

# In the Privy Council

## ON APPEAL

FROM THE COURT OF APPEAL OF SIERRA LEONE AND GAMBIA

BETWEEN

IBRAHIM MOMORDU ALLIE (Administrator of the Estate of ALHAJI ANTUMANI ALLIE, deceased) . *Plaintiff-Appellant*

AND

10

HAJAH FATMATTA KATAH . . . . . *Defendant-Respondent.*

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
  
19 JUN 1964  
  
25 RUSSELL SQUARE  
LONDON, W.C.1.

## Case for the Respondent

RECORD.

74055 This appeal is from a Judgment of the Court of Appeal of Sierra Leone and Gambia dated the 14th April, 1961, allowing an appeal from a Judgment of the Supreme Court of Sierra Leone dated the 23rd February, 1961, in two consolidated actions in which the Appellant (hereinafter called the Plaintiff) sought to set aside 6 conveyances made to the Respondent (hereinafter called the Defendant) of properties in Freetown. p. 88. p. 56.

20 2. The principal question to be determined on this appeal is as follows :—

Whether the Court of Appeal was right in holding that there was evidence that a Deed of Family Arrangement which authorised, inter alia, 5 of the 6 conveyances the subject of the claim was approved by a Judge's Order dated the 14th July, 1948, in the Supreme Court of Sierra Leone.

30 3. It was common ground between the parties that the properties in question formed part of the estate of the Defendant's husband, Momordu Allie, (hereinafter called the Testator), who died on the 22nd January, 1948, leaving a Will dated the 20th August, 1946, and codicil dated the 19th July, 1947, whereby an interest in each of the said properties was devised to Alhaji Antumani Allie, the son of the Testator and the Defendant. The executors named in the said Will renounced probate, the then Official p. 16. p. 24.

pp. 100-114. Administrator, Ahmed Alhadi, was appointed Administrator with the will and codicil annexed, and in July, 1948, the said Ahmed Alhadi conveyed the 6 properties to the Defendant in fee simple. On the 14th May, 1959, Alhaji Antumani Allie (hereinafter called Antumani) died intestate and the Plaintiff became Administrator of his estate.

4. Briefly, the Plaintiff's case was that the said conveyances were made in bad faith and by means of undue influence on Antumani; the Defendant's case was that these conveyances were the consequence of a valid Deed of Family Arrangement which had been approved by the Court. 10

pp. 1, 9. 5. This suit was commenced in the Supreme Court of Sierra Leone  
pp. 3, 11. by two writs dated the 6th August, 1960, seeking to set aside in all some  
p. 7. 9 conveyances. Statements of Claim were delivered on the 9th September  
pp. 5, 14. and 11th November, respectively, and the two actions were consolidated  
by an Order dated the 22nd November, 1960. By the Statements of  
Claim the Plaintiff limited his claims to the 6 conveyances of the following  
properties :—

1. No. 46 East Street,
2. No. 6 Magazine Cut.
3. No. 48 East Street. 20
4. No. 23 East Street.
5. No. 50 East Street.
6. No. 2 Kissy Road.

pp. 4, 11-13. After setting out, inter alia, the facts in paragraph 3 above, and the relevant portions of the Testator's Will, whereby the properties numbered 2, 4 and 6 above were devised to the Defendant for life with remainder to Antumani, the properties numbered 1 and 5 above were devised to the Defendant for life or until re-marriage with remainder to Antumani, and property No. 3 above was devised in trust for Antumani, it was pleaded that Ahmed Alhadi : 30

pp. 5, 6, 14. "male fide and in collusion with the Defendant conveyed all the above mentioned properties unto and to the use of the said Defendant in fee simple absolute in possession and by the exercise of undue influence over the said Alhaji Antumani Allie (deceased) obtained his execution thereto as Beneficiary under the said Will of Momordu Allie (deceased)."

pp. 5, 12. It was further alleged that Antumani was an infant, that by the convey-  
pp. 6, 14. ances he was deprived of his whole patrimony, that Antumani was so  
influenced by the Defendant that he was not a free agent, that there  
was no Deed of Family Arrangement, alternatively Antumani's execution 40  
pp. 7, 15. thereof was not free and voluntary, and that no Order of the Supreme  
Court approving it was ever obtained.

p. 8. 6. By her Defence dated October, 1960, the Defendant admitted the extracts from the Testator's Will and the appointment of Ahmed Alhadi as Administrator but put the Plaintiff to strict proof of all other allegations.

7. The trial was on the 24th, 25th, 27th, 30th and 31st January, 1961, before S. B. Jones, J., the Plaintiff called witnesses who proved the said Will, Codicil and Conveyances, and other witnesses including :—

*Sokonah Tarawalley*, another widow of the Testator who said Antumani was 8 or 9 months younger than one of her own children, who was registered as born on the 6th December, 1929. (This would make Antumani 18 when the Conveyances were executed.)

*Mucktarr Kallay*, half brother to the Defendant, who said that Antumani was born at 1 Elba Street, Freetown.

10 *Baba Allie*, son of the Testator, who said that Antumani was still at school when the Testator died and was thereafter maintained by the Defendant, that Antumani did not work after leaving school and that he, the witness, had no notice of any family arrangement or Court proceeding.

*Abass Allie*, son of the Testator, who said he had no notice of any family arrangement or Court proceeding, but was one of the brothers and sisters who took proceedings to upset the Testator's Will.

20 *The Plaintiff* gave evidence that he knew of no matter in Court or family arrangement, that Antumani was at school until 1950, and from the Testator's death to his own he was maintained by the Defendant and refused to work, that after the Testator's death the Defendant and Ahmed Alhadi were lovers which caused trouble with the Plaintiff and his brothers who once threw Ahmed Alhadi out of the house.

8. The Defendant called witnesses who proved the following documents : (A) That a deed was registered dated the 14th July, 1948, Exhibit " H," which purports to be a deed of family arrangement, executed by the Defendant and Ahmed Alhadi, varying the trusts of the Testator's will so as—

(1) to vest in the Defendant the fee simple of : 23, 46, 48 and 50 East Street and 6 Magazine Cut,

(2) to vest in Ahmed Alhadi in trust for Antumani the following properties :—

6, Magazine Street.

17 & 17A, Martin Street.

9, Walpole Street,

40 (3) to provide for payment by the Defendant to Antumani of £1,000 for repairing 9, Walpole Street, and £1,500 to advance him in life.

(B) That the records of the Supreme Court contained a file C.C.185/48 entitled " In the Matter of the Estate of Momordu Allie deceased and in the Matter of the Trusts affecting Antumani (an infant) " which could

- p. 40. not be found. (c) That the action in the lost file was recorded in the Cause Book which was put in evidence and showed the following documents were filed :—
- “ (1) Affidavit in support dated 18.6.48.  
 (2) Summons to approve of Deed of Family Arrangement, etc., etc.
- There was an affidavit in opposition dated 2.7.48 by C. B. Rogers Wright. As from 29.6.48 the Solicitor for the Applicant was C. O. E. Cole. The Judge’s order approving Deed of Family Arrangement dated 14.7.48 was filed by C. O. E. Cole on 14.7.48.” 10
- pp. 46, 120–125.  
pp. 120, 122. (D) Three conveyances dated the 14th and 18th September, 1954, and 5th April, 1956, Exhibits K, L & M. In both Exhibits K and L the Deed of Family Arrangement and the Judge’s Order approving it are recited, and Exhibit L, which constitutes the Conveyance by one Percy Richmond Davies, the then Official Administrator, to Antumani of 8, Magazine Street recites the terms of the said deed as identical with those of Exhibit “ H.”
- p. 41. 9. The Defendant gave evidence that Antumani was born in 1927 at Cook Street, that Ahmed Alhadi was not her lover and visited her only to discuss matters relating to the administration of the estate, that 20
- p. 42. the Deed of Family Arrangement was made and that she paid Antumani
- p. 44. the £2,500 due to him thereunder, and that when the Deed of Family Arrangement was approved by the Judge Antumani was present and consented, and Mr. C. B. Rogers Wright appeared for the Plaintiff and the Testator’s other children and opposed the application.
- p. 56. 10. The Judgment of the Supreme Court was delivered on the
- pp. 56–  
p. 62. 23rd February, 1961. The learned Judge, after summarising the evidence and the issues as set out above, found that the Defendant was an unsatisfactory witness, that Antumani was born in 1930 and therefore was 18 when the deeds were executed, that Exhibit H was not in law a Deed 30
- p. 63. of Family Arrangement, that its terms were unreasonable and unfair to Antumani, who did not receive independent advice before it was executed, that the payment to him of £2,500 was strong evidence of undue influence, that authorities cited by the Defendant’s Counsel to show that a non-executing party who takes benefits under a deed is bound by it, and that by taking benefits under it after attaining his majority Antumani adopted and approved it were not relevant to the case, that the onus of disproving undue influence on Antumani lay on the Defendant who had not discharged it, that he had not come to the conclusion that the terms recited in the alleged Deed of Family Arrangement were those approved 40
- pp. 64–65.  
p. 66.  
p. 66. of in the Judge’s Order of the 14th July, 1948, and that Ahmed Alhadi acted male fide and in collusion with the Defendant.
- pp. 67–68. 11. In two passages in the said Judgment it is stated, erroneously, that
- p. 70.  
pp. 70–71. that
- p. 72. “ After Antumani came of age, Ahmed Alhadi in 1954 conveyed to him in fee simple the properties situate at 17 and 17A Martin Street and at 8 Magazine Street in pursuance of the terms of the Deed of Arrangement ”
- p. 59, ll. 4–9.

and that

“ . . . Ahmed Alhadi in 1954 conveyed to him in fee simple the properties 17 and 17A Martin Street and 8 Magazine Street respectively in pursuance of the Deed of Family Arrangement, . . .” p. 66, ll. 48-51

12. Judgment was given for the Plaintiff and an Order made accordingly. pp. 56-72.  
p. 73.

13. In a notice of Appeal dated the 4th March, 1961, the Defendant set out the following Grounds of Appeal :— pp. 74-76.

10 (1) In the circumstances of the case, the Plaintiff was not competent to bring the consolidated actions to have any or all of the Deeds affected by the Judgment set aside.

(2) The Court below was not competent to set aside the Deed of Family Arrangement dated the 14th July, 1948, or the Deeds of Conveyance made in pursuance of the said Deed, relating to the properties situate at 23 East Street, 46 East Street, 48 East Street, 50 East Street, 6 Magazine Cut and 2 Kissy Road all being in Freetown executed by Ahmed Alhadi then Official Administrator as Administrator of the Estate of Momordu Allie deceased with his Will and confirming Codicil annexed in favour of the Defendant.

20 (3) The learned trial Judge was wrong in law in holding that the said Deed of Family Arrangement was not a valid Deed of Family Arrangement.

(4) The learned trial Judge was wrong in law in holding that the said Deeds of Conveyance made in pursuance of the terms of the Deed of Family Arrangement related to 23 East Street, 46 East Street, 48 East Street and 50 East Street could be set aside.

30 (5) The learned trial Judge erred in law in not holding that the said Deed of Family Arrangement could not be set aside as the parties thereto could not be restored to their respective original positions.

(6) The finding of the learned trial Judge that inadequacy of consideration invalidated the Deed of Family Arrangement could not be supported in law in the circumstances of the case.

(7) Delay in bringing the action to invalidate the Deeds sought to be set aside in the consolidated actions is a bar to the granting of the relief sought in view of proved facts.

40 (8) There is no justification in law in view of the evidence tendered and received that Ahmed Alhadi now deceased formerly Official Administrator or Estates acted as Trustee of the Trusts of the Will of Momordu Allie deceased affecting Alhaji Antumani Allie male fide in relation to any of the Deeds in question in the consolidated actions or that the Appellant exercised undue influence over her son the said Alhaji Antumani Allie in relation to the execution of the said Deeds.

(9) Alhaji Antumani Allie having in his lifetime after he became of full age received benefits under the Deed of Family Arrangement could not lawfully be heard to say that the Deed was invalid in law or that the Deeds of Conveyance made by virtue of the Deed of Family Arrangement and the Deed of Family Arrangement itself should be set aside.

(10) The learned trial Judge misdirected himself in stating that the Deeds of Conveyance relating to 17 and 17A Martin Street and 8 Magazine Street in Freetown were in 1954 conveyed to Alhaji Antumani Allie in pursuance of the terms of the Deed of Family Arrangement by Ahmed Alhadi. 10

(11) The Judgment is against the weight of the evidence tendered and received in the course of the trial of the consolidated actions.

p. 88. 14. The Judgment of the Court of Appeal (C. G. Ames, President, S. A. Benka-Coker, C.J. and Marke, J.) was delivered by Marke, J. After stating the issues and facts and grounds of appeal numbered 2, 3, 4, 5 and 6, he said :

p. 93. " It seems to us nevertheless that the first if not the main ground to be determined on this appeal is whether there is evidence from which it can be said that a Judge's Order was in fact made on the 14th July, 1948, approving the terms of the Deed of Family Arrangement." 20

pp. 93-95. The learned Judge then reviewed the evidence relating to the Judge's Order, stating, inter alia :—

p. 94. " It seems to us of particular significance that the Conveyances marked ' K ' and ' L ' and made about six years after the Judge's Order dated the 14th July, 1948, could each of them have recited that order and the Deed of Family Arrangement. If as suggested by the Plaintiff-Respondent that the Deed of Family Arrangement did not exist it would be difficult to account for this recital in the Conveyances marked ' K ' and ' L ' which were not made by the same Solicitor who made the Deed of Family Arrangement." 30

and that :—

p. 95. " it is not unlikely that the incorrect promise [*sic*] as to who did in fact convey the hereditaments referred to in Exhibits ' K ', ' L ' and ' M ' might have misled the trial Judge in properly directing his mind to the evidence before him."

He concluded as follows :—

p. 95, ll. 17-24. " The evidence of the cause book and of the recitals in Exhibits ' K ', ' L ' and ' M ' irresistibly draw us to the conclusion that the Deed of Family Arrangement was approved by a Judge's Order dated the 14th July, 1948. Having so held it follows that the Supreme Court was not competent to review the Judge's Order dated the 14th July, 1948." 40

With regard to No. 2 Kissy Road, which was not included in the Deed of Family arrangement the learned Judge stated :

“ It is clear that on the Testator’s death, part of the purchase price on No. 2 Kissy Road was unpaid. That unpaid purchase price became a charge on No. 2 Kissy Road and unless there was a contrary intention in the Will the provisions of the Real Estate Charges Acts, 1854–1877 (Locke Kings Acts) should apply. pp. 95, 96.

10 We can find no contrary intention in the Will. The premises No. 2 Kissy Road are charged with the payment of the unpaid purchase money and the Administrator cannot apply moneys from the estate to pay off this charge. The Defendant-Appellant who is residuary devisee and legatee under the Will paid off the Charge and the hereditaments were in our opinion rightly conveyed to her.”

The appeal was accordingly allowed and the Defendant awarded costs in both Courts. p. 96.

15. On the 15th August, 1961, Final Leave to Appeal to Her Majesty in Council was granted. p. 96.

16. The Defendant respectfully submits that this Appeal should be 20 dismissed with costs for the following, among other,

### REASONS

- (1) BECAUSE the Judgment of the Court of Appeal of Sierra Leone and Gambia is right for the reasons given therein.
- (2) BECAUSE the Deed of Family Arrangement was binding on Antumani at the date of his death and could not be repudiated by his administrator.
- (3) BECAUSE on the evidence the conveyances should not be set aside.

**In the Privy Council**

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**ON APPEAL**

*from the Court of Appeal of Sierra Leone  
and Gambia*

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BETWEEN

**IBRAHIM MOMORDU ALLIE**  
(Administrator of the Estate  
of Alhaji Antumani Allie,  
deceased) . . . . . *Plaintiff-  
Appellant*

AND

**HAJAH FATMATTA KATAH** *Defendant-  
Respondent*

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**Case for the Respondent**

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