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CIV.APP. 4/2009

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

JOHN KAMARA &

MOHAMED KAMARA

APPELLANTS

AND

VICTOR ALPHONSO DEVENEUX

RESPONDENT

CORAM:

Hon. Mrs. Justice S. Bash-Taqi, JSC (Presiding)

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

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

Barristers

N. D. Tejan-Cole Esq. (A. E. Manly-Spain) for the Appellants

Crispin F. Edwards, Esq. for the Respondent

JUDGMENT DELIVERED ON THE 31st DAY OF May 2012

S.BASH-TAQI, JSC: -

By this action the Respondent, then the Plaintiff in the High Court, claimed, against the Appellants, then Defendants, inter alia:

- (a) A declaration that the Plaintiff is the owner and person entitled to possession of all that piece or parcel of land lying being and situate Off New Freetown-Waterloo Road Wellington in the Western Area of the Republic of Sierra Leone.
- (b) Damages for trespass.
- (c) Perpetual injunction.

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Any further orders; and costs.

In his Particulars of Claim, the Plaintiff averred that:

1. *He is and was at all material times the owner and person entitled to possession of that piece or parcel of land situate lying and being Off New Freetown/Waterloo Road Wellington Freetown, measuring 0.9021 Acres delineated on Survey Plan L. S. 3416/83 attached to a Conveyance dated 14th December 1983 made between the one Santigie Bangura of the one part and the Respondent of the other part.*
2. *That the defendants (now Respondents) and their agents, privies have trespassed and are trespassing on the Plaintiff's said piece or parcel of land and unless restrained by this Honourable Court the defendants intend to continue their act of trespass and to wrongfully remain on the land.*
3. *By reason of the aforesaid premises the Plaintiff has incurred loss and damages.*

The Defendants (Appellants) entered Appearance by Counsel and delivered a Statement of Defence and Counterclaim. In their Defence, they denied the Respondent's claim to title and trespass to the land in dispute. The 1st Appellant in addition to denying the Respondent's claim, Counter claimed that he is the fee simple owner of the piece or parcel of land delineated in Survey Plan No. L. S. 51/81 attached to the Deed of Conveyance dated 6th July 1981 which Survey Plan is also attached to the Deed of Conveyance dated 4th January 1983 (Exh. "B1"). He further claimed to have acquired his land while he was still a minor and that the same was held by Santigie Bangura in trust for him. He contends further that Santigie Bangura was to have handed over the land to him when he attained his majority in accordance with the terms of the trust. He alleged that Pa Santigie Bangura had no authority to sell the land held in trust on his behalf.

BACKGROUND

Briefly and from the evidence, the Appellants' father, one Allie Kamara, was the original owner of the above piece or parcel of land measuring 1.2946 Acres. Allie Kamara, had three children: N'Ballia Kamara, a daughter, John Kamara and Mohamed Kamara, the two Appellants. Their mother was one Amie Kanu. Allie

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Kamara died when the 1st Appellant was still a minor. On his death, the family, appointed Pa Santigie Bangura to be in charge of the deceased's property, which included the piece or parcel of land in dispute.

By an Indenture dated 4th January 1983, registered as NO. 1/83 in Volume 62 at Page 48 of the Books of Voluntary Conveyance made between N'Ballia Kamara and Mohamed Sesay therein described as "the Donors" of the one part and Santigie Bangura therein described as 'Trustee for and on behalf of John Kamara' described as "the Infant Donee", this piece or parcel of land was conveyed to the Santigie Bangura, as such "Trustee", for and on behalf of John Kamara, the "Infant Donee". The Indenture was tendered in evidence as Exh. "B1".

The recitals in Clause 2 of Exh. "B1" state that by a Deed of Gift dated 6th April 1981 registered as No 63 at Page 96 in Volume 59 in the Register of Voluntary Conveyances in the Registrar-General's Office in Freetown made between M. A. Bakarr of the one part and M'Ballia Kamara and Mohamed Sesay described as 'Donors' of the other part, the deceased's land was conveyed to N'Ballia Kamara and Mohamed Sesay. (See Exh. "B1" at page 118).

On 30th November 1983, that is, ten (10) months after the property was conveyed to him, Santigie Bangura applied to the Court for an Order to sell 0.9462 Acres of the said Property. Pursuant to the application, Johnson, J, ordered that the Trustee, Santigie Bangura, should sell the 0.9462 Acres of the land and deposit the Purchase money into a Post Office Savings Account in trust for John Kamara, the infant. The circumstances under which the land was sold to the Respondent were not disclosed to the Appellants or members of his family. The Appellant was still a minor.

By Indenture dated the 16th day of January 1984, registered as No. 85/84 in Volume 359 at Page 117 in the Books of Conveyances, made between Santigie Bangura, "as Trustee and Vendor" the of the one part and the Respondent as the Purchaser of the other part, Santigie Bangura sold the portion of the Property measuring 0.9462 Acres to the Respondent for Le 8,000.00, (Eight Thousand Leones) pursuant to the said Court.

Santigie Bangura, the Trustee, later died and I will here assume that on attaining his majority, the 1st Appellant started selling portions of the land. The evidence is

that the Respondent objected to certain encroachment by the 1st Appellant on the portion of the land he had bought and he had warned him off; when the latter did not cease his activities on the land, he reported the matter to the police. Subsequently, the Respondent instituted this action against the two Appellants for the reliefs already stated above.

On the above pleadings the matter went to trial before the Hon. S. A. Ademosu, J.A, sitting in the High Court and he after hearing evidence from both parties delivered judgment on 9th October 2008 in favour of the Respondent. The relevant portions of his Judgment read as follows:

"... .. Pa Santigie obtained an order of the High Court on 30th November 1983 authorizing the sale of the property in question before he sold and conveyed the same to the plaintiff. The law is clear that Orders of the Court are conclusive".

His reason for that conclusion was that the purchaser from the representative has the right to infer that the representative was acting fairly in the execution of his duty and that it rests upon the person seeking to impeach the validity of the transaction to prove that the purchaser had notice of the true state of the facts. He therefore concluded that the Respondent had acquired a fee simple ownership of the land pursuant to the Court order and relied on **Sec. 70(1) The Conveyancing Land and Property Act 1881**. He held that the sale to the Plaintiff was valid and unimpeachable. He also relied on the dictum of Butler Lloyd Ag. C.J. in *Carmarah vs. Macaulay (1920-36) A.L.R (S.L). 150*, wherein he stated:

"I am therefore of the opinion that the sale by the administrator to the defendant gave the latter a valid and unimpeachable title."

The Learned Judge went further to hold:

"I accept unhesitatingly the evidence that Pa Santigie was Trustee for the 1st defendant (Appellant) who was by then a minor. I note that nobody could tell the court why Pa Santigie Bangura sold to the plaintiff. I hold that having sold to the plaintiff pursuant to a Court Order the plaintiff acquired a valid title. The 1st defendant should not have waited for so long before attempting as he is seeking to do in these proceedings to impeach the validity of the sale to the plaintiff. In the absence of any evidence that the plaintiff acted in collusion with Pa Santigie Bangura I hold as a matter of

law that the plaintiff obtained a good title despite irregularities in the administration of the Trust."(Emphasis added)

On the 1st Appellant's counter claim for an Injunction, the Trial Judge held that the 1st Appellant had not yet obtained possession of the land because he was still a minor and therefore cannot claim for an injunction to restrain the Respondent from interfering with his possession of the land.

It is against the above judgment that the Appellants appealed to this Court on the following grounds:

1. *That the decision is against the weight of the evidence.*

On 27th May 2010 they filed additional grounds of appeal which read as follows:

2. *The learned Trial Judge misdirected himself when he agreed with Counsel for the Respondent that under Section 70(1) of the Conveyancing Land and Property Act 1881 that the Order of the High Court dated 30th November 1983 authorising the sale and conveyance of the property in question was conclusive. (see pages 105 lines-10)*
3. *The Learned Trial Judge failed to avert his mind to the fact that the Trust Deed in question did not expressly authorise the Trustee Power of sale of the property or part thereof.*
4. *The Learned Trial Judge was wrong in law to grant the Respondent a Declaration of the title to the property, the subject-matter of the action. Furthermore the Learned Judge erred when he dismissed the Counter claim of the Appellants."*

Both Counsel filed Skeleton Arguments on upon they relied; these can be found in the records. After hearing Counsels' various oral submissions, we reserved Judgement on the matter on **01/07 2010**.

This our Judgment

Various arguments have been canvassed by Counsel for the Appellants and the Respondent. In the main, it is contended by Counsel for the Appellants, Mr. Tejan-Colc, that Exh. "A1"(see pages 107-110) relates to property held in trust; the Exh. "A1", the deed creating the trust does not contain a Power of Sale and consequently it falls to be considered under Section 13 of the Trustee act 1893; that by subsection 2 of that Section, it applies only if and as far as a contrary intention is not expressed in the Instrument creating the trust or power, in which

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case it shall have effect subject to the terms of the instrument and the provision contained therein. He also referred us to the evidence of the various defence witnesses and to that of the Respondent to buttress the fact that the action concerns trust property. Counsel further drew the Court's attention to section 3 of the Act and submitted that provisions of the act apply to trust or powers created by instrument coming into operation after 31st December 1881. He submitted that the Trustee Act 1893 is an adopted Act under the Imperial Statutes (Law of Property) Adoption Act 1960 (CAP 18) of the Laws of Sierra Leone; that the whole Statute applies except for Sections 6,16,34,41,44,46 and 52.

Counsel submitted further that a Trust without a Power of Sale on the face of the instrument held in trust for the beneficiary on attaining majority, the legal estate is vested in the beneficiary and not in the Trustee, Consequently, the Trustee not having the legal estate in the property cannot convey it to a purchaser whether or not such purchaser is one of value without notice. In the instant case, Counsel, stressed, that even if it is accepted that when the Trustee Santigie Bangura handed his Conveyance to the Respondent who said he did not read it but merely handed it over to his Solicitor; his Solicitor if he was a prudent Solicitor and had made enquiries, might have discovered that the wife and some relations of Pa Allie Kamara, the original owner of the property, were still living on the disputed land; he submitted therefore that knowledge of the Solicitor is imputed or constructive notice of the Purchaser.

Mr. Tejan-Cole further submitted that the property in dispute is not governed by the Conveyancing Land and Property Act 1881; that subsection 2 of that Act provides that the Section shall have effect with respect of any lease, sale, or other act under the authority of the Court purporting to be in pursuance of the Settled Estates Act 1877. He submitted that the Learned Trial Judge was wrong to have invoked the provisions of Section 70(1) of the Conveyancing Act 1881 and to rely on the principle of law that Orders of the Court are conclusive. He submitted that the Conveyancing Land and Property Act 1881 is an adopted Act in Sierra Leone, and that it is applicable only if the lease of sale is under the Settled Estates Act 1877. He also called in aid the decision in the case of **IN RE HALL DAROS CONTRACT, 21 CH. D. 41**. He also relied on the House of Lords' decision in **CHAPMAN V. CHAPMAN (1954) 2WLR 723** on the limits of the Court's jurisdiction to sanction deviations from the strict terms in a trust. He submitted that the case of Chapman makes it clear that the court does not possess plenary powers to alter a trust because alterations if thought to be advantageous to the beneficiaries who are infants or not yet born....He submitted that the Respondent's use of the Court to approve of the sale of the Trust Property is an

attempt to give validity to the sale because there was no authority for the sale in the instrument; that it was also an attempt to conceal the collusion between Santigie Bangura and the Respondent through the Solicitor concerned. The result is that innumerable irregularities occurred as the Trial Judge himself observed.

Turning to the Respondent's claim for a declaration of title, counsel submitted that for this to succeed the Respondent must rely on the strength of his case; that the mere production of his Conveyance is insufficient to prove his title. On the other hand Mr. Tejan-Cole submitted that the Appellants have proved their case on a balance of probabilities; that the 1st Appellant had a right to sell the property on attaining his majority. He pointed out that the Learned Trial Judge did not treat the counterclaim as a cause of action in its own right, since he never treated the counterclaim as a separate action, but merely dismissed it. He asked that the appeal be upheld and Judgment entered for the Appellants.

In reply, Mr. C. F. Edwards of Counsel for the Respondent submitted that there is no evidence of any irregularities in the administration of the trust apart from the Trial Judge's pronouncement that there are irregularities; that the Trial Judge accepted the evidence that Pa Santigie Bangura was trustee for the 1st Appellant who was then a minor; that there was no evidence to show why Pa Santigie Bangura sold the property to the Respondent; that the sale having been done pursuant to a Court Order the Respondent acquired a valid title. He further submitted that the appellant should not have waited for so long before seeking to impeach the validity of the Respondent's title to the land which he only did after the Respondent had instituted these proceedings in the Court, a period of 20 years after the land had been sold to the Respondent. He submitted that in the absence of any evidence the Respondent acted in collusion with the Pa Santigie Bangura, the Trustee, the Respondent obtained a good title as a matter of law; he stressed that the Learned Trial Judge in holding that Pa Santigie sold the land to the Respondent pursuant to a valid Court Order, his pronouncement that the sale to the Respondent was valid and unimpeachable was correct in law. Mr. Edwards, further pointed out that the Appellants had made no attempt to challenge the Court Order authorising the sale of the land since 30th November 1983. He argued that the 1st Appellant testified to knowing the Respondent only for about 10 years, which calculated backwards from the date of his evidence meant that he knew the Respondent on or about February 1995, whereas the Respondent had bought the land since 1984; that that being the case, the evidence adduced does not support the Appellant's argument that the Respondent cannot be said to have obtained a good title because he had notice of the 1st Appellant's interest and he bought from one who cannot pass title to him. Counsel relied on the case of *Camarah vs. Macauley (1920-36) ALR SL 150 at page 152-153* and submitted that

where such a sale/purchase is sanctioned by an Order of Court, the title obtained therefore becomes both unimpeachable and unassailable. He asked the Court to dismiss the appeal.

I have given full details of both Counsels' submissions to remind myself of the issues to decide in this case.

It is perhaps noteworthy to observe that from the outset that the action concerns the sale of Trust Property held by the Trustee Santigie Bangura in trust for the 1st Appellant. There is considerable evidence both from the witnesses and the documents tendered in Court that this action not only concerns Trust property held in trust but the sale thereof by the Trustee.

The relevant Statutes which have been relied on by the various parties as governing such actions are: The Trustee Act of 1893 being an Act under the Imperial Statutes (Laws of Property) Adoption Act 1960 (CAP 18) of the Laws of Sierra Leone; The Settled Estates Act 1877 and the Conveyancing Land and Property Act 1881.

In the first place it is necessary to construe the wording of the Trust created in the Conveyance EXh. "B1" so as to give it its proper effect as to the whole, regard being had to the language used. In this way, one will be able to discover the true intentions of the makers of the instrument. There seems to me to be two points to be considered in this appeal; one of the points is whether the 1st Appellant is entitled to the property left to him in the Deed of Gift dated 4th January 1983; the other is whether at the time of the Order to sell made by the Court, the legal estate was vested in the Trustee so as to entitle him to pass a good title to the Purchase of the Trust Property; and the third point is as to the construction and validity of the Gift in Clause 3 of the property to the Trustee to hold the same until the 1st Appellant attained his majority. In other words, whether on a true construction of the Deed of Gift, the gift is a valid gift in law, of the property to the 1st Appellant.

Exh. "B1" is a Deed of Gift made between N'Ballia Kamara the 1st Appellant's sister and Mohamed Sesay, both referred to as the "Donors" of the one part and Santigie Bangura, therein described as the "Trustee for and on behalf of John Kamara, an Infant", both referred to as "The Trustee and the Infant Donee" respectively of the other part. A general perusal of the document itself will indicate that it was not drawn by a skilled person or even a lawyer. Nevertheless, it is the duty of this Court to construe the document so as to give it its proper effect as a whole regard being had to the language used in order to discover the true intentions of the makers of the document.

The law is clear that recitals in a title deed are presumed to be evidence of the truth of the facts recited therein although it is nevertheless not conclusive as evidence may be adduced to rebut the presumption of their correctness. In the recitals as stated in clause 3 and 4 of Exh "B1" read as follows:

"AND WHEREAS the Donors are seised of or otherwise well entitled to the unincumbered fee simple in possession of the aforesaid piece or parcel of land and are desirous of making provision for the Infant Donee in manner hereinafter appearing.

AND WHEREAS the Donors have agreed to grant A PORTION of the aforesaid piece or parcel of land to which they are seised to the Trustee for and on behalf of the Infant Donee for a like estate upon the Trust herein at the consideration hereinafter mentioned."

The Trusts which the Donors created for the Infant Donee can be seen from the witness clause of the same document. The clause reads:

"NOW THIS DEED WITNESSETH that for and in consideration of the natural love and affection which the Donors have and bear for and towards the Infant Donee and for divers good causes.....the Donors AS BENEFICIAL OWNERS hereby grant and convey UNTO AND TO THE USE of the Trustee upon the Trust herein declared and acknowledged by the Trustee on behalf of the Infant Donee the unencumbered fee simple estate in possession of ALL THAT PIECE OR PARCEL OF LAND.....containing an area of 1.2946 acres or thereabouts.....TO HAVE AND TO HOLD the same unto the Trustee UNTO AND TO THE USE of the Infant Donee for an estate in fee simple absolute in possession free from incumbrances AND the Trustee for himself his heirs administrators and assigns doth hereby declare and acknowledge that the said piece or parcel of land herein granted and conveyed is held by him IN TRUST for the Infant Donee and doth by his execution hereof hereby confirm such declaration and acknowledgement of the said Trust." (Emphasis added)

The Trust on the face of the instrument is a Trust created not only for the benefit of an Infant, but also in my view, for the advancement of an Infant beneficiary. The creators of the Trust were desirous of making provision for the Infant and the trust is confined only confined to benefiting the Infant Donee. The wording of the instrument does show a plain intention on the part of the donors that the Infant Donee should take the legal estate on becoming an adult.

It is been suggested by Mr. Tejan-Cole that the instrument does not contain a power of sale and consequently it falls to be considered under Section 13 of the Trustee Act 1893.

Section 13(1) of the Trustee Act 1893 provides:

"Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale and to resell, without being answerable to for any loss."

Section 13(2) states:

"This Section (That is Section 13) applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained."

Looking at the wording of the trust created in Exh. "B1", there is no express or implied power given to the Trustee to sell the Trust property during the minority of the Infant Donee. I will here agree with Mr. Tejan-Cole that the instrument does not contain a Power of Sale. I will also agree that as a Trust without a Power of Sale on the face of the instrument which is held in trust for a beneficiary until he attains his majority, the legal estate in the property is vested in the beneficiary for whose benefit the trust was created, and not in the Trustee.

The Learned Trial Judge in his Judgment relied on the Section 70(1) of the Conveyancing Land and Property Act 1881 when he held "The Law is clear that Orders of the Court are conclusive and the sale is valid and unimpeachable." It has been suggested that Sec 70(1) of the Conveyancing Act 1881 is not applicable in the instant case as the property in this case is not one that is governed by the Settled Estates Act 1877 and that the Trial Judge was wrong to have invoked the provisions of that Act.

Section 70(1) of the Conveyancing Land and Property Act 1881 provides inter alia:

".....an order of the court under any statutory or other jurisdiction shall not as against a purchaser be invalidated on the ground of (inter alia) want of jurisdiction."

Counsel for the Respondent submitted that the Respondent obtained a good title from the Trustee under the Order of the Court of 30th November 1983. The question to be asked is what was the property which the Court intended to sell by the Order of 30th November 1983? To answer this question it is necessary to enable the Court to draw a distinction between interest which an order was intended to affect and interest which an order was not intended to affect.

Referring to the Order of W. A. Johnson, J dated 30th November 1983, it was ordered inter alia:

"The land held by the trustee on behalf of John Kamara.....an infant, be sold by the trustee herein i. e. the portion of land to the extent of 0.9462 Acre"

The application was made by Santigie Bangura the Trustee as Plaintiff/Applicant and John Kamara as Defendant/Respondent acting by his guardian ad litem Amadu Sankoh.

On a true construction of the Deed of 4th January 1983 (Exh. "B1"), Santigie Bangura has no interest in the property and he merely holds the property in trust for the infant John Kamara until he attains his majority. It seems to me therefore that the legal estate in the property remained in the Infant beneficiary the 1st Appellant. The Trustee Santigie Bangura even covenanted to hold the property on trust upon the trusts declared, when he declared and acknowledged as follows:

AND the Trustee for himself his heirs administrators and assigns doth hereby declare and acknowledge that the said piece or parcel of land herein granted and conveyed is held by him IN TRUST for the Infant Donee and doth by his execution hereof hereby confirm such declaration and acknowledgement of the said Trust."

In making the Order for the sale of the Property, the Court was dealing with property whose ownership the Court was not called upon not decide, but which it assumed to belong to Santigie Bangura. In the result, it cannot be said that the Respondent, as Purchaser of the trust property acquired a good title to the property as against the 1st Appellant the infant beneficiary.

The difficulty faced by the Learned Trial Judge appears to me to be in the use of the words in Section 70(1) of the Conveyancing Act 1881..."on the grounds of want of jurisdiction". It should be observed that Sec 70 begins by assuming that the Court has made an order under its jurisdiction, statutory or otherwise, and

the words "shall not be invalidated on the ground of want of jurisdiction" are introduced to cover any irregularity or procedure which might possibly affect the jurisdiction and invalidate the order."

It is my view in this case that the Court had no idea when it made the order of 30th November 1993, for the sale of trust property, that it was dealing with the property of the Infant John Kamara and the Learned Judge did not avert his mind to the fact that there was no power of sale in the instrument when he was asked to order the sale. It should be noted that in November 1983 when the application was made the 1st Appellant was still an Infant/minor although he was named in the application as acting by his guardian ad litem.

In *Chapman*, supra, the House of Lords limits the jurisdiction of the Courts to sanction deviations from the strict terms of a trust. Romer L. J. In delivering the Judgment of the Court said at (1901) 2 Ch. 544:

"As a rule, the Court has no jurisdiction to give, and will not give, its sanction to the performance by Trustees of acts with reference to the trust estate which are not, on the face of the instrument creating the trust, authorised by its terms."

They held that the Court do not possess plenary powers to alter a trust even if such alteration is thought to be for the benefit of beneficiaries who are infants or children not yet born. So in this case even if the reason for seeking the sale was said to be for the benefit of the Infant Donee, i. e. the 1st Appellant, the courts do not possess power to alter the strict terms of a trust.

It was submitted by Mr. Edwards that the Appellant's appeal concerns only one issue and that issue is limited to the Learned Judge's pronouncement that there were irregularities in the administration of the trust. He submitted that there is nothing in the entire records to show that there were irregularities in the administration of the trust nor, he submitted had the Appellants pointed to any such irregularities or for that matter to any collision between the Respondent and the Trustee, Santigie Bangura. But the Learned Trial Judge did accept and did find that there were irregularities in the administration of the trust, and he must have seen or been aware of such irregularities before making that pronouncement. Otherwise why was it necessary for the Trustee Santigie Bangura to apply to the Court to sell the Trust property?

As to the allegation of collision between the Respondent and the Trustee Santigie Bangura, even though the Trial Judge referred to this as a possible issue which would have invalidated the sale, he made no attempt to look for such collision

between the Respondent and the Trustee. This the Trial Judge would have discerned from the evidence adduced at the trial assuming that he was looking for such evidence. At pages 55-56, the Respondent had this to say when asked about his knowledge of the ownership of the property:

"Xxed by Mr. Koroma: "I did not know that Pa Santigie was not the owner of the land. I did not ask him for his title deeds. I see Exh. "A1. I see paragraph 3".

Exh. "A1" is the Conveyance from Santigie Bangura therein described as "Trustee" and Vendor and the Respondent as Purchaser. Paragraph 3 thereof reads:

AND WHEREAS BY A DEED of Gift bearing date the 4th day of January 1942.....made between N'Ballia Kamaraand Mohamed Sesay..... therein called the Donors and Santigie Bangura therein described as as the Trustee for and on behalf of John Kamara an Infant.....the unencumbered Fee simple estate in possession of a certain piece of parcel of land situate lying and being off the New Freetown/waterloo Road Wellington aforementioned became vested in the Trustee for and on behalf of John Kamara the infant donee aforementioned therein.

In exhibit "A1", the Respondent's conveyance was made by Santigie Bangura therein called "the Trustee and Vendor" and the Respondent as Purchaser.

In further answer to questions in cross-examination on 19th March 2004, he said:

"Xxed by Mr. Koroma: I never knew late Pa Santigie Bangura before I bought the land from him.....I was introduced to him by one Abu Kargbo. Pa Santigie never gave me a document. I asked Pa Santigie for his title deeds. He gave me the document. I did not read it. I gave it to my lawyer in the person of Leslie Wilson Esq.....I know the proceedings in court for an order that Pa Santigie should sell the land to me. I did not ask why it was necessary for the Court order that Pa Santigie should sell the land to me. My lawyer told me the land was trust land and that only a High Court can order sale of it."

The above testimony shows clearly that the Respondent was aware that the property he was buying was the subject matter of a trust. He said further that he saw John Kamara's name mentioned in his document; he knew that the 1st Appellant was the Infant for whom the property was held in trust. The Respondent was therefore aware of the existence of the trust in favour of the 1st Appellant. Even if he was not personally aware of the facts, I agree with Mr. Tejan-Cole, that knowledge of his Solicitor will be imputed on the Respondent; his


Solicitor should have been in a position to advise him as to the true nature of the sale to him. In the circumstances, I cannot agree that the Respondent is a bona fide Purchaser without notice of the existence of the trust or of the 1st Appellant's interest in the property. To be a bona fide Purchaser for value without notice, the Purchaser, among other things, ought to have acted in good faith, that is to say without fraud; he had to be a Purchaser of the legal estate from the trustee and also to have taken the land without notice of the beneficiary's interest. This is not the case in the instant case.

There is also clear from the evidence that the 1st Appellant and his family and Respondent were not only neighbours, but that the 1st Appellant worked for the establishment which the Respondent was head of, The National Workshop first as a learner and later as a full worker. The 1st Appellant also testified that before his death, Pa Santigie Bangura put him in the care of the Respondent and told him that the Respondent would give him his documents of title when he became an adult. Thus if we believe the evidence of the 1st Appellant as to the above fact, I can only accept that the Respondent had knowledge of the circumstances and state of the property before his alleged purchased of the same. It is safe to say that the Respondent had actual notice of the 1st Appellant's interest in the property. I will again agree with Mr. Tejan-Cole's submission that it was knowledge of the beneficiary's interest in the property that led to the application being made to the Court to sell the property. The Order of Johnson, J, was an attempt by the Respondent and Pa Santigie to use the Court to give validity to the sale because there was no authority on the instrument for sale of the property. The application to the Court for the Order to sale was also an attempt to hide the collision between the Respondent and Pa Santigie. It seems to me therefore that the Respondent in this case cannot take the legal estate free from the trust and must take subject to the 1st Appellant's interest. The Order of Johnson J was made on the assumption that the property Off New Freetown/Waterloo Road Wellington Freetown subject matter of this action belonged to Santigie Bangura whereas in fact from what I have said it belonged to the 1st Appellant who was a minor at the time of the application, the Respondent in my view did not obtain a good title against the 1st Appellant and I so hold.

Counsel for the Respondent has argued that the Appellants had not appealed against the Order of Johnson J authorising the sale, but have only sought to impeach the validity of the sale only in this action. My short answer to that submission is that the length of time that an illegal order remains in force does not necessary make the transaction legal especially if it is fundamentally flawed.

In the premises I hold that the appeal succeeds and will make the following Orders:

1. The Judgment of the High Court is hereby set aside and Judgment is entered on behalf of the Appellants.
2. The 1st Appellant's counterclaim succeeds and he is hereby declared the owner of All That Piece or Parcel of land situate lying and being Off New Freetown/Waterloo Road Wellington Freetown in the Western Area of Sierra Leone measuring 0.9021 Acre more particularly delineated in his Survey Plan L. S. 3406/83 attached to Exh. "A1".
3. The 1st Appellant is to recover possession of the property situate lying and being Off New Freetown/Waterloo Road Wellington Freetown in the Western Area of Sierra Leone the subject matter of this action.
4. The Deed of Conveyance dated 16th January 1984 registered as No. 85/84 in Volume 359 at Page 117 in the Books of Conveyances kept in the Office of the Administration & Registrar-General expressed to be made between Santigie Bangura therein described as Trustee and Vendor and the Victor Alphonso Deveneaux therein described as the Purchaser be expunged from the Record Books of Conveyances in the said Registrar-General's Office.
5. The Appellant shall have the costs of this appeal and the cost of the action in the High Court.

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 Hon. Mrs. Justice S. Bash-Taqi, JSC (Presiding)

I Agree.....


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

I Agree.....


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