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CIV. APP.17/2006

IN THE COURT OF APPEAL FOR SIERRA LEONE

CORAM:

The Hon Mrs. Justice S. Bash-Taqi, JSC

The Hon Mr. Justice N. C. Browne-Marke, JA

The Hon. Mr. Justice E. E. Roberts, JA

BETWEEN:

DR. HARRY TURAY **APPELLANT**

AND

JOAN BALFOUR (NEE WILSON)

(Suing by Her Attorney Mr. Charles Ayodeji Dixon)

RESPONDENT

Judgment delivered on the 26th day of January 2010

Counsel

S. M. Sesay, Esq. of Serry Kamal & Co. for the Appellant

J. B. Jenkins-Johnston, Esq. for the Respondent

S. BASH-TAQI, JSC: This is an appeal from the judgment of the High Court (A.B. Rashid, J) dated the 22nd December 2005, allowing the Respondent's claim against the Appellant and declaring the Respondent the fee simple owner of the land and property situate and being Off Hill Station Wilberforce Freetown, damages for trespass an injunction restraining the Appellant from trespassing on the Respondent's said land.

The relevant facts of this case are as follows: -

The action was commenced by the Respondent, through her Attorney, Mr. Charles Ayodeji Dixon, as Plaintiff, by a Specially endorsed Writ of Summons

dated 17th June 2002 against the Defendants jointly and/or severally. He claimed that at all material times before and during this action, the Respondent was the fee simple owner of a piece or parcel of land and hereditaments situate lying and being Off Hill Station, Wilberforce Freetown. He further alleged that she became the fee simple owner of the said land by virtue of a Deed of Conveyance dated 19th October 1992 and registered as No. 858 at Page 33 in Vol. 472 in the Books of Conveyances kept in the Registrar-General's Office in Freetown. The Conveyance was tendered in evidence at the trial as Exhibit "B1".

The Respondent further alleged that the Appellants and their servants entered the said land and the 1st Appellant started building on it and the access road abutting and leading into the said land; that despite repeated demands and warnings to the Appellant to vacate the land and cease construction work thereon, he refused to do so, and eventually he instructed his Solicitor to institute the action asking for the relief set out in the statement of claim.

The records do not disclose whether an Appearance was entered by or on behalf of the Appellants, nor do they disclose whether the Appellants filed a Statement of Defence, although Counsel, Mr. Serry-Kamal, in his address referred to a Statement of Defence being filed and to the fact that the Second Defendant was not served with the Writ of Summons (see page 51 of the Records of the proceedings in the High Court). Despite these irregularities, the action was nonetheless entered for trial on 10th February 2003, and on 23rd September 2002, the Respondent applied under Order 37 R 9-10 of the 1960 High Court Rules for an interim injunction to restrain the Appellants from continuing to trespass on the disputed land. The injunction granted on 23rd September 2002 on the written undertaking by the Respondent to compensate the first Appellant for any loss he may sustain in consequence of the Injunction. The Court then ordered a speedy hearing of the action. There is no indication that the case against the Second Defendant was discontinued in default of service or if serviced with the Writ that interlocutory judgment was entered against him in default of appearance. Presumably the Respondent's Solicitor was content with having served the First Defendant, and therefore proceeded with the action against him alone.

At the hearing of the action, the Respondent's Attorney gave oral evidence. He identified his Power of Attorney as Exh. "Z", but somehow, this document was not tendered in evidence. The witness said he knows the Respondent's land situate Off Hill Station Wilberforfce, and that she has title Deeds to the disputed land. He visited the land about four times and observed construction work going on, on part of the land; he made enquiries and was informed the land under construction belonged to the two Appellants. Although he made efforts to find them, the witness was unable to locate them. When he visited the land again he noticed that the construction of the building was progressing. He instituted this action seeking the reliefs set out in the Statement of Claim. PW3, a representative of the Administrator-General's Office tendered the Respondent's Deed of Conveyance to the disputed land as Exhibit "B1".This Conveyance is dated 19th October 1992 registered as Number 858/93 in Vol. 472 at page 33 of the Books of Conveyances.

The Respondent's Surveyor also gave evidence as PW2. For reason which will become clear later in this Judgment it is necessary to give a detailed summary of this witness's evidence. He said the Respondent's Attorney, Mr. Charles A. Dixon asked him to do a survey of the Respondent's land at Off Hill Station Wilberforce. He saw some pillars and observed a structure being built on the land; he asked for the Respondent's Survey Plan and saw that it was a sub-division of Survey Plan LS.2671/86; he plotted Plan LS 2671/86 and prepared a composite plan together with a report which he tendered as Exh."A1-2". He took details of the structure and found that part of it was in L.S. 105/92, (Respondent's land, see page 96) and the other part on LS574/2000, (Appellant's land see page 106); he observed some beacons on the land numbered B 126/2000, 127/2000 and B 128/2000, which appear on the Parent Plan L.S.2671/86; he requested the coordinates of these pillars was he was given Survey Plan LS574/2000 (the Appellant's Survey Plan).

The First Appellant also gave evidence. He said he purchased his land from one Pa Alimany Conteh on 8th January 2001; that the land is situate at Fudia Terrace at the South overlooking Hill Station, and he commenced building on the North west part of the land. He had floated the floor with concrete and was preparing to float the main floor when he received the Writ of Summons. His Solicitor advised him

there is an injunction and to stop his building. His iron rods and cement blocks are still on the land. Prior to the advice from his Solicitor no one had claimed the land. He said further that his vendor told him he bought the land from the Staffords. He denied building on the Respondent's land; he made enquiries as to the ownership of the land before purchasing it; it was confirmed to him that the land belonged to his Vendor. I knows one Mansaray who claims to also have land in the area; he saw other people building in the area. The Appellant's Surveyor also gave evidence; he surveyed the Appellant's land and produce LS574/2000; one Alimamy Conteh showed him the boundaries. A year later he was given the Respondent's land; he went to the ground and took measurements; he prepared a plan which he tendered as Exhibit "C", showing the Appellant's property marked 'Red' and that of the Respondent marked 'Green'. Exhibit "C" appears at page 98 of the Records. Unlike Exhibit "A 1-2", Exhibit "C" shows no overlapping/encroachment.

The Learned Trial Judge having reviewed the evidence adduced at the trial gave judgment in favour of the Respondent and had this to say:

> "From this it seems quite clear that each party alleged ownership of the land in dispute and they based their respective claim on deeds of Conveyance. The simple issue before the Court is which of them has a better title.
>
> The position therefore is this namely the plaintiff has traced her title to the deed of Conveyance which was registered on the 24th March 1991, Exhibit B whereas the Defendant has traced his title back to a Conveyance which was registered and made on the 16th May 1991 Exhibit D1 of the two therefore it would appear that the plaintiff has a better title than the defendant."

The Appellant has now appealed to this Court on three grounds, namely:-

1. That the Learned Trial Judge acted on wrong principles of law in arriving at his decision

2. That the Learned Trial Judge failed to consider adequately that the Appellant's predecessors in title had been in exclusive possession of that property for over 20 years before the defendant went into possession of the same land.

3. That the decision is against the weight of the evidence.

Various arguments have been adduced on behalf of both the Appellant and the Respondent. Mr. S. M. Sesay of Counsel for the Appellant, relied on his written submissions. He argued that the Learned Trial Judge, to a large extent, based his judgment on the evidence of Appellant's Licensed Surveyor, Mr. Shamun Hamid, who prepared and tendered the encroachment Plan and Report, Exhs. "A 1-2". He asked us to observe the Survey Plan, L.S. 574/2000 at page 20, and to the boundaries of both the Appellant's and Mr. Mansary' s lands reflected thereon and to compare that at page 4, the encroachment plan prepared by Mr. Hamid, in which he concluded that Survey Plan L.S. 574/2000 reflects the land belonging to the Appellant and Survey Plan L.S. 105/92, as that belonging to the Respondent. It should be noted that the Plan does not reflect the land belonging to Mr. Mansaray, the original 2nd Defendant in the High Court. Counsel therefore submitted "that the plan is completely erroneous" as what the Surveyor (Mr. Hamid, I assume) did was to combine the two plots of land belonging to the Appellant and Mr. Mansaray, (2nd Defendant,) reproduce an encroachment plan n based on the combined lands, and portrayed it as belonging to the Appellant. Counsel submitted that a careful scrutiny of the exhibits will confirm that the Appellant did not trespass on the Respondent's land. He submitted that the position of the Appellant and Respondent's respective lands is correctly reflected in Exhibit HT2 (See page 23) the composite plan prepared by James M. Bangura, Licensed Surveyor; he submitted that Exh. HT2 clearly shows that the Appellant did not trespass on the Respondent's land, and further that the Appellant's land and that of the Respondent are separate and distinct; he therefore submitted that the action is misconceived.

Arguing ground 2 of the Grounds of Appeal Mr. Sesay submitted that the learned judge failed to consider adequately that the Appellant's predecessor in title had

been in exclusive possession of the property over 20 years before the defendant went into possession of the same land; that there is no evidence that the Appellant entered into the Respondent's land, and therefore the Trial Judge was wrong to have held that the Appellant trespassed on the Respondent's land. Counsel quoted the following passage from the Judgment:

> **"In my opinion Exhibit "A1 and Exhibit "A2" have satisfactorily clarified the position of the land in dispute which is shown to fall within the area of the plaintiff's land which is particularly delineated on LS 105/95. Suffice it to say that I find that 1st Defendant liable. The result is that the plaintiff's claim for Declaration of Title, Damages for Trespass upon the plaintiff's land by the defendant and injunction must succeed."**

He submitted that in coming to the above conclusion the Learned Trial Judge was misled by the evidence of PW2, who produced an erroneous report which then led the Judge to come to that erroneous conclusion.

Finally on the issue of trespass, Counsel submitted that there is no issue of title between the Appellant and the Respondent, since the Appellant contention is that he is lawfully on his land and has not laid claim on the Respondent's land; that the Appellant has always maintained that his land is separate and distinct from that of the Respondent, he claimed that it is the Respondent who has trespassed on his land. He submitted that the evidence in support of the above submissions, was before the Learned Trial Judge, who disregarded it. He urged us to up hold the appeal for the above reasons.

Mr. Jenkins-Johnston of Counsel for the Respondent in reply also relied on his written submissions. He contended that the Learned Judge came to the right conclusions having regard to the evidence led; he also relied on the Respondent's evidence of title, that of her predecessor-in-title, and on the evidence of PW2 the Respondent's Licensed Surveyor, and more particularly on the evidence of DW2, the Appellant's licensed Surveyor who said in cross-examination at page 48, as follows:

> "..... .....

" .....I see two (2) plans – LS 105/92 and LS574/2000. L. S. 105/92 is properly shown, but L. S. 574/2000 is not properly plotted. The coordinates of L.S 574/2000 are not properly shown....."

He submitted that the burden of proof is on the person asserting title to prove such title in accordance with the pleadings, and that the Respondent has clearly discharged that burden and was therefore entitled to a declaration of title claimed

In respect of Grounds one & two, Mr. Jenkins-Johnston submitted that these are vague not having given any particulars or instances of the alleged "wrong principles of law relied by him as is required by Rule 9(4) of the Court of Appeal Rules PN No. 29 of 1985; that the grounds, should not be considered as proper grounds of appeal. He urged us to dismiss both grounds of appeal.

In reply to ground 3, he submitted that the decision in this case is based on questions of fact, which the Judge resolved in the Respondent's favour; that the Judge having accepted the finding of facts of the trial judge, this Court should not disturb those findings. He relied on the following cases **(1) Lucy Decker and others vs. Goldstone E. Decker (Civ. App. 11/2002 (C/A) Judgment of Gelaga-King JA; (2) the dictum of Lord Shaw in Clarke vs. Edinburgh and District Tramways Ltd. (1919) S.C (H/L) 35, 37; (3) Yuill vs Yuill (1945) 1 AER 183 at 188 ; (3) Watt vs. Thomas (1947) A. C. 484,** to buttress his submissions.

Having narrated the arguments put forward by both Counsel, it now becomes necessary for me to consider the evidence adduced in this case together with the law on the points raised and the authorities relied on by both Counsel. The first point which I now have to consider is the question of whether either party proved that they had a better title to the land question.

The Appellant in his oral evidence maintained that he is the owner of the disputed land by virtue of the Deed of Conveyance Exh. "E1" dated 8th January 2001, and as such did not trespass on the Respondent's land; that his land is separate and distinct from that of the Respondent's and tendered Exhibit "C" to buttress this fact. He also tendered the Conveyance of his predecessors-in-title as Exh. "D1".

This is a Conveyance between Emmanuel Stafford & others to Pa Alimamy Conteh, the Appellant's Vendor, dated 16 May 1997 registered as No. 642/97 in Vol. 508 at page 16 of the Books of Conveyances. His predecessors' root of title dates back to 14 March 1991.

The Respondent on the other hand traced his root of title to his predecessors' as far back as 24th March 1986, when her Vendor Samuel K. Bart-Williams bought the land from Antominus Benjamin and Jeremiah Christopher Kaitel.

After considering the various contentions of the parties it is clear that both parties base their ownership of the land on documentary titles. Although the claim among other things was for trespass as well as a declaration, the Trial Judge dealth exclusively with the declaration. The only problem here appears to be more on the identity of the land that both parties are claiming and which is reflected on their respective Survey Plans.

From the evidence in the case, it would appear that the Appellant is in actual possession of the land, however, the law is clear that such possession does not entitle him to a declaration he not having applied for it.

As stated in the case of **Seymour Wilson vs. Musa Abbess**, supra, "mere possession of land is not enough for the Court to declare title. Similarly, the mere production in evidence of a Conveyance in fee simple is not proof of a fee simple title. The document may be worthless....."

Where, in an action for a declaration of title to a disputed land, the parties rely on their respective Deeds of Conveyances, the Court will confine itself in deciding the documentary title only. See Venn Thompson and Musu vs. Cole (1968-69) ALR (S/L) 331. It follows that to be entitled to a declaration of title, a party must prove that he has a better title not only as against the defendant but that there is no other person having a better title than himself.

In the West African Court of Appeal case of Kodilinye vs. Odu (1935) 2 WACA 336, Webber C. J. Said:

"The onus is on the Plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. The Plaintiff in this case must rely on the strength of his own case and not on the weakness of the Defendant's case. If this onus is not discharged, the weakness of the Defendant's case will not help and the proper judgment is for the Defendant, he not having sought the declaration."

The above case was also cited with approval the case of **Seymour Wilson vs. Musa Abess Supreme Court Civ. App. 5/79 (unreported).**

The question the Learned Trial Judge was faced with for determination is: as between the Appellant and the Respondent who has a better title to the land in dispute. He decided this question by considering the relevant dates of the documentary titles of both parties' predecessors-in-title, namely, that the title deed of the Respondent's predecessor-in-title dates as far back as 24th March 1986, and that of the Appellant's predecessor-in-title is dated 4th March 1991.He concluded from the above that the Respondent had a better title to the disputed land and declared her the fee simple owner of the land. Although the claim among other things was for a declaration as well as trespass, the Trial Judge dealt exclusively with the declaration. From the Particulars of Claim, the declaration sought is for title to 1.0134 Acre of land.

The 1st Appellant's Counsel has raised the issue of the identity of the land. In his submissions, he contended that the Survey Plan Exh."A1" relied on by the Learned Trial Judge to determine the identity of the land in dispute and which was drawn by Surveyor Mr. Hamid, is erroneous. He further contended that the Appellant has not encroached on the Respondent's land, and that the parties' respective parcels of land are separate and distinct.

In order to resolved this issue, it will be best to refer to principles of law outlined two cases, that of KONDILINYE v ODU which I have earlier on referred to, and also to the well-known case of SOBANJO v OKE 14 WACA 593 which says "the burden is on the plaintiff to prove his right to a title and other relief by independent means. In the case of WALTER RIDDLE v SAMUEL NICOL (1971) Court of Appeal (SL) unreported, in which the case of ATE KWADZE and ROBERT KWASI ADJEI an

appeal from the Provincial Commissioner's Court, cited in WACA Vol.X 274, it was held that before a declaration of title is given the land to which it relates must be ascertained with certainty, the test being whether a Surveyor can from the record produce an accurate plan of such land. There is also the case of BITTER v BAOMA TRIBAL AUTHORITIES (1957-1960) ALR S.L 128 (R. B. Marke, J.), who stated this quotation:

> "In KWADZE v ADJEI, already cited, the West African Court of Appeal laid down the test to be applied as regards the delimitations of land in dispute".
>
> Though this is an action for declaration of title the principles laid down by the Court as to the necessity for defining with certainty the area in dispute would, in my opinion, apply to an action for ejectment. The Court of Appeal, among other things said: "The acid test is whether a surveyor, taking the record could produce a plan showing accurately the land to which title has been given"

I would also refer to the often repeated legal principle that the plaintiff must depend on the strength of his case and not on the weakness of the defendants contained in the case of VEN & VEN v COLE (1968-69) ALR (S.L.) 338, and in MANSARAY v WILLIAMS (1968-69) ALR (S.L.),326.

Applying the principles in the above decisions to this case, it is for me to decide whether the Judge was justified in coming to the conclusion he did regarding the declaration of title.

The declaration sought, against two defendants sued jointly and severally, was for title to 1.0134 acres of land (see para. 2 of the Particulars of Claim). As a legal concept a claim for declaratory title demands a much higher degree of proof than that required for a claim for trespass; and though usually they are claimed together they are considered to be separate and distinct issues. (See Chief Eyo Ita v Etumbom Asido 2 WACA (1934-35) P. 339 Carey, J.

The Learned Trial Judge attempted to deal with the identity of the land when he considerd the evidence of the two surveyors (See page 63 of the Records). Of the

evidence of the Respondent's Surveyor the Learned Judge quoted the Respondent's Surveyor's Report as follows:

> "Survey Exercise carried out at Hill Station for Mrs. Joan Baffour (Nee Wilson). Plan LS105/92in the name of Mrs. Joan Baffour was given to me for location. I went to the site and used LS1/76/BP 13 and SLS 1/76 BP 14 to carry out the survey work. The parent body from which LS105/92 was extracted is LS2671/86. I observed beacon B126/2000- B130/2000 on the ground which border LS 574/2000 has a part of LS105/92 enclosed. I am of the opinion that LS105/92 which is the first plan surveyed supersedes plan No. 574/2000. The latter has therefore encroached into the former."

From the above the learned Judge concluded as follows:

> "Looking at Exhibit A2 which is the encroachment on LS 105/92 it is obvious that LS 574/000 has encroached into LS105/92 whereas looking at Exhibit C the Composite Plan of the Defendant drawn by his surveyor DW2 his evidence is that the two properties are distinct and separate. DW2 further went on to say. I see two plans – LS 105/92 and LS574/2000. LS105/92 is properly shown but LS 574/2000 is not properly plotted. The Coordinates of LS574/2000 are not properly shown; the shape does not look alike. I am not referring to plot 2 which is a different person."

DW2 went on to say:

> "I see Exhibit A2. The Plan of LS574/2000 is showing an overlap on plot 2.....LS105/90(2) over laps plot 2."

This is the only witness who refers to a plot 2 on LS574/2000. Looking at Exh. "E1" the Conveyance of the Appellant there is attached the Survey Plan LS574/2000 showing the relative positions of the Appellant's land as Plot 1 and that of Mr. Brima A. Mansaray as Plot 2. Survey Plan LS574/2000 is in respect of two pieces of property portrayed on a single plan. The Composite Plan, Exh. "A1", drawn by Mr. Hamid, does not show the position of Plot 2 in relation to the Respondent's land. A close scrutiny of Exh. "A1" shows that beacons B126/92, B127/92, B128/92 and B130/92 are the property beacons separating Plot 2 property of Mr. Mansaray

from Plot 1 Property of Harry Turay the 1st Appellant. The Appellant's Surveyor in his evidence confirms as follows: "I see Exhibit A2. The Plan LS574/92 is showing an overlap on Plot 2. LS574/90 overlaps Plot 2."

As I state earlier, Surveyor Mr. Hamid's Exh. "A2" does not show the position of Plot 1 and Plot 2 of LS 574/92, therefore it would be difficult to ascertain Whether the so-called encroachment was done by the 1st Appellant or Mr Mansaray. Considering that there were two defendants in the original action whose respective lands are shown on one Survey Plan, a prudent and conscientious Surveyor would have prepared a Composite Plan depicting which of the two pieces or parcels of lands on LS 574/92 overlapped the Respondent's property. There is doubt that there is an encroachment on the Respondent's land, but to arrive at a fair and just decision, the party who encroached/ trespassed or whose land overlaps that of the Respondent's land ought to have been properly identified. More so, as the evidence shows that the 1st Appellant was already in possession of his portion of the land and has built a permanent structure on it.

In as much as the encroachment plan "Exh. A1", relied on by the Learned Trial Judge in coming to his conclusion about the identity of the land, is uncertain in that respect, I am of the view that the land in dispute has not been ascertained with certainty. The evidence is clear that not the entire 1. 0134 acre of land belonging to the Respondent was encroached upon. Mr. Hamid, the Respondent's Surveyor, in his report Exh."A1" said:

> "I observed that beacons B 126/2000 – B130/2000 on the ground which border LS 574/2000 **has a part of LS105/92 enclosed".(emphasis added).**

But the part that overlaps that of the Respondent has not been identified. As stated earlier in this judgment in ATE KWADZE v ROBERT KWASI ADJEI, supra, before a declaration of title is given the land to which it relates must be ascertained with certainty, the test being whether a surveyor can from the record

produce an accurate plan of such land. In other words, in a claim for a declaration, it is of vital significance that there is certainty of the land in question. The onus, and it is a heavy one, of establishing the identity of the land is on the person making the claim. One way of many ways and preferable and better way of proving the identity of the land is by filling a Surveyor's plan of the area being claimed. The production of a Surveyor's plan of the area depicting the salient features and boundaries of the land being claimed and its relative position to the surrounding land and adjacent properties is necessary where the identity of the land in dispute is being challenged or is in doubt.

In the instant case, the Respondent relied on her Surveyor, Mr. Hamid who gave evidence and produced a Survey Plan namely Exh. A2which shows the 1st Appellant's and Mr. Mansaray's lands forming part of the Respondent's land. But another Surveyor, that of the 1st Appellant, Mr. James Bangura, prepared and produced Exh. "C" showing the relative positions of the land occupied by the 1st Appellant and the Respondent's land and asserted that these are separate and distinct pieces of land.

The evidence of Mr. Hamid is confused in the sense that he failed to take into record the parcel of land belonging to Mr. Mansaray depicted as Plot 2 on the Plan LS574/2000, the Plan which he used to prepare his encroachment. On the strength of what is before the Court can it be said that the Respondent has discharged the heavy burden of establishing with any measure of certainty the land she is claiming? I think not.

Once the identity of the land being claimed by the Respondent is in doubt the claims for a declaration of title and trespass to the land in question must necessarily fail since in real terms there is nothing on which the claims are based. I hold therefore that having considered the whole evidence, including the Exhibits and what was said by the witnesses before the Trial Judge, I am not convinced that the identity of the lands of both the Appellant and the Respondent have been properly indentified.

In the circumstances, this appeal is allowed to the extent that the action be remitted to the High Court for a retrial. The Judgment of the High Court is hereby set aside. Each party to bear his own costs.

Before, I end my Judgment it will be pertinent at this stage to mention two failures of procedure in the pleading, namely the absence of an Affidavit of Service of the Writ of Summons on the so-called 2nd Defendant Mr. Mansaray

And the absence from the records of a Statement of Defence of the 1st Appellant. I had mentioned that the case against the 2nd Defendant was not discontinued when the action proceeded to trial. The learned trial judge referred to this procedural irregularity briefly in his judgment when he said.:

> "As regards the 2nd Defendant Order 10 Rule 11 states that if a defendant. fails to enter appearance the action may proceed. In the instant case the 2nd Defendant having failed to enter appearance the action proceeded. As the case against him is uncontroverted there will be judgment for the plaintiff. In the result there will be judgment for the plaintiff against the 1st and 2nd defendant as follows:....."

With the greatest respect to the Learned Trial Judge, nowhere in his judgment did he ascertain that the 2nd Defendant was served with the Writ of Summons in this action. The evidence of the Charles Ayodeji Dixon, the attorney for the Respondent in his evidence stated that he made efforts to contact the two Defendants, but he was "unable to see them". There is nothing in the Court file to show that he was served by substituted service. The law is clear that if a trial Judge decides to proceed with an action that has been entered by default, he must ascertain that every procedure was followed according to the Rules. In the case of the 2nd Defendant, there is a statement from Counsel for the 1st Appellant ain his address that the 2nd Defendant was not served with the Writ of Summons, and that it was only the 1st Defendant that was served (see page 51 of the Records). At that stage the learned trial judge should have made proper enquiries before proceeding against the 2nd Defendant in default. The Learned Judge himself mentioned in his Judgment: "There is no Appearance of (or) Statement of defence in the file", but proceeded to hear the case under what he state as Order

10 R 11. The above irregularities also buttresses my decision to remit the case for re-trial.

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HON MRS JUSTICE S BASH-TAQI, JSC

I AGREE.....

HON MR JUSTICE N C BROWNE-MARKE, JA

I AGREE.....

HON MR JUSTICE E. E. ROBERTS, JA