BETWEEN:

JOYCE JOHNSON — APPELLANTS/APPLICANTS
GEORGE AGIBADE JOHNSON
QUEENIE WILLAMS
MARILYN TUCKER
SIMEON MORIBA
OLUWALE STAFFORD

AND

BASITA DAKLALAH — RESPONDENT
Through her Attorney, SAHID DAKLALAH .

COUNSEL:
LEON JENKINS-JOHNSTON ESQ& MRS F FORSTER for the joint 1st Appellants
C J PEACOCK ESQ for 2nd, 3rd and 5th Appellants
The 4th named person did not appeal and was not represented at the hearing

CORAM:
THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT
THE HONOURABLE MS V M SOLOMON,JUSTICE OF THE SUPREME COURT
THE HONOURABLE MR JUSTICE A S FOFANAH, JUSTICE OF APPEAL

DECISION DELIVERED TUESDAY THE 20 DAY OF DECEMBER,2016

THE APPLICATIONS

1. There are two Applications before us for decision. The first, is that filed on 2nd September,2016by Jenkins-Johnston & Co on behalf of the joint 1st Appellants, Joyce Johnston and George Agibade Johnson; and the second, is that dated 6 September,2016 filed by Mr Peacock on behalf of the 2nd, 3rd and 5th Appellants herein. Both Applications were heard together by this Court. In both Applications, the respective Appellants/Applicants, whom I shall hereafter call the Appellants, have applied to this Court for a stay of

execution of the Judgment of this Court delivered on 28 July,2016, pending the hearing and determination of their respective appeals to the Supreme Court. They have also asked for any further or other Orders this Honourable Court may deem just in the circumstances. The respective Applications were heard on 23 November and on 13 December,2016 after which Ruling was reserved. We now give our Ruling.

JOINT 1ST APPELLANTS' APPLICATION

2. The joint 1st Appellants' Application is supported by the joint affidavit of the two of them deposed and sworn to on 1 September,2016. To that affidavit are exhibited several documents. Exhibits A - J are in our opinion, documents which relate to substantive or triable issues dealt with by the trial Judge, ALUSINE SESAY, JA and by this Court, in its said Judgment. Apart from exhibit A, which is a copy of the writ of summons issued by the Respondent, the other documents were those relied on by the deceased 1st Defendant at the trial, and by the joint 1st and 2nd Appellants at the hearing of the Appeal in this Court. The trial Judge and this Court have made pronouncements on the strength and validity of these documents, and we do not think it is necessary to deal with them further.
3. Exhibits K, L, and M are documents incidental to the hearing of the appeal which was dismissed by this Honourable Court. These documents are those exhibited to the joint Appellants' joint affidavit between paragraphs 1 and 13. Of more relevance to the Application herein, are exhibit N, which is a copy of this Court's judgment, and exhibit O which is a copy of the Notice of Appeal. Also of primary importance, for the purposes of this Application, and which should weigh in the scales in favour of these Appellants, are the matters deposed to by the Joint Appellants in paragraphs 16 - 21. There, the joint 1st Appellants have deposed that the land, the subject matter of our Judgment, has been in the ownership and/or possession of their family for well over 100 years, and that dwelling houses have been constructed on the same.
4. However, in truth, portions of the property claimed by these Appellants in their joint affidavit, no longer belong to them, or to members of their respective families. Some portions of the property have been sold off, as is shown in exhibits "P1 &2" respectively.

5. Exhibit "P1" is a copy of a deed of conveyance said to have been made on 16 November,2007 and duly registered by Mr Peacock. Exhibit A, tells us that the writ of summons was issued on 10 July,2007 and that some of the reliefs prayed for by the Respondent were that declarations be made by the trial Court that certain lands were hers, and that an Injunction be granted restraining the deceased 1st Defendant at the trial, and the other Defendants therein, now Appellants, from dealing with these lands. An Interlocutory Injunction was granted in the terms stated in the writ, and it lasted until, and was continued in existence by the Judgment delivered in the High Court on 20 October,2008. Further, exhibit "P1" was made out to one Mrs Sarah Kargbo, who was not an Appellant herein, nor is she an Appellant in the Supreme Court, and who has not, in any event, come to this Court, seeking relief from dispossession. No vesting assent is referred to in the deed. In fine, the property no longer belongs to these joint Appellants, but to someone else who is not a party to the appeal, presently in the Supreme Court.
6. Exhibit "P2" is a copy of another deed of conveyance dated 8 September,2010 between Frank Bright Marke and one Mrs Eleanor GittaKoroma. Neither vendor nor purchaser is a party to the Application herein, nor a party in the Appellants' appeal to the Supreme Court. This deed was executed nearly 3 years after the writ of summons was issued, and nearly one year after Judgment had been given against the Appellants herein.
7. It follows therefore, that the matters deposed to in paragraph 18 of their joint affidavit, are not strictly speaking true: no hardship will be caused to the joint 1st and 2nd Appellants because the property or properties they are referring to in that paragraph is, or are not theirs.
8. In paragraph 19, they depose that they have good and meritorious grounds of appeal which have a good chance of success in the Supreme Court. We have gone through these grounds. The particulars supporting the grounds are quite lengthy, but save for that, the grounds are not really exceptional. In fact, the particulars disclose that what we said in our Judgment, in effect, was that the Learned Trial Judge was right in coming to the decision he had reached because of the state of the evidence before him. If a surveyor called by a party says in evidence that the land he was asked to

survey falls within private land and partly within State land, he would have in part, helped to prove the case of his client's opposing party. In effect, most of the supposedly good grounds of appeal, are merely attempts at reopening issues which were, or, ought to have been canvassed at the trial; or, which were indeed canvassed, but were found to be unproven or, unsupported. But, the true weight to be given to them is a matter for the Supreme Court, and not for us. What we are concerned with, is whether they are of such note or importance, that the Respondent should be deprived of her success at the trial and in the appeal to this Court. In arguing the Application before us Mrs Forster relied heavily on the matters deposed to in paragraphs 16,17,18,19 & 21 and asked us not to dispossess the Appellants and those they had sold to, of the lands they were presently occupying, until the appeal to the Supreme Court was disposed of. As we have repeatedly stated above, there is no affidavit evidence before us that the joint 1st Appellants are in possession of any land which this Honourable Court has Ordered belongs to the Respondent.

2ND, 3RD& 5th APPLICANTS' APPLICATION

9. We shall turn to the merits of the Application filed on behalf of the 2nd, 3rd and 5th Appellants on 6 September,2016. It is also asking us to stay execution of the Judgment of this Court dated 28 July,2016. It is supported by several affidavits. The 2nd Appellant, Mrs Queenie Williams, deposed and swore to three affidavits: on 6 September,2016; 11 October,2016 and on 22 November,2016 respectively.The fourth affidavit filed on their behalf, was one, deposed and sworn to on 23 November,2016 by the 2nd, 3rd and 5th Appellants jointly, and was purportedly in reply to the Respondent's affidavit in opposition deposed and sworn to on 6 October,2016. But as its contents disclose, it is not so much an affidavit in reply, as an affidavit in response to a comment this Court had made about the bona fides and propriety of the Appellants' Application herein. We shall deal with it later in this Ruling.

1st AFFIDAVIT OF 2ND, 3RD AND 5TH APPELLANTS

10. In her first affidavit, she began by deposing that what she was going to depose to, was on behalf of herself, and on behalf of the 3rd and 5th Appellants. The Notice of Appeal to this Court, and the Judgment of this

Court, are exhibited as "C" and "D", respectively. Interestingly, there is no contention in these grounds, that the Learned Trial Judge came to a wrong conclusion on the facts of the case: that, for instance, there was clear and irrefragable evidence that the land in dispute at the trial belonged to the Appellants; rather, the Appellants focus on the relevance and true import of exhibit "M" without giving sound reasons why it does not avail the Respondent. In our Judgment, helpfully exhibited to the 2nd Appellant's affidavit as "C", we have explained what it signifies, in view of the provisions of Section 4 of the Ministers' Statutory Powers and Duties Act, Chapter 53 of the Laws of Sierra Leone, 1960 and of Sections 28 and 29 of the Interpretation Act,1971. These Appellants have not, in their joint grounds of appeal, contended that we have wrongly interpretedthese statutory provision. And so, notwithstanding their claim in paragraph 4 of the 2nd Appellant's first affidavit, that they have good grounds of appeal, it does not seem so to us.

11. An undertaking dated 6 September,2016 and signed by all three Appellants, is exhibited as "E". We find this document unnecessary and unhelpful; it is also unusual: it is unlikely to be enforceable as it is not couched in any definite terms: it is a mere vague undertaking to pay undefined compensation to the Respondent in the event that it turns out they, the Appellants, were not entitled to a stay of execution. It is not also, in our respectful view, a requirement in any application for stay of execution: a stay of execution is only granted on terms which the Court independently determines.
12. In paragraph 5 of her first affidavit, the 2nd Appellant deposes that they are entitled to a stay of execution on equitable grounds, one such ground being that third party rights have accrued and are involved, and that there have been substantial developments on the land in dispute, even before the commencement of the action in the Court below. In support of this argument, the 2nd Appellant has exhibited as "F", a copy of a photograph of what is supposed to be part of the said land. As we pointed out to Mr Peacock during argument, the picture did not really enlighten us. We could not tell, neither could he, truthfully tell, what was really depicted in that picture: no indication of the location, nor of any landmarks which would aid our enquiry. In short, it was unhelpful. Nor, disingenuously, did the 2nd

Appellant explain, in that affidavit, when these so-called third party rights arose. Her paragraph 6, is perhaps more to the point. She deposes that if a stay of execution is not granted, houses already built on the land, now adjudged to be part of the Respondent's land, would be demolished as the Respondent had already taken steps to do so. That may be so: but the question still remains: whose houses are they which might be demolished. There was no answer to this in that affidavit.

13. In her second affidavit, the 2nd Appellant has deposed to her fears that the Respondent might proceed to execution if no stay of execution is granted. Notwithstanding the fact that the Respondent did obtain leave to issue a writ of possession, no execution was carried out simply because the convention for some years now has been that, even without a formal Order of Court, no writ of possession will be executed upon a judgment of the High Court if an application for stay of execution of the same is receiving the active attention of this Court. If such an application is filed, but not pursued with alacrity and despatch, and is merely intended to deprive the successful litigant of the fruits of judgment, execution of a writ of possession will not be halted. The indulgence granted by the Under-Sheriff's office and by the office's Supervisor is intended for the diligent and not for the indolent, or, for one bent on frustrating the processes of the Court, or, on seeking merely procedural advantages. As no execution was carried out, this affidavit has no bearing on this Application.
14. In her fourth affidavit, deposed and sworn to on 25 November,2016, purportedly described as an affidavit in reply, but in reality, a further affidavit in support of the Appellants' Application, the three Appellants attempted to fill in the credibility gaps in their Application. At the hearing on 23 November,2016, we had helpfully pointed out first, to Mrs Forster, while she was presenting her arguments, and later to Mr Peacock, when he made his Application, that the Appellants could not properly seek from this Court an Order which would not directly affect them: in that, the grant or stay of execution of the Judgment of the Court below would only affect persons presently occupying buildingsin respect of which execution could properly be levied, but who were not parties in, and to the appeal to the Supreme Court; nor, had these persons themselves come to this Court seeking relief.Mr Peacock evidently benefitted from our comments, and

ensured that this affidavit was filed. But ultimately, it was not used by him, as on the date of the last hearing, i.e. on Tuesday last, the 13th instant, he was not in Court as he was otherwise engaged in the Commercial Court. However, even though he did not address us on it, we could not ignore, nor disregard its existence and presence in our files. We therefore allowed MrHalloway to refer to it in his Reply. And we are also prepared to give it due consideration.

15. Exhibited to this affidavit are several documents. Exhibit "*WW1*" is an encroachment plan drawn and signed on 6 June,2007, 9 years ago, which was adequately dealt with in the judgment of the Learned Trial Judge, and by us in our Judgment. It does show that the encroachment complained of by the Respondent was indeed a reality; but at the same time, it does not really show that the properties supposedly built, and presently occupied by the Appellants, fall within its confines. For instance, plot G which purportedly is the property of the late Georgiana Cole, the deceased 1st Defendant at trial, falls within plot B, which is said to be the property of the Respondent. But what Mr Peacock cannot say with any degree of certainty, nor have his clients done so, is whether the land encompassed in plot G, is not the same as, was for instance, sold by Frank Bright Marke, to Mrs Eleanor Koroma; land which had, prior to the date on that conveyance, been vested in Frank Marke by the deceased 1st Defendant.

16. The same consideration applies to the land sold by the deceased 1st Defendant to Mrs Sarah Koroma. The two deeds in respect of both transactions are those exhibited to the joint affidavit of 1st and 2nd Appellants as "*P1&2*". Take also plot H, delineated on the same exhibit "*WW1*". It is said to be the property of Simeon Moriba, the 4th Defendant at the trial. But he did not appeal against the Judgment of the High Court, and so is not a party to this Application. Plots E and F, respectively, appear to fall partly within the boundaries of plot B. These two plots are said, in 2007, to have belonged to both 3rd and 5th Appellants respectively. But there is no affidavit evidence before us that those portions in those two plots, have buildings on them, that may or may not belong to the 3rd and 5th Appellants; or, that they may have been sold by either or both of them to different purchasers. So, there is no clear affidavit evidence before us that either of

these Appellants still have buildings within the boundaries of the land adjudged by this Court to belong to the Respondent.

17. Also exhibited by these Appellants as "*XX1-9*", "YY1-6 & ZZ1-7" respectively, are supposedly building plans approved by the Director of Surveys and Lands. Looking at the first page of exhibit "XX" it is clear that the date has been altered to read: "18/7/07" instead of "18/07/08". Clearly, the 2nd Appellant wished to deceive the Court into believing that that particular building plan was approved before the institution of action by the Respondent. That ploy failed miserably when deployed before me in November,2008 when, sitting as a Judge of the High Court, I refused these Appellants' first application for a stay of execution of the Judgment of the High Court. The superimposition of "*7*" over "8" appears in all the pages of exhibit "XX". Exhibit "YY", the supposed approved building plan of the 3rd Appellant, also has the same defect in all its pages. The year has been changed from 2008 to 2007 on pages 1-6. It is true that pages 1-7 of "ZZ" said to have been prepared in 2006 and 2007, do supposedly evidence the purchase of some building materials, not sufficient by themselves to fully complete the construction of supposedly three houses, but contain no indication that were bought for construction of houses on the land, the subject matter of this Application.
18. Since I had, as is well known to Mr Peacock and to the Appellants, trashed these plans and invoices in 2009, I am rather surprised that they still think they can pass them off in this Court as genuine and supportive of the Appellants' Application herein. I need only refer to paragraphs 9 - 11 of my Ruling of 21 January,2009, exhibited as "*SD13*" to the affidavit of SahidDaklalah on this point. There, I set out just as I have done here, the blatant attempts at tampering with dates in the architectural drawings and approved building plans these same Appellants were relying on in support of their respective applications for a stay of execution of the judgment of the High Court. I do not think this Court is inclined to grant relief, or, to aid Applicants who do not come to it with clean hands but are yet still imploring the Court to deal with their suit with equity.

RESPONDENT'S REPLY

application, the applicant shall be entitled to renew the application before the Supreme Court for determination."

21. The statutory provision confers discretion on this Court to grant the relief sought by the Appellants, but it goes no further. But the appellate Courts in this jurisdiction have adopted a rule of practice, which has, because of constant use, developed into a rule of law, that the application will be granted in cases in which an applicant has shown special circumstances. This accounts for the constant reference to special circumstances in the Applications under consideration, and in the oral submissions of respective Counsel. Authorities have been cited by Counsel to us, and we adopt them as guides to the decision we have reached. We do not think that any or all of the Appellants have shown special circumstances why we should stay execution of our Judgment of 28 July,2016. If anything, the documents exhibited in these proceedings show that the Appellants have on frequent occasions not treated this Court and/or its Orders with the respect due the same. In addition, in their present respective Applications, they have not provided the Court with any direct affidavit evidence that any building or property currently owned by either or all of them will be affected by a refusal of the stay. The affidavit evidence tends to show that persons who were not parties to the litigation in the Court below, and were not parties in the appeal to this Court, and still are not parties in the appeal to the Supreme Court, may or may not be affected by the refusal of a stay. I can put it no higher than that. But there is no clear affidavit evidence before us that either or all of the Appellants are entitled to a stay of execution of our Judgment.

22. In the result, the joint 1st Appellants Application dated 2 September,2016 is dismissed with Costs to the Respondent; and the joint Application of the 2nd, 3rd and 5th Appellants' Application dated 6 September,2016 is likewise dismissed with Costs to the Respondent. The Costs shall be taxed if not agreed.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MS JUSTICE V M SOLOMON,
JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE A S FOFANAH, JUSTICE OF APPEAL