

SUPREME COURT OF MALI
JUDICIAL BENCH
1st CIVIL DIVISION

REPUBLIC OF MALI
One People -One Goal - One Faith

APPEAL FOR JUDICIAL REVIEW No. 046DU 08/02/2011

Decision No. 221 OF 05/9/2011

TYPE : Division of an Inheritance

THE SUPREME COURT OF MALI

During its ordinary public hearing of Monday
Five September Two Thousand and Eleven, attended by ;

Mr Etienne KENE, President of the Judicial
Bench, Presiding Judge ;

Madame KANTE Awa KOUYATE, Trial Judge at the Court ;
Member

Mr Bouraïma COULIBALY, Trial Judge at the Court;
member;

Mr Mody TRAORE, Assessor at the Supreme
Court, Member

Mr Ibrahima WADE, Assessor at the Court ,
Member

In the presence of Mr **Seydou DIOP** State Prosecutor
at the said Court acting as The State;

Assisted by *Maître Issa SAMAKE*,

Court Registrar ;

Passed the following judgement :

REGARDING THE APPEAL FOR JUDICIAL REVIEW filed by the
heirs of late Ousmane

DIARRA represented by Mariam DOUMBIA having as legal counsel
(Barrister Tiécoura SAMAKE Attorney at the Bamako Court)
claimant on one hand;

v. : Mme Kadidia DOUMBIA having as Legal Counsel
(Barrister Yacouba FOFANA - Attorney) respondent, on the other
hand;

Based on the report of **Mr Bouraïma COULIBALY**,
Trial Judge at the Judicial Bench as well as the written and oral submissions
of State Prosecutor **Sydou DIOP** ;

After deliberating about this case in accordance with the law;

AS CONCERNS PROCEDURAL MATTERS:

MINDFUL of judicial review No. 32 of 08 February 2011 received at the
Bamako Court of Appeal , filed by Barrister Tiécoura
SAMAKE acting on behalf of the heirs of late Ousmane
DIARRA against decision No. 466 of 28 July 2010 of the Bamako Court
of Appeal at first instance to share an inheritance, pitting
her clients against Madame Kadidia DOUMBIA.

Whereas article 632 paragraph one of the Civil, Commercial and Social Procedure Code states that the party seeking judicial review must, under pain of forfeiture, submit at the Supreme Court registry, no later than three months as from the date of receipt, at the registry, further pleadings containing the legal arguments raised against the decision subject of the judicial review, where necessary the documents used to support the judicial review;

This deadline will run as from the notice given to the court registrar as from the receipt of the file at the Supreme Court.

This notice may be given through a simple letter. Under pain of inadmissibility, a certain amount must be paid at the registry of the Supreme Court for the purpose of covering the various costs for procedure and registration.

Whereas in this specific case, the certificate of 21 July from the Supreme Court chief Registrar shows that the applicant did not meet any of the legal requirements within the prescribed time limit.

NOW THEREFORE

As concerns procedural issues: Declares the judicial review inadmissible for failure to pay the required deposit;

Orders the State Treasury to pay for costs;

It is therefore ordered, adjudged and decreed publicly by the Court of Assizes on the days, month and year stated herein above.

SIGNED BY THE PRESIDENT AND THE COURT REGISTRAR.

(Civil Proceeding)

Extract from the Court's Records

ORDINARY PUBLIC HEARING OF 28 JULY 2010

The Bamako Court of Appeal, sitting in the Court room of the said town, during its ordinary public hearing of twenty-eight July Two Thousand and Eighteen, held for civil proceedings, and before

No. 466/2010/DECISION

No 0248/2010/R.G

No 0210/2010/RC

Mr Moussa Sara DIALLO : Trial Judge at a the Bamako Court of Appeal ;

Mr Kamafily DEMBELE : Trial Judge at the Bamako Court of Appeal ;
Mr Tiécoura SAMAKE

PRESIDING JUDGE

MEMBERS ;

ASSESSORS

In the presence of Mr Moussa F. BAGAYOKO : Deputy State Prosecutor at the Bamako Court of Appeal;

THE STATE;

COURT REGISTRAR ;

CASE

H F OUSMANE
DIARRA

Assisted by *Maître* DIAWARA Fatimata DE

R/MARIAM
DOUMBIA

PASSED THE FOLLOWING JUDGEMENT in the case between:

HF. Ousmane DIARRA R/Mariam DOUMBIA : Appellant, who has legal counsel Barrister Mamadou Y. THIERO, Attorney at the Bamako Court ;

ON ONE HAND:

Kadidia DOUMBIA : Respondent, who has as legal counsel Barrister Yacouba FOFANA. Attorney at the Bamako Court of Appeal ;

ON THE OTHER HAND:

KADIDIA
DOUMBIA

IN A PROCEEDING FOR SHARING OF AN INHERITANCE

- THE COURT-

TYPE:

Mindful of the case documents;

SHARING OF
AN INHERITANCE

Whereas the parties have presented their actions, claims and arguments ;

-The State has been heard; .

After deliberating about this case in accordance with the law;

AS CONCERNS PROCEDURAL MATTERS:

Whereas through the legal document from the registry on 21 December 2010, the heirs of late Ousmane DIARRA, represented by Mariam DOUMBIA, declare that they will appeal against judgement No. 399 of 18 December 2009 from the *Commune VI* Civil Court in Bamako, whose operative parts read as follows: "In the presence of both parties, declares that the estate of Ousmane DIARRA is made up of a residential building located at

Magnambougou (plot No. 4/10 of section 7) and a compound here at Boulaba (Dioila) ; orders that the compound of Ousmane DIARRA should be shared, appoints *Maître* Mamadou KANDA KEITA Notary with residence in Bamako to perform the sharing;

- States that the Notary will submit his report no later than 2 months as from the receipt of this document ...

Whereas the appeal was filed in accordance with the provisions of articles 554 and 556 Civil, Commercial and Social Procedure Code, that it is admissible;

AS CONCERNS THE MERITS:

CLAIMS AND SUBMISSIONS OF THE PARTIES

Whereas the heirs of late Ousmane DIARRA through Barrister

Mamadou Y. THIERO, Attorney at the Court, although they were present at the hearing and the referral hearing before the procedural judge, did not provide their submissions and reply to the claims of the respondent;

Whereas the respondent Kadidia DOUMBIA through Barrister Yacouba FOFANA, Attorney at the Court, points out that she cannot continue being a joint owner in the estate, that the estate has been determined and evaluated, that the disputed ruling was right to share this estate;

that it concluded that the appealed ruling should be upheld;

GROUND OF THE DECISION

Whereas the estate of the heirs of late Ousmane DIARRA has been determined and evaluated, that the parties did not raise any objections on these points;

Whereas unlike the heir, Kadidia DOUMBIA, the other heirs who are appellants asked to continue staying in the compound located at Magnambougou where they are already staying and give the compound at Dioïla to Kadidia and her children;

Whereas the compound at Magnambougou was evaluated by an expert to be CFAF7, 762, 280 and the one in Dioïla evaluated to be CFAF 1, 374, 600;

Whereas the value of the compound at Magnambougou is higher, that its award to the appellants without any condition or proof may harm Kadidia DOUMBIA and her children ;

That the disputed ruling was right to order the sharing of the entire estate;

Consequently it should be upheld.

Mindful of the provisions of article 9 of the Civil, Commercial and Social Procedure Code Code;

NOW THEREFORE

Ruling in public, in the presence of both parties, in a labour proceeding and as the court of last resort;

AS CONCERNS PROCEDURAL MATTERS: Declares the appeal admissible

AS CONCERNS THE MERITS: Confirms the appealed ruling in its entirety;

-Orders the appellants to pay for costs;

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It is therefore ordered, adjudged and decreed publicly by the Civil Division of the Bamako Court of Appeal on the days, month and year stated herein above

SIGNED BY THE PRESIDENT AND THE COURT REGISTRAR

Signed (below)

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DF = CFAF6,000

Registered in Bamako, on 29/09/2010

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Registration Inspector

Signature illegible

Certified True Copy

Bamako, on 16 December 2010

CHIEF COURT REGISTRAR

BAMAKO COURT OF APPEAL

REPUBLIC OF MALI
One People -One Goal - One Faith

THE COURT OF FIRST INSTANCE OF
THE *COMMUNE VI* OF THE BAMAKO
DISTRICT

No. 405/ RG
No. 405/ RC
No. 399/JGT/ADD

ORDINARY PUBLIC HEARING OF 18 DECEMBER 2009

Ordinary Public Hearing of the *Commune VI* Court of First Instance
in the Bamako District ;

CASE :

Kadidia DOUMBIA:

v.

the Heirs of

Ousmane DIARRA

R/Mariam DOUMBIA

(REPUBLIC OF MALI), on December Eighteen Two Thousand
and Nine, held in a customary proceeding by Mr **Oumar**

TRAORE, Presiding Judge, assisted by *Maître Rakya Mint SIDI*,
Sworn Court Registrar, in the presence of Mr **Ibrahima**

DIOMBANA and Mr **Seydou KANTE**, Assessors completing the Court
Tribunal, the following judgement herein after was handed down ;

Kadidia DOUMBIA : resident in Bamako:

Applicant: Present at the hearing:

ON ONE HAND:

Sharing of an Inheritance

Heirs of late Ousmane DIARRA R/par Mariam

DOUMBIA : resident in Bamako;

Respondents : Present at the hearing;

ON THE OTHER HAND:

DECISION

OF THE COURT :

(See operative parts)

THE COURT

Mindful of the case documents ,

Whereas the applicant has presented her actions, claims and
and arguments;

Whereas the witnesses of the respondents have presented
their grounds of defence ;

Facts- Grounds and Procedure

Through a written application on 7 March 2008 sent to
President of the *Commune VI* Court of First Instance
in the Bamako District , Madame Kadidia Doumbia seeks the
sharing of the estate of late Ousmane Diarra against
the other heirs represented by Mariam Doumbia.

The

procedure was the subject of interlocutory ruling No. 192 on
31 July 2009 from this court, which was enforced by the
Diola Justice of the Peace with wide powers :

Through a letter on 3 November 2009 sent to the President
of the *Commune VI* Court of First Instance in
the the Bamako District , Barrister Yacouba Fofana, legal counsel for the
applicant sought and obtained the rescheduling of the case for



hearing on 18 December 2009 ;

When the hearing started, Barrister Thierro Yattabarv, legal counsel for the respondents stated that her client Mariam Doumbia et al. regularly live in the compound located at Magnambougou, that he wishes that the estate should be

shared with his client getting this house, while the applicant gets the other compound located at Boulaba C/Dioïla;

Barrister Yacouba Fofana, legal counsel for Kadidia Doumbia rejected this offer, arguing that the estate had been determined and evaluated, that the only decision left is to rule on the sharing of the estate and appoint a notary to act accordingly.

GROUNDS OF THE DECISION

Evidence and submissions during the hearing have established that the estate of late Ousmane Diarra is made up of two compounds, with one located at Magnambougou and the other located at Boulaba in the *cercle de Dioïla* area;

It has also been established that the estate of late Ousmane Diarra was evaluated with the relevant reports included in the case file showing the following estimates:
- one million three hundred and seventy-four thousand six hundred (1 374 600) CFAfrancs for the compound located at *Boulaba cercle de Dioïla* area;
-seven million seven hundred and sixty-two thousand two hundred and eighty (7, 762, 280) CFA francs for the compound in Magnambougou ;

It has also been established that the parties through the oral submissions of their counsel failed to arrive at an out-of-court sharing whereas article 815 of the Civil Code states that nobody is compelled to remain a joint owner and sharing is still possible, and article 816 of the same code provides that sharing may be requested, even when one of the joint heirs has individually received part of the property from part of the property under the estate, if there was no deed of partition, the sufficient possession to acquire prescription;

That in these conditions, it is important to share the estate of late Ousmane Diarra and task a notary with the sharing;

NOW THEREFORE

The Court :

Ruling in public, in the presence of both parties, in a customary proceeding, and as the court of first resort with the support of assessors;

As concerns procedural issues, declares the petition of Kadidia Doumbia admissible;

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As procedure substantive issues: Rules that the estate of Ousmane Diarra is made up of a residential compound located at Magnambougou (plot No.4/10 of section 7) and a compound located at Bouiaba (Dioïla) ;

Orders that the estate of late Ousmane Diarra should be partitioned;

Appoints *Maître* Mamadou Kanda Keïta, Notary with residence in Bamako to perform the partition;

States that Notary will submit his report no later than 2 months as from the receipt of this judgement;

Orders the heirs to pay for costs;

It is therefore ordered, adjudged and decreed publicly by this Civil Court on the days, month and year stated herein above

SIGNED BY THE PRESIDENT AND THE COURT REGISTRAR.

Signed (below)