

IN THE COURT OF APPEAL OF SIERRA LEONE

*Am CJ*

BETWEEN:

JOYCE DUNIE JOHNSON (Nee DAVIES)}

GEORGE AGIBADE JOHNSON}

- 1<sup>st</sup> APPELLANTS (Joint)

QUEENIE WILLIAMS

- 2<sup>ND</sup> APPELLANT

MARILYN TUCKER

- 3<sup>RD</sup> APPELLANT

SIMEON MORIBA

- 4<sup>TH</sup> APPELLANT

OLUWALE STAFFORD

- 5<sup>TH</sup> APPELLANT

AND

BASITA DAKLALLAH

- RESPONDENT

(Suing by her Attorney SAHID DAKLALLAH) *Am*

COUNSEL:

J B JENKINS-JOHNSTON ESQ for the Joint 1<sup>st</sup> and 2<sup>nd</sup> Appellants

C J PEACOCK ESQ for 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents

4<sup>th</sup> Appellant was unrepresented and did not appear at the hearing of the appeal

E A HALLOWAY Esq. For the Respondent

CORAM:

THE HON. MR JUSTICE N C BROWNE-MARKE

JUSTICE OF THE SUPREME COURT

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

THE HON MR JUSTICE A S FOFANAH, JUSTICE OF APPEAL

JUDGMENT DELIVERED THE *28th* DAY OF JULY, 2016

BACKGROUND

1. These several appeals have come up before us for hearing and determination as a result of certain events which took place in the Judiciary. The appeals were first heard by a Bench comprising of BASH-TAQI, JSC, ADEMOSU, JA and TAYLOR, J on 8<sup>th</sup> December, 2009. Counsel for the Appellants and Respondent, respectively had earlier filed their respective synopses. They also made oral submissions at the hearing. Judgment was reserved by that Court that same day. In mid-

2011, the late ADEMOSU, JA, took up appointment as Chairman of the Political Parties Registration Commission. But before doing so, he had written out his Judgment and had asked that it be read by another Judge. The then Learned Chief Justice, The Hon Justice U H Tejan-Jalloh assigned the task to me, and handed over to me the late Learned Judge's Judgment. He died in April of the following year, i.e. 2012 before this could be delivered. In June, 2012, TAYLOR, J left for medical treatment abroad without indicating whether she was for, or, against the appeal being allowed. She did not return to office, and subsequently died late last year. In January, 2013, BASH-TAQI, JSC, left for the United Kingdom for medical treatment. She also did not return to office, and has since retired. The Judgment of that Court therefore remains undelivered. In May 2014, an appeal was made to the Honourable the Chief Justice by Solicitors for the Respondent for a fresh panel to be appointed so that the several appeals could be heard and determined. In May, 2014 the Learned Chief Justice appointed this panel to hear these appeals.

#### PROCEEDINGS BEFORE THIS PANEL OF JUSTICES

2. At the first hearing before this panel of Judges, the Bench suggested to Counsel that perhaps the best way forward, was for them to re-submit to the Court, the respective synopses they had filed. They could, if they so desired, make additions to, revise or review these submissions, and would still be entitled to make oral submissions before us. Counsel agreed to this. Their earlier synopses were re-filed. All three of them relied on them, and made no further oral submissions. Judgment was then reserved. But in July, 2014, Mr Peacock filed in the Court's Registry, what he described as "*Additional written submission and cited authority*". The substance of this submission is that the joint 1<sup>st</sup> Defendants had, whilst this appeal was pending before the earlier panel in 2009, instituted an action against the Minister of Lands and others, apparently in respect of the very land in dispute in this appeal; and that they had obtained Judgment in default of defence in their favour on 12 March, 2010. We do not think this was a proper course of action to take as the appeal was pending, and in any event, it does not add to the merits of the arguments initially canvassed by Mr Peacock in his synopsis.

#### THE APPEALS

3. The several Appellants herein, have filed Notices of Appeal Nose 60/2008, 64/2008 and 66/2008 respectively. Civ App 66/2008 is that of the 4<sup>th</sup> Appellant, and the Notice thereof, is dated 19<sup>th</sup> November, 2008. As the joint appeal of the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Appellants, Civ App 60/2008 was the first to be filed on 22<sup>nd</sup> October, 2008, I shall deal with it first. The appeal is against the whole of the Judgment of the Hon Mr Justice A S SESAY, then a Judge of the High Court, now a Justice of Appeal, dated 20<sup>th</sup> August, 2008. It is to be found at pages 557 - 559 of the Record. Hereafter, references to page numbers, will be references to pages in the Record. The grounds are as follows:
- (i) That the Learned Trial Judge erred in law in holding that the purported memorandum from the Ministry of Agriculture and Forestry to the Ministry of Lands and Surveys transferred and or vested title in the Ministry of Lands and surveys in respect of (sic) a certain land to have been forest reserve, when the said purported Memorandum was not: (a) Gazetted as required by Law; (b) did not show the extent of the forest reserve land which was purportedly ceded, which makes it vague and uncertain as to acreage and to its demarcations.
  - (ii) That the Learned Trial Judge misdirected himself as to the evidence adduced by DW1 - Madam Georgiana Elizabeth Abayomi-Cole - the lawful Administratrix of the estate of the late Dr John Abayomi Cole (Testate) - from whom the 2<sup>nd</sup> and 3<sup>rd</sup> and 5<sup>th</sup> Defendants derived their title when he held that she was not a beneficiary under the will of the late Dr John Abayomi Cole (Testate).
  - (iii) The Learned Trial Judge erred in law by holding that the Ministry of Lands and Surveys had good title to pass unto the plaintiff by virtue of the inherent defect above-stated in ground 1.
4. The reliefs sought by these Appellants are that the said judgment be set aside and that judgment be entered in favour of them based on their counter-claim; and that the Respondent bears the Costs of the appeal and in the Court below.
5. The appeal of the joint 1<sup>st</sup> Appellants is in much the same terms, and is to be found at pages 560 - 562 of the Record. There is an additional ground, that the whole of the evidence proffered by the Respondent at the trial did not substantiate (sic) that the parcel of land claimed by the 1<sup>st</sup>

Appellant was State land or forest reserve. The reliefs sought by them are very much the same as in the previous instance.

6. The 4<sup>th</sup> Appellant's appeal is to be found at pages 563 - 565 of the Record. The grounds of appeal are the same as in the case of the 1<sup>st</sup> Appellant, and the reliefs sought the same, save that, additionally, the 4<sup>th</sup> Appellant is asking that judgment be entered in his favour based on his counter-claim.

#### 4<sup>TH</sup> APPELLANT'S APPEAL STRUCK OUT

7. By Notice filed on 7<sup>th</sup> December, 2009, E A Holloway esq, Counsel for the Respondent, applied to the Court presided over by BASH-TAQI, JA, (later, JSC) for the 4<sup>th</sup> Appellant's appeal to be dismissed for non-compliance with the directive of the Court that Counsel for the respective parties should submit synopses of arguments and submissions on behalf of their respective clients. The 4<sup>th</sup> Respondent was absent and unrepresented at the hearing of the appeal. We have not got a record of the proceedings at the hearing, but at page 4 of his Judgment, ADEMOSU, JA noted that: *"I think that it is necessary to put on record that the 4<sup>th</sup> Appellant was absent and was unrepresented at the trial. In the absence of any objection to Mr Holloway's application, the appeal of Simeon Moriba was struck out...."* As such, there is no appeal on behalf of Mr Moriba before us for consideration.

#### NOTICE OF INTENTION TO AMEND GROUNDS OF APPEAL

8. Another development before the earlier panel of Justices which heard this appeal, was a Notice of Intention to amend grounds of appeal filed on 25<sup>th</sup> October, 2009 by Mr Peacock on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Appellants in this Court. Again, ADEMOSU, JA noted at page 4 of his Judgment that Mr Peacock abandoned that Application at the hearing of the appeal, and relied on the grounds of appeal originally filed on behalf of his clients. I have read the Notice, and I believe that ground had its origins in a Ruling I delivered on an application for stay of execution of the Judgment of SESAY, J, made on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Appellants by Mr Peacock. That Ruling was delivered on 21<sup>st</sup> January, 2009 and is to be found at pages 329 - 334 of the Record. Also, in that Ruling, I expressed grave doubts about the reliability and authenticity of the affidavit evidence the respective Appellants had presented to the Court to support their respective applications.

## SUBSTANCE OF THE APPEALS

### A. WHETHER GEORGIANA COLE A BENEFICIARY NAMED IN THE WILL OF JOHN ABAYOMI COLE

9. The pith and substance of the all the appeals is that the land in dispute between the opposing parties at the trial, was not originally State land, and therefore land which could be conveyed by the State to the Respondent, but rather, land which had been in the ownership and possession of Dr John Abayomi Cole, the predecessor-in-title of the Appellants in one way or the other, and which land he had devised to them by Will through the deceased 1<sup>st</sup> Defendant at the trial, Georgiana Cole. The argument of the Respondent has been that Georgiana Cole could not have been legally entitled to the land in fee simple because she was not specifically named in the Will of Dr John Abayomi Cole; and that in line with the decision in *GOODING v ALLEN* [1937 -49] ALR SL, 328, HC, Per BEOKU-BETTS, Ag J at page 335, property devised by Will vested immediately in a devisee without the need for a Vesting Assent to be executed in the devisee's favour. I agree that that is the effect of the decision in that case, and it was relied on by this Court, with the same panel of Justices, in Civ App 40/2009 - *BARRIE v KUTUBU*.
10. I must state that Georgiana Cole died after close of the trial but before Judgment, and on an Application made by R A During Esq., as Counsel for the present joint 1<sup>st</sup> Appellants, on 3<sup>rd</sup> November, 2008 I Ordered that they be substituted for the deceased Georgiana Cole, and that all further proceedings be carried on and continued by them as jointly. That Ruling is at page 321.

### WHETHER LAND CONVEYED TO RESPONDENT WAS STATE LAND OR PRIVATE LAND

11. Another line of argument was whether the land which the Respondent claimed to have been conveyed to him by the State had originally been part of the Forest Reserve located in the Hill Station/ Regent area, or, whether, it was part of the land which had originally been owned by Dr John Abayomi Cole, and which it was as contended by the Respondent, located at Dworzak Farm or George Brook. And if the said land had indeed been part of the Forest Reserve, there is the further argument as to whether it had been legally and/or properly transferred or released by the Ministry of Agriculture to the Ministry of Lands so as to entitle or,

enable the latter Ministry to convey title to the same to the Respondent. In this latter respect, the Appellants have argued that such a transfer or release ought to have been done by way of Notice in the Sierra Leone Gazette, and not merely by an exchange of correspondence between the two named Ministries.

#### BRIEF FACTS

12. The brief facts of the case are as follows: The Respondent via her duly appointed Attorney, Said Daklallah, instituted action in the High Court against the deceased 1<sup>st</sup> Defendant and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents herein, for a declaration of title to various portions of land by way of writ of summons issued on 10<sup>th</sup> July, 2007. The writ of summons is at pages 1-7 of the Record. These portions of land had, in the contention of the Respondent, been wrongly conveyed to one Edmond Parkinson, and to the deceased 1<sup>st</sup> Defendant and to the 2<sup>nd</sup> - 5<sup>th</sup> Appellants herein. The Respondent claimed that he was the owner of land measuring 15.051 acres situate, lying and being at Upper Leicester Road, Off Hill Station Road, Hill Station, Freetown in the Western Area; that these lands had been conveyed to her by the Government of Sierra Leone by way of deed of conveyance dated 19<sup>th</sup> February, 1993 and duly registered as No. 138 at page 63 in volume 467 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown. In 1998 and again between 2005 and 2007, various portions of these lands had been wrongly conveyed to Edmond Parkinson, and to the deceased 1<sup>st</sup> Defendant, and to the 2<sup>nd</sup> - 5<sup>th</sup> Appellants herein by way of several vesting deeds. She prayed that the respective vesting deeds be expunged from the said Record Books of Conveyances and that she recover possession of the respective lands purportedly conveyed therein. She also prayed that Survey Plan LS2064/97 dated 5<sup>th</sup> February, 1998 be re-called and be cancelled. Appearance was entered for the deceased 1<sup>st</sup> Defendant and for the respective Appellants herein - pages 8 - 15 of the Record. Statements of defence and of counterclaim were filed on behalf of the said deceased 1<sup>st</sup> Defendant and for the 2<sup>nd</sup> - 5<sup>th</sup> Appellants herein - pages 16&17; 119 - 121 and 124 - 126 respectively. The Respondent's respective replies and defences to counterclaim are at pages 127 - 132.
13. Six witnesses testified on behalf of the Plaintiff, including the Plaintiff's Attorney as PW1 - see pages 247 - 263. The deceased 1<sup>st</sup> Defendant and all the Appellants and their respective witnesses gave evidence as DW1 to

DW11 - pages 264 to 276. The Court visited the locus in quo as is recorded at page 277. A report of that visit was tendered by the Registrar of the Court, Ms Samuels as exhibit "DD1" - pages 683 & 684. The procedure adopted by the Court in this respect was wrong as we have (i.e. this panel of Justices) pointed out in our decision in Civ App 40/2009 - BARRIE v KUTUBU, cited above, at paragraphs 13 -20 - Judgment delivered in April, 2015. A locus in quo forms part of the proceedings at trial; a Court Registrar is not a competent witness in a civil trial. The type-written Judgment of SESAY, J is at pages 291 - 320; the hand-written one is at pages 340 - 389.

#### WHETHER MANNER IN WHICH LAND WAS CONVEYED TO THE RESPONDENT IN ACCORDANCE WITH THE LAW

14. Let us now consider the common grounds of appeal. The first one is the manner in which the land in dispute was conveyed to the Respondent. Let us see what the Learned Trial Judge said about this. At pages 306 - 310, the Learned Trial Judge reviewed the evidence for the Respondent. We are of the view that his review was quite correct and accurate. At page 316 of his Judgment, he also correctly stated the law: in a claim for a declaration of title, the plaintiff must rely on the strength of his title, and not on the weakness of the defendant's; and also, that the plaintiff must prove that his predecessor-in-title had good title to convey to him. As to how the Respondent came to acquire the lands measuring 15 acres plus, this is what the Learned Trial Judge had to say at page 317:

*".....PW1 in his evidence as Attorney stated that he approached the then Minister of Lands Dominic Musa (deceased) and informed him that he was interested in the land at Hill Station Leicester Peak for his wife for development. He wrote a letter to the Minister and his wife Basita Maki Daklallah was granted a lease (exhibit C) the term of which is contained therein. The wife was subsequently granted a freehold. A conveyance was executed in her favour (exhibit A) which contained the same plan as the plan annexed to exhibit C covering an area of 15.051 acres. In addition, the plaintiff has also relied on exhibit M, a Memorandum stating that the Minister of Agriculture, Natural Resources and Forestry had no objection for the release of State Lands provided the necessary conditions are met. Counsel for the plaintiff has submitted that the land was a forest reserve and later ceded to the State. It is out of the said*

land that the plaintiff was granted a lease and later a freehold. That evidence of PW1 was also confirmed by PW6 Mr Alfred Michael Simbo, Acting Senior Lands Officer in so far as the land had been formerly a forest reserve. He tendered as exhibit L the F & D sheet of Freetown. He indicated in red that the plan of the plaintiff is a forest reserve and the plan of the defendants' predecessors in title Edmond Parkinson falls within the forest reserve area. I have also observed from the evidence that the defendants' surveyor DW2 Abass Sheriff Kargbo stated in exhibit O that the area plotted indicates the land is a forest reserve. In my humble opinion, exhibits M and O which were tendered in evidence leave me in no doubt that the aforementioned piece or parcel of land is a forest reserve out of which a freehold was granted to the plaintiff. The defence did not raise any objections when exhibit M in particular was tendered."

15. Exhibit "M" is at page 624. It is a letter dated 4<sup>th</sup> May, 1990 from the Senior Permanent Secretary, Ministry of Agriculture, to the Permanent Secretary, Ministry of Lands. It refers to memoranda from the Director of Surveys and Lands dated 14<sup>th</sup> December, 1989 and 10<sup>th</sup> April, 1990, respectively. It states that the Ministry of Agriculture has no objection to the release of the said land to the Ministry of Lands provided the necessary formalities are fulfilled. It is this letter which enabled and authorised the Minister of land to, in 1990, first lease the 15+ acre land to the Respondent, and to sell the same to her in 1993 - exhibits "A" and "C" respectively - pages 592 - 598 and pages 578 - 585, respectively. Whilst giving evidence, PW6, Alfred Simbo, Acting Senior Lands Officer, tendered as exhibit "L", the F&D sheet. He also said, as recorded on page 262:

".....I made my findings by checking in the archives and I saw a letter from the Ministry of Agriculture and Natural Resources (exhibit M) to release a portion of forest reserve land at Hill Station. The forest reserve area is at Hill Station. From the F&D sheet. I indicated in red that the plan of B M Daklallah is a forest reserve. The property of Edmond Parkinson falls partly within the forest reserve area. The Director of Surveys and Lands granted the forest reserve area. It was released to Ministry of Lands and it was out of the forest reserve that the land was conveyed to B M Daklallah. The areas shaded yellow are

*encroachers. The encroachers are Simeon Moriba (4<sup>th</sup> Defendant at the trial), Georgiana Annie Cole (deceased 1<sup>st</sup> Defendant) and others I cannot say. The brown indicates the forest reserve boundary. The extent of the encroachment is about 13 acres of land. I see exhibit N - the survey plan in the name of Edmond Parkinson, page 625. It talks about George Brook. George Brook is located at Dworzak Farm at New England.....George Brook extends up to Leicester from Freetown Cold Storage. The acreage is 96.6189. The plan in exhibit N is the same as drawing in blue in exhibit M..."*

16. Here, I believe the witness was referring to exhibit "L", the F&D sheet, and not "M" which is a letter. This was the evidence the Learned Trial Judge relied upon in coming to the conclusion that the land which was conveyed to the Respondent had formed part of the forest reserve at Hill Station. This piece of evidence was not seriously challenged in cross-examination by either Messrs During, Peacock or Mamie, Counsel for the respective defendants in the Court below. Their cross-examination of this witness is at pages 262 - 263.
17. When contrasted with the evidence of DW2, Abass Sheriff Kargbo, at pages 265 -266, one can easily see why the Learned Trial Judge came to the conclusion that his evidence was unreliable. At page 266, whilst being cross-examined by Mr Halloway, DW2 said: "....The defendants' land is on Forest Reserve and it is still on Forest Reserve." He was not re-examined. This was after he had first said at page 265: *"I prepared a composite plan. I reduced my findings in writing. I have the plan and the report (produced and tendered as exhibit "O" and "O1"). I used F&D sheet to prepare it. I used the documents of the plaintiff and the defendant. The plottings were done by co-ordinates of (a) different survey plan. It indicates forest reserve area. The plaintiff's land verged blue is not in forest reserve area....."*
18. In exhibit "O1", DW2 admitted that he was unable to access survey plan LOB 922A which is the survey plan in the Respondent's conveyance, exhibit A. The reason for this was that the new Minister of Lands was restructuring the Department. In his Report, exhibit "O1", at page 628, DW2, it seems, came to contradictory conclusions: in one breath he said that the area shaded yellow in the cadastral sheet was a forest reserve usually referred to as State land - (PW6 had also said the area shaded yellow in exhibit "L" formed part of the forest reserve area - page 262). Further, that the land demarcated in survey plan LOB 922A, the file for

which he admitted he had not been able to find, did not fall within State Land. But at the bottom of his Report, he stated that "*The survey plan of Mr Edmond Parkinson occupies part of the private land and part of State Land...*" This was the precise conclusion reached by PW6 at page 262 where he also said that the extent of the encroachment into the Respondent's land was about 13 acres. In my view, there was evidence on which the Learned Trial Judge could come to the conclusion on a balance of probabilities that the land sold to the Respondent had originally formed part of the forest reserve area.

#### EXHIBIT M AND ITS EFFECT

19. Now, both the Ministry of Lands and the Ministry of Agriculture are part of the executive arm of Government. There is only one Government in existence. Executive power in Sierra Leone resides in the President, and he, according to Section 53(1) of the Constitution of Sierra Leone, 1991, can exercise such power through his Ministers or, public officers. A Permanent Secretary in any Ministry or Department, is a public officer for this purpose. Ponderous and sterile arguments have been advanced about whether the release of the forest reserve area was done in the proper manner.
20. In Civ App 34/2007 - MINISTER OF LANDS & OTHERS v ALHAJI AMADU WURIE JALLOH Judgment delivered by ADESMOSU, JA in 2008, (Coram: BROWNE-MARKE, ADEMOSU, JJA; SHOWERS, J), the respondent in that case who was represented by Mr J B Jenkins-Johnston, Counsel for the Appellants in this case, had pleaded in his statement of claim in the High Court that the land to which he was laying claim had been part of the forest reserve area which been released by the Ministry of Agriculture to the Ministry of Lands, the same to be utilized for residential development, and that records in the Ministry would prove this: no such records were found to support this averment. But, as ADEMOSU, JA observed in his Judgment, at trial, the Respondent made a complete u-turn and presented the case that the land had been sold to him by private individuals. In any event there was no evidence to substantiate the averment that the land claimed by the Respondent in that case, had been part of the forest reserve area.
21. In the instant case, the position is rather different. All three surveyors called to give evidence, PW3, PW6 and DW2 (impliedly) agreed that the land in dispute had originally formed part of the forest reserve area. And

this was the conclusion reached by the Learned Trial Judge. But the issue still remains whether this area described as a forest reserve area was properly released to the Ministry of Lands. We are of the view that exhibit "M" sufficed to effect the transfer of the forest reserve area from one Ministry - the Ministry of Agriculture, to another Ministry, the Ministry of Lands, and that no formal notice in the Gazette was necessary. A publication in the Gazette is necessary where the Minister wishes to take action in line with the provisions of Section 10(3) of the Forestry Act, 1988 where he wishes to constitute any land owned or leased by the State as a national production forest or an national protection forest. It is also necessary in the manner stated in Section 21 of the Act. But the lands under consideration had been in existence long before this Act was passed. These provisions do not, in our respectful view, apply to an existing national forest.

22. It is our view that exhibit "M" was an inter-ministerial transaction and that the provision which governs such a transaction is the Ministers' Statutory Powers and Duties Act, Chapter 53 of the Laws of Sierra Leone, 1960 which is still extant, and which has not been expressly, nor impliedly repealed. Section 4 thereof states:

*"When any power is given to a Minister to make any declaration or appointment or to give any licence, authorisation, exemption, notice direction, approval, permission or consent, it shall be sufficient, unless it be otherwise expressed, for the same to be signified under the hand of a Permanent Secretary."*

23. The power to revoke any such authorisation, licence, or permit, is also conferred on the Minister by Section 28 of the Interpretation Act, 1971. Section 29(2) of the Interpretation Act also states that:

*"Where an Act confers power to do any act or thing all such powers shall be deemed to be also given as are reasonably necessary to enable that act or thing to be done or are incidental to the doing thereof."*

24. In other words, the Minister of Agriculture via exhibit "M" passed on to the Minister of Lands, his power and authority to declare that certain portions of land were no longer required to remain State lands, and that the Minister of Lands could dispose of the same. It is true that the full extent of the forest reserve area ceded by the Ministry of Agriculture

to the Ministry of Lands has not been proven in evidence; but that is not of itself constitute a serious defect in any title conferred by the Ministry of Lands on any person: There was evidence which the Learned Trial Judge accepted and relied on that the 15+ acres of land claimed by the Respondent fell within the boundaries of the original forest reserve area. We see no reason why we should interfere with that finding of fact.

25. In our judgment, the Memorandum, exhibit "M", was an authorisation or approval or permission granted by one Minister, the Minister of Agriculture via his Permanent Secretary, to another Minister, the Minister of Lands, to take charge of certain lands, the forest reserve area of which he had been the ultimate custodian in terms of the Forestry Act, 1988 and its predecessor, Chapter 189 of the Laws of Sierra Leone, 1960. There is no contention that the Minister of Lands did not convey the property in dispute by the legally approved method, that it, by deed, to the Respondent. There is ample evidence in both exhibits "A" and "C" respectively that he did so. The ground of appeal relating to the propriety and efficacy of exhibit "M" therefore fails. It follows also that the common ground of appeal that the Ministry of Lands had no good title to pass onto the Respondent also fails.

26. That the Appellants succeeded in obtaining an Order from the Court dated 21 December, 2006 commanding the Director of Surveys and Lands to sign survey plans being sub-divisions of LS2064/97 dated 5<sup>th</sup> February, 1998 does not affect our decision in any way. In fact, it may go to show that the Director had perhaps refused to countersign these survey plans because of the confusion which they would engender, bearing in mind the Ministry's disposition of lands in that area to the Respondent in 1993. It must also be remembered that the date LS2064/97 bears was a day during the final days of the AFRC junta, and that there was much confusion and strife at the time.

#### WHETHER DECEASED 1<sup>ST</sup> DEFENDANT IS A BENEFICIARY

27. The next common ground, is that relating to whether the Learned Trial Judge was right in holding that the deceased 1<sup>st</sup> Defendant was not a named beneficiary under the terms of the Will of Dr John Abayomi Cole, and that this omission therefore vitiated all the vesting assents she had executed in her favour, and in favour of the other Appellants. Let us first look at the vesting assent she executed in her favour on 23 December, 2005. It was duly registered, and it is at pages 599 - 603. In

paragraph 3 of the preamble, the relevant devise in the Will of John Abayomi Cole, is set out:

*"I give and bequeath my landed properties and house thereon, lying and situated at George's Valley, Pademba Road, covering about 150 acres more or less to my children herein under-mentioned - Mary Breads, Visatha Agnes Cole, Fialano Cole, Yasadaha Cole and my grandchildren, Percy Johnson, Edmund Parkinson, Ben Gibson, John Abayomi Gibson, Arijuina Cole, Elizabeth Wright and Kezia Cole."*

28. The will is hand-written and is at pages 654 - 660. I have examined it and its clause 6, seems to correspond largely with the type-written version in the vesting assent. In the said clause 6, the testator devised his 150 acres of land situate at George's Valley, Pademba Road to his children and to his grandchildren. No words of severance are used, and when this is the case, the presumption is that there is a joint tenancy, as against a tenancy-in-common. And in the case of a joint tenancy, the doctrine of survivorship applies. Clearly, the deceased 1<sup>st</sup> Defendant's name does not appear in the will. Further, in the Vesting Assent she executed in her favour, she has not explained how she came to become a beneficiary. She did say she was the grandchild of the Testator, but as she was not specifically mentioned in the Will, that is of no consequence. Being a grandchild may have entitled her to obtain a grant of Letters of Administration, but not necessarily a beneficial interest in the property devised. For her to be so entitled, she would have had to show that she was a beneficiary of the estate of the survivor of the children or grandchildren of the Testator, as I have pointed out above, there was a presumption that the beneficiaries named in the will took as joint tenants in the absence of words of severance used by the Testator. Where words of severance are omitted, the descendant or descendants of the last surviving named devisee, would be the person or persons entitled to the entire property. The Learned Trial Judge concluded at page 319 that in the absence of a specific devise to her in the Testator's Will, the deceased 1<sup>st</sup> Defendant had not proved on a balance of probabilities that she was entitled to the fee simple estate in the property in respect of which she had brought a counterclaim against the Respondent. The Learned Trial Judge limited himself to just one issue, i.e., the absence of a specific devise to the deceased 1<sup>st</sup> Defendant; we do not think that was by itself sufficient to deprive her of any entitlement - she could have

become entitled through the survivor of the named devisees. But the result is the same: she had not been able to prove on a balance of probabilities that she was the fee simple owner of the land demarcated and described in exhibit "D" at pages 599 - 603. And if she had not, at the trial, established her title to and/or beneficial interest in the property in dispute, it follows that all those deriving title from her could not, in the circumstances, have obtained a good one from her. It was therefore inevitable that the counterclaims prayed for by the Appellants should fail. It is our considered opinion, and our Judgment that for all these reasons, the Appellants respective appeals should be dismissed with Costs.

THIS HONOURABLE COURT ADJUDGES AND ORDERS:

1. The Appellants appeal is dismissed with Costs to the Respondent
2. This Honourable Court Declares that the Respondent is the owner of and person entitled to possession of all that piece or parcel of land situate, lying and being at Upper Leicester Road, Off Hill Station Road, Hill Station, Freetown in the Western Area of the Republic of Sierra Leone, and expressed to be made between the Government of Sierra Leone of the one part and Basita Maki Daklallah of the other part and duly registered as No 138 at page 63 in volume 467 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown the same whereof is delineated in survey plan LS922B dated 15<sup>th</sup> February, 1993 drawn and attached thereto.
3. The Respondent is entitled to recover possession of the said land and no more. For ascertaining the full extent of the land to be recovered by the Respondent, the Sheriff is authorised to utilise exhibit "H" at page 620 of the Record, dated 6<sup>th</sup> June, 2007.
4. To the extent that the lands claimed by the Appellants encroach upon the land adjudged to be that of the Respondent, as depicted and delineated in the said exhibit "H", this Honourable Court Adjudges and Orders that they must vacate the same, i.e to the full extent of the encroachment, immediately.
5. The Vesting Assents itemised in paragraph 10 of the writ of Summons at page 5 of the Record and executed in favour of the deceased 1<sup>st</sup> Defendant, and of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Appellants respectively, are therefore invalid to the extent that the survey plans enclosed in each of them delineate and enclose lands adjudged in paragraph 1, supra, to be

that of the Respondent. The Vesting Assents cannot therefore be wholly set aside as they purport to convey parts and portions of land not claimed by the Respondent.

6. Survey plan LS2064/97 dated 5<sup>th</sup> February, 1998 is therefore cancelled. *Nhu*

*Nhu*

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

*V M Solomon*

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

*A S Fofanah*

MR JUSTICE A S FOFANAH, JUSTICE OF THE APPEAL