No.-20 - /Decision
Of 15 July 1997
No. 684 / R.G
No. 2 / R. C. 03

HEIRS OF LATE
Gaoussou Drame

v.

KADIATOU DIARRA

DISTRIBUTION OF ESTATE

BAMAKO COURT OF APPEAL

(Civil Case)

ORDINARY PUBLIC HEARING OF 15 JANUARY 1997

The Bamako Court of Appeal, sitting in the Courtroom of the said town, during its ordinary public hearing of January fifteen nineteen ninety-seven, held in a civil proceeding, before Messrs:

Mr WAFI OUGADEYE : Trial Judge at the Bamako Court of Appeal :

PRESIDENT / :

DEMBA N'DIAYE Trial Judge at the Bamako Court of
ALIOU ARBONCANA MAIGA Appeal ;

MEMBERS / ;

Dramane TRAORE :
Birama TRAORE : **ASSESSORS**

In the presence of Mr **Modibo COULIBALY**, Deputy State Counsel, of the Bamako Court of Appeal.

THE STATE;

Assisted by *Me* MME COULIBALY DABOU TRAORE, Registrar of the said Bamako Court of Appeal:

COURT REGISTRAR

Passed the following ruling in the case between:

HEIRS OF LATE Gaoussou DRAME Appellant, who have as legal counsel Barrister Mamadou DAFFE. Attorney, represented at the hearing by the said counsel:

ON ONE HAND/ ;

KADIATOU DlARRA : Respondent, who has as legal counsel , Barrister Aminata TRAORE. Attorney, represented at the hearing by the said counsel:

ON THE OTHER HAND / ;

IN A PROCEEDING FOR DISTRIBUTION OF ESTATE

THE COURT,

The record of these proceedings shall not jeopardize or be prejudicial in any manner whatsoever to the respective rights and interests of the parties involved but be without prejudice to matters of fact and law:

MATTERS OF FACT: Through a document filed at the registry of 11 April 1989. Madame Madio NIARE pointed to the appeal against Ruling No. °90 of 6 April 1989 of the Bamako Court of Instance in a case for distribution of estate pitting the heirs of her late husband Gaoussou DRAME of Madame Kadiatou DIARRA and her two under-age children Ousmane and Assitan DRAME. The ruling

whose operative parts read as follows

"Ruling in public, in the presence of both parties, in a civil proceeding and at first instance:

AS CONCERNS PROCEDURAL MATTERS: Declares the objection, of Madame Madio NIARE and Madame Fanla TOURE admissible .

AS CONCERNS THE MERITS: Confirms the default judgement handed down on 17 December 1987 by this Civil Court (No. 392),

Orders the appellant to pay costs":

As a result of this document, the Bamako Court of Appeal handed down on 30 April 1992 Ruling No. 171 whose operative parts read as follows:

"Ruling in public, in the presence of both parties, in a succession proceeding and

as the court of last resort:

AS CONCERNS PROCEDURAL MATTERS: Declares the appeal admissible .

AS CONCERNS THE MERITS: Confirms the portion of the appealed ruling ordering sharing in accordance with Muslim law with all the aspects contained therein: however overturns the portion of the ruling regarding the amount for rents collected:

Ruling anew on this point and changing the amount, sets the amount for the said rents at

CFAF 4,222,000 plus CFAF350,000, representing a total of CFAF 4,472,000 : orders that it should be shared: Orders the appellants to pay costs".

Through a document filed at the Registry on 02 March 1992, Barrister Mamadou

DAFFE, Attorney, acting on behalf of and for the heirs of late Gaoussou DRAME, declared that he will appeal against this judgement;

As a result of this appeal, the Supreme Court of Mali (Judicial Chamber) handed down on 19 July Judgement No. 114 whose operative parts read as follows:

As concerns procedural matters: Declares the appeal admissible;

As concerns the merits : Quashes and cancels the appealed decision;

Sends the case and parties back to the Bamako Court of Appeal, with a different composition

Orders that the deposit fine should be returned

Orders the State Treasury to pay for costs."

Based on this document, the case was registered in the general list of cases scheduled at the court's registry for hearing as No. 684 in 1993,

Called up for the hearing of 19 January, 1994, it was successively postponed to 22 February, 1994. to file and exchange submissions, on 16 March 1994 to duly compose the Court, to 6 April 1994 on the same grounds , on this date, the case was scheduled for deliberation on 8 June 1994 : when this date arrived, the deliberation was reopened for the court to be constituted once again and the case was postponed to 15 June 1994 for this purpose and scheduled for deliberation

on this date on 14 September 1994 before the deliberation was extended to 28 September 1994; on this date the deliberation was reopened and an order given to reopen proceedings for an investigation to determine the amounts for rents

generated from May 1983 to June 1984 from the house located at *Missira Rue 14 X 25* (the restaurant, three shops, two workshops, the house located at *Médina Coura*) : Appoints Wafi OUGADEYE (Trial Judge at the Court of appeal to enforce this provisional judgement

whose operative parts read as follows

"Ruling in public, in the presence of both parties, in a civil proceeding and at first instance:

AS CONCERNS PROCEDURAL MATTERS: Declares the objection of Madame Madio NIARE and Fanta TOURE admissible :

AS CONCERNS THE MERITS: Confirms the default judgement handed down on 17 December 1987 by this Civil Court (No. 392),

Orders the appellant to pay costs;"

As a result of this document, the Bamako Court of Appeal handed down on 30 April 1992 judgement No. 171 whose operative read out as follows:

"Ruling in public, in the presence of both parties, in a succession proceeding and

as the court of last resort;

AS CONCERNS PROCEDURAL MATTERS: Declares the appeal admissible;

AS CONCERNS THE MERITS: Confirms the portion of the appealed ruling ordering sharing in accordance with Muslim law with all the aspects contained therein; Overturns however the portion regarding the amount for rents collected: Ruling anew on this point and changing the amount, sets the amount for the said rents at the minimum of CFAF 4,222,000 plus CFAF350,000, representing a total of CFAF 4,472,000 : orders that it should be shared: Orders the appellants to pay costs:"

Through a document filed at the Registry on 02 March 1992, Barrister Mamadou

DAFFE. Attorney, acting on behalf of and for the heirs of late Gaoussou DRAME, declared that he will appeal against this judgement;

As a result of this appeal, the Supreme Court of Mali (Judicial Chamber) handed down, on 19 July, Judgement No 114 whose operative parts read as follows:

As concerns procedural matters: Declares the appeal admissible;

As regards the merits : Quashes and cancels the appealed decision;

Sends the case and parties back to the Bamako Court of Appeal, with a different composition;

Orders that the deposit fine should be returned:

Orders the State Treasury to pay for costs ":

Based on this document, the case was registered in the general list of cases Scheduled at the court's registry to be heard as No. 684 of 1993 ;

Called up for the hearing of 19 January, 1994, it was successively postponed to 22 February, 1994 for filing and exchange of submissions, on 16 March 1994 to duly compose the Court, to 6 April 1994 on the same grounds , on this date, the case was scheduled for deliberation on 8 June 1994; when this date arrived, the deliberation was reopened for the court to be constituted once again and the case was postponed to 15 June 1994 for this purpose and scheduled for deliberation

on this date, to 14 September 1994 before the deliberation was extended to 28 September 1994, on this date the deliberation was reopened and an order given to reopen proceedings for an investigation to determine the amounts for rents generated from May 1983 to June 1984 from the house located at *Missira Rue*

14 X 25 (the restaurant, three shops, two workshops, the house located at Médina Goura) :

Appoints Wafi OUGADEYE (Trial Judge at the Court of appeal to enforce this interlocutory ruling (A.D.D.)

Reserves judgement on the award of costs ;

Scheduled again for hearing on 5 March 1995, then postponed successively to 29 March 1995 for eventual remarks from the parties on the enforcement of the A.D.D. and postponed to 12 April 1995 at the request of *Me* DAFFE, to 3 May 1995 at the request of the legal counsel of the appellants, to 31 May 1995 for the regular composition of the Court .(Customary Assessors), to 7 June 1995 for the regular composition of the Court, to 28 June 1995 on the same ground, to 19 July 1995 on the same ground, to 30 August 1995 on the same ground , to 21 October 1995 for the regular composition of the Court, to 1st November 1995 on the same ground, to 8 November 1995 at the request of Kadiatou DIARRA, scheduled for deliberation on 15 November 1995, deliberation postponed to 6 December 1995 ; When this date arrived, the deliberation was reopened and an order given to reopen proceedings : In Interlocutory ruling. : Order that an investigation should be carried out :

1°- To determine the amount of rents collected for the house in *Médina Coura* ;

2°- Include in the case file the deposit report from *Me* DEME Notary and *Me* BAH, Bailiff or any other legal document that makes it possible to assess their respective management;

Appoints Trial Judge Wafi OUGADEYE to perform this assessment: Reserves judgement on the award of costs :

Rescheduled for hearing on 7 August 1996, it was postponed successively to 14 August 1996, date of the first hearing of vacation, during the extraordinary hearing of 4 September 4, 1996 (UEMOA/OHADA of August 26 to 28 1996), to 25 September 1996 to check an investigative mission , on this date, it was scheduled for deliberation on 20 November 1996, on this date, the proceeding was postponed to 2 December 1996, when this date arrived, the deliberation was reopened for a new composition and the case scheduled for deliberation on 15 January 1997:

On this date, the Court, having considered according to the law, handed down the following judgement:

THE COURT

Mindful of the case documents ;

WHEREAS the parties and their respective legal counsels presented their actions, claims and arguments:

l 4 The State in relation to justice :

After deliberating about this case in accordance with the law ;

I - AS CONCERNS PROCEDURAL MATTERS: Through a legal document filed at the registry on 11 April 1989, Madio NIARE appealed against ruling No.90 handed down on 6 April 1989 by the Bamako Court of First Instance ruling in a customary proceeding, which declared as null and void the opposition directed against ruling No.382 of December 1989, which estimated the estate of late Gaoussou DFRAME at CFAF 22,420,000 , broken down as follows :

- a compound located at Médina Coura (occupancy permit No.1 1 30.08.14.01 of 240759) estimated to be worth CFAF 12,719,355 :
- a built -compound in Missira estimated to be CFAF 5,478,768 ;
- the entire revenue generated by both compounds during the

the 1983 to 1987 period, representing CFAF 4,222,000 and which ordered that the the estate should be shared based on Muslim custom:

That this appeal is admissible because it was filed in accordance with the legal procedures and
time limits:

2 - AS CONCERNS THE MERITS : Whereas to support the appeal of VIadib NIARE, *Me* Mamadou DAFFE, Attorney, counsel for the
appellant and of the group of heirs of Gaoussou DRAME
pitted against Kadiatou DIARRA argued that the
deceased as per the law left behind two wives, Madio N1ARH and Fanta COURE, their
respective children and two children from a religious marriage celebrated with KADIATOU DIARRA: That the latter is laying claim to the compound in Missira to be the share meant for her children: That paradoxically
the appealed ruling requires the majority heirs of late
Gaoussou DRAME to present the sum of CFAF 4,222,000,
which corresponds to the rents collected by them : That this amount
unsubstantiated by any proof has been imagined by Kadiatou
DIARRA : That article 1315 of the Mali Civil Code provides: " whoever
demands the enforcement of an obligation must proof it,"; That in
this case, the judge has not stated the formula he is using to come up with this result : That given the abovementioned article, the judge is supposed to base his future agreement and decision on the relevance of facts
on which the case is based:

21 June 1.921 DP 1921. 1. 120): That in any case, during the proceedings Kadiatou DIARRA did not present any evidence; ; that the contested ruling
considers nothing but assumptions whereas it should have automatically
or at the request of both or one of the parties ordered, prior to the interlocutory ruling,
an expert evaluation on specific points: That furthermore, *Me* Aliou
DEME, notary had been appointed custodian of the
succession ; that he should provide a report on his management .

Whereas *Me* Mamadou DAFFE concluded that
that the known heirs of late Gaoussou DRAME are his
two widows Nadio NIARE, Fanta TOURE and his eleven children :
Mamadou,Kadiatou, Massaran, Moussa, Papa, Fanta, Lalla,
Souleymane, Bintou, Ousmane and Assitan DRAME, counsel for the
appellant desires that the majority heirs should remain
in the compound at Medina-Coura and that they should be ordered to pay the two other heirs their share in cash.

Whereas through the pleading of 2 May 1995, *Me*
Mamadou DAFFE using the results of interlocutory rulings No.
485 cl 656 of 28/09/94 and 06/12/95 for 13 months, meaning from
May 1983 to June 1984, set the amount for rents to be
presentedd by the majority group at CFAF 282,750F : that he pleaded
that the judgement of 30 April 1992 to share the estate
according to Muslim Law should be withdrawn:

- that Kadiatou DIARRA should present the retirement benefits she has received so far:
- that the rents collected by the heirs of late
Gaoussou DRAME should be set at CFAF 282, 7501- instead of CFAF4,572,000 :

Whereas in her statement of defence, Barrister TRAORE
Aminata

, attorney and legal counsel of Kadiatou DIARRA stated that given the challenges recorded, it is necessary to appoint an expert to determine the amount for rents collected by the joint heirs of her client;

That through the pleading of 28 November 1995, she clearly stated that the sharing must include all the rents collected from the time the deceased passed away right to the time of the sharing: that she added that the management of revenue from both buildings had been entrusted to the custodian since June 1990 notably *Me* DEME Notary and *Me* BAH, Bailiff ;

Whereas based on the facts, Gaoussou DRAME passed away in Bamako on 22 April 1983 leaving behind as heirs his two widows : Madio NIARE and Fanta TOURE and his eleven children : Madou : Kadiatou, Massaran, Moussa, Papa, Fanta Lala Souleymane. Bintou. Ousmane and Assitan DRAME ;

Whereas based on the procedure, Kadiatou DIARRA, mother of the minors Ousmane and Assitan DRAME from the religious marriage celebrated with Gaoussou DRAME , requested that through default judgement No. 382 handed down on 17 December 1987, the Court declared that the estate is estimated to be CFAF22.420.000, representing:

- a compound located at Missira evaluated to be CFAF 5,478,768
- a compound located at Medina-Coura evaluated to be CFAF 12,719,355

the entire revenue generated by both compounds during the period from 1983 to 1987 to be presented by the defendants: CFAF4,222,000 ;

-States that the sharing will take place according to custom, representing 1/8 for the two widows and 7/8 for the children, given that a boy's share is twice the share of a girl ; Appoints *Me* Tidiane DEME to carry out the sharing ; That upon opposition from Madio NIARE and Fanta TOURE, the Succession Chamber of the Bamako Court of First Instance, through judgement No. 90 of 6 April 1989, declared the opposition null and void ; That through a legal document filed at the Registry on II April 1982, Madio NIARE appealed against this judgement; That through judgement No. 171 handed down on 30 April 1992,the Court of Appeal confirmed this judgement by readjusting the amount for rents at CFAF 4,572,000 ; that through the appeal of 2 May 1992 from Barrister Mamadou DAFFE, Counsel for Madio NIARE, the Supreme Court of Mali through judgement No. l 14 of 19 July 1993 overturned judgement No. 171 of 30 April 1992 and sent the case as well as the parties back to the Bamako Court of Appeal, with a different composition .

Whereas as concerns the estate, the only contested aspect is the amount for rents to be presented by Madio NIARE and the other appellant heirs; that on these points, the enforcement of Interlocutory Rulings No. 485 of 28 -2-1994 and No.656 of 6-12-1995 made it possible to understand the facts of the case; that in fact it identified all the tenants who can be divided into three categories:

- permanent tenants like Adama SID1BE and Seyba Mamadou who lived in the house before the demise of Gaoussou DRAME and who still live there ; their respective situations are clears, with the various price changes and the receipts as proof :

- current tenants who make it possible to calculate only their personal situation
, excluding the various past tenants :
- tenants with unclear situations whom we have not
included in our calculations; these are tenants who have been reported by other
tenants and who provide unclear information about their situation: that furthermore
the enforcement of interlocutory rulings made it possible
to ascertain the periods of tenancy and the person to whom payments were made; that

as

such for example
Madio NIARE who had declared on 11 January 1995 that the compound
in Medina cour was used solely as a living space by the heirs of
Gaoussou DRAME and one room was later set aside for rent,
ended up admitting that it generated at least CFAF 25,000
monthly ; that even the counsel for the appellants had
argued in his pleading on 25 November 1988 that contrary to the
false estimates provided by Madame Kadiatou
DIARRA, the compound located near the Missira bridge and which
Gaoussou DRAME cannot in any case claim to
own alone contains :
- a shop leased
to Bengaly CISSE at F10,000 from the demise of
Gaoussou to this day, representing CFAF10,000 X 54 = F540,000
- a hotel leased at CFAF 10,000 CFAF10.000 X54 =CFAF540,000
- Two small shops leased respectively at CFAF5,000, representing CFAF10,000
X54= CFA540,000
Representing a total for rents for the compound located near the bridge
540,000F X 3 =CFAF1,620,000 collected as rent and which
were used to feed the family of late Gaoussou DRAME from the time of his death
to today:

Whereas the investigation carried out revealed
the following :

Rents generated by the two compounds from May 1983 to June 1984
CFAF275,000F+287,500 = CFAF562,750 :

Rents from July 1984 to June 1990 date of the sequestration':
a) : House in *Médine*
- Seydou. COULIBALY, 5,000 X 12 X CFAF6, 360,000F
- Adama SIDIBE= 5,000 F X 12 X 6= CFAF360,000
- Seyba Mamadou Souleymane 15.000 X .12 X 6 =1.080.000 FCFA

-Bengalv DIAKITE= 15,000 X 12 X 6= CFAF 1,080,000
b) House in Missira: 25,000 X 17 X 6 = CFAF1 800 000
TOTAL RENTS DURING THIS PERIOD
562,750 F + 360,000 + 360,000 + 1,080,000 + 1,800,000
= 4,092,750 F CFA (sum to be presented by the group of heirs
Madio NIARE and others ;

Rents normally collected by the sequestrator from July 1990 to
January 1991=total collected CFAF240,000 :
From February to May 1991=Total recovered - CFAF387,000 :

Rent from May 1991 to December 1994
a) **Compound in Missira** - 25,000 X 12 X 5= CFAF1,500,000
b) **Compound in Medine** :
Seydou COULIBALY CFAF300,000 + CFAF35,000 = CFAF335,000
Adama SIDIBE: CFAF300,000 + CFAF35,000 = CFAF335,000

Seyba Mamadou Souleymane = CFAF900,000 + CFAF10,500 = CFAF1,050,000

Mme DIABY Makono CAMARA from May 1993 to December 1996= CFAF645,000

Total rents generated from both compounds from the demise of Gaoussou DRAME to 31 December 1996 = CFAF8,574,750 :

Whereas the only thing disputed by the appellants is the amount generated as rents from both compounds.

that the relevant portion of the disputed ruling on this point should be quashed and it should be declared

that the heirs of the Madio NIARE group must present, as rents collected, the sum of **CFAF4, 092, 750 F** and the sequestrator must justify the sum of **CFAF4, 482,000** ;

Whereas the other points of the decision comply with the law, it is appropriate to quash the other provisions of the disputed ruling ;

NOW THEREFORE

Ruling in public, in the presence of both parties, in a succession proceeding, on appeal and as the court of last resort:

1°) **As concerns procedural matters** : Declares the appeal admissible

2°) **As concerns the merits** : Confirms the provisions of the appealed ruling relating to the sharing of the estate Quashes the other provisions of the appealed ruling.

Ruling anew on these provisions: States that the amount updated with rents generated from both compounds from May 1983 to December 1996 is eight million five hundred and seventy-four thousand seven hundred and fifty francs CFAF (CFAF8, 574, 750) distributed as follows :

rents to be presented by the appellants : four million ninety-two thousand seven hundred and fifty francs CFA (CFAF 4,092,750)

- Rents to be presented by the notary *Me* DEME, tasked with the sharing : Four million four hundred and eighty-two thousand francs CFA (CFAF4, 482, 000).

States that given this new figure for rents , the estate is now estimated at: twenty-six million seventy hundred and seventy-two thousand eight hundred and seventy-three francs CFA broken down as follows: Compound located at Médina Coura Rue 14 x 17 subject of occupancy permit No. l 1- 30- 30- 08- 14- 01 issued on 24 July 1959 estimated at twelve million seven hundred and nineteen thousand seven hundred and fifty francs (CFAF12, 719, 750)

The amount for rents estimated at eight million five hundred and seventy-four thousand seven hundred and fifty francs CFAF (CFAF8, 574, 750)

Orders the estate to pay for costs ":

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

Signed by the President and the Court Registrar /.

Signed (below)

Registered in Bamako, on 18-04 -2000

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Registration Inspector

Signature illegible

CERTIFIED TRUE COPY

Bamako, on 14 September 2016

CHIEF COURT REGISTRAR

Baba Hamadou Traoré