff he said that he also received a letter from Mr. S.F. N'Jie and dated 12th March, 1969 but that there was no order sent to him from the Court to the effect that nothing should be done to the property that no one raised an objection to the permission be granted to 2nd defendant to assign that property to plaintiff and that on or about 13th January, 1970, he received a letter from the Sheriff. He said that he had never granted permission to any other person to assign the property that he had access to leases and other documents registered in the Registrar Generals Office and that they had record of all leases in their own office. He said that he had no notice or order of an encumbrance on the property before or immediately after the assignment and that 2nd defendant never made any objection to the grant or approval of the assignment.

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In answer to Mr. Opene the witness explained that either the lessee or his solicitor could apply for permission to assign and that 2nd defendant applied through his solicitor. That he would be surprised to know that 2nd defendant did not instruct Mr. Drameh to apply. He admitted that he received a letter from the Sheriff in respect of the property and that as a result the matter was referred to the Minister for approval of sale of the property. That as far as he was aware, there was no correspondence conveying approval. He agreed that Mr. S.F. N'Jie applied for interim attachment of the property but his department acted on legal advice that they should be shown a Court Order. He only knew months later that the property had been attached.

The witness had said that he could not trace the original of the letter sent by Mr. S.F. N'Jie. He was shown a copy by Mr. N'Jie and he tendered exhibits L1, L2 and L3. L1 is an affidavit sworn by Mr. N'Jie as solicitor for the plaintiff in the suit Gabriel George and Ousman Wadda on 8th May, 1969. L2 is a continuation of the affidavit. L3 contains copies of two letters. One dated 12th March 1969 written by Mr. S.F. N'Jie to the Lands Officer. On para 2 Mr. N'Jie wrote "I hope to move the Court to order that certain leasehold property at Serekunda, Saint Mary Division of the Gambia Serial Registration number 09/1969 be kept in custodia legia pending the trial of suit between Gabriel George and Ousman Wadda.

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In the reply dated 1st April, 1969, the Lands Officer wrote that in the absence of a Court Order they could not interfere with dealings about the land in question.

Another witness was Mr. Drameh a barrister and solicitor of the Supreme Court of the Gambia. He said that sometime between 18th January and 25th February, 1969, the plaintiff showed him exhibit A and requested him to act on his behalf. He agreed and did so. That the parties mentioned in exhibit B and himself visited No. 3 Anglesea Street, Bathurst where was a shop operated by one Sugufara.

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That they went next to a shop at 2 Russell Street operated by the plaintiff where the plaintiff paid in the presence and with the consent of 2nd defendant the sum of £340.4.6 being full and final settlement between 2nd defendant and Sugufara. That 2nd defendant had in addition to the debt deposited his lease for the property at Serakunda to Sugufara who was holding it at the time they visited 2 Russell Street and he received the money from plaintiff. That 2nd defendant agreed that in exchange for the money which plaintiff paid to Sugufara, the latter with 2nd defendants consent should hand over the lease to plaintiff after which the sale would be effective subject to the usual consent of the ministry of Lands. The witness said he understood that to mean that 2nd defendant there and then sold the property to plaintiff subject to the ministrys approval. He said that he made it clear to all the parties that it was important to obtain the ministrys consent and as 2nd defendant agreed that he should take necessary action he (the witness) prepared exhibit B which was signed by 2nd defendant and witnessed by him. That Sugufara also signed in arabic and that he (Mr. Drameh) witnessed his mark after the transaction the lease was handed over to plaintiff and they all dispassed. He agreed that he wrote exhibit J to the Lands Officer and that exhibit K was the reply. That he then prepared exhibit E and requested 2nd defendant to sign it but as 2nd defendant refused to sign he (the witness) had to file a motion in the Supreme Court before 2nd defendant eventually signed. Later 2nd defendant showed him a letter and asked him to

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intervene on his behalf to ask for extended time to repay the loan. That he telephoned Mr. S.F. N'Jie who was solicitor on the other side and 3rd defendant and Mr. N'Jie agreed to give 2nd defendant 10 days extension. It turned out that the amount of £300 paid by 2nd defendant to Shyben Madi was the sum advanced by Sugufara and that was the reason why the witness joined Shyben Madi and 2nd defendant in an action brought by Sugufara. He said that the suit was withdrawn because his client got his money but that 2nd defendant at no time withdrew his consent for the witness to apply to the ministry for the property to be assigned that he carried out the usual research before asking for the consent of the ministry but that the property was not encumbered in anyway.

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When cross-examined by Mr. Opene the witness said that he acted for plaintiff, 2nd defendant and Sugufara indifferent capacities. That they had one interest which was the sale of the property and that they were all satisfied.

In answer to 2nd defendant the witness said that when 2nd defendant signed exhibit B he implied that 2nd defendant intended him to apply to the Ministry of lands for permission and that action or suit 32/1969 was withdrawn because 2nd defendant settled the amount and before that action Sugufara handed over the lease to him.

30

The witness was cross-examined by Mr. S.F. N'Jie. He said that when he applied for specific performance he had no idea that there was interim attachment of the property. He agreed that exhibit A provided only for an agreement to sell and that the only consent he had from 2nd defendant was exhibit B.

When re-examined the witness said that the interpleader action was discontinued and that he had got his reply from the Lands Officer before filing the interpleader action.

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Another witness Alieu Ceesay a Clerk in the Judicial Department said that he had in his custody a writ of summons between 3rd defendant and 2nd defendant Civil Suit No. 35 of 1969 and an application filed on 12th March 1969, by Mr. S.F. N'Jie for interim attachment of 2nd defendant's property at Serrekunda. That the order granting the application

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was made on 10th March, 1969. He tendered exhibit M1, M2, M3 and M4. When cross examined by Mr. Opene the witness said that he had in his possession the interpleader summons filed by Mr. Drammeh but according to the records the action was not completed. He did not know the reason.

In answer to further cross examination the witness said that no further step was taken after filing the last note made on the 6th of May when the matter was adjourned to 9th May to enable Mr. N'Jie to file an affidavit in reply and that the affidavit was sworn on 8th May, 1969, and filed. This was tendered as M5 warrant of attachment signed by the Chief Justice was M6. That in suit 35 of 1969 judgment was entered in favour of plaintiff in that suit for £372.5.6 plus costs the writ of fi.fa was tendered as M7.

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When re-examined the witness said that plaintiff was not a party in suit 35/1969 and that he could not say when the bailiff attached the property.

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Edward Lees the deputy Sheriff and Superintendent of Police tendered letter dated 25th March 1969 from the Registrar of Supreme Court forwarding warrant for the attachment of property before judgment in connection with case of 3rd defendant as plaintiff and 2nd defendant as defendant.

When cross-examined by Mr. N'Jie the witness said that the property was sold under a subsequent writ of fi.fa in the same suit and the proceeds of sale paid into Court.

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The first defendant did not call any witness.

The 2nd defendant described himself as a businessman. He said that the plaintiff gave him £240 for the supply of 8 bundles of corrugated Iron sheets which he should obtain from Shyben Madi the supplier. That after paying over the money Shyben Madi failed to supply the corrugated Iron sheets and other sundry goods. That he explained the position to plaintiff and the result was that plaintiff asked his son to prepare exhibit A dated 19th January 1969 which he the witness signed. That after a few weeks the plaintiff told him that he had no money because

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10 it was the commencement of the trade reason but as he (the witness) was also indebted to Sugufara in the sum of £340 which he gave to Shyben Madi to close his account, Shyben Madi took the money and did not give him the goods but requested him to see his guarantor. He had already handed over his lease to Shyben Madi which Shyben Madi later gave to Sugufara. But Sugufara did not want the lease and consulted Mr. Drameh to see Shyben Madi and himself under suit No.32 of 1969 which was not pursued. That he heard nothing further until 25th March 1969 when the plaintiff asked him to go to Sugufara. That he went there with the plaintiff and Mr. Drameh and that Mr. Drameh prepared a document for the settlement of the matter with Sugufara which he and Sugufara signed. That on 29th March, 1969 he received an interim attachment dated 27th March, 1969, prohibiting him from doing anything with the property and that on 9th June 20 1969 he received a writ of Fi.Fa. That on 9th April, 1969, the plaintiff went to him with a deed of assignment but that he refused to sign it on account of the interim attachment he had received. That he was sued and taken to Court but that he explained to the Chief Justice on 14th July, 1969 that the property was already attached and that he was unable to sign. The plaintiff had judgment in his favour and 2nd defendant was asked to sign.

30 When cross-examined by Mr. Opene the witness said that he did not at anytime engage the services of Mr. Drameh as solicitor and did not authorise him to hand over his title deeds to anyone or to obtain any consent to assign. That the plaintiff did not sign exhibit B but that plaintiff knew about the interim attachment before the witness was sued in Court. He could remember when Mr. Drameh filed an interpleader summons in which he the witness was a party but that Mr. Drameh did not proceed with the action.

40 In answer to Mr. N'Jie the witness said that exhibit B was made on 25th February 1969 after looking at it and that Sugufara received £340 on that day. He agreed that he received £240 under exhibit A and that 3rd defendant obtained judgment against him.

The witness was cross-examined by Mr. S.A. N'Jie. He said that he gave evidence in a previous

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action between the same parties and "I said I signed exhibit A. I intended to part with the lease by sale to the plaintiff. He also agreed that on 25th February, 1969 he had already received amounts due on the leasehold property and at that time the lease was in the possession of the plaintiff. He denied that Sugufara gave him £340 to pay Shyben Madi and that he paid it into his own account instead. He said that he did not tell the Sheriff's bailiff that he had received the last instalment on the property on 25th March, 1969 and that although he knew he should have told him he had no reason for not doing so. That he expected the plaintiff to acquite the property by assignment as that was the action which he (the plaintiff) intended to take through Mr. Drameh that Mr. Drameh did not conceal that an assignment should be prepared.

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The 4th defendant in evidence said that on 22nd September 1969 he purchased a compound at Serrekunda which the Sheriff's bailiff offered for sale by public auction and that he paid the purchase price of £675 to the Court Clerk that the property had not been conveyed to him and that the money was not returned.

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When cross-examined the witness admitted that he did not get a permit from the Ministry of Local Government before purchasing the property.

The plaintiffs claim on the writ is to set aside a purported sale of his property at Serrekunda to 4th defendant on 20th September, 1969.

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According to the evidence the 2nd defendant approached the plaintiff for a loan of £240 and exhibit A was prepared. Exhibit B the next document was dated 25th February 1969 under which the leasehold was to be sold for £580.4.6. The 2nd defendant had said that he agreed to part with the leasehold to plaintiff. I believe that 2nd defendant instructed Mr. Drameh to apply to the Ministry of Lands for necessary permission to assign the leasehold and I reject the denial of 2nd defendant and that he did so. Exhibit J is the request for permission and exhibit K the approval I do not believe that

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Mr. Drameh concealed anything from 2nd defendant about the whole transaction. In exhibit L3 Mr. S.F. N'Jie in his letter to the Lands Officer that he intended to move the Court for an interim attachment and although in the reply the Lands Officer that nothing could be done without a Court order no further action appeared to have been taken in that regard to inform the Lands Officer when the order was obtained. The Lands Officer in evidence said that no order of the Court was sent to him that nothing should be done to the property and that nobody raised an objection to the permission he gave 2nd defendant further that he had no notice or order of any incumbrance on the property before or immediately after the assignment under Order II rules 1, 3 and 5, the plaintiff was not a party to the action between 2nd defendant and 3rd defendant which resulted in the interim attachment of the property and the plaintiff had said that he had no knowledge of the action at the time. An order for attachment shall not affect the rights of other parties.

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(cont.)

In the case Adjei vs. Chief Dabanka & Kwami Akowua reported in W.A.C.A. Vol.1 at page 63 onwards in consideration of a loan of £350 the plaintiff deposited with a predecessor of defendant by name Dorkyi his document of title to certain leasehold property and at the same time by an informal document purported to grant to the said defendant his interest in the said premises. The principal conditions in the document were that the Plaintiff was to remain in possession but that the lease was to be the absolute property of Derkyi of the principal and interest were not paid within one year. The principal and interest were not paid within the time and Derkyi sold the property to the defendant Dabanka.

On appeal it was held that the original transaction between plaintiff and Derkyi was not a native mortgage because the plaintiff was to remain in possession. The Court held it to be an equitable mortgage which the plaintiff was still entitled to redeem and order the sale to be set aside and the premises to be assigned to the plaintiff.

In the present case the leasehold property was properly assigned to the plaintiff and the deed of assignment executed by 2nd defendant. I am satisfied

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that he did not notify the plaintiff of the action between 3rd defendant and himself which culminated in the writ of fi.fa being executed neither did he obtain the permission from the Lands Officer to sell the property to 3rd defendant, nor has the Lands Officer any record of the sale to 3rd defendant. I do not agree with Mr. Opene that plaintiff slept on his rights until the fi.fa was issued. Plaintiff said he only knew of the transaction when he noticed the property being sold by the sheriff. It is the responsibility of an intending purchaser to ascertain that ? is no encumbrance on the land before purchasing it 2nd defendant in my view intended to make as much money on the leasehold at the expense of other parties. Even from his evidence he was well aware of all that transpired.

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Mr. S.F. N'Jie argued that exhibit A disclosed no agreement but merely gave plaintiff option to purchase but exhibit E was executed by 2nd defendant which is a deed of assignment.

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Mr. Mahoney argued that the vendor to 4th defendant who was the sheriff should have obtained the necessary consent. Be it so but that should not affect the rights of plaintiff if the vendor without plaintiff's knowledge offered the property for sale.

For the above reasons I hold that the plaintiff has proved his claim. Judgment is hereby given for the plaintiff. The purported sale to 4th defendant by the sheriff is set aside and I hold that the leasehold property was properly assigned to plaintiff by 2nd defendant.

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(Sgd) N.E. Brown-Marke
16/12/71.

Application for costs by Mr. S.A. N'Jie.
By Court. Costs awarded to plaintiff to be taxed.

I order that the amount of £675 paid into Court by 4th defendant for the purchase of leasehold property involved in this action be refunded.

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I further order that the rents which had

43.

accrued on the property under an order of Court
be refunded to plaintiff.

(Sgd) N.E. Brown-Marke.
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On the question of costs Mr. S.F. N'Jie
intents that nature of the case it is not fair
for any party but 2nd defendant to bear costs
of the case.

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(cont.)

By Court. Costs against all defendants
to be taxed.

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(Sgd) N.E. Brown-Marke.
16/12/71

No. 22

NOTICE AND GROUNDS OF APPEAL

IN THE GAMBIA COURT OF APPEAL

Civil Appeal No.4/72

BETWEEN:

GABRIEL GEORGE APPELLANT

AND

THE ATTORNEY GENERAL 1st RESPONDENT

OUSMAN MOMODOU WADDA 2nd RESPONDENT

ALHAJI MALANG KANTEH 3rd RESPONDENT

ALHAJI JARJU 4th RESPONDENT

In the
Court of
Appeal

No. 22

Notice and
Grounds of
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NOTICE OF APPEAL

Take Notice that the Third Defendant being
dissatisfied with the decision of the Supreme Court
contained in the judgment of Brown-Marke J. dated
the 16th day of December, 1971 doth hereby appeal
to The Gambia Court of Appeal upon the grounds set
out in paragraph 3 and will at the hearing of the
appeal seek the relief set out in paragraph 4.

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In the
Court of
Appeal

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Notice and
Grounds of
Appeal
(cont.)

2. AND the Appellant further states that the names and addresses of the persons directly affected by the Appeal are those set out in paragraph 5. Persons directly affected by the Appeal:-

3. Grounds of Appeal:

- (i) The trial Judge was wrong in law to hold that the leasehold property was properly assigned to the Plaintiff by the second defendant.
- (ii) The judgment cannot be supported having regard to the evidence. 10
- (iii) The trial judge was wrong in law when he failed to consider the effect of the Order for Interim attachment on a subsequent assignment of the same property.

4. Relief sought from The Gambia Court of Appeal.

- (i) To set aside the judgment delivered in this case.
- (ii) To enter judgment for the Third Defendant. 20
- (iii) Costs to the Third Defendant.

5. Persons directly affected by the Appeal:-

- (i) The Attorney General, of The Quadrangle, Bathurst.
- (ii) Ousman Momodou Wadda of
- (iii) Alhaji Jarju of
- (iv) Alhaji Malang Kanteh of 2 Russell Street, Bathurst.

Dated this sixth day of March, 1972.

(Sgd) G.C. George
APPELLANT.

45.

No. 23

JUDGMENT

In the
Court of
Appeal

IN THE GAMBIA COURT OF APPEAL

No. 23

General Sitting Holden at Bathurst in July, 1972

Judgment

11th July
1972

CORAN:

| | |
|-----------------|-------------------|
| G.F. DOVE-EDWIN | PRESIDENT |
| E. LIVESEY LUKE | JUSTICE OF APPEAL |
| C.A. HARDING | JUSTICE OF APPEAL |

Civil Appeal No.4/72.

10 GABRIEL GEORGE APPELLANT

Vs.

| | |
|----------------------------------|------------|
| THE ATTORNEY GENERAL & 3 ORS. | RESPONDENT |
|----------------------------------|------------|

S.F. N'Jie, Esq., for Appellant.

S.A. N'Jie, Esq., for the 3rd Respondent.

2nd Respondent in person.

No Appearance by or on behalf of the Attorney
General.

20 No Appearance by or on behalf of the 4th
Respondent.

JUDGMENT

E. LIVESEY LUKE J.A.

This is an appeal against the judgment of Browne-Marke, Acting Chief Justice dated 16th December, 1971 setting aside the sale by the Sheriff of property situated at Serekunda in the Gambia.

It will be convenient to give a brief history of this case.

30 On 26th February, 1969 Gabriel George, (the Appellant in this Appeal) issued a Writ of Summons

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(cont.)

against Ousman Wadda (the 2nd Respondent in this Appeal) claiming the sum of £393.5.0. debt due and owing. On 25th March, 1969 on the application of Gabriel George the Chief Justice granted an interim order of attachment against the property of Ousman Wadda situated at Serekunda in the Gambia. On 17th April, 1969 Alhaji Malang Kanteh (the 3rd Respondent in this Appeal) took out an Interpleader Summons in the suit between Gabriel George and Ousman Wadda claiming that the property of Ousman Wadda attached by virtue of the Order of 25th March, 1969 belonged to him. On 9th May, 1969 Gabriel George obtained judgment against Ousman Wadda for £372.5.6 and £13.5.10 costs in the suit previously referred to. On 22nd May, 1969 Gabriel George issued a writ of Fi.Fa against Ousman Wadda for the recovery of the judgment debt. On 31st July, 1969 in a suit by Alhaji Malang Kanteh against Ousman Wadda an order for specific performance of an agreement for sale of the said property at Serekunda was made by the Chief Justice in favour of Alhaji Malang Kanteh and against Ousman Wadda. In pursuance of the said order for specific performance Ousman Wadda executed an assignment of the said property in favour of Alhaji Malang Kanteh on 11th August, 1969. On 20th September, 1969, the writ of Fi.Fa. issued in the suit between Gabriel George and Ousman Wadda was executed against the said property by sale by public auction. The property was sold to Alhaji Jarju (the 4th Respondent in this Appeal) for £675. Alhaji Jarju duly paid the purchase price to the Sheriff who in turn paid it into Court. On the 22nd September, 1969, Alhaji Malang Kanteh issued a writ of summons against the Attorney General, Ousman Wadda Gabriel George and Alhaji Jarju claiming an order that the sale by the Sheriff to Alhaji Jarju be set aside.

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In his statement of claim, Alhaji Malang Kanteh alleged inter alia that the property had been assigned to him, before the sale by the Sheriff, by Ousman Wadda in pursuance of the Order for specific performance granted by the Chief Justice. In his Defence Gabriel George inter alia averred that the order for specific performance was void.

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In his judgment, Mr. Justice Browne-Marke

held that Alhaji Malang Kanteh had proved his claim and that the property had been properly assigned by Osman Wadda to Alhji Malang Kanteh.

In the
Court of
Appeal

Gabriel George appealed on five grounds of Appeal, but the main issues in this appeal are whether the order for specific performance was regular and whether the assignment was valid.

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(cont.)

10 As I stated earlier, Alhaji Malang Kanteh issued an Interpleader Summons on 17th April 1969 claiming that the property belonged to him. In his affidavit in support of the Interpleader Summons he deposed inter alia.

20 "3. That on the 18th January, 1969 the Defendant took £240 cash as a loan from me which he promised to repay on the 24th January, 1969 failing which he agreed to sell me his compound (leasehold No. C 9/1969) at Serekunda, Kombo Saint Mary Division Gambia which he valued at £250. I was to refund the change to him from the value of the compound.

4. I again confirm the sale in writing on another transaction on 25th February, 1969."

30 So what Alhaji Malang Kanteh was claiming in effect was that Ousman Wadda had agreed to assign the leasehold property to him and therefore execution should not be levied against it in respect of any debt due from Ousman Wadda. Alhaji Malang Kanteh was well within his rights to make such a claim, for Order 44 rule 26(1) of the Rules of the Supreme Court, second Schedule, provided as follows:-

40 "In the event of any claim being preferred to, or objection offered against, the sale of lands, or any other immovable property which may have been attached in execution of a decree, or under any order for attachment made before judgment, as not liable to be sold in execution of a decree against the judgment debtor, the Court shall, subject to the proviso contained in the next succeeding rule, proceed to investigate the same with the like powers as if the claimant

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1972
(cont.)

had been originally made a party to the suit, and if it shall appear to the satisfaction of the Court that the land or other immovable or moveable property was not in the possession of the party against whom execution is sought, or of some person in trust for him, or in the occupancy of persons paying rent to him at the time when the property was attached, or that, being in the possession of the party himself at such time, it was so in his possession not on his own account, or as his own property, but on account of, or in trust for some other person, the Court shall make an order for releasing the said property from attachment. But if it shall appear to the satisfaction of the Court that the land or other immovable or movable property was in possession of the party against whom execution is sought as his own property, and not on account of any other person, or was in the possession of some person in trust for him, or in the occupancy of persons paying rent to him at the time when the property was attached, the Court shall disallow the claim."

10

20

Order 44 rule 27 also provides

"The claim or objection shall be made at the earliest opportunity to the Court; and if the property to which the claim or objection applies, shall have been advertised for sale, the sale may (if it appears necessary) be postponed for the purpose of making the investigation mentioned in the last preceding rule:

30

Provided that no such investigation shall be made if it appear that the making of the claim or objection was designedly and unnecessarily delayed, with a view to obstruct the ends of justice, and in such case the claimant shall be left to prosecute his claim by a regular suit."

40

But instead of proceeding with the Interpleader, Summons, Alhaji Malang Kanteḥ abandoned it. He applied to the Court in July, 1969 for an order of specific performance

of the same agreements which he had mentioned in his affidavit in support of the Interpleader Summons. In my view by abandoning the Interpleader Summons, Alhaji Malang Kanteh deprived the Court of the chance of determining the rights of the claimants to the property at the earliest opportunity and thereby a simple matter was unnecessarily complicated and costs increased.

In the
Court of
Appeal

No. 23

Judgment
11th July
1972

(cont.)

10 Alhaji Malang Kanteh relied on two documents in support of his claim for specific performance. One was dated 18th January, 1969 and was in my opinion in the form of a receipt for a pledge and not a receipt for a sale. It could therefore not found a claim for specific performance of an agreement for sale. The other document was a receipt dated 25th February 1969 and it was the document which the Chief Justice accepted as a memorandum evidencing a contract to
20 sell the property. It is in the following terms:-

3 Anglesea Street,
Bathurst,

25th February, 1969.

30 "Received the sum of £340.4.6 from Alhaji Malang Kanteh 4 New Street Bathurst being full and final settlement of account between O.M. Wadda and I relating to promisory note dated 20th January 1969, the subject matter of the proceedings in the Supreme Court due to be purchased on 27/2/69.

In return for this Mr. Wadda hereby agrees to sell his property at Serekunda to me for this sum plus what he owe me i.e. £340.4.6 plus £240.

(Sgd) Sugufara his

X

Mark

Witness

40 Alhaji A.N. Drameh
Solicitor
2 Cameron Street,
Bathurst.

Agree with the above
(Sgd) O.M. Wadda
25/2/69.

In the
Court of
Appeal

No. 23

Judgment

11th July
1972

(cont.)

It is quite clear on the face of it that this was a receipt given by one Sugufara to Alhaji Malang Kanteh. It was certainly not a receipt given by Ousman Wadda to Alhaji Malang Kanteh or any other person. In addition it contained a paragraph whereby Ousman Wadda agreed to sell his property at Serekunda "to me". In my view "to me" in that context referred to and could only refer to the person giving the receipt i.e. Sugufara; it did not and could not refer to Alhaji Malang Kanteh. Admittedly Ousman Wadda signed the receipt as agreeing to it. But what did he agree to? He agreed that Sugufara had received the sum of £340.4.6 from Alhaji Malang Kanteh and that he (Wadda) had agreed to sell his property to Sugufara. He certainly did not agree to sell his property to Alhaji Malang Kanteh.

10

The question arises, was the receipt dated 25th February, 1969 (Ex. "B") a sufficient memorandum to form the basis of an order for specific performance? The ingredients which a receipt should contain before it would be regarded by the Courts as a sufficient memorandum were stated by Tucker L.J. in Beckett v Nurse (1948) 1 ALL E.R. 81 at p.82 as follows:-

20

"The first question for decision is whether that document was a contract. In my view, it was not. It does not, on the face of it, bear any signs of being intended to be a contractual document, a document by which both parties bound themselves to certain terms. It is only signed by one of them. That is not conclusive but I think it is significant. It is in the form of a receipt and purports to be nothing else. It contains all the necessary ingredients of a receipt. A receipt to be of any value, must show the sum paid and I think where the sum paid is a deposit or instalment it should also show the total price in respect of which it is an instalment and it should show who paid it and who received it and identify the property in respect of which it is paid. It seems to me that those are matters which are properly to be included in a receipt."

30

40

Does the receipt (Ex.B) contain all the necessary ingredients to found an action by Alhaji Malang Kanteh against Ousman Wadda? The answer must be no. It shows that Sugufara received money from Alhaji Malang Kanteh and that Ousman Wadda agreed to sell his property to Sugufara and certainly not to Alhaji Malang Kanteh. In the circumstances I hold that the receipt (Ex."B") was not a sufficient memorandum to found an order for specific performance of a Agreement between Alhaji Malang Kanteh and Ousman Wadda.

In the
Court of
Appeal

No. 23

Judgment
11th July
1972
(cont.)

What then is to happen to the Order for specific performance made by the Chief Justice? It was in the forefront of Mr. S.A. N'Jie's argument that the order for specific performance, not having been appealed against, stands and therefore the assignment to Alhaji Malang Kanteh in pursuance of the said Order was valid. But it must be pointed out that Gabriel George (the appellant) was not a party to the specific performance proceeding. What happened is that instead of proceeding with his Interpleader Summons to which Gabriel George was a party, Alhaji Malang Kanteh went behind Gabriel George's back, so to speak, and obtained an order for specific performance. Besides, the order for specific performance was pleaded by Alhaji Malang Kanteh in his Statement of Claim and he replied on it at the trial; and Gabriel George put it in issue in his Defence. So the validity of the order for specific performance is before this Court. And all the parties directly affected by the order for specific performance were parties to the suit and are before this Court. In the circumstances, it is my view that this Court is competent to determine the issue whether or not the Order for specific performance is valid.

In view of the facts which I have related above and the other circumstances of the case, and the fact that the Interim Order of Attachment was in force and my finding that the receipt (Ex."B") was not a sufficient memorandum, I hold that the Chief Justice was misled into making the order for specific performance. I also hold that the order for specific performance was irregularly applied for and is invalid. In the circumstances I set aside the order for specific performance. The Assignment which was executed in pursuance of the

In the
Court of
Appeal

No. 23

Judgment

11th July
1972

(cont.)

Chief Justices' Order suffers the same fate, and it is hereby set aside.

In view of the foregoing I hold that Mr. Justice Browne-Marke's judgment that the plaintiff (Alhaji Malang Kanteh) had proved his claim and that the property was properly assigned to Alhaji Malang Kanteh by Ousman Wadda was erroneous. I also hold that the sale by the Sheriff was a valid sale. In the circumstances I would allow the Appeal and set aside the judgment of Mr. Justice Browne-Marke.

10

After the delivery of his judgment on 16th December, 1971, Mr. Justice Browne-Marke ordered that the sum of £675 (the proceeds of sale) paid into Court be refunded. The amount has since been refunded to Alhaji Jarju. I order that the sum of £675 be paid into Court by Alhaji Jarju within 30 days hereof, in default I order that the Sheriff offer the property for sale under the writ of Fi.Fa within 60 days hereof

20

(Sgd) E. Livesey Luke
JUSTICE OF APPEAL

(Sgd) G.F. Dove-Edwin
PRESIDENT

(Sgd) C.A. Harding
JUSTICE OF APPEAL

No. 24

ORDER GRANTING SPECIAL LEAVE TO APPEAL TO
THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

In the
Judicial
Committee
of the
Privy
Council

L.S.

AT THE COUNCIL CHAMBER WHITEHALL

The 16th day of May 1973

BY THE RIGHT HONOURABLE THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

No. 24

Order
granting
Special
Leave to
Appeal to
the Judicial
Committee of
the Privy
Council

16th May
1973

10

WHEREAS by virtue of The Gambia Appeals to
Judicial Committee Order 1970 there was referred
unto this Committee a humble Petition of Alhaji
Malang Kanteh in the matter of an Appeal from the
Court of Appeal of The Gambia between the
Petitioner and (1) the Attorney General (2) Ousman
Momadou Wadda (3) Gabriel George and (4) Alkali
Jarju Respondents setting forth that the Petitioner
prays for special leave to appeal from a Judgment
of the Court of Appeal of The Gambia dated the 11th
July 1972 allowing an Appeal from a Judgment of the
Supreme Court of The Gambia dated the 16th December
1971 which set aside a sale to the 4th Respondent
by the Sheriff of property situated at Serokunda;
And humbly praying the Lords of the Judicial
Committee of the Privy Council to grant him special
leave to appeal against the Judgment of the Court of
Appeal of The Gambia dated the 11th July 1972 or for
further or other relief.

20

30

THE LORDS OF THE COMMITTEE in obedience to the
said Order have taken the humble Petition into
consideration and having heard Counsel in support
thereof no one appearing at the Bar on behalf of the
Respondents Their Lordships do grant leave to the
Petitioner to enter and prosecute his Appeal against
the Judgment of the Court of Appeal of The Gambia
dated the 11th July 1972 upon depositing in the
Registry of the Privy Council within three months of
the date of this Order the sum of £400 as security
for costs.

40

AND Their Lordships do order that the
authenticated copy of the Record produced by the
Petitioner upon the hearing of the Petition ought to
be accepted (subject to any objection that may be
taken thereto by the Respondents) as the Record
proper to be laid before the Judicial Committee on
the hearing of the Appeal.

E.R. MILLS,
Registrar of the Privy Council.

ExhibitsEXHIBIT "A". RECEIPT

"A"
Receipt,
18th
January
1969

2 Russell Street,
Bathurst, Gambia,
18th January, 1969.

I, Ousman Mamadou Wadda took two hundred and forty pounds cash (£240) from Alhaji Malang Kanteh. And if I failed to pay two hundred and forty pounds (£240) cash on 24th of January 1969, he is allowed to take my compound situated at Serakunda Kombo at value of four hundred and fifty pounds (£450). He may refund the change to me from the value of the compound.

10

Bearers signature
Bathurst 18th January, 1969.
(Sgd) Ousman M. Wadda.

"B"

EXHIBIT "B". RECEIPT

Receipt,
25th
February
1969

3, Anglesea Street,
Bathurst,
25th February, 1969.

20

Received the sum of £340.4.6 from Alhaj Malang Kanteh 4 New Street, Bathurst being full and final settlement of account between O.M. Wadda and I relating to promisory note dated 20th January 1969, the subject matter of the proceedings in the Supreme Court due to be purchased on 27/2/69.

In return for this Mr. Wadda hereby agree to sell his property at Serekunda to me for this sum plus what he owe me i.e. £340.4.6. plus £240.

30

(Sgd) Sufugara his

X

Mark

Witness:
Alhaji A.M. Drameh
Solicitor
2 Cameron Street,
Bathurst.

Agree with the
above
(Sgd) O.M. Wadda
25/2/69

EXHIBIT "C". LEASEExhibits"C"Lease
16th
January
1969

10 THIS LEASE made the sixteenth day of January one thousand nine hundred and sixty nine BETWEEN the Minister for the time being responsible for the administration of the Lands (Bathurst and Kombo Saint Mary) Act (hereinafter called the "Minister") on behalf of the Crown by virtue of the powers vested in him by the said Act of the one part and OUSMAN MOMODOU WADDA C/O SEREKUNDA VILLAGE in The Kombo Saint Mary Division of The Gambia (hereinafter called the "Lessee" which expression shall where the context so admits include permitted assigns) of the other part

WITNESSETH as follows:-

- 20 1. In consideration of the rent hereinafter reserved and of the covenants and conditions on the part of the Lessee hereinafter contained or implied by virtue of the said Act the Minister hereby demises unto the Lessee ALL THAT piece or parcel of land described in the First Schedule hereto and delineated on the plan annexed hereto and thereon surrounded by a pink verge line TO HOLD the same unto the Lessee from the First day of August one thousand nine hundred and sixty eight for the term of Twenty one years PAYING THEREFOR during the said term the net yearly rent of FOUR POUNDS ONE SHILLING AND FOUR PENCE clear of all deductions such rent to be payable in advance on the 1st day of January in every year
- 30 2. The Lessee hereby agrees to observe and perform the said implied covenants and hereby further covenants with the Minister that the Lessee will throughout the term hereby granted perform and observe the provisions and stipulations contained in the Second Schedule hereto.
- 40 3. If the Lessee shall be desirous of taking a new Lease of the demised premises after the expiration of the term hereby granted then the Minister will grant to the Lessee a new Lease of the premises hereby demised for a further term of Twenty one years at the same rent provided there shall be no subsisting breach of any of the Lessee's obligations under these presents
4. Provided always that if the rent hereby

Exhibits

"C"

Lease
16th
January
1969
(cont.)

reserved or any part thereof shall at any time be in arrear and unpaid for twenty one days after the same shall have become due (whether legally demanded or not) or there shall be any breach or non-observance of the covenants conditions express or implied by virtue of the said Act or as contained in the Second Schedule hereto on the part of the Lessee then the Minister may at any time after such breach or non-observance re-enter into and upon the premises or any part thereof in the name of the whole and have again repossess hold and enjoy the same as in his former estate on behalf of the Crown

10

IN WITNESS whereof the Lands Officer in accordance with the provisions of the said Act has hereunto set his hand and caused the seal of the Lands Office to be affixed hereto and the Lessee has hereunto set his hand and seal the day and year first above written

THE FIRST SCHEDULE ABOVE REFERRED TO

20

ALL THAT piece or parcel of land situate at SERREKUNDA in the Kombo St. Mary Division of The Gambia and bounded on the North-east side thereof by a road passing between the premises herein demised and a plot of land in the occupancy of one Rohey Jobe and on the South-east side thereof by a road Thirty-five feet in width or thereabout passing between the premises herein demised and a plot of land in the occupancy of one R.N. Lowe and on the South-west side thereof by a plot of land in the occupancy of one Alhaji N'Dongo Faal and on the North-west side thereof by a plot of land in the occupancy of one A.B. Sallah and measuring along the North-east side thereof one hundred and five feet or thereabouts and along the South-east side thereof One Hundred and Twenty nine feet or thereabout and along the South-west side thereof Ninety nine feet or thereabout and along the North-west side thereof One hundred and thirty three feet or thereabout and containing an area of Thirteen thousand three hundred and sixty two square feet or thereabout ALL as shown and delineated in the Plan attached hereto and thereon edged Pink

30

40

THE SECOND SCHEDULE ABOVE REFERRED TO

1. To erect within three calendar months from

the date hereof and at all times thereafter to maintain in good condition and complete repair a sufficient boundary fence surrounding the whole of the demised premises.

Exhibits

"G"

2. To erect upon the demised premises within two years from the date hereof a dwellinghouse costing not less than £200 (Two hundred pounds) and out-buildings fit for immediate occupation.

Lease
16th
January
1969

(cont.)

10 3. To keep all the buildings erected upon the demised premises in good and substantial repair and condition.

4. To use the demised premises for the purpose of a private residence only and not to carry on any trade or business hereon and not to erect or exhibit any sign notice or advertisement of any kind whatsoever upon the demised premises.

20 5. Not to do or permit anything to be done in the said premises or any part thereof which may cause danger nuisance scandal or annoyance to the Lessor or the neighbouring premises.

6. In the constructing and erecting of any buildings and fence upon the demised premises to conform to the provisions of any Act or Order applicable thereto and to any Building Regulations applicable to the Kombo Saint Mary Division of The Gambia.

30 7. That the lessee will not subdivide convey assign or otherwise alienate the premises or any part thereof by sale mortgage transfer of possession lease or sublease without the consent of the Minister in writing first had and obtained and such consent shall not be granted if the lessee shall not have developed the demised premises in accordance with the covenants in that behalf in this lease contained

Signed and Sealed with the
Seal of the Lands Office and
delivered by ABDOULAI ALIEU N'JIE (Sgd) A.A. N'Jie
Lands Officer in the presence of:- LANDS OFFICER

58.

Exhibits

"C"

Lease
16th
January
1969
(cont.)

SIGNED SEALED AND DELIVERED
by the above-named OUSMAN
MOMODOU WADDA in the
presence of

(Sgd) O.M. Wadda

(Sgd) E. Nicol,
3, Spalding Street,
Bathurst.

"D and K"

EXHIBIT "D" and "K"

Letter,
Lands
Officer
to A.M.M.
Drameh,
9th April
1969

LETTER, LANDS OFFICER to A.A.M. DRAMEH

CL/4/1968/(24)

Crown Lands Office,
The Quadrangle,
Bathurst,
The Gambia.

9th April, 1969.

Sir,

LEASE NO. C.58/1969 - SEREKUNDA

I am directed to acknowledge the receipt of
your letter dated 28th February, 1969 and to
convey to your client Mr. O.M. Wadda to assign
the above-mentioned leasehold premises to Alhaji
Malang Kanteh of New Street, Bathurst.

10

2. Please note that the Deed of assignment
should be submitted to this office for onward
transmission to the Registry Office.

I am, Sir,
Your obedient servant

(Sgd) D.M. Tatta

LANDS OFFICER

Alhaji A.M. Drameh,
No. 3, MacCarthy Square,
Bathurst.

20

EXHIBIT "E". ASSIGNMENT OF LEASEExhibits

THIS INDENTURE is made the 11th day of August One thousand nine hundred and sixty nine BETWEEN OUSMAN MOMODOU WADDA of Serekunda Village Kombo Saint Mary Division Gambia (hereinafter called "the Assignor") of the one part and ALHAJI MALANG KANTEH of 4 New Street Bathurst aforesaid (hereinafter called "the Assignee") of the other part

"E"

Assignment
of Lease,
11th August
1969

10 WHEREAS by an indenture of lease (hereinafter referred to as "the Lease") dated the sixteenth day of January 1969 and made between the Minister responsible for lands on behalf of the Crown by virtue of the powers vested in him by the said Act of the one part and Ousman Momodou Wadda aforesaid of the second part All that piece and parcel of land situate at Serekunda in the Kombo Saint Mary Division of the Gambia aforesaid and more fully described in the said lease No.C.9/1969 comprising
20 an area of 13,362 square feet for a term of twenty one years (21) at a yearly rental of £4.1.4 (four pounds one shillings and four pence) and subject to the covenants conditions and stipulations therein contained and binding on the lessee his executors administrators and assigns

30 AND WHEREAS the Assignor has agreed with the Assignee for the sale to the latter of the said leasehold premises with the prior written approval of the Lands Officer dated the 9th day of April 1969 at the price of £580.4.6. (five hundred and eighty pounds four shillings and six pence)

40 NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £580.4.6. (five hundred and eighty pounds four shillings and six pence) paid by the Assignee to the Assignor (the receipt whereof the Assignor hereby acknowledges) the Assignor as Beneficial Owner hereby assigns to the Assignee ALL AND SINGULAR the hereditaments and premises comprised in and demised by the said leasehold TO HOLD the same to the Assignee for the residue now unexpired of the term of TWENTY ONE YEARS created by the lease subject to the payment of the rent and performance and observance of the covenants conditions and stipulations in the lease reserved and contained and henceforth on the lessee's part to be paid performed and observed AND the Assignee HEREBY covenants with the Assignor henceforth during the continuance of the said term to

Exhibits

(sit) say the rent reserved by and perform and observed the covenants conditions and stipulations contained in the lease and on the Lessee's part to be performed and observed and to keep indemnified the Assignor his executors and administrators against all actions claims and demands whatsoever in respect of the said rent covenants conditions and stipulations or anything relating thereto

"E"

Assignment of Lease, 11th August 1969

(cont.)

IN WITNESS whereof the within-named parties have hereunto set their respective hands and seals the day and year first above written

10

SIGNED SEALED AND DELIVERED by the said OUSMAN MONODOU WADDA in the presence of:-

(Sgd) O.M. Wadda

(Sgd) ABIGAIL JULIANA CHERY
5, Louvel Street,
Bathurst, Gambia.

SOLICITOR'S MANAGEMENT CLERK

SIGNED SEALED AND DELIVERED by the said ALHAJI MALANG KANTEH after the contents of this deed have been read over and explained to him in the Mandigo language and he appeared perfectly to understand the same in the presence of:-

(Sgd) Malang Kanteh

20

(Sgd) ABIGAIL JULIANA CHERY
5, Louvel Street,
Bathurst, Gambia.

SOLICITOR'S MANAGEMENT CLERK

30

61.

EXHIBIT "F"

Exhibits

JUDGMENT, CIVIL SUIT No. 83/1969

"F"

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No. 83/69.

Judgment,
Civil Suit
No. 83 of
1969
31st July
1969

ALHAJI MALANG KANTEH

PLAINTIFF

AND

OUSMAN M. WADDA

DEFENDANT

Alhaji A.M. Drameh for Plaintiff.

Defendant in person.

10

JUDGMENT

Judgment for the plaintiff with costs.
There will be an order for specific performance
of the agreement for sale or property comprised in
Crown Lease No.C9/1969 to the plaintiff for the sum
of £580.4.6.

(Sgd) Phillip Bridges.
Chief Justice.

31st July, 1969.

S.C.Civ.N.B.Vol.55/356.

Exhibits

EXHIBIT "G"

"G"

REASONS FOR JUDGMENT, CIVIL SUIT
No. 83 of 1969

Reasons for
Judgment,
Civil Suit,
No. 83 of
1969
11th August
1969

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No.83/69

ALHAJI MALANG KANTEH PLAINTIFF

AND

OUSMAN MOMODOU WADDA DEFENDANT

Alhaji A.M. Drameh for Plaintiff.

Defendant in Person.

10

REASONS FOR JUDGMENT

On 18th January 1969 the defendant borrowed £240 from the plaintiff promising to pay it back next day. The following day he called on the defendant to say he could not pay. He did say however that he had a compound on crown lease at Serekunda and left the deed with the plaintiff.

Later having got into financial trouble with a moor who was suing him for £340.4.6 he sought the help of the plaintiff. The plaintiff paid the moor and the defendant signed a memorandum by which he agreed to convey the lease of his property to the plaintiff for the amount of the debt now £580.4.6 if the debt had not been repaid within the time specified in the memorandum.

20

That time passed without repayment being made and the plaintiff now seeks specific performance of the contract.

The necessary elements are contained in the memorandum and this is a case in which the equitable relief of specific performance may be granted.

30

Accordingly I gave judgment for the plaintiff with costs.

(Sgd) Phillip Bridges.
CHIEF JUSTICE

11th August, 1969.
S.C.Civ. N.B.Vol.55/356.

EXHIBIT "H"

INTERPLEADER SUMMONS AND AFFIDAVIT

Exhibits

"H"

IN THE SUPREME COURT OF THE GAMBIA

Suit No.84/1969.

Inter-pleader Summons and Affidavit, 18th April 1969

BETWEEN:

GABRIEL GEORGE PLAINTIFF

AND

OUSMAN M. WADDA DEFENDANT

10 In the matter of Alhaji Malang Kanteh
Claimant of property seized under process of
the Court in the above-named Suit.

TO: GABRIEL GEORGE (the above-named Plaintiff)

C/O S. Madi Ltd.,
4, Wellington Street,
Bathurst, Gambia., (or his Solicitor S.F. N'Jie,
B.L.)

20 YOU ARE HEREBY SUMMONED to appear before this Court
at Bathurst on Tuesday the 6th day of May 1969 at
9.30 o'clock in the forenoon to answer a claim that
certain property seized under the process of the
Court in the above suit should be declared and
adjudged to be the property of ALHAJI MALANG
KANTEH the above-named claimant and delivered to
him accordingly.

ISSUED AT BATHURST this 18th day of April,
1969.

(Sgd) Phillip Bridges.
Chief Justice.

30 TAKE NOTICE: That if you fail to attend at the
hearing of this matter, or at any continuation or
adjournment thereof the Court may order the
property to be delivered to the said Alhaji Malang
Kanteh.

ExhibitsIN THE SUPREME COURT OF THE GAMBIA

"H"

Suit No.84/1969.

Inter-
pleader
Summons
and
Affidavit,
18th April
1969

BETWEEN:

| | |
|-----------------|-----------|
| GABRIEL GEORGE | PLAINTIFF |
| AND | |
| OUSMAN M. WADDA | DEFENDANT |

(cont.)

In the matter of Alhaji Malang Kanteh
claimant of property seized under process of the
Court in the above-named Suit.

AFFIDAVIT

10

I, Alhaji Malang Kanteh, Businessman, 4, New
Street, Bathurst, Gambia, make oath and say as
follows:-

1. That I am the claimant herein.
2. That the Defendant is a Petty-Trader.
3. That on the 18th January, 1969, the Defendant
took £240 cash as a loan from me which he
promised to repay on the 24th January, 1969
failing which he agreed to sell me his
compound (leasehold No. C.9/1969) at
Serrekunda Kombo Saint Mary Division Gambia
which he valued at £450, I was to refund the
change to him from the value of the
compound. 20
4. I again confirmed the sale in writing an
another transaction on 25th February, 1969.
5. On the 28th February 1969, my Solicitor
formerly requested the Lands Officer to
grant permission for a formal assignment
of lease C 9/1969 to be made which permission
has been granted - see Lands Officer's
letter reference CC/4/1968 (24). 30
6. That the Claimant and his Solicitor knew
of this sale before the above-named property
was attached and that there is a series of
correspondence between the Lands Officer and

65.

the Plaintiff's Solicitor culminating in the Lands Officer's letter reference CC/4/1968 (24) of the 9th April, 1969.

Exhibits

"H"

7. That these correspondence will be produced at the trial.

Inter-pleader Summons and Affidavit, 18th April 1969

I therefore apply that the attachment of Lease Serial Registration No.C 9/1969 be removed and the property be adjudged mine.

(Sgd) Malang Kanteh

(cont.)

10

DEPONENT

SWORN at Bathurst after the contents of this Affidavit have been read over translated into the Wollof language and explained to the Deponent the Deponent seemed perfectly to understand the same before signing his name or making his mark in the presence of me,

BEFORE ME:

20

THIS 18th DAY OF APRIL, 1969.

(Sgd) O.H. Cham.

A COMMISSIONER FOR OATHS

EXHIBIT "J"

"J"

LETTER, A.A.M. DRAMEH TO LANDS OFFICER

Letter, A.A.M. Drameh to Lands Officer 28th February 1969

2, Cameron Street,
Bathurst, Gambia,
West Africa.

28th February, 1969.

Ref. AAMD/AJC.

30

Sir,

Lease Serial Registration No. C 9/1969

I have been instructed by my client, Mr. O.M. Wadda of Serekunda to apply to you for permission to assign (by way of sale) the above-named leasehold

Exhibits

property situate in Serekunda Kombo Saint Mary to Alhaji Malang Kanteh of New Street Bathurst.

"J"

An early reply will be appreciated.

Yours faithfully,

(Sgd) Alhaji A.M. Drameh

Letter,
A.A.M.
Drameh to
Lands
Officer
28th
February
1969
(cont.)

"L1"

EXHIBIT "L1"

Affidavit
of S.F.
N'Jie,
Civil Suit
No. 84 of
1969
8th May
1969

AFFIDAVIT OF S.F.N'JIE. SUIT
No. 84 of 1969

IN THE SUPREME COURT OF THE GAMBIA

Suit No. 84/1969

10

BETWEEN:

GABRIEL GEORGE PLAINTIFF
AND
OUSMAN WADDA DEFENDANT

In the matter of Alhaji Malang Kanteh
Claimant of property seized under process of the
Court in the above named suit.

AFFIDAVIT

I Solomon Francis N'Jie of Bedford Place
Bathurst make oath and say as follows:-

20

1. That I am Solicitor for Gabriel George the Plaintiff in suit No. 35/1969.
2. That I do not know of any sale of leasehold property registration No. C 9/1969.
3. That I wrote to the Lands Officer annexure marked "A" and his reply annexure marked "B" was received by me some nine days after its date of writing.

4. That Alhaji Abdoulie Drameh Solicitor telephoned me at my chambers on or about the 5th February last and asked me to give Ousman Wadda more time to settle the debt be owned to my client.

5. That the said Alhaji Drameh later told me that Ousman Wadda was in no position to pay any amount to my client and further that Ousman Wadda's leasehold property at Serekunda was in fact mortgaged to Alhaji Drameh's client whose name was not disclosed.

6. That I checked with the Lands Office and the Registry and discovered that there was no record of any mortgage nor of any application to mortgage the said property.

14. That on the 14th March 1969 when I made the application for an interim attachment on the said property I had invited Alhaji Drameh to hear the application in open court.

15. That during the last week I came to know that Alhaji Drameh had filed a suit between Malang Kanteh and Ousman Wadda claiming specific performance of an agreement to sell the leasehold property the subject of the interim attachment.

16. That Ousman Wadda is in physical possession of the said leasehold property and on his own account and not in trust for any other person.

17. That even if there is any agreement between Malang Kanteh and Ousman Wadda any permission to assign the said property can only be applied for by Ousman Wadda and not by the solicitor of Malang Kanteh.

18. That this action by Malang Kanteh is premature and not in the proper form.

19. That the attachment may not be removed.

20. That the property may not be adjudged the property of Malang Kanteh the applicant.

(Sgd) S.F. N'Jie

DEPONENT

Exhibits

"L1"

Affidavit
of S.F.
N'Jie,
Civil Suit
No. 84 of
1969

8th May
1969

(cont.)

Exhibits

"L1"

Affidavit
of S.F.
N'Jie,
Civil Suit
No. 84 of
1969

8th May
1969

(cont.)

SWORN AT BATHURST this
8th day of May 1969
BEFORE ME

(Sgd) O.H. Cham
COMMISSIONER FOR OATHS

To: Alhaji A.M. Dramey
Solicitor for Malang Kanteh,
8, MacCarthy Square,
Bathurst.

Ousman Wadda,
Serekunda,
K.S.M.D.

10

"L3"

EXHIBIT "L3"

Letter,
S.F. N'Jie
to Lands
Officer

12th March
1969

LETTER, S.F. N'JIE to LANDS OFFICER

ANNEXURE "A"

S.F. N'Jie, Barrister-at-Law & Solicitor
my ref: 28/2/69.

Bedford Place,
Bathurst.

12th March, 1969

Dear Sir,

20

I have this day filed a motion in the Supreme
Court in Civil Suit No. 58/1969 between Gabriel
George and Ousman Wadda.

I hope to move the Court to order that
certain leasehold property at Serekunda Saint
Mary Division of the Gambia Serial Registration
number C9/1969 be kept in Custodia Legis pending
the trial of Suit between Gabriel George and
Ousman Wadda.

The lease was granted on the 16th January
1969.

30

69.

I attach a copy of the affidavit filed in this matter.

Yours truly,
(Sgd) S.F. N'Jie

The Lands Officer,
The Quadrangle,
Bathurst.

LETTER, LANDS OFFICER TO S.F.N'JIE

ANNEXURE "B"

10

GOVERNMENT OF THE GAMBIA

CL/4/1968/(19).

Crown Lanes Office,
The Quadrangle,
Bathurst,
The Gambia,

1st April, 1969.

Sir,

20

I am to refer to your letter Ref.28/2/69 of 12th March, 1969 in connection with Mr. Ousman Wadda's leasehold property situate at Serekunda, Kombo St. Mary, vide Serial Registration No. C.9/1969 and to inform you that in the absence of a Court Order, we cannot interfere with dealings about the land in question.

I am Sir,
Your obedient servant,

(Sgd) Lands Officer

S.F. N'Jie,
Bedford Place,
Bathurst.

Exhibits

"L3"

Letter,
S.F. N'Jie
to Lands
Officer

12th March
1969

(cont.)

Letter,
Lands
Officer to
S.F. N'Jie

1st April
1969

Exhibits

EXHIBIT "M1"

"M1"

WRIT OF SUMMONS, CIVIL SUIT No. 35 of 1969

Writ of
Summons,
Civil Suit
No. 35 of
1969

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No. 35/69.

26th
February
1969

BETWEEN:

GABRIEL GEORGE PLAINTIFF
AND
OUSMAN WADDA DEFENDANT

To:

Ousman Wadda
Serekunda,
Kombo St. Mary.

10

You Are Hereby Comanded in Her Majesty's name to attend this Court at Bathurst on Monday the 10th day of March 1969, at 9 o'clock in the forenoon to answer a suit by Gabriel George of 5 Dobson Street, Bathurst, against you.

THE PLAINTIFF'S CLAIM is for debt in the sum of £393.5.0. being the balance of money outstanding for goods supplied to you.

(Sgd) Phillip Bridges.
CHIEF JUSTICE

20

ISSUED AT BATHURST, this 26th day of February 1969.

TAKE NOTICE: that if you fail to attend at the hearing of this suit or at any continuation or adjournment thereof, the court may allow the Plaintiff to proceed to judgment and execution.

If you have a counter-claim or set-off against the Plaintiff you must lodge with the Registrar FOUR CLEAR DAYS before the Return day a notice in original, with as many copies thereof as there are Plaintiffs, containing your name and address and a concise statement of the grounds of such counterclaim or set-off and pay such court and service fees as may be payable therefor.

30

71.

CERTIFICATE OF SERVICE BY BAILLIFF

UPON THE 7th day of March 1969, this summons was served by me on the Ousman Wadda the Defendant. This I did by serving a copy of the above summons on the Defendant personally at Serekunda.

(Sgd) Darboe.
BAILLIFF OR OFFICER OF THE COURT

EXHIBIT "M2"

NOTICE OF MOTION, CIVIL SUIT No. 35 of 1969

10 IN THE SUPREME COURT OF THE GAMBIA

Misc. Civil Cause No. 58/69
Civil Suit No. 35/69

BETWEEN:

GABRIEL GEORGE PLAINTIFF/APPLICANT
AND
OUSMAN WADDA DEFENDANT/RESPONDENT

20

Take notice that the Court will be moved on Friday the 14th day of March 1969, at 9 o'clock in the forenoon, or so soon thereafter as counsel can be heard by Solomon Francis N'Jie of Bedford Place, Bathurst, Solicitor for the Plaintiff/Applicant that certain leasehold property at Serekunda in the Kombo St. Mary Division of the Gambia Registration No. C9/1969 belonging to the Defendant/Respondent should be kept in custodia legis pending the determination of the suit between the Applicant and the Respondent.

Dated the 10th day of March, 1969.

30

(Sgd) S.F. N'Jie,
Bedford Place
Solicitor for the Plaintiff/Applicant

Exhibits

"M1"

Writ of
Summons,
Civil Suit
No. 35 of
1969

26th
February
1969

(cont.)

"M2"

Notice of
Motion,
Civil Suit
No. 35 of
1969

10th March
1969

Exhibits

"M2"

Notice of
Motion,
Civil Suit
No. 35 of
1969

10th March
1969

(cont.)

To: The Registrar,
Supreme Court,
Bathurst.

A.S.B. Saho,
32, Leman Street,
Bathurst.

SOLICITOR FOR DEFENDANT

"M3"

EXHIBIT "M3"

Affidavit
of Gabriel
George,
Civil Suit
No. 35 of
1969

12th March
1969

AFFIDAVIT OF GABRIEL GEORGE, CIVIL SUIT
No. 35 of 1969

10

IN THE SUPREME COURT OF THE GAMBIA

Misc. Civil Cause No.58/69

Civil Suit No.35/69

BETWEEN:

GABRIEL GEORGE PLAINTIFF/APPLICANT

AND

OUSMAN WADDA DEFENDANT/RESPONDENT

AFFIDAVIT

I GABRIEL GEORGE of 5, Dobson Street, Bathurst
make oath and say as follows:-

20

1. That I am the Plaintiff/Applicant in this cause.
2. That I have filed a suit in the Supreme Court claiming £393.5.0. against the Respondent.
3. That on the 16th January 1969 the Defendant was granted a lease registration number C9/1969 of a certain property situate at Serekunda in the Kombo Saint Mary Division of The Gambia and more particularly described in the attached document marked "A".

30

4. That the said property is worth about three hundred pounds.

5. That the Defendant/Respondent proposes to mortgage or otherwise dispose of the said leasehold property, and that such mortgage or disposal will defeat execution of any judgment I may have against the Defendant/Respondent.

10 6. That I am not aware of any other assets belonging to the Defendant/Respondent against which I could levy execution.

7. That to the best of my information and belief the Defendant/Respondent is about to dispose of the aforementioned leasehold property.

(Sgd) G. George
DEPONENT

SWORN AT BATHURST this 12th
day of March, 1969

BEFORE ME

20 (Sgd) O.H. Cham
COMMISSIONER FOR OATHS

"A"

DESCRIPTION OF LAND LEASED TO OUSMAN M. WADDA

30 ALL THAT piece or parcel of land situate at SEREKUNDA in the Kombo St. Mary Division of The Gambia hereinafter called "the premises" and bounded on the North-east side thereof by a road passing between the premises and a plot of land in the occupancy of one Rohey Jobe and on the South-east thereof by a road Thirty five feet in width or thereabout passing between the premises and a plot of land in the occupancy of one R.M. Lowe and on the South-east side thereof by a plot of land in the occupancy of one Alhaji N'Dongo Faal and on the North-west side thereof by a plot of land in the occupancy of one A.B. Sallah and measuring along the North-east side thereof one hundred and five feet or thereabouts and along the South-east side thereof one hundred and twenty nine feet or thereabout and along the south-west side thereof one hundred and thirty three feet or thereabout and containing an area of thirteen thousand three hundred and sixty two square feet or thereabout.

40

Exhibits

"M3"

Affidavit
of Gabriel
George,
Civil Suit
No. 35 of
1969

12th March
1969

(cont.)

Exhibits

EXHIBIT "M5"

"M5"

IN THE SUPREME COURT OF THE GAMBIA

Suit No.84/1969

Affidavit
of Gabriel
George,
Suit No. 84
of 1969

BETWEEN:

GABRIEL GEORGE and OUSMAN WADDA

8th May
1969

In the matter of Alhaji Malang Kanteh
Claimant of property seized under process of the
Court in the above-named Suit.

TO: Alhaji A.M. Dramey,
8, MacCarthy Square,
Bathurst, Solicitor for
Alhaji Malang Kanteh.

10

AFFIDAVIT

I Gabriel George of 5, Dobson Street,
Bathurst make oath and say as follows:-

1. That I am the Plaintiff in Suit No.35/1969
with Ousman Wadda as Defendant.

2. That I know nothing about Suit No. 84/1969
in which I have been named Plaintiff.

3. That I have read the affidavit of one
Malang Kanteh filed in Suit No.84/1969.

20

4. That I do not know of any transaction or
agreement between Malang Kanteh and Ousman Wadda.

5. That I do not know of any application by
the said Malang Kanteh or his Solicitor for
permission to assign any property.

6. That I do not know of any sale of
leasehold property registration number C9/1969.

7. That I know of one letter from ny Solicitor
to the Lands Officer and the reply thereto.

30

(Sgd) G. George
DEPONENT

75.

SWORN AT BATHURST this 8th day of May, 1969.

Before me

(Sgd) O.H. Cham

COMMISSIONER FOR OATHS

Exhibits

"M5"

Affidavit of Gabriel George, Suit No. 84 of 1969

8th May 1969

(cont.)

EXHIBIT "M6"

WARRANT, CIVIL SUIT No. 35 of 1969

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No. 35/1969

"M6"

Warrant, Civil Suit No. 35 of 1969

25th March 1969

10 BETWEEN:

GABRIEL GEORGE

PLAINTIFF

AND

OUSMAN WADDA

DEFENDANT

To the Sheriff,
Police Headquarters,
Bathurst.

20

WHEREAS it has been shown to the satisfaction of this Court that Ousman Wadda the defendant in the above suit, with intent to obstruct or delay the execution of any decree which may be passed against him therein, is about to dispose of or remove out of the jurisdiction of this Court his immovable property.

You are hereby commanded to seize, attach, and take into your hands the immovable property of the defendant held under a lease serial registration number C9/1969 and more particularly described in the attached document marked "A" and to hold the same until further order of the Court; and you are

Exhibits

"M6"

also commanded forthwith after execution of this writ to return the same into the Court, with the place, time and particulars of the execution endorsed thereon.

Warrant,
Civil Suit
No. 35 of
1969

Dated at Bathurst this 25th day of March, 1969.

(Sgd) Phillip Bridges.

CHIEF JUSTICE

25th March
1969

(cont.)

DESCRIPTION OF LAND LEASED TO OUSMAN WADDA

ALL THAT piece of land situate at Serekunda in the Kombo St. Mary Division of The Gambia hereinafter called "the premises" and bounded on the North-East side thereof by a road passing between the premises and a plot of land in the occupancy of one Rohey Jobe and on the South-east side thereof by a road thirty-five feet in width or thereabout passing between the premises and a plot of land in the occupancy of one R.M. Lowe and on the South-east side thereof by a plot of land in the occupancy of one Alhaji NDongo Faal and on the North-west side thereof by a plot of land in the occupancy of one A.B. Sallah

10

20

"M7"

EXHIBIT "M7"

Writ of
Fi Fa,
Civil Suit
No. 35 of
1969

WRIT OF FI FA, CIVIL SUIT No. 35 of 1969

IN THE SUPREME COURT OF THE GAMBIA

Civil Suit No. 35/69

22nd May
1969

BETWEEN:

GABRIEL GEORGE

PLAINTIFF

AND

OUSMAN WADDA

DEFENDANT

To: The Sheriff,
Police Headquarters,
Bathurst.

30

You are commanded in Her Majesty's name,

Exhibits

"M7"

Writ of
Fi Fa,
Civil Suit
No. 35 of
1969

22nd May
1969

(cont.)

10

that of the movable property of OUSMAN WADDA of Serekunda in the Kombo St. Mary Division of the Gambia within the jurisdiction of the Court if the same be sufficient, and if not then of the moveable and immovable property of the said OUSMAN WADDA you cause to be made the sum of £372.5.6 which sum was by decree of the said Court in this suit bearing date the 9th day of May 1969, adjudged to be paid by the said OUSMAN WADDA to GABRIEL GEORGE, together with certain costs in the said decree mentioned, and which costs have been taxed and allowed at the sum of £13.15.1 and that of the said movable and immovable property of the said OUSMAN WADDA within the jurisdiction of the Court you further cause to be made the sum of £..... costs. And that you have the above sums of money as aforesaid before the said Court in pursuance of the said decree; and in what manner you shall have executed this writ made appear to the Court immediately after the execution thereof and have there then this writ.

20

Dated at Bathurst this 22nd day of May, 1969.

(Sgd) R.R.G. Joiner.

Ag. REGISTRAR OF SUPREME COURT.

EXHIBIT "N"

"N"

LETTER FORWARDING WARRANT

Letter
forwarding
Warrant

25th March
1969

Ref.No.20/49/207

IN CONFIDENCE

Registrar's Office,
Supreme Court,
Bathurst, The Gambia.

25th March, 1969

30

GABRIEL GEORGE

Vs.

OUSMAN WADDA

Forwarded herewith is a warrant to attach property before Judgment in connection with the above case for necessary action.

(Sgd) P.H. Ceessay

For: REGISTRAR OF SUPREME COURT

The Sheriff,
Police Headquarters,
Bathurst.

40

ON APPEAL
FROM THE COURT OF APPEAL OF THE GAMBIA

B E T W E E N

ALHAJI MALANG KANTEH (Plaintiff) Appellant

- and -

1. THE ATTORNEY GENERAL

2. OUSMAN MOMADOU WADDA

3. GABRIEL GEORGE

4. ALKALI JARJU (Defendants) Respondents

RECORD OF PROCEEDINGS

WILSON FREEMAN,
6/8 Westminster Palace Gardens,
London, SW1P 1RL
Solicitors for the Appellant