

IN THE HIGH COURT OF SIERRA LLEONE

Between: PASTOR SOLOMON PARSONS Plaintiff

And SAPO KANARA  
ALPHIA GIBBA  
FODAY KANARA  
TAMBA PINNAY  
SALIEU SIBAY Defendants

Then-Set on the 14<sup>th</sup> June 2012  
Before the Hon. Mr Justice J.B. Holliday J  
Plaintiff mentioned  
Plaintiff present / I. Kanah Ego for the Plaintiff present  
Defendants present

JUDGEMENT

The action herein, which commenced by the issue of a specially indorsed Writ of Summons on the 27<sup>th</sup> October, 2012 for and on behalf of Plaintiff SOLOMON PARSONS of the Plaintiff Party, who claims as correct and true statement of case, against the Defendants, namely: ALPHIA GIBBA, FODAY KANARA, TAMBA PINNAY and SALIEU SIBAY the Defendants, namely jointly and severally is to: Declare that Plaintiff herein is the legitimate owner or and the person entitled to possession of all that piece or parcel of land situate lying and being at Old Waterloo Road Hastings in the Western Area of the Sierra Leone District of the County; Recovery of possession of the said piece or parcel of land from the Defendants jointly and severally; A perpetual injunction restraining the Defendants herein whether by themselves or their servants, agents or privies from interfering in any way with Plaintiff herein and from disposing of or in any other way

[Signature]

into form with the title of the same in the Land Registry of the Province of Ontario  
this Honorable Court and the Court of Appeal in Ontario.

The particulars of the Plaintiff's claim aforesaid are that he is the true and lawful  
owner of and the person entitled to possession of all that piece or parcel of land  
situate lying and being at Old Waterloo Road, Hastings aforesaid, the same  
being delineated on Survey and numbered LS 541410, dated 20th October 2012, by the  
Ontario Land Registry Office, said piece or parcel of land by virtue of a deed of  
Conveyance dated the 25th May, 2012 and registered at No. 1023, 2012, page 28  
in volume 689 of the second books of Conveyances kept in the Office of the  
Registrar General at the town aforesaid; that the Defendants herein by  
themselves, their agents, servants or privies (expressed or implied) have by the  
use and operation of their force and power wrongfully and unlawfully and  
unlawfully and without any colour of title wrongfully and unlawfully and  
without any colour of title wrongfully and unlawfully and without any colour of  
title wrongfully and unlawfully and without any colour of title wrongfully and  
unlawfully and without any colour of title wrongfully and unlawfully and without  
any acts therein inconsistent with the Plaintiff's rights thereto, the Defendants  
herein and their agents, servants or privies aforesaid have willfully refused and  
neglected to heed to these writs; that unless restrained by the Honorable  
Court, the Defendants herein threaten to continue the wrongs and  
complaints of and to wrongfully continue to be troubled with the use and  
possession of land and out by reason of the matter aforesaid the Plaintiff  
has and will sustain loss and damage.

The statement and particulars of claim accompanying the Writ of Subpoena  
aforesaid were served on the Defendants herein who had Answered the writ  
and on their agents on the 25th October, 2012, respectively, and the  
Defendants also had a Defence and Counterclaim filed on and the 1st of  
November, 2012, the particulars of which are that they do not admit that the  
Plaintiff is the fee simple owner of and the person entitled to possession of all  
that piece or parcel of land situate lying and being at Old Waterloo Road  
Hastings aforesaid, that they do not admit or deny that themselves, their agents,

servants or privies aforesaid on and remain on the piece or parcel of land  
if need be, and any person claiming to have some or doing any  
act thereon inconsistent therewith, and to make and publish the same  
to the said place of the Government of Sierra Leone, and to the  
Defendants herein as the holder of ALLIHA 2031A of the 2nd of that name  
and in force of the said title deed of land, the structure of which  
Defendant herein that the Defendant does not admit that Justice created  
warrant issued to the Defendants herein their agents, servants or privies for  
them to vacate the said piece or parcel of land and to cease doing any of  
the acts inconsistent with the Plaintiffs right thereto, themselves their agents,  
servants or privies aforesaid have willfully refused and or neglected to hand to  
these warrants and aver that he is entitled to all that piece or parcel of land  
situate at Off Old Moor Road, Hastings, Freetown aforesaid by virtue of a Deed  
of Conveyance expressed to be made between ABDOU KAHMAN KAMARA of  
the one part and ALLIHA 2031A of the other part and duly registered in  
volume 679 in the year of His Majesty's Majesty in the Office of the  
Deputy Registrar General, Freetown, and of Deeds Books, Freetown,  
and of aver that the said Justice created the said title deed of land  
their agents, servants or privies thereto to vacate the piece or parcel of land  
herein and to cease doing any acts thereon inconsistent with the Plaintiffs right  
thereto, themselves their agents, servants or privies aforesaid have willfully  
refused and or neglected to hand to these warrants and aver that they are  
entitled to all that piece or parcel of land situate at Off Old Moor Road,  
Hastings Freetown aforesaid by virtue of a Deed of Conveyance expressed to be  
made between the HONOURABLE BOBSON SEYAM Minister of Lands, Housing,  
and the Environment and Planning for and on behalf of the GOVERNMENT OF  
SIERRA LEONE on the one part and FODAY KAMARA, the 3rd Defendant  
herein, TAMBA FINNELL the 4th Defendant herein and SALIEU SEYAM the 5th  
Defendant herein all of the second part and NORWEGIAN STEVEDORE  
COUNCIL of the 6th part and duly registered in No. 211/2004 of that 679 in  
volume 211 of the Office of Conveyancer, Freetown, the Office of the  
Registrar General, Freetown, but they aver that the Plaintiffs possession and  
title is restricted by the Honourable Court, the Defendants herein that they

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...outlet... their... of... interfere with the Plaintiff's... vexations and ought to be struck out... as the same consists... and every allegation... in the Plaintiff's... and Unusual... and Unusual...

The particulars of the Defendants'... particulars of their... piece of parcel of land... the Western Area... commercial for a... possession of all that property... having in the Western Area... or parcel of land... the Honourable Court may... just and Costs

Pleadings were deemed closed at this stage and by an order of the Court dated 16<sup>th</sup> February, 2016, Directions as to the preparation of the trial of the... the parties... signed statement of the... and several documents which are... party relied on,... a Deed of Conveyance dated 16<sup>th</sup> May, 2011 and made between... RAHMAN KAMARA on the one part as vendor and... PARSONS, the Plaintiff herein, on the other part as purchaser, the... in respect of a piece of parcel of land situated at... the Western Area of the Republic of Sierra Leone... and delineated on an... dated 22<sup>nd</sup> October 2011... the same which is... 102/V12 at page 25... the office of the Registrar-General... evidence by the Plaintiff herein as...

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concluded on the 6<sup>th</sup> June 2016. At the sitting, PASTOR SOLUMEN  
PARSONS, the Plaintiff herein, testified for me on behalf of himself, SAMUEL  
LAFAMPA, LEAVINIA, JOHN, JOSEPH, ERIC, JOSEPH AN, ANTHONY, RUSTEN  
JESSE, KENNETH, JOHN, JOHN, VICTOR, PAUL respectively. DAMBA KANNE, the 2<sup>nd</sup>  
Defendant herein, JOHN KAMALIA, the 3<sup>rd</sup> Defendant herein, and  
SALLEU SESAY, the 5<sup>th</sup> Defendant herein, testified for me on behalf of  
themselves as DAWA, DAWA and DAWA respectively.

Having carefully read and considered the pleadings delivered and filed herein,  
the evidence adduced in the affidavits and the submissions made by the  
parties and after due consideration of the evidence on file, the Court  
should be initially pointed out that whereas the Defendant herein claim the  
Court to believe, as found from portions of the pleading herein, that it is only  
a single piece or parcel of land which is involved in the dispute herein, the Court  
finds at least three(3) separate and distinct pieces or parcels claimed by the  
Plaintiff herein on the first part, the 2<sup>nd</sup> Defendant herein on the second part  
and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendant on the third part. This Court herein views  
that whereas either party to the action herein claim a Declaration of title to  
their respective pieces or parcels of land, the same delineated on survey plan  
numbered 105444-Zone 11 of 23<sup>rd</sup> October 2010, being the piece or parcel of  
land claimed by the Plaintiff herein, and on survey plan numbered DVA 044  
of 16<sup>th</sup> February 2010, delineating the piece or parcel of land claimed by the 2<sup>nd</sup>,  
3<sup>rd</sup> and 5<sup>th</sup> Defendant herein, the dispute herein involves a 28 acre piece or  
parcel of land, which is a piece or parcels of land claimed by the parties  
aforesaid.

The Plaintiff's contention is that the Defendants have unlawfully taken over the  
his piece or parcel of land herein, the said Defendants herein whose contention  
is that the Plaintiff's piece or parcel of land herein encroaches into the 28 acre  
piece or parcel of land herein, is concerning the party's respective contentions as  
this Court holds the view that either party to the action herein has not in any  
way disputed the other's claim to a Declaration of title to their respective piece  
or parcels of land by way of claiming a Declaration of title to the other's piece  
or parcel of land. This Court holds the view that even though it is a fact that

claimant has a claim for Declaration of title to a piece or parcel of land by way of claiming a Declaration of title to the other's piece or parcel of land, this is not enough for the Court to declare either of them title owner to their respective pieces or parcels of land. RENNER-THOMAS C.J. in the case between SORIE TARAWALLI vs SORIE KOROMA, Civ. App. No 11/2004 in the Supreme Court of Sierra Leone, ruled as follows:

'that it is not sufficient for a Plaintiff's claim for Declaration of title to a piece or parcel of land to be supported by uncontroverted evidence simpliciter to entitle that Plaintiff to such a Declaration'.

The Court finds that PW1 reported that in old statutory books of ownership and title to a piece or parcel of land at Old Watende Road in the Western part of Sierra Leone containing OFFICIAL and unregistered survey plans numbered 15 3414/10 dated 12th October 2000 and PW2 herein relies on the fish-bone PW2 which is a Conveyance dated 16th May 1999 and registered as No. 1014/12 at page 93 in volume 689 in the book of Conveyances kept in the office of the Registrar General in Freetown. The Court finds that from the entries contained in Exhibit PW2, the Plaintiff predeceased in title to a piece or parcel of land was one PAZAMANI KAMARA who exhibited his possessory title to the piece or parcel of land at Old Watende Road Freetown in the Western part of Sierra Leone in a portion which is the Plaintiff's piece or parcel of land herein, by virtue of a Statutory Declaration dated 29th January 1990 and registered as No. 131A/10 at page 112 in volume 19 in the book of Statutory Declarations kept in the office of the Registrar General in Freetown. The Court finds further that the entries contained in Exhibit PW2, dated PAZAMANI KAMARA, dated 1st January 1999, the 6th June 1999 and that latter of Administration under seal was granted on the 16th October by the Probate jurisdiction of the High Court of Sierra Leone to PW2, ABDUL RAHMAN KAMARA, who sold a portion of the piece or parcel of land aforesaid to the Plaintiff's wife.

clearly and from the evidence in this Court that the Plaintiff is entitled to establishing his claim to the ownership of the piece or parcel of land herein in dispute and on the facts of the case by his predecessors in title, RENNER-THOMAS C.J. in the same case stated that SORIE TARAWALLI and SORIE KAMARA who have a better title than

To be entitled to a Declaration of Title to land, a Plaintiff who relies on the fact of possession by himself or his predecessor-in-title must prove that he has a better title not only as against the Defendant but there is no other person having a better title than himself and that he can do this by showing that the title of the true owner has been extinguished in his favour by the combined effect of adverse possession and the limitation statute.

RENNER-THOMAS C.J. in the same case aforesaid, stated that the nature of the root of possessory title is thus explained by MEGARY and WADE in the 4<sup>th</sup> Edition of the LAW OF PROPERTY at page 140 C. It follows:

'Limitation is thus not per se a mode of transferring property from one person to another. But it may operate as such when combined with the principle that adverse possession gives a title. If S (squatter) wrongfully takes possession of land belonging to O (owner), O immediately acquires a right of action against S for recovery of land. If O takes no action in twelve years (normally) his right of action becomes barred and his title extinguished by limitation. S can no longer be disturbed by O and as against all the world except someone having a better legal right to possession.'

This Court finds that the Plaintiff to dispute the Plaintiff's contention, and his claim to a Declaration of title to the piece or parcel of land herein in dispute or Survey Plan number LS 544/10 dated 27<sup>th</sup> October 2004, the Defendants herein, must be rebutting the Plaintiff's claim that his predecessor-in-title to his piece or parcel of land in dispute, one RA AMADU KAMARA established his possession of the piece or parcel of land at 05, 06 and 07, Waterloo Road, Hillingdon, London of which is the Plaintiff piece or parcel of land herein, by virtue of a statutory Declaration dated 27<sup>th</sup> September 1994 and registered as No. 132A/30 at page 132 in volume 13 of the records of the

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Statutory Declaration made in the office of the Registrar General in Freetown. Under Cross-examination of him by PW2 KANNHEE WSO, PW1 testified that Defendant PW1, PASTOR SOLOMON PARSONS, the Plaintiff here, testified that he purchased the piece or parcel of land herein in 2007 from PW2, ABDUL KAHMAN KAMARA. He testified that it is not true that he purchased the piece or parcel of land in question from one UMARU SESAY. He identified Exhibit 11 as a Statutory Declaration dated the 4th September 1994 analysing the reasons why PW1 PA AMADU KAMARA has made a claim to the piece of land at Old Freetown. Sesay's claim in a survey plan numbered 159794 in respect of which is the Plaintiff's piece or parcel of land herein. He testified that Exhibit 11 is registered at page 97 in volume 41 of the book of Statutory Declarations kept in the office of the Registrar General in Freetown. He identified Exhibit 12 which is a Conveyance dated 16th May, 2012, in his favour, in respect of his piece or parcel of land herein, delineated on survey plan numbered 15 544/10 dated 22nd October, 2010. He testified that it is true that it contained in the name of Exhibit 12, the title deeds of the piece or parcel of land PA AMADU KAMARA since a Statutory Declaration registered at page 17 in volume 41 of the book of Statutory Declarations kept in the office of the Registrar General in Freetown is stated above. He testified that he cannot tell whether the Statutory Declaration was found in the record here filed dated 29th September 1990 registered as No. 1524/90 at page 151 in volume 38 of the book of Statutory Declarations kept in the office of the Registrar General in Freetown, is in respect of a piece or parcel of land at Newton Village in the Western Area of Sierra Leone.

By reason that the Statutory Declaration dated 27th September 1990 and registered as No. 1524/90 at page 151 in volume 38 of the record book of Statutory Declarations kept in the office of the Registrar General in Freetown, was not tendered in evidence, this Court cannot confirm that the Defendants' refusal of the Plaintiff's claim that the said PA AMADU KAMARA established his possessory title to the piece or parcel of land at Old Freetown, West of Road, although a possibility of that fact could have been raised. It is the Court's



by virtue of the Statutory Declaration dated 29<sup>th</sup> September 1980 are so justified. This Court is only persuaded that the Plaintiff's claim that the said PA AMADU KAMARA did hold a possessory title to the piece or parcel of land at Old FreeTown Waterloo Road Hastings a portion of which is the plaintiff's piece or parcel of land herein by virtue of the Statutory Declaration dated 29<sup>th</sup> September 1980 is not established on the basis of Exhibit 21<sup>st</sup> and of the evidence on that the Statutory Declaration in question which the Plaintiff claims is the title deeds of his predecessor-in-title the said PA AMADU KAMARA. Exhibit 21<sup>st</sup> is Statutory Declaration dated the 4<sup>th</sup> September 1980 establishing the possessory title of PA AMADU KAMARA aforesaid to the piece or parcel of land at Old FreeTown Waterloo Road Hastings. Exhibit 22<sup>nd</sup> is a survey plan with Serial No. 114, a portion of which is the Plaintiff's piece or parcel of land herein and is signed at page 9 in volume 11 of the book of Statutory Declarations kept in the office of the Registrar General in Freetown.

This Court finds no apparent contradiction in the evidence adduced as outlined above. Clearly in one claim the Plaintiff herein claims that from Exhibit 21<sup>st</sup> of his predecessor-in-title to the piece or parcel of land herein establishing the possessory title to the piece or parcel of land at Old FreeTown Waterloo Road Hastings a portion of which is the piece or parcel herein by virtue of a Statutory Declaration dated 29<sup>th</sup> September 1980 and registered as No. 112/V&C at page 211 in volume 13 of the book of Statutory Declarations kept in the office of the Registrar General in Freetown. In another claim the Plaintiff herein claims that his predecessor-in-title to the said piece or parcel of land herein establishing the possessory title to the piece or parcel of land at Old FreeTown Waterloo Road Hastings a portion of which is the piece or parcel of land herein by virtue of Exhibit 21<sup>st</sup> which is a Statutory Declaration dated 29<sup>th</sup> September 1980 and registered at page 97 in volume 11 of the book of Statutory Declarations kept in the office of the Registrar General in Freetown. In the circumstance, if this Court were to determine whether the Plaintiff is entitled to a Declaration of title to the piece or parcel of land herein in the light of the contradiction aforesaid by applying the principle enunciated by RENNER-THOMAS C.J. in the case between SORIE TARAWALLI and SORIE KAMARA

et al above. It will find that the plaintiffs with the title of the piece or parcel of the piece or parcel of land at D11 Freetown Waterloo Road Hastings a portion of land in the piece or parcel of land herein, the same which is demarcated on Survey No. numbered IS 5420 or on written said contradiction should be interpreted to mean that the Plaintiff herein is not entitled to such a declaration, if the court were to determine whether or not the title of the true owner of the piece or parcel of land at D11 Freetown Waterloo Road Hastings a portion of land in the piece or parcel of land herein has been extinguished in favour of the Plaintiff herein who relies on the fact of possession by his predecessor-in-title to the same by virtue of a statutory declaration dated 27 September 1980 and registered at No. 124/1980 in volume 43 of the records of the Statutory Declarations kept in the office of the Registrar General in the town using the combined effect of adverse possession and the limitation statute, it will find that the title to the piece or parcel of land aforesaid of the Plaintiff's predecessor-in-title, the said PA AMADU SAMAKA dates back to the 27 September 1980, Twenty Eight (28) years ago. On the other hand if the court were to determine whether or not the title of the true owner of the piece or parcel of land at D11 Freetown Waterloo Road Hastings a portion of land in the piece or parcel of land herein has been extinguished in favour of the Plaintiff who relies on the fact of possession by his predecessor-in-title to the same by virtue of a statutory declaration dated 24 October 1986 and registered at page 57 in volume 47 of the records of the Statutory Declarations kept in the office of the Registrar General in the town using the combined effect of adverse possession and the limitation statute, it will find that the title of the Plaintiff's predecessor-in-title the said PA AMADU SAMAKA to the piece or parcel of land aforesaid date back to the 27 September 1980 Twenty two (22) years ago.

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It is the case that in the year 1987, Defendant PA AMADU KAMARA the Plaintiff's predecessor-in-title to the piece or parcel of land herein in dispute, acquired his possessory title to all that piece or parcel of land at Old Freetown Waterloo Road, Hastings, in the City of Freetown, by virtue of a Statutory Declaration registered at page 132 in volume 11 of the record book of Statutory Declarations kept in the office of the Registrar-General in Freetown and that to wit two (2) years have elapsed since the date on which Defendant PA AMADU KAMARA the Plaintiff's predecessor-in-title to the piece or parcel of land herein established his possessory title to all that piece or parcel of land at Old Freetown Waterloo Road aforesaid by virtue of a Statutory Declaration registered at page 97 in volume 11 of the book of Statutory Declarations kept in the office of Registrar-General in Freetown. Accordingly this Court is of the view that in effect the supposed rights, if at all, of any person, including the Defendant's herein, who might want to lay claim to the piece or parcel of land herein is barred and their title extinguished by virtue of Section 1(5) of an ACT OF PARLIAMENT ENTITLED THE STATUTE OF LIMITATION ACT 1961 which reads as follows:-

'No action shall be brought by any other person to recover any land after the expiration of Twelve (12) years from the date on which the right of action accrued to him or it first accrued to some person through whom he claims to that person.'

Consequently whether it is Thirty-eight (38) years or Twenty-two (22) years which has elapsed since PA AMADU KAMARA the Plaintiff's predecessor-in-title to the piece or parcel of land herein established his possessory title to all that piece or parcel of land at Old Freetown Waterloo Road, aforesaid, the Plaintiff herein will invariably be entitled to a Declaration of title sought herein to the piece or parcel of land situate lying and being at Old Waterloo Road, Hastings aforesaid, the same delineated on survey plan numbered LS 2412/10 and dated 20<sup>th</sup> October 2010. In view of the facts herein, the Court is of the firm belief that the Defendants herein are not in any way having claim to the piece or parcel of land herein delineated on survey plan numbered LS 2412/10 aforesaid, the title thereto being vested in the Plaintiff as shown herein.

the same was conveyed to him as contained in Exhibit P217, even if it is not sufficient enough to be a title deed. It is not the fact that the Plaintiff herein is entitled to possession of the said piece or parcel of land, what this Court would stop short of doing at the stage is to actually make a Declaration of title as aforesaid, by reason that the Statutory Declaration dated 29<sup>th</sup> September, 1996 and registered as No. 100017 at page 162 in volume 13 of the records of the Statutory Declarations kept in the office of the Registrar-General in Freetown is not in evidence, hence it is the Court's opinion that for said PA AMADU KAMARA actually to be the possessor of the said piece or parcel of land at Old Freetown Waterloo Road, Hastings a portion of which is the said piece or parcel of land herein as recited in his Conveyance dated 16<sup>th</sup> May 2011 and registered as No. 100017 at page 15 in volume 699 in the records of Conveyances kept in the office of the Registrar-General in Freetown as recited in Exhibit P217 aforesaid. Moreover, notwithstanding the fact that Exhibit P217 which is the Statutory Declaration dated the 4<sup>th</sup> September, 1996 establishing the possessory title of PA AMADU KAMARA aforesaid to the said piece or parcel of land at Old Freetown Waterloo Road, Hastings a portion of which is the Plaintiff's piece or parcel of land herein is what was rendered in evidence and which this Court is satisfied, it would still stop short of making a Declaration of title aforesaid, since the same was not recited in Exhibit P217. The Plaintiff's Conveyance dated 16<sup>th</sup> May 2011 aforesaid as the Statutory Declaration establishing the possessory title of PA AMADU KAMARA to the said piece or parcel of land herein is a copy of the above mentioned Statutory Declaration which is not in evidence and hence it is the Court's opinion that at this stage still the Plaintiff's title claim cannot be given effect.

The Defendants herein claim to be the true simple owners of piece or parcel of land situate lying and being at Old Motor Road, Hastings in the Western Area of Sierra Leone, the said Defendant herein claiming same by virtue of a Deed of Conveyance expressed to be made between ABIMU RAHMAN KAMARA as vendor of the one part and ALPHA COBBA as purchaser of the other part and registered at page 162 in Volume 629 in the records of Conveyances kept in the office of the Western Area Registrar-General, the 29<sup>th</sup> September,

landlords were satisfied to give by virtue of a Deed of Conveyance dated 21st August 1984 registered as No. 211/ 84 in volume 1 of the record book of Statutory Declaration kept in the office of the Registrar General in Freetown. In the said Deed of Conveyance the Plaintiff and the Defendant herein claim a Declaration of title to their respective pieces of parcels of land situated in the Township of Freetown of SIERRA LEONE on the one part, PA AMAMBE KAMARA the Plaintiff herein, TAMBA FINNOH the Defendant herein and MALLETU SEWAY, the Defendant herein, all of the second part and NORWEGIAN and GEE COUNCIL of the third part and duly registered as No. 211/ 2004 at page 61 in volume 29 in the book of Statutory Declaration kept in the office of the Registrar General in Freetown.

As has been stated above, this Court holds the view that neither of the parties herein have disputed the other claim to a Declaration of title to their respective pieces of parcels of land claimed by them. This Court finds from the evidence adduced herein as revealed above that the Plaintiff herein claims a Declaration of title to a piece of parcel of land situated in Freetown, Sierra Leone, to the said PA AMAMBE KAMARA, his legal predecessor-in-title to the whole or part of land hereby established in possession title to about piece or parcel of land at Old Freetown, Waterloo Road, Hastings by virtue of a Statutory Declaration registered as No. 42/ AMC at page 152 in volume 48 of the record book of Statutory Declaration kept in the office of the Registrar General in Freetown or by virtue of a Statutory Declaration, dated 4th September 1996 and registered at page 97 in volume 41 in the book of Statutory Declaration kept in the office of Registrar General in Freetown, and the Defendant herein claims a Declaration of title to a piece of parcel of land situated in Freetown, Sierra Leone, to the said MALLETU SEWAY, his legal predecessor-in-title to the whole or part of land hereby established in possession title to about piece or parcel of land at Old Freetown, Waterloo Road, Hastings by virtue of a Statutory Declaration registered as No. 42/ AMC at page 152 in volume 48 of the record book of Statutory Declaration kept in the office of the Registrar General in Freetown, and the Defendant herein claims a Declaration of title to a piece of parcel of land situated in Freetown, Sierra Leone, to the said TAMBA FINNOH, his legal predecessor-in-title to the whole or part of land hereby established in possession title to about piece or parcel of land at Old Freetown, Waterloo Road, Hastings by virtue of a Statutory Declaration registered as No. 42/ AMC at page 152 in volume 48 of the record book of Statutory Declaration kept in the office of the Registrar General in Freetown. The Court finds the law that in the case herein claim a Declaration of title to a piece of parcel of land hereby established in possession title to about piece or parcel of land to the one which the Plaintiff herein claim a Declaration of title to RENNER-THOMAS C.J. in the case between, SORIE TARAWALLI and SORIE KAMARA cited above stated that in a long line of cases reviewed by the Court

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from the case between MACAULEY and STAFFORD & OTHER (1976) 11 WACA 376 at page 377 and No. 1773, Judgment delivered on the 13<sup>th</sup> July, 1976 and in the case on the authority of the case between SEYMOUR WILSON and MUSA ABESS (1976) 11 WACA 379, Judgment delivered on the 13<sup>th</sup> June, 1981, it has been established that in an action for a declaration of title the Plaintiff must rely on the strength of his own case and not on the weakness of the Defendant's case. KENNER-THOMAS C.J. stated further that in other words, as stated by WEBBER C.J. in delivering the Judgment of the West African Court of Appeal in the case between KODOLINYE and ODU (1960) 5 WACA 356 at page 357-358:

'The onus lies on the Plaintiff to satisfy the Court that he is entitled on the evidence brought by him, to a declaration of title. The Plaintiff in this case must rely on the strength of his case and not on the weakness of the Defendant's case. If this onus is not discharged, the weakness of the Defendant's case will not help him and the proper Judgment is for the Defendant. Such Judgment decrees no title to the Defendant, he not having sought the declaration'.

This Court holds the view that applying the principle enunciated in the case between KODOLINYE and ODU cited above, even if the apparent facts as they are proved by the Plaintiff are sufficient to make this Court hold the view that the Plaintiff is entitled to a declaration of title to the parcels of land at Old Wafako Road, Hastings, formerly deeded to on Survey Plan No. 1000/1-3/344/10 and dated 27<sup>th</sup> October, 2010 is weak, it would not in any way help this Court declare the Defendants title owners to their respective parcels or parcels of land claimed by them, since the said Defendants herein must rely on the strength of their own case and not on the weakness of the Plaintiff's case.

Clearly, the said Defendants herein, who should rely on the strength of their own case for this Court to declare them title owners to their pieces or parcels of land situated at Old Wafako Road, Hastings, Eberewin and Old Motor Road, Hastings in the Western Area Urban Scheme failed to tender in and make proof of Conveyance registered at Page 149 of Volume 027 of the records of the Court of Conveyance kept in the office of the Registrar of the District Court of the

being the title deeds of the 2<sup>nd</sup> Defendant herein, to the piece or parcel of land situate at Old Motor Road, Hastings, Freetown aforesaid and the terms of Conveyance bearing the number LS 3414/10 of 20<sup>th</sup> October 2010 and the terms of Conveyance bearing the number LS 3414/10 of 20<sup>th</sup> October 2010, in Freetown, being the title deeds of the 5<sup>th</sup> and 8<sup>th</sup> Defendants to the piece or parcel of land situate at Old Motor Road, Hastings, in the Western Area of Sierra Leone, by virtue of which the said Defendants claim ownership of. This Court, having regard to the circumstance make a Declaration of title to the piece or parcel of land if should sought by them. In this regard and the fact that Conveyance bearing the number LS 3414/10 of 20<sup>th</sup> October 2010 and the terms of Conveyance bearing the number LS 3414/10 of 20<sup>th</sup> October 2010, in Freetown, being the title deeds of the 5<sup>th</sup> and 8<sup>th</sup> Defendants to the piece or parcel of land situate at Old Motor Road, Hastings, Freetown, and Old Motor Road, Hastings, are not claimed by them.

As stated above, the respective title deeds bearing the names read summarily of the respective pieces or parcels of land claimed by the parties herein, the same delineated on survey map numbered LS 3414/10 dated 20<sup>th</sup> October 2010 attached to the conveyance bearing the number LS 3414/10 of 20<sup>th</sup> October 2010, being the piece or parcel of land claimed by the Plaintiff herein and on survey map numbered LOA 1045 dated 10<sup>th</sup> December 2001, being the piece or parcel of land claimed by the 5<sup>th</sup> and 8<sup>th</sup> Defendants herein, the same which are shown on Exhibit P27 of the piece or parcel of land claimed by the Plaintiff herein and on survey map numbered LOA 1045 dated 10<sup>th</sup> December 2001, being the piece or parcel of land claimed by the 5<sup>th</sup> and 8<sup>th</sup> Defendants aforesaid, and that at Old Motor Road, Hastings, Freetown, and Old Motor Road, Hastings, are not claimed by them. Whereas the said piece or parcel of land claimed by the Plaintiff herein and on survey map numbered LOA 1045 dated 10<sup>th</sup> December 2001, being the piece or parcel of land aforesaid, the 5<sup>th</sup> and 8<sup>th</sup> Defendants' contention is that the said piece or parcel of land encroaches into the 26 feet access road aforesaid.

The Law as stated by RENNER-THOMAS C.J. in the case between SORIE TARA WALLI and SORIE KOROMA cited above, is that in a case for trespass of the Plaintiff against the Defendant, the Plaintiff has the burden of proof to show that he has a better title to the property in question and in this regard the piece or parcel of land claimed on survey map numbered LS 3414/10 of 20<sup>th</sup> October 2010 attached to the conveyance

tenured in evidence as Exhibit 2017 which is the Plaintiff's title deed to his piece or parcel of land aforesaid situated at Old Watford - Waterloo Road Hastings aforesaid and which is the subject matter of the action herein. In the case between SEMOUR WILSON and MUSA ABESS cited above, LIVELEY LUKE C.J. had this to say:

'But better title in the context of an action for trespass is not necessarily valid title. In the case for trespass, the Court is concerned also with the relative strength of the title or possession proved by the real claimants. The party who proves a better title or a better right to possession succeeds even though there may be another person not a party who has a better title than he'

PW. PASTOR SOLOMON PARSONS, the Plaintiff herein testified that he knows the piece or parcel of land in dispute situated at Old Waterloo Road Hastings aforesaid delineated on survey plan numbered LS 3444/10. He testified that the said piece or parcel of land is his and bordered in evidence, Exhibit 2017 as his title deeds in respect of the same. He testified that he shared a boundary with the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants with 25 feet access road separating his piece or parcel of land aforesaid from the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants' piece or parcel of land delineated on survey plan numbered LOA 1045. He testified that prior to the execution of Exhibit 2017, he has been in free and undisturbed possession of the said piece or parcel of land since 2007. He testified that he has now constructed a dwelling house on the said piece or parcel of land aforesaid and resides thereon with his family. He testified that sometime in 2008 he went out of the Jurisdiction of Sierra Leone and when he returned, he observed that the fences on the piece or parcel of land herein had been removed, that a new access road had been created through the said piece or parcel of land and that part of the fence on his land which had been constructed on the same had been pulled down. He testified that upon information given to him he confronted the 2nd Defendant who confirmed that he was the one who instructed the creation of the access road aforesaid. He testified that he thereafter made a report of trespass and encroachment to the Police, who called for the parties respective documents in relation to the pieces or parcels of land in question, the same which was forwarded to the Ministry of Survey and Lands and which the



Defendant herein is a person who has been convicted of a crime. Defendant's severely failed to attend meetings called by the Minister of Revenue and Taxation to have the defendant's financial records reviewed, the restriction on the Minister subsequently imposed that no one could with construction work done on the property or any other land of defendant along the side of the highway. Defendant's own witness held that he was not aware of the defendant's termination with revenue Canada. The defendant's own witness testified that he was not aware of the defendant's construction work and took away his building materials and the heap of sand that was on the piece or parcel of land. Defendant herein identified Exhibits P47 through P50 as being photographs showing damages done to his fence constructed at present.

Under cross examination of him by P. KANNELL Esq., of Counsel for the Defendant herein, P.W. PASTOR SOLOMON PARSONS, the Plaintiff herein, testified that he purchased the piece or parcel of land herein in 2007 from P.W. ABDUL RAHMAN KAMARA. He testified that he made a deal with the said, said and said Defendants herein who reside in the Annapolis region of this province and in the said piece or parcel of land which is a parcel of land owned by a 25 year old person. He testified that the Plaintiff herein has his own property on a street or off the right from his piece or parcel of land which said property is a part of the Annapolis Camp or Inn area. He testified that it is not true that the issues herein were the subject of a matter at the Waterloo Magistrate Court. He testified that the issue of the matter at the Waterloo Magistrate Court was for Malicious Damage. He testified that he went to the court to appear in relation to the Magistrate during the pendency of the matter at the Waterloo Magistrate Court. He testified that it is not true that the conclusion of the court in the said piece or parcel of land was that the said parcel of land herein was an access road. He testified that he is not aware that a survey was done by the said Director of Surveys and Land in respect of the said piece or parcel of land. He identified Exhibit D1 as a report done by the Director of Surveys and Land in respect of the respective piece or parcels of land owned by the Plaintiff herein and the Defendants herein. He agreed that the said piece or parcel of land herein is located on a road or a highway.

2/1/17

Plaintiff's piece or parcel of land herein delineated on survey plan number LS 3414/10

The evidence in this case has been reviewed by the surveyor of court and the evidence of DWI KAMMAVAI and JOHN PARSONS the Plaintiff herein that an access road was created through the piece or parcel of land herein delineated on the survey plan number LS 3414/10 above, even though the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants never directly admitted that they were the ones who together with others created the new access road after said DWI KAMMAVAI and the 4<sup>th</sup> Defendant herein made an examination of him by W.F. SAFF of the District Court for the District of Columbia, District of Columbia, regarding the Plaintiff and extracts of the Amputee Camp from the access road separating the Plaintiff's piece or parcel of land from the piece or parcel of land on which the residents of the Amputee Camp resides. The Court is aware of an issue regarding an access road that leads to the Amputee Camp and passes through the Plaintiff's piece or parcel of land. Under cross examination of him by W.F. SAFF Esq. of course for the Plaintiff DWI KAMMAVAI and JOHN PARSONS herein admitted that the access road or piece or parcel of land of the Plaintiff herein and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants herein is separated by a road. He identified the survey plan number LS 3414/10 attached to Exhibit "A" delineating the Plaintiff's piece or parcel of land herein and testified that the access road herein was actually created through the piece or parcel of land delineated herein on the survey plan number LS 3414/10 by W.F. SAFF Esq. of course for the Plaintiff DWI KAMMAVAI and JOHN PARSONS herein. He testified that there is an access road separating the Plaintiff's piece or parcel of land from the piece or parcel of land of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants herein, but denies though, that the said access road is now located on and forms part of the Plaintiff's piece or parcel of land herein.

This Court finds from the above that undisputedly there is an access road which has been created and which runs through the Plaintiff's piece or parcel of land delineated on survey plan number LS 3414/10. This Court finds from the above, that undisputedly it was the Defendants and other people in the

symmetrical in position and width, the fact that the access road is not shown on the survey plan is not in the view of the Court a material factor in determining the position of the access road. The Court is satisfied that the Plaintiff cannot be held liable for the 25 feet access road separating the Plaintiff's piece of land herefrom from the Defendants' piece of land herefrom, for that the said access road created is separate and distinct from the 25 feet access road aforesaid. In this regard, the affidavits herein submitted and tendered as evidence together with the report in answer to the question aforesaid, PW3, ERIC CHRISTIAN ARTHUR EOPSTHE testifying for and on behalf of the Plaintiff herein, contained in evidence number P57<sup>C</sup>, which is a report of an inspection of the respective pieces or parcels of land of the Plaintiff herein and the Defendants herein in the area of Old FreeTown, Waterloo Road, Hastings, to re-establish the boundaries of the Plaintiff's piece of land herefrom and the Defendants' piece of land herefrom, as stated in Exhibit P57<sup>C</sup>, that the 25 feet access road now shown on the layout plan number LS 3414/10 is a piece of land delineated on survey plan number LS 3414/10, to conclude that the 25 feet access road aforesaid has now been shifted to this access road running through the Plaintiff's piece or parcel of land herein. On the other hand, DW3 TAMBA PINNOH the defendant herein identified Exhibit D<sup>1</sup> which was tendered in evidence by the defendant herein, which is a copy of a letter which they sought to have as Exhibit D<sup>1</sup> as a copy of a letter by one FRANCIS A. KIRUMA, Assistant Surveyor from the Office of the Director of Survey, and a drawing of a fence between the Plaintiff herein and the Defendant herein on Old FreeTown Waterloo Road, Hastings, regarding an access road thereon, in which he concludes that the fence erected by the Plaintiff on his piece or parcel of land delineated on survey plan numbered LS 3414/10 along the Old FreeTown Waterloo Road, Hastings excluded the encroachments shown on the said survey plan and encroached on the 25 feet access road, separating the Plaintiff's piece or parcel of land herefrom from the Defendants' piece or parcel of land.

In its bid to resolve the contradiction between Exhibit P57<sup>C</sup> and Exhibit D<sup>1</sup> aforesaid, this Court has had to visit the locus in quo situate at Old FreeTown

Waterloo Road, Hastings, by the 1<sup>st</sup> Defendant, November 2007. On 29<sup>th</sup> 2007, the Locus was the Judge's name and the location of the locus, the Plaintiff and his Counsel (EASTON & SONS) the Defendant's name and the Plaintiff's Counsel (EASTON & SONS) together with PLAINIFF, ERIC CHRISTIAN ARTHUR FORSTER, prepared Exhibit 5 - a plan of its ownership of the locus in 2007, the map being located in the defendant's file numbered LS 3414/10 captioned "Locus" dated 2010 attached to the defendant's same defendant's Exhibit 5 - a plan of land hereon and the survey plan numbered LCA 1045 dated 10<sup>th</sup> December 2007 which on page 2 of Exhibit 5 is the same delineation on 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendant's piece or parcel of land. In view of the fact that the principal contention is to measure the measurements along the Old Freetown Waterloo Road, Hastings, for section 1 of the map presented to have measurements taken along the same line namely from Beakon numbered B 675/07 shown on the survey plan numbered LS 3414/10 delineating the Plaintiff's piece or parcel of land hereon. As indicated on the said survey plan and also indicated from the said Beakon numbered B 675/07 showing a bearing of 248 degrees and 00 minutes, the distance to Beakon numbered B 675/07 along the Old Freetown Waterloo Road, Hastings, is 400 feet and 100 centimetres, and which the Plaintiff also claims to be the access road created by its own or parcel of land hereon. The Defendants contended that this point is the commencement point of the 25 feet access road when moving eastward along the Old Freetown Waterloo Road, Hastings, regarding the Plaintiff's piece or parcel of land hereon on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendant's piece or parcel of land. The Defendants claim that the difference of 10 feet from the distance shown on the survey plan numbered LS 3414/10 aforesaid is an encroachment into the 25 feet access road aforesaid. This Court holds the view that if the Defendants' claim aforesaid were to hold true, then measurements to be shown on survey plan numbered LCA 1045 delineating the Plaintiff's piece or parcel of land hereon should have been the 25 feet access road aforesaid (width and area) at the 90 feet point along the plan of the same aforesaid commercial motor, westwards along the Old Freetown Waterloo Road, Hastings. In this regard, the Court proceeds to have measured the plan.

along the Old Freedom Waterloo Road. Having found, common to both the start point of a proposed access road shown on Survey Plan numbered TCA 1045, moving westwards along the Old Freedom Waterloo Road to the aforesaid for a distance of 50 feet to Boreon numbered SLS 75/01/B13 moving at a bearing of 109 degrees and 30 minutes for a distance of 80 feet to Boreon numbered SLS 75/01/B22 and then at a bearing of 109 degrees and 30 minutes for a distance of 10 feet to Boreon SLS 75/01/B13 which is contained within the 25 feet access road shown on Survey Plan. The piece or parcel of land herein delineated on survey plan numbered TCA 3444/10 from the 25 feet access road 5 feet into the plaintiff's piece of land delineated on survey plan numbered TCA 1045. This Court proceeded to measure 25 feet from Boreon numbered SLS 75/01/B13 moving westwards along the Old Freedom Waterloo Road. Having aforesaid, as shown on Survey Plan numbered TCA 1045 and it found that the 25 feet aforesaid ended at a point 25 feet short of the 26 feet point where an access road created on the Plaintiff's piece of parcel of land herein delineated on survey plan numbered TCA 3444/10 terminated.

Consequently this Court holds the view that the access road created on the Plaintiff's piece of parcel of land as delineated on Survey Plan numbered TCA 3444/10 by the Defendants herein cannot be an encroachment into the 25 feet access road aforesaid as it is clear from the above and from the measurement taken on the ground in fact visible to the eyes and moreover that the 26 feet access road aforesaid is a duly constructed road on the plaintiff's piece of land aforesaid in view of the fact that the said Defendants are not in any way claiming title to the piece or parcel of land herein. This Court holds the view that the Plaintiff herein has proved that he has a better title to the piece or parcel of land herein against the said Defendants who have not shown any title to the same. This Court holds the view further that the actions of the Defendants herein above in creating a 26 feet road on the Plaintiff's piece of parcel of land herein amounts to trespass and that as a result the Plaintiff herein is entitled to Damages for trespass as claimed by him, though the same cannot now be assessed due to lack of evidence in that regard. In this view this Court holds the view that the said Plaintiff is also entitled to recovery of possession of the said

place or possession of the land in dispute for the purpose of determining the said Defendants' negligence in occupying the land in dispute as set out above. The Court held the view that the Plaintiff's case is fully supported by the information sought herein.

By reason of the above, this Court holds the view that on a balance of probabilities the Plaintiff's case has proved his case and gives judgment in his favour as follows:

1. That it is hereby Declared that the Plaintiff herein is the registered proprietor in possession of all that piece or parcel of land situated being parcel 10 of Old Waterloo Road, District of the Metropolitan Area of the State of Lagos measuring 0.1022 hectares and delineated on survey plan or reference IS 3414/10 dated 22<sup>nd</sup> October, 2010 attached to the Deed of Conveyance dated 16<sup>th</sup> May, 2012, made between ABDUL RAHMAN KAMARA, on the one part as vendor and PASTOR SOLUMON PARSONS the Plaintiff herein on the other part as purchaser and registered at No. 105 of 12 at page 93 in volume 662 in the record books of Conveyances kept in the office of the Registrar-General in Lagos.
2. That the Plaintiff RECEIVES from the Defendants jointly and severally Damages for being in the negligence aforesaid.
3. That the Plaintiff RECOVERS possession of that piece of land as aforesaid situated along and front of Old Waterloo Road being parcel 10 of the Area of the State of Lagos aforesaid from the Defendants and all others whom they have allowed occupation of.
4. That a perpetual injunction restraining the Defendants herein, whether by themselves, their servants, agents or privies from entering into or remaining on any portion of or putting any person in possession of and

from disposing of or in any other way from interfering with the said matter or process of law is hereby GRANTED.

That the Costs of and expenses on account of the action herein, the same to be taken in respect of the same to be borne by the Defendants jointly and severally.

*A. Halloway JA*

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HON. MR. JUSTICE ALLAN B. HALLOWAY JA

Delivered this 14<sup>th</sup> day of June 2019

*A. Halloway*