

**IN THE HIGH COURT OF SIERRA LEONE  
(LAND & PROPERTY DIVISION)**

**BETWEEN:**

**DR. J.D ROGERS** - **PLAINTIFF**  
**29 JONES STREET**  
**FREETOWN**

**AND**

**MRS. KHADIJA DAFFAY (NEE KAMARA)** - **DEFENDANT**  
**(BY HER ATORNEY ALUSINE HAMID TURAY)**  
**29 JONES STREET**  
**FREETOWN**

**BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA**  
**DATED THE 22<sup>nd</sup> DAY OF NOVEMBER 2016**

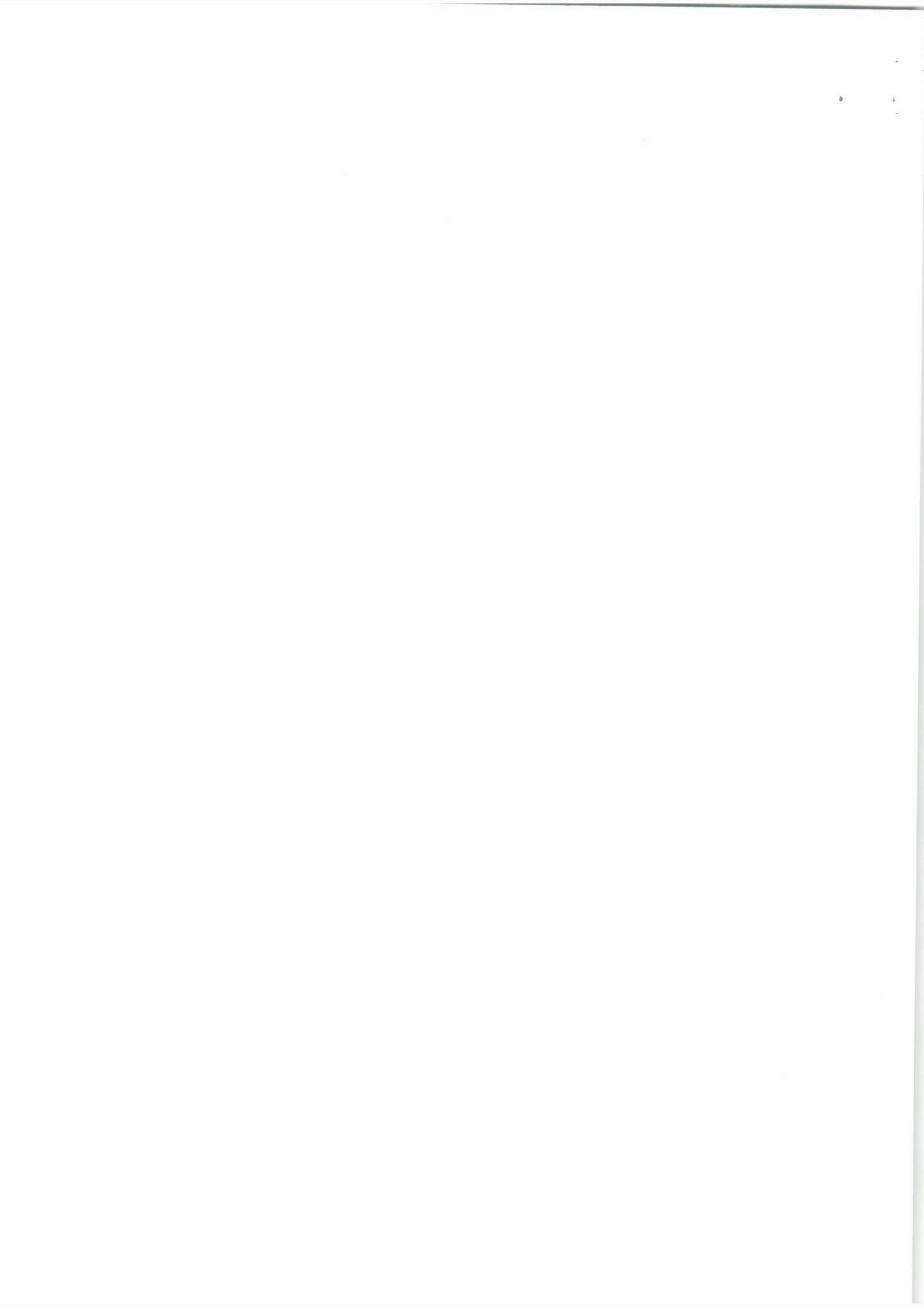
**Counsel:****Anthony Y. Brewah Esq for the Plaintiff****Ivan A. Sesay Esq and Irah Caulker Esq for the Defendant**

1. This matter before this Court commenced by way of a Writ of Summons dated the 13<sup>th</sup> day of April 2015 at the suit of the Plaintiff against the Defendant herein. The Plaintiff's claim against the Defendant is basically for the following reliefs:

- a. A declaration that the Plaintiff is the fee simple owner or person entitled to the possession of property situate at 29 Jones Street, Freetown.
- b. Recovery of immediate possession of all that piece or parcel of land and hereditament situate at 29 Jones Street, Freetown.
- c. A perpetual injunction restraining the Defendant, by herself, servant, agents or privies or workmen from entering upon remaining or interfering in any manner with the said property.
- d. Expunge from the Record Books of Conveyances in the office of the Registrar-General, Freetown, Conveyance in favour of Khadija Kamara, dated 31<sup>st</sup> October 2004 and registered in Volume 579 page 133 of the Record Books of Conveyances.

2. The Plaintiff and the Defendant were lawfully married on the 16<sup>th</sup> day of December 2004 at the Kuba Mosque at Edward Street, Freetown in the Western Area of the Republic of Sierra Leone pursuant to Cap. 96 of the Laws of Sierra Leone 1960. On file is a marriage certificate in respect of the marriage between the Plaintiff and the Defendant, same exhibited as Exhibit A.

3. The Plaintiff claims that before his marriage to the Defendant herein, he bought an old dilapidated house situate at No. 29 Jones Street, Freetown in the



name of the Defendant for purposes of marriage settlement between himself and the Defendant. The document of title in the name of the Defendant which is dated 31<sup>st</sup> day of October 2004 and registered as No. 1591 in Volume 579 at page 133 in the Books of Conveyance kept in the office of the Administrator and Registrar-General is exhibited and marked Exhibit R. The Plaintiff claims he expended lots of money to convert the board structure on the property aforementioned into a concrete structure.

4. The Plaintiff claims that during the subsistence of the marriage between himself and the Defendant in 2008, he financially supported the Defendant who was pregnant to travel to the United States of America where she delivered her baby. On her return, the Plaintiff claims that the Defendant refused to produce the newborn baby's birth certificate and American Passport despite the Plaintiff's numerous request and that sometime in 2010, the Defendant left the matrimonial home without the consent of the Plaintiff together with the newborn child.

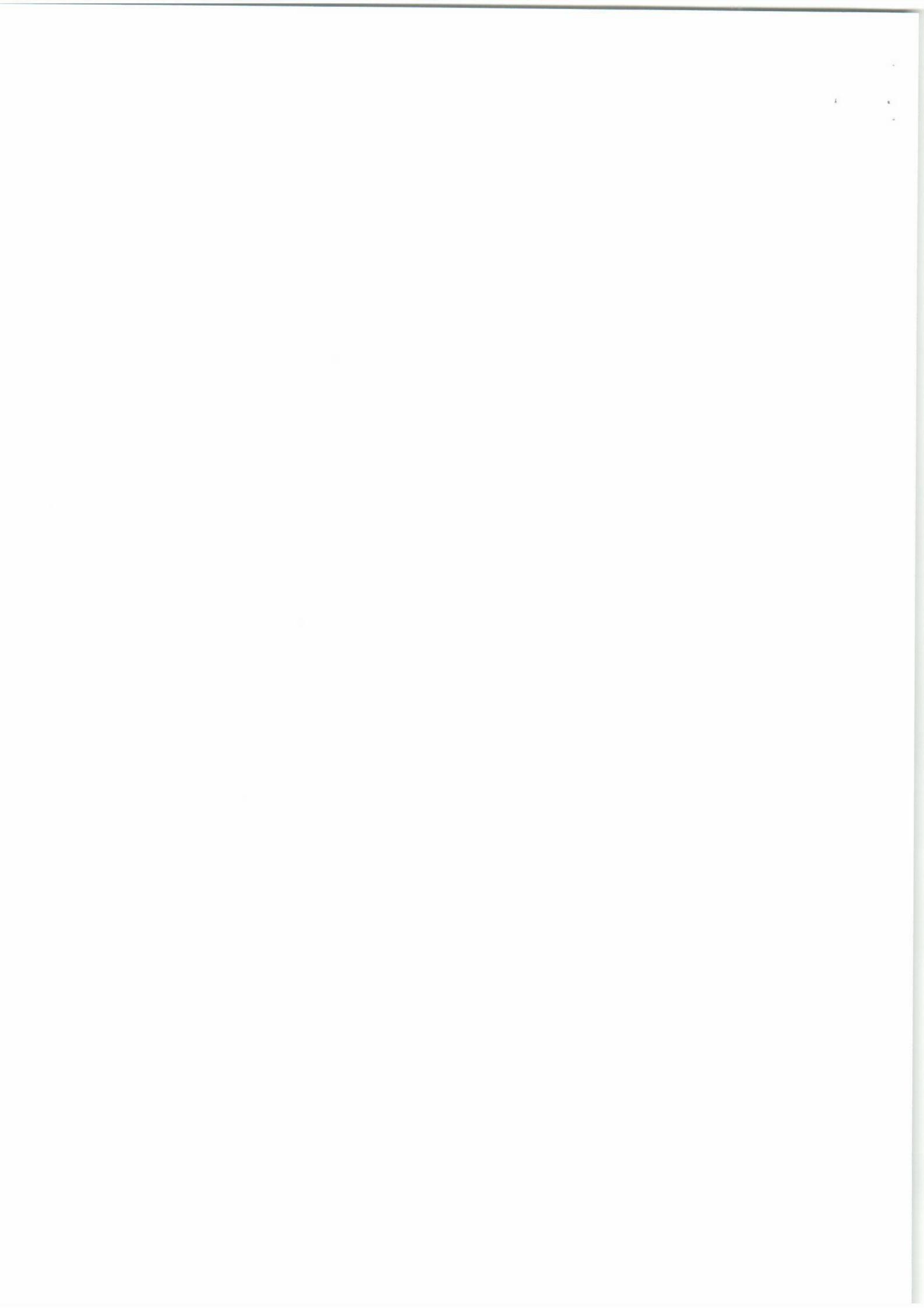
5. The Plaintiff claims that sometime in 2010, the Defendant instituted divorce proceedings against him in the High Court of Sierra Leone which said action was dismissed by the Honourable Court. On file is an Order of the Honourable Justice Vivian A. Solomon, dismissing the said action, same dated 14<sup>th</sup> day of May 2010, exhibited and marked Exhibit B.

6. On the 6<sup>th</sup> day of August 2010, the Defendant secured a divorce against the Plaintiff from the Al-Masjid Mahmoud Mosque, Freetown and according to the Plaintiff, he was not informed about the proceedings in the Mosque leading to the divorce. The Plaintiff claims that the Defendant is currently married to Osman Daffay whose name the child born to the Defendant during the subsistence of her marriage to the Plaintiff, carries.

7. The Plaintiff claims that because of the Defendant's acts aforementioned, she disentitled herself to the property situate at No. 29 Jones Street, Freetown, pursuant to the provisions of Islamic jurisprudence and this I must state appears to me to be the thrust of the Plaintiff's case.

8. On file is a Memorandum and Notice of Appearance dated the 17<sup>th</sup> day of August 2015 and a Defence dated the 19<sup>th</sup> day of August 2015 for and on behalf of the Defendant herein. In her defence, the Defendant refers to the title Deed expressed to be made between Josephine Elizabeth Cleopatra Davies and herself and dated the 31<sup>st</sup> day of October 2004 and claims she is the rightful owner of the property situate lying and being at 29 Jones Street, Freetown aforesaid. She agrees that the said property was bought by the Plaintiff for her and in her name for a marriage settlement between herself and the Plaintiff.

9. On file is a Power of Attorney dated the 27<sup>th</sup> day of July 2015, same notarized by a Notary Public in the City of Philadelphia in the State of Pennsylvania in the United States of America. The said Power of Attorney authorized Alusine Hamid Turay to defend the matter herein on behalf of the Defendant. The Power of Attorney is registered as No. 314/2015 in Volume 119 page 27 of the Books of



power of attorney kept in the office of the Administrator and Registrar-General of Freetown, same exhibited as Exhibit Q.

10. The Defendant in her defence agrees the Plaintiff used his finances to convert the board structure that was on the property at 29 Jones Street, Freetown aforesaid but claims that she also spent her own finances in the reconstruction of the house on the said property. She denies the fact that the Plaintiff financially supported her to travel to the United States of America to deliver her baby and that she refused to disclose her child's birth certificate and passport to the Plaintiff. She also denies leaving the matrimonial home without the consent of the Plaintiff and admits her son was born to her present husband, Osman Daffay as per Exhibit V.

11. An Order as to Summons for Directions dated 8<sup>th</sup> day of October 2015 was granted by this Honourable Court. The Plaintiff filed all documents he will be relying on to make out his case on the 27<sup>th</sup> day of October 2015 and the Defendant did same on the 30<sup>th</sup> day of October 2015.

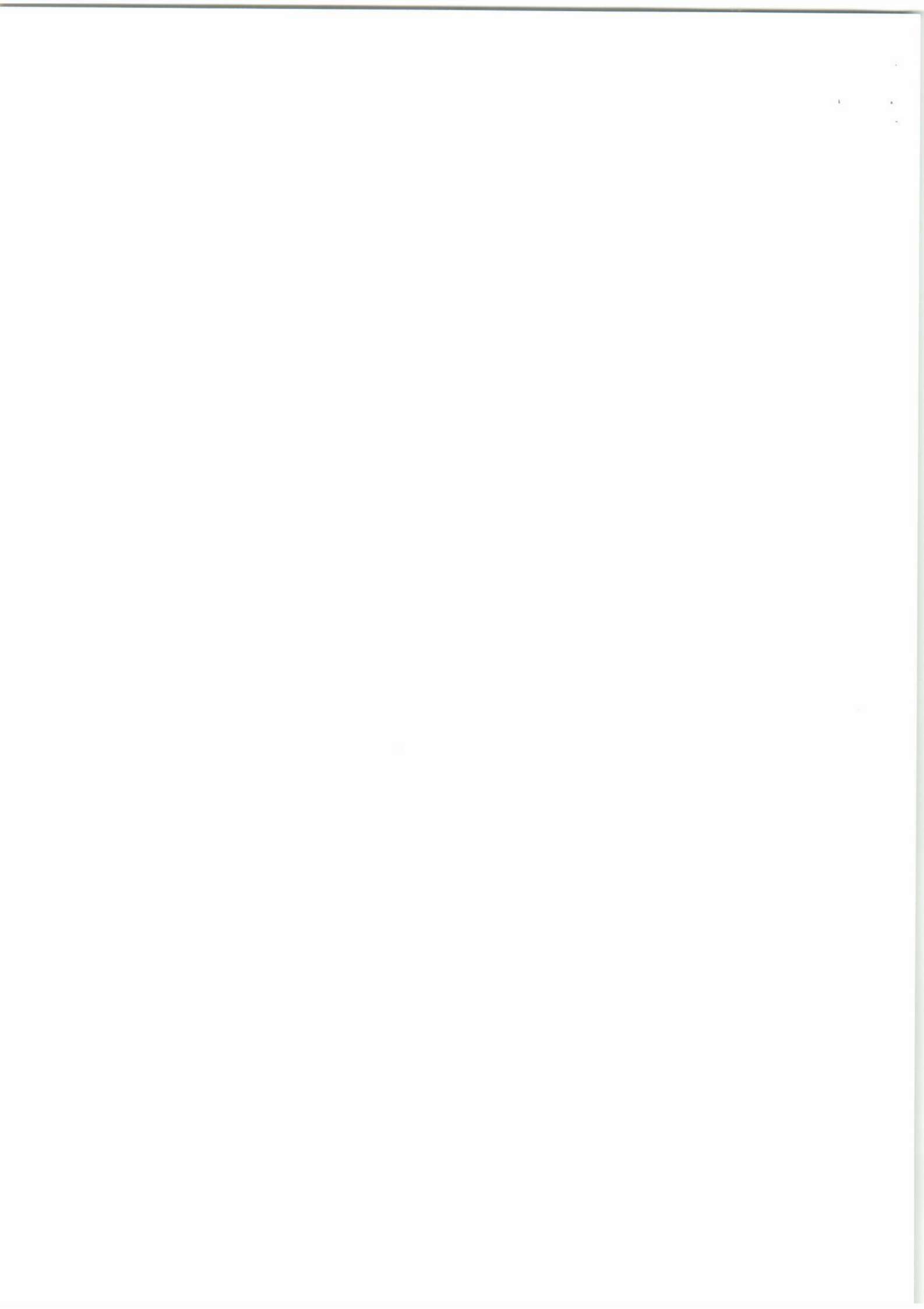
12. The Plaintiff opened his case on the 25<sup>th</sup> day of November 2015. He identified himself as Dr. James David Rogers to the Court and told the Court that he met the Defendant in 2002; that on the 16<sup>th</sup> day of December 2004 they both were married at the Soso Mosque at Edward Street, Freetown pursuant to the Mohammedan Marriage Act, Cap. 96, of the Laws of Sierra Leone, 1960. He tendered Exhibit A afore mentioned which is a copy of their marriage certificate. He said he co-habited with the defendant between December 2004 and 2007. The Plaintiff declared his intention of wanting to marry the Defendant to the parents of the Defendant who by then lived in Wellington in Freetown aforesaid.

13. The Plaintiff made certain promises if he married the Defendant which said promises, according to the Plaintiff, he honoured. The Plaintiff's promises included but were not limited to the following:

- a. That he will care for the Defendant and her parents.
- b. That he will give the Defendant economic strength in which respect he bought the Defendant three commercial vehicles.
- c. That he will buy the Defendant a house and open a pharmacy where the Defendant can practice her trade as a nurse.
- d. That he will pay the university fees for the Defendant's brother, Alusine Majid Turay.

14. The Plaintiff said he honoured the four promises above including other auxiliary promises. In line with his promise to buy the Defendant a house, the Plaintiff bought No. 29 Jones Street, Freetown. He referred to Exhibits E-N in respect of the property at No. 29 Jones Street, Freetown, details of which I will state hereinafter, in fulfillment of his marriage promise.

15. The Plaintiff referred the Court to Exhibit B, which is a Court Order dismissing a divorce proceeding begun by the Defendant in the high Court of Sierra Leone. I wish to state that the reason why the matter was dismissed by the



Learned Trial Judge the, the Honourable Justice V. Solomon, now JSC is because the High Court of Sierra Leone has no jurisdiction in respect of hearing and determining divorce matters in respect of Mohammedan marriages. It is therefore understandable why the Defendant had to seek her divorce from a Mosque.

16. The Plaintiff referred the Court to Exhibits E-N. Exhibit E is a letter written to the Plaintiff from Palmersons Estates Agents Ltd, Exhibit F is a site plan in the name of Mrs. Elizabeth Davies from whom the property situate at No. 29 Jones Street, Freetown was bought; Exhibit G is a letter from llyod During, the Managing Director of Palmersons Estates Agents Ltd; Exhibit H is a Power of Attorney to Llyod During by Elizabeth Davies to sell the property on No. 29 Jones Street, Freetown; Exhibit J is a letter from the Plaintiff to the Managing Director of the Guarantee Trust Bank for the transfer of Twenty Four Thousand Two Hundred and Fifty British Pounds Sterlin; Exhibit K is a document showing the bank details of the Vendor for the property aforementioned; Exhibit L is a letter dated 14<sup>th</sup> day of September 2004 from Palmersons Estates Agents Ltd to Llyod During in respect of sale of the property at No. 29 Jones Street aforesaid; Exhibit M is a letter dated 30<sup>th</sup> day of November 2004 addressed to the Plaintiff in respect of a Conveyance; Exhibit N1-9 are proforma invoices and receipts for purchase of building materials purchased by the Plaintiff for construction of the house at No. 29 Jones Street, Freetown.

17. The Plaintiff drew the Court's attention to Exhibits B and C, their marriage certificate hereinbefore referred and a divorce certificate obtained by the Defendant. He also referred to Exhibit D, a letter dated 7<sup>th</sup> day of May 2010 from the law offices of Serry-Kamal & co. He told the Court that whilst they were still co-habiting, the Defendant got pregnant and he made arrangements for her to travel to the United States of America in June 2008 so that she can deliver her baby therein. He gave the Defendant supporting money of \$50,000. On his instructions, the Defendant stayed with the Plaintiff's brother, the late Dr. Ben Shekou in Philadelphia till she delivered her baby and they both kept in constant communication.

18. The Defendant travelled back to Sierra Leone to live with the Plaintiff. The Plaintiff picked her up on arrival from the Lungi International Airport. On their way home from the airport, the Plaintiff asked the Defendant to produce the birth certificate and American passport of the new born baby but the Defendant promised to do so when they get home. The Defendant never produced the birth certificate and passport requested despite the Plaintiff's persistent request.

19. The Plaintiff told the Court that he received an information that the baby born by the Defendant carried the name of her boyfriend then living in Philadelphia. He said he put the allegations to the Defendant but that she refused to provide any information in respect of the allegations to the Plaintiff until she moved out of the matrimonial home sometime in 2010 without the consent of the Plaintiff even though he pleaded with her to stay. According to the Plaintiff, the Defendant moved into a duplex next to No. 29 Jones Street, the subject matter herein and frequented her pharmacy thereunder.





20. The Plaintiff told the Court that on the 6<sup>th</sup> day of August 2010, he received a final divorce certificate and that he was not part of the divorce proceeding that the Defendant had initiated.
21. In light of the above, the Plaintiff asked this Honourable Court to grant him the Order sought in paragraphs 1-6 of his statement of claim stated as in the Writ of Summons above referred.
22. The Plaintiff was cross examined on the 18<sup>th</sup> day of January 2016 by A.I Sesay Esq, Counsel for the Defendant herein. In cross-examination, the Plaintiff disagreed with Defence counsel that he promised to buy a house for the Defendant in order that she continues her nursing career. By another breath however, the Plaintiff agrees that buying a house for the Defendant to practice her nursing career was one of the packages he promised the Plaintiff, because, in his own words, at that time he loved the Defendant whole heartedly.
23. The Plaintiff was referred to Exhibit R, that is the Conveyance in respect of the property at No. 29 Jones Street hereinbefore referred in the name of the Defendant herein. He told the Court that the owner of the property in Exhibit R, that is, the said Conveyance, is Kadija Kamara, that is the Defendant herein. He told the Court that the Conveyance is in respect of property situate at No. 29 Jones street, Freetown aforesaid, the subject matter herein. The Plaintiff told the Court that no where on Exhibit R is his name, Dr, James David Rogers written and that there is no clause on the said Exhibit R that speaks about a marriage settlement.
24. The Plaintiff's witness, Sheik Mohamed Amadu Barrie testified before this Honourable Court on the Koran on the 19<sup>th</sup> day of February 2016. He told the Court that he has an LLM in Sharia law. He said his services were solicited by the Plaintiff in respect of the question of divorce between himself and the Defendant. The witness told the Court that pursuant to the Plaintiff's request, he did a Report dated 12<sup>th</sup> day of July 2014 on what the law on Islam says in respect of divorce. The said Report is exhibited and marked Exhibit O1-5. It must be stated for the records that the said Report does not form part of the Laws of Sierra Leone.
25. The Plaintiff's witness, the said Sheik Mohamed Amadu Barrie was cross examined by A.I Sesay Esq on the 2<sup>nd</sup> day of March 2016. He told the Court he is an expert in Sharia law and that Exhibit O1-5 is based on his knowledge of Sharia law and the principles thereto. The witness told the Court that only the Republic of Nigeria practices Sharia law. He said he took into consideration the Mohammedan Marriage Act, Cap 96 when writing his Report.
26. On the 9<sup>th</sup> day of March 2016, answering questions during re-examination, the Plaintiff's witness told the Court that there is no difference between Sharia law and Mohammedan law. On the 5<sup>th</sup> day of May 2016, A.Y Brewah Esq closed the case on behalf of the Plaintiff.



27. On the 23<sup>rd</sup> day of May 2016, Counsel for the Defendant filed a Notice of Motion dated 16<sup>th</sup> day of May 2016 together with an affidavit sworn to by Irah Caulker Esq with exhibits attached asking that leave be granted by this Honourable Court to the Defendant/Applicant therein to reopen her bundle of documents and include the statement of her Attorney, Alusine Hamid Turay to serve as a witness in the proceeding herein. Counsel for the Plaintiff not having filed any affidavit in opposition or objecting to the said Notice of Motion, the application was granted by this Honourable Court on the 23<sup>rd</sup> day of June 2016, upon reading the said Notice of Motion filed together with its supporting affidavit and attached exhibits and after hearing Irah Caulker Esq on the said application.

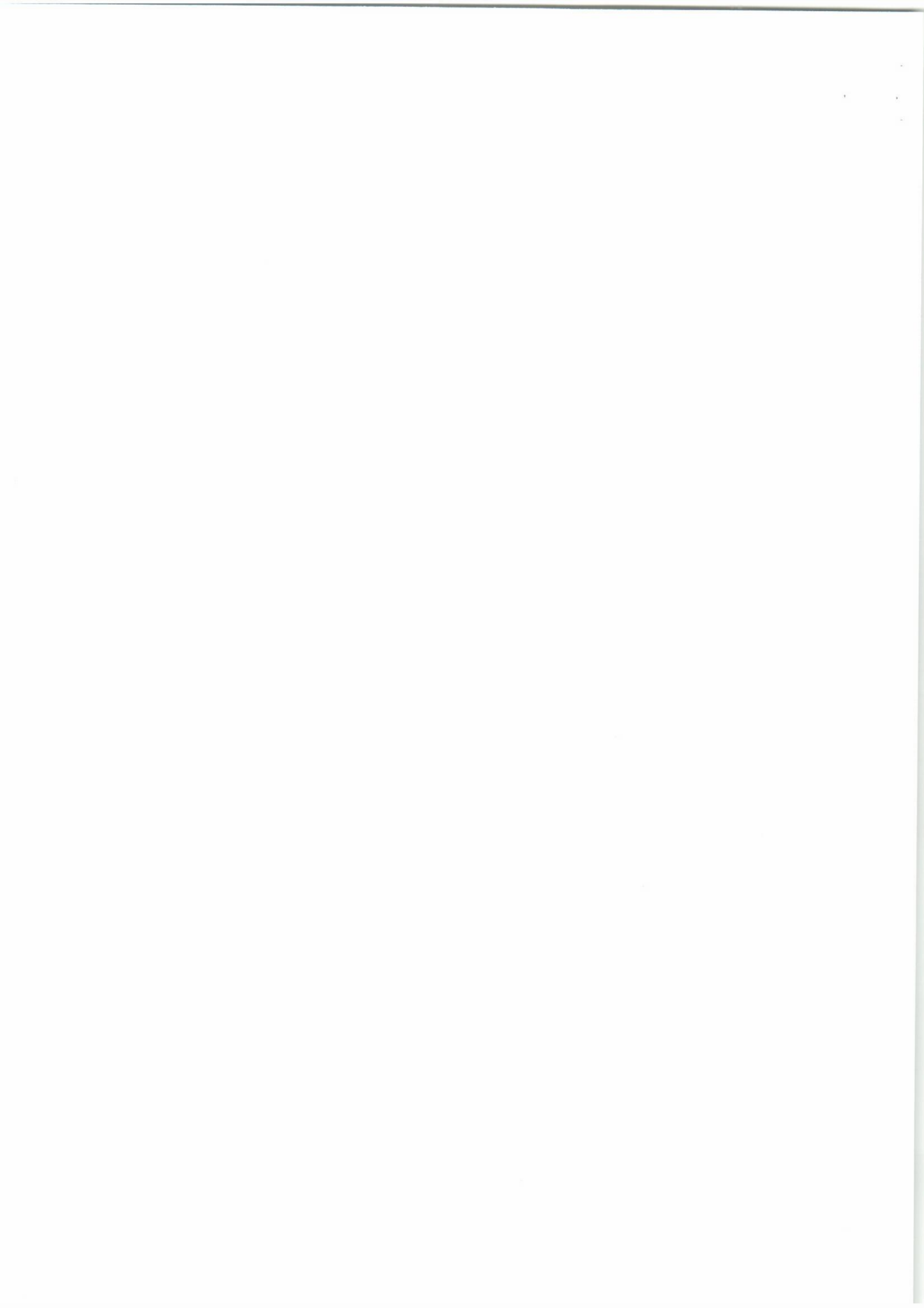
28. A.I Sesay Esq opened the case on behalf of the Defendant on the 30<sup>th</sup> day of June 2016 on which said date, the first Defence Witness, Alusine Hamid Turay, the Defendant's Attorney, referred the Court to Exhibit Q, the Power of Attorney granted him by the Defendant to defend the property situate at No. 29 Jones Street, Freetown aforesaid in any Court of Law. He referred the Court to Exhibit R and identified same as the Conveyance referred to in Exhibit Q hereinbefore referred. Turay referred the Court to Exhibits A and C and identified same as the Mohammedan marriage and certificate of divorce respectively between the Plaintiff and the Defendant. He referred and relied on his statement, Exhibit V in respect of the matter herein which he asked the Court to form part of his examination in chief pursuant to Order 30 R1 Sub Rule 9(a) of the High Court Rules of Sierra Leone, 2007. Same was granted by this Honourable Court.

29. During cross-examination by A.Y Brewah Esq, the witness agreed that the marriage officiated between the Plaintiff and the Defendant was pursuant to Muslim law. He agreed the property situate at No. 29 Jones Street was purchased by the Plaintiff.

30. To my mind, it is not in contention that the Plaintiff it was who bought the property at No. 29 Jones Street; it is also not in contention that the Plaintiff spent money to convert the house from the board structure it initially was when purchased to a concrete structure as now is. The witness supports the Defendant's contention, to which there is no physical evidence, that the Defendant also financed the construction of the said property. The witness told the Court that it was the Plaintiff who set up the pharmacy on the ground floor of No. 29 Jones Street. This also is not in contention for the Plaintiff himself told the Court he did this because of the love he then had for the Defendant.

31. The second Defence Witness to testify on that same day was Mustapha Kamara who identified himself as the elder brother of the Defendant. He identified his witness statement as in exhibit W which he asked this Court to make part of his evidence in chief pursuant to Order 30 R1 SR9(a) of the High Court Rules, 2007. Same was granted by this Court.

32. During cross-examination by A.Y Brewah Esq, the second Defence Witness told the Court that before the marriage between the Plaintiff and the Defendant, the Defendant had introduced the Plaintiff to him as her intended husband. He



told the Court that the property at No. 29 Jones Street was bought shortly before the Plaintiff's marriage to the Defendant.

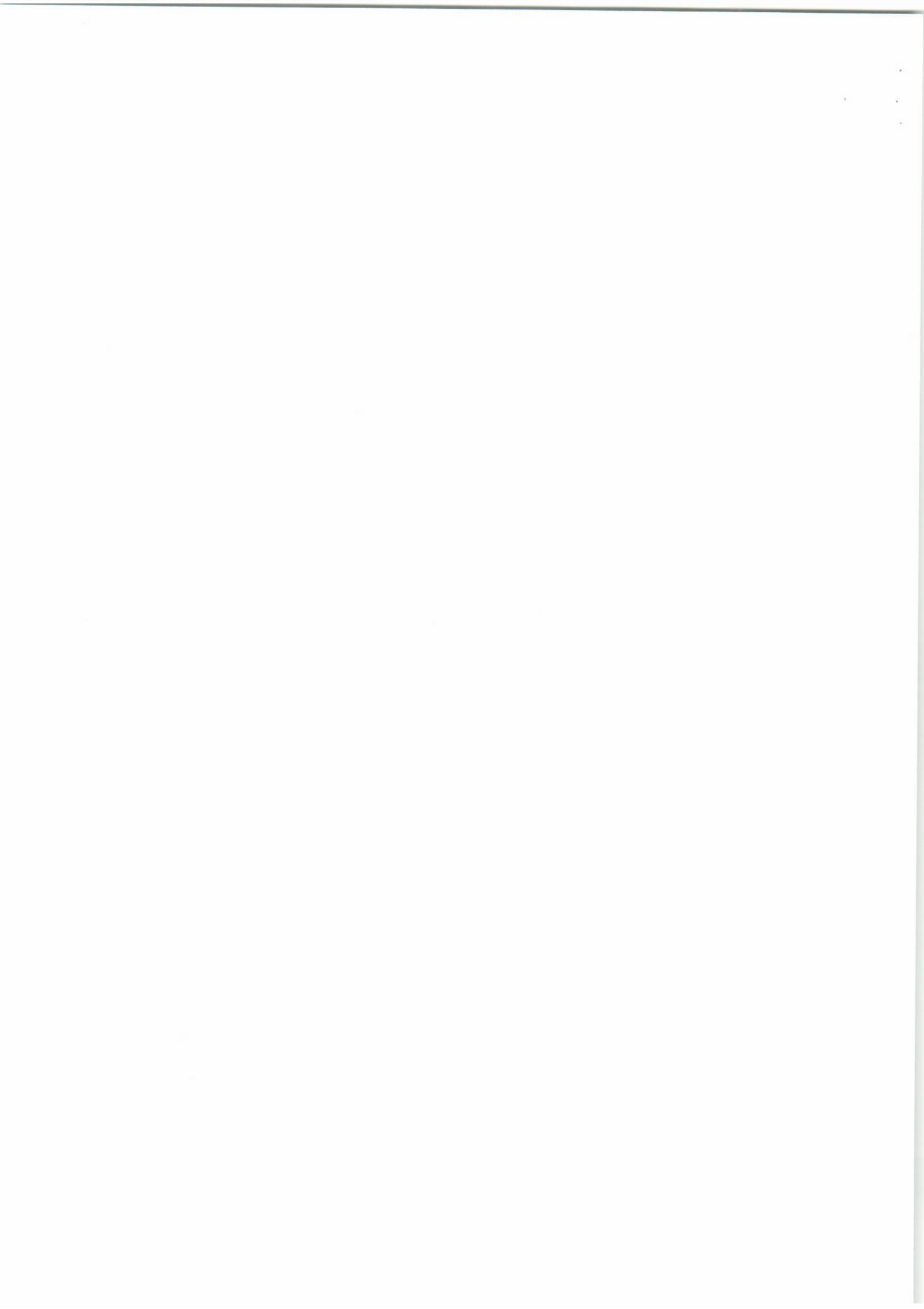
33. The Defence closed its case on the 30<sup>th</sup> day of June 2016. Both Counsel for the Defendant and the Plaintiff submitted their final addresses on the 11<sup>th</sup> day of July and the 19<sup>th</sup> day of July 2016 respectively. The file was withdrawn for judgment.

34. The following facts are not in contention:

- a. That the Plaintiff it was who paid for the property situate at No. 29 Jones Street Freetown. The Court takes note of the correspondences between the Plaintiff and Palmersons Estates Ltd and the law offices of Renner Thomas & Co. The Court takes note of the bank transfers of moneys by the Plaintiff in respect of purchase of the said property.
- b. That the Plaintiff spent money to convert an old board structure which was on the said property to a concrete structure as it now is. There is nothing in evidence to show that the Defendant contributed financially to the construction of the property as in its present form.
- c. That the Plaintiff it was who opened a pharmacy on the ground floor of the said property so that the Defendant can practice her profession as a nurse therefrom.
- d. That the Plaintiff and the Defendant entered into a Mohammedan marriage pursuant to Cap. 96 of the Laws of Sierra Leone 1960.
- e. That a divorce proceeding initiated by the Defendant in the High Court of Sierra Leone was dismissed by the Honourable Justice Vivian Solomon, JSC on the 14<sup>th</sup> day of May 2014. I have already stated the reason why the divorce matter was dismissed by the High Court.
- f. That the Defendant obtained a divorce against the Plaintiff from a Mosque eventually.
- g. That the Defendant delivered a baby outside wedlock; this to my mind is a reason for divorce and has nothing to do with declaration of title or a reason to ask that this Court expunges a title in the name of another from the Books of Conveyances kept in the offices of the Administrator and Registrar-General.
- h. That the Defendant left the matrimonial home without the consent of the Plaintiff is also a ground for divorce having nothing to do with declaration of title or a reason to ask that this Court expunges a title in the name of another from the Books of Conveyances kept in the offices of the Administrator and Registrar-General.

35. The Plaintiff does not claim to have mistakenly put the Defendant's name on the Conveyance hereinbefore referred; he has not told the Court that the property at No. 29 Jones Street, Freetown aforesaid is held in trust by the Defendant in his interest. The Plaintiff was quite clear when he said to the Court in answer to cross examination that he loved his wife, the Defendant herein, so wholeheartedly, hence the reason why he bought the house at No. 29 Jones Street, Freetown in her interest.

36. The Plaintiff wants this Court to make a declaration that the property, the subject matter of the litigation is owned by his goodself and for this Court to



expunge the Conveyance dated 31<sup>st</sup> day of October 2004 in the name of the Defendant from the Records Book of Conveyance. The real issues therefore to be considered by this Court to my mind is the applicability or otherwise of Mohammedan law to ownership of real property.

37. The legal system of Sierra Leone include:

- i. The General Law
- ii. Customary Law
- iii. Islamic Law

38. The term 'general law' describes the enactments of the Sierra Leone legislature and English law as adopted in Sierra Leone. It includes the common law, equity and enactments in force in Sierra Leone.

39. Section 170(1) (a-e) of the 1991 Constitution of Sierra Leone, Act No. 6 of 1991, hereinafter referred to as the Constitution, provides for the laws of Sierra Leone to comprise of the Constitution, laws made by or as authorized by Parliament pursuant to provisions of the Constitution, rules or regulations and other statutory instruments made by persons or authority pursuant to power conferred on such persons or authority by the Constitution or any other law, the existing law and the common law.

40. Section 170(2) of the Constitution provides that the common law shall comprise of rules of law generally known as common law, doctrines of equity and customary law including those determined by the Superior Court of Judicature. The Constitution provides that customary law means the rules of law which by custom are applicable to particular communities in Sierra Leone and the term 'existing law' shall comprise the written and unwritten laws of Sierra Leone as they existed before the coming into force of the 1991 Constitution of Sierra Leone hereinbefore referred and any statutory instrument issued before the date which is to come into force on or after that date.

41. The Constitution provides for the publication of any statutory instrument in the Gazette not later than 28 days after it is made and for statutory instrument which will not have the force of law unless it is approved by some person or authority other than the person or authority by which it is made, not later than twenty-eight days after it is approved; and if it is not so published, it shall be void from the date on which it was made.

42. Aside Imperial Statutes and those Statutes which are periodically adopted by specific enactments residual English Law applies as a result of Section 74 of the Court Act, 1965. The Statutory provisions for recognition and application of customary law are found in Section 170(2) hereinbefore referred of the Constitution, Section 13(2) of the 1963 Local Courts Act and Section 76 of the Courts Act of 1965.

43. The only reference to Islamic or Mohammedan Law in the laws of Sierra Leone is the Mohammedan Marriage Act, Cap 96 of the revised Laws of Sierra





Leone 1960, passed in 1905, hereinafter referred to as Cap 96. The Act deals mainly with three areas of the law to wit: marriage, divorce and intestate succession. The Devolution of Estates Act, 2007 is now the applicable law in respect of devolution of estates of deceased persons including Muslims who die intestate.

44. Starting with Marriage, Section 2 of Cap 96 provides that a valid Mohammedan Marriage by Muslims domiciled in Sierra Leone is to be regarded as valid for all civil purposes. Section 5 of Cap 96 provides that marriage or divorce under Mohammedan Law can be registered and proof of such marriage or divorce, according to Section 3 of Cap 96 is admissible in evidence in any Court of Law in Sierra Leone. Finally, according to Section 9(1) of Cap 96, the estate of a Muslim who dies intestate shall be distributed in accordance with Mohammedan law. I have already referred to the Devolution of Estates Act, 2007 which deals with intestacy succession and which said Act has repealed and replaced certain provisions of Cap 96 in that respect. Being that the matter before this Court has nothing to do with intestacy succession, I shall not deliberate on same further.

45. At the time of a Mohammedan marriage, Islam requires a marriage settlement to be made upon the wife. According to the Honourable Justice. Professor. Doctor. Henry Mathew Joko Smart, JSC, in his book, "The Place of Islamic Law within The Framework of The Sierra Leone Legal System", at page 15, the object of the marriage settlement is that the wife should have an independent priority position and should be free to spend charitably or make gifts to her relatives out of her separate property. According to Joko-Smart, JSC, the marriage settlement is the practical acknowledgement of the prospective husband of the independent proprietary position of the future wife and her right to maintain and acquire separate property which the husband cannot bring to his own use. There is no fixed amount for marriage settlement. It could take the form of gold, money, cattle, house(s).

46. As already stated, the High Court in Sierra Leone has no jurisdiction to dissolve a Muslim marriage and since there are no Qudi Courts so divorce by judicial process is virtually unknown in Sierra Leone.

47. In respect of succession, neither Cap 96 nor any other enactment provides for the application of Islamic Law to Wills made by Muslims. The General Law therefore, in respect of Wills made by Muslims is the applicable law in respect of testate succession. Application of Mohammedan law of succession to the distribution of the estate, both real and personal of a Muslim who dies intestate is Section 9 of Cap 96 which enumerates the person on whom the property devolves for administration as being the eldest son of full age, the eldest brother of full age or the Administrator-General. This provision, as stated hereinbefore has been replaced by provisions in the Devolution of Estates Act, 2007.

48. It stands to reason from the preceding paragraphs that Mohammedan Law or Islamic Law, however it is called, is only applicable to Muslim Marriage, Divorce and Succession, testate and/or intestate. The matter before this Court will



therefore be dealt with in light of the laws applicable to Conveyances and other General Law.

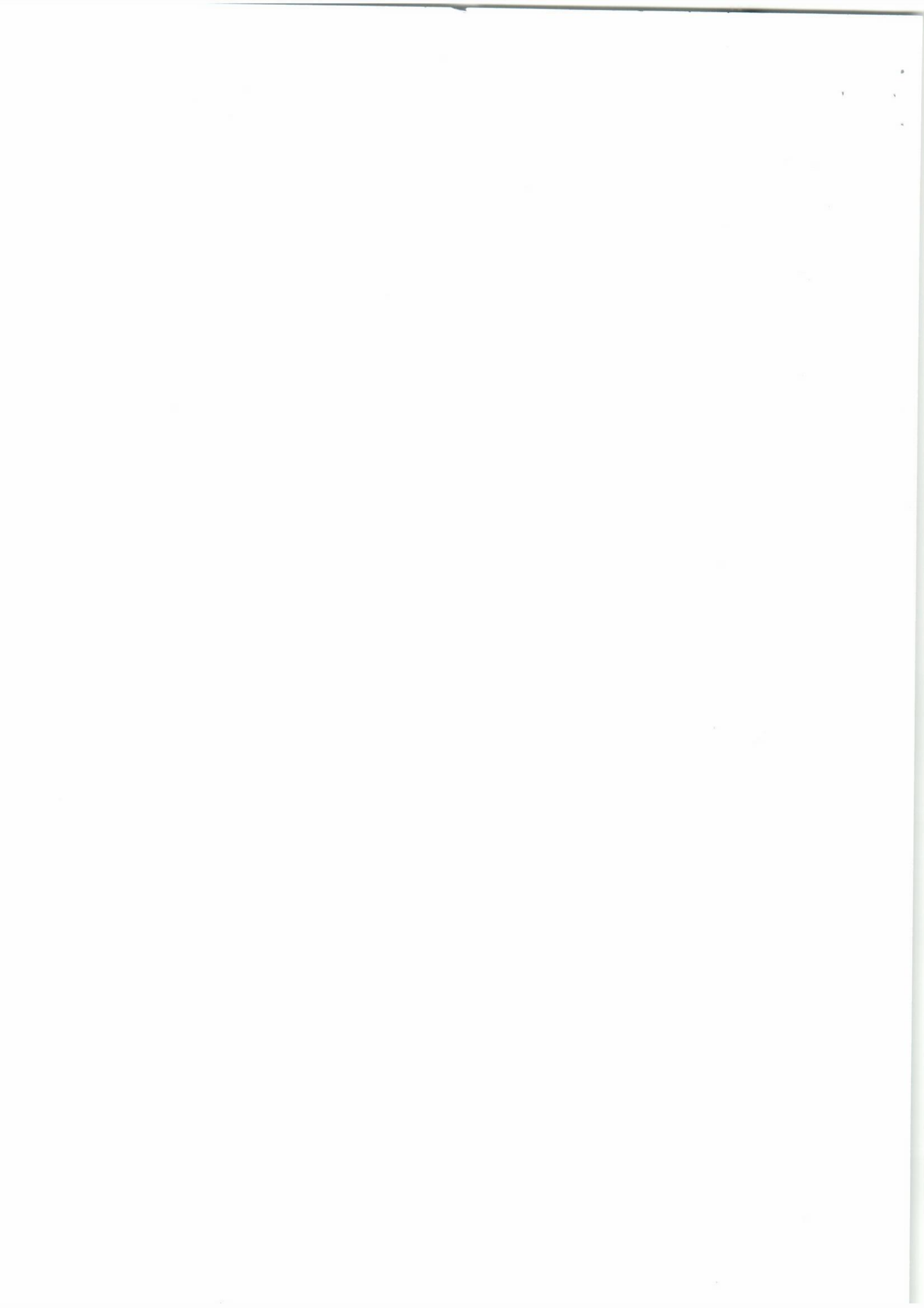
48. I have looked at the Conveyance dated 31<sup>st</sup> day of October 2004, which is expressed to be made between Josephine Elizabeth Cleopatra Davies and Kadija Kamara. It is accepted that the property was purchased by the Plaintiff for the Defendant who at the time of the said purchase, according to the Plaintiff, was loved whole heartedly by the Plaintiff. I have also held that there is no evidence before this Court that the Defendant made any contribution to the purchase of the property at No. 29 Jones Street, Freetown as in the Conveyance herein.

49. Where A makes a voluntary payment for purchase of a piece of property which is vested in B alone as in the instant case, there is a presumption that A did not intend to make a gift to B; the property is held on trust for A (if he is the sole provider of the money). See *Westdeutsche Landesbank Girozentrale V Islington* LBC (1996) A.C. 669. The fact in the example stated which gives rise to a resulting trust are that A transfers property to B for which B provides no consideration. The trust arises by operation of law to give effect to the presumption that A did not intend B to take the property beneficially.

50. A resulting trust may arise where B purchases real property of any description using money provided by A. The advance of the purchase money by A need not appear on the face of the Conveyance.

51. The presumption can be rebutted by proof that A did in fact intend B to take the property as beneficial owner. See *Westdeutsche Landesbank Girozentrale V Islington* LBC (1996) A.C. 669 at 708. This intent can be established by direct evidence or to a degree by reliance on the presumption of advancement which arises at times between parties where it may be readily inferred that A would have intended to make a gift to B. see *Wirth V Wirth* (1956) 98 C.L.R 228 at 237. The presumption is found, where A is under an equitable obligation to support or make provision for B. For example, in our case, where the Plaintiff, the ex-husband of the Defendant was obliged as he enumerated to provide for the Defendant herein. In effect, it is a counter-presumption which provides prima facie evidence about A's intentions as to where the beneficial interest in the property should lie. Its effect is to negative any initial presumption that the transfer creates a resulting trust.

52. In the instant case for example, if the presumption of advancement applies to explain the payment of money for the property herein by the Plaintiff, the Defendant will not be presumed to hold property on trust for the Plaintiff even though the Plaintiff it was who provided the purchase money. The presumption of advancement use to apply only among family members; example from father to child and husband to wife etc but this has changed over time. The rationale of presumption is nowadays broader and the Court may be prepared to draw inferences that transactions between members of household or family was intended as a gift when that accords with common social experience.



53. Where a man bought property and had it conveyed to his wife, the presumption of advancement is applied. See *Silver V Silver* (1958) 1WLR. 259; *Richards V Richards* (1958) 1W.L.R. 1116. In *Silver V Silver* (1958) 1W.L.R. 259, the presumption of advancement existing at the date of the Conveyance was not destroyed by the fact that the marriage was afterwards dissolved.

54. It is worthy of note though that the presumption of advancement can be rebutted by the evidence of the parties' actual intentions. The clearest evidence of rebuttal is an expressed declaration of trust on the face of the Conveyance of the legal estate to the purchaser. Such an expressed statement of intention displaces any presumed intention arising by law from the form of the transaction. There is no such expressed statement on the face of Exhibit R, the Conveyance in the name of the Defendant herein.

55. Even where there is no expressed statement of intention on the face of the Deed, the Court can arrive at the parties' real intention by considering direct evidence of all the transaction by way of objective inference drawn from the parties' words and conduct. See *Gissing V Gissing* (1971) A.C 886, 906; *Calverly V Green* (1984) 155 C.L.R 242. Considering the entire evidence before this Court, I have not found any contrary intention on the part of the Plaintiff other than what he stated he stated that he bought the property herein for the Defendant wholeheartedly because of his love then for her.

56. I have held that Islamic Law on which the Plaintiff relies is inapplicable to the issues before this Court. I have also stated the evidence adduced before this Court by the Plaintiff as to his reasons why he bought the property herein in the name of the Defendant, which is to say, he loved her whole heartedly. His evidence before this Court is not to the effect that his intention was for the Defendant to hold on to the property in trust for him nor to the effect that he mistakenly had the Defendant's name in place of his. The property was not bought by the Plaintiff jointly either, in the name of the Plaintiff and the Defendant but clearly and solely in the name of the Defendant for his love for her 'whole heartedly'.

57. I see clearly that the Plaintiff intended to make a gift of No. 29 Jones Street, Freetown to his proposed wife then, the Defendant herein and that intention has not been controverted by the Plaintiff. The Plaintiff cannot ask this Court for a declaration of title to property which he had passed over as a gift to the Defendant because the Defendant divorced him or because the Defendant had a child outside wedlock. The law cannot restrain one from moving out of a matrimonial home where one does not want to stay. The Report relied upon by the Plaintiff cannot stand in the face of the General Laws and especially the Gender Laws of Sierra Leone. one would wonder why the Plaintiff did not request for other gifts or payments therefore he had made in settlement of his marriage to the Defendant.

58. The Conveyance dated 31<sup>st</sup> day of October 2004 expressed to be made between Josephine Elizabeth Cleopatra Davies and Khadija Kamara is therefore construed as is and held to be valid. No counter-claim having been filed by the

