

IN THE HIGH COURT OF SIERRA LEONE  
(GENERAL CIVIL DIVISION)

BETWEEN:

BANKOLE DOHERTY  
(FOR HIMSELF AS BENEFICIARY  
OF THE ESTATE OF JOSEPH  
CHRISTOPHER JOHNSON)  
JOHN DOHERTY  
OLUDELE DOHERTY  
JANE DOHERTY  
(BY THEIR ATTORNEY  
BANKOLE A. DOHERTY)

- PLAINTIFFS/APPLICANTS

AND

MOHAMED KHALIL  
KOBBA LAHAI & LANSANA LAHAI  
(AS ADMINISTRATOR OF THE ESTATE  
OF LAHAI KOBBA SAFFA DIAGBOI)

- 1<sup>ST</sup> DEFENDANT/RESPONDENT  
- 2<sup>ND</sup> & 3<sup>RD</sup> DEFENDANTS/RESPONDENTS

**BEFORE THE HON. MR. JUSTICE JOHN BOSCO ALLIEU, J.A.**

**RULING DATED THE 1<sup>ST</sup> DAY OF JUNE 2021**

COUNSEL:

F. FORSTER  
M. DUMBUYA

- FOR THE PLAINTIFFS/APPLICANTS  
- FOR THE DEFENDANTS/RESPONDENTS

**RULING**

**I**

By Notice of Motion dated 4<sup>th</sup> October 2018, Counsel for the Plaintiffs/Applicants, F. Forster, applied on behalf of her clients herein for the following Orders pursuant to Order 17 Rule 1 of the High Court Rules 2007;

1. That this Hon. Court disposes of the matter herein above on points of law based on the construction of the documents referred to in the pleadings filed by the parties on the below stated questions;
  - (a) Whether or not in light of paragraph 9 of the Last Will and Testament of Joseph Christopher Johnson (Deceased) Testate, his widow Hannah Johnson had any right to grant and/or convey the property situate, lying and being at No. 1 Cape Palmas Street, Freetown to Sergeant Major Saffa Lahai considering that she only had a lifetime interest in the said property; and
  - (b) Whether or not in the absence of any proof of lawful ownership of the property situate lying and numbered No. 1 Cape Palmas Street, Freetown, Hannah Johnson can under the '*Nemo dat quod non habet*' principle, pass any good title to Sergeant Major Saffa Lahai; and



- (c) Whether or not the grant of Probate to one of the three Executors named in the Last Will and Testament of Joseph Christopher Johnson is an implied agreement of all the beneficiaries of the Estate of Joseph Christopher Johnson for the said Executor to dispose of property forming part of the said Estate; and
  - (d) Whether or not a Statutory Declaration predicted on an unregistered conveyance can confer a good root of title on Sergeant Major Saffa Lahai; and
  - (e) Whether or not in the absence of such a good root of title; Sergeant Major Saffa Lahai can lawfully lease the property to another party; and
  - (f) Whether or not the 1<sup>st</sup> Defendant can maintain and defend this action in light of the fact that the Lease Agreement from which his right to possession is derived has expired since the 30<sup>th</sup> day of September 2017 (25 years since 1<sup>st</sup> October 1992).
2. That if the answer to the abovementioned questions is in the negative, that this Hon. Court grants to the Plaintiffs/Applicants the reliefs prayed for in the amended Writ of Summons herein to wit:
1. A Declaration that the Plaintiffs are beneficiaries of the Estate of Joseph Christopher Johnson and are entitled to possession of all that piece or parcel of land situate lying and being at No. 1 Cape Palmas Street, Freetown.
  2. An Order that the Statutory Declaration dated 15<sup>th</sup> August 1983 registered as No. 190/83 at Page 73 in Volume 23 of the record books of Statutory Declarations be cancelled and expunged from the records of the Administrator and Registrar General in Freetown.
  3. A Perpetual Injunction restraining the Defendants, by themselves, their servants and/or agents or howsoever otherwise from trespassing and/or remaining on the Plaintiffs land.
  4. A Declaration that the Agreements and/or Conveyances flowing from the aforesaid Statutory Declaration are null and void.
  5. An Order expunging from the records of the Administrator and Registrar General all such aforesaid agreements and/or leases and/or Conveyances .
  6. Recovery of possession of the said piece or parcel of land.
  7. Damages for Trespass.
  8. Any further or other order that this Hon. Court may deem just.
  9. Cost.

In support of this Application is the Affidavit of Leon Jenkins-Johnston sworn to on 4<sup>th</sup> October 2018, and filed herein to which the following Exhibits are attached;

- “LJJ1” - Copy of Power of Attorney dated 3<sup>rd</sup> October 1998 and registered as No. 79/99 at Page 12 Vol. 68 of the Books of Powers of Attorney.
- “LJJ2” - Copy of Power of Attorney dated 3<sup>rd</sup> October 1998 and registered as No. 80/99 at Page 13 Vol. 68 of the Books of Powers of Attorney.
- “LJJ3” - Copy of Power of Attorney dated 3<sup>rd</sup> October 1998 and registered as No. 78/99 at Page 11 Vol. 68 of the Books of Powers of Attorney.
- “LJJ4” - Copy of Writ of Summons commencing this action dated 3<sup>rd</sup> February 2003.
- “LJJ5” - Copy of Vesting Deed dated 10<sup>th</sup> September 2002 and registered as No. 1169/2002 at Page 46 in Volume 557 in the Book of Conveyances kept in the office of the Administrator and Registrar General.
- “LJJ6” - Copy of the Last Will and Testament of Joseph Christopher Johnson dated 4<sup>th</sup> May 1951 registered as No. 15 at Page 34 in Volume 22 of the Book of Wills.
- “LJJ7” - Copy of Probate dated 13<sup>th</sup> January 1953 granted to Mrs. Hannah Johnson.
- “LJJ8” - Copy of Death Certificate of Mrs. Hannah Johnson dated 14<sup>th</sup> August 2001.



- “LJJ9” - Copy of the Death Certificate of Elizabeth Hannah Macauley dated 15<sup>th</sup> March 2005.
- “LJJ10” - Copy of a Statutory Declaration sworn to on 15<sup>th</sup> August 1983 and registered as No. 190/83 at Page 73 in Vol. 23 of the Books of Statutory Declarations kept in the office of the Administrator General.
- “LJJ11” - Copy of letter dated 23<sup>rd</sup> December 1961
- “LJJ12” - Copy of letter dated 21<sup>st</sup> December 1961.
- “LJJ13” - Copy of Lease Agreement dated 23<sup>rd</sup> February 1993 and duly registered as No. 29/93 at Page 102 in Volume 87 of the Book of Leases.
- “LJJ14” - Copy of Assignment Lease dated 11<sup>th</sup> December 1997 registered as No. 67/97 at Page 98 in Volume 91.
- “LJJ15” - Defence filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants dated 23<sup>rd</sup> December 2004.
- “LJJ16” - Copy of the Reply filed by the Plaintiff dated 5<sup>th</sup> January 2005.
- “LJJ17” - Copy of Court Order dated 26<sup>th</sup> June 2018 granting the Plaintiffs/Applicants leave to amend the Writ of Summons in this action dated 3<sup>rd</sup> February 2003.

Counsel relied on the entirety of her Affidavit in Support and made the Application pursuant to Order 17 Rule 1 (1) of the High Court Rules 2007.

Counsel for the Plaintiffs/Applicants submitted that her Application before this Hon. Court finally determines all the issues in this matter subject only to any possible Appeal. Therefore, this Application is a suitable one to be made pursuant to Order 17 Rule 1(1) of the High Court rules 2007.

She stated that the property in question situate at 1 Cape Palmas Street, Freetown, was the property of Joseph Christopher Johnson (deceased) and that ExLJJ6, his Last Will and Testament, is a Declaration made by the Testator in the form required in the Wills Act 1937, of what he desired to be done after his demise. It is to ensure that his wishes are carried out in his Appointment of Executors.

The wish of the Testator, Joseph Christopher Johnson (deceased) in this matter, according to her, is that his widow, Hannah Johnson holds the property at No. 1 Cape Palmas Street, Freetown, “for her natural life time”. The use of that phrase is therefore a limitation on the ownership of Hannah Johnson as it made her a Tenant for life.

She referred to part II (5) of the Settled Lands Act 1882 which defines a Tenant for Life and also Settlement. She submitted that the property which is the subject matter of the Application falls within that definition. She submitted that a person who is a Tenant for Life is entitled to the right of possession during his or her lifetime and that the right of possession does not translate to absolute ownership of property.

She further submitted that Hannah Johnson been the Life Tenant in this case was entitled only to possession of the property – a right which could be exercised by her actual possession or by Leasing the property to another and collecting the rents and profits thereof. But the rights of a Tenant for Life extinguishes upon her demise and the property either goes to a remainder man or reverts to the Testator.

She referred to the claims made by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants herein that Sergeant Major Saffa Lahai purchased the property from Hannah Johnson but that no Conveyance has been exhibited in this Hon. Court as proof of such sale. she submitted that no such sale took place. Even if the sale took place, Hannah Johnson had no right to absolutely convey the property because she did not have absolute ownership. Reliance was placed on the Latin Maxim “*Nemo dat quad non habet*” - the seller cannot pass a better title than he possesses.

Whatever title Hannah Johnson had to pass on to another party was extinguished upon her death and the right of the remainder men, who are the Plaintiffs/Applicants herein, comes into operation.



Counsel for the Plaintiffs/Applicants relied on the Washington's case (1573) where it was stated that he who has an Estate in land for life does not have an Estate longer than for his whole life.

She referred to Section 3(i) of the Settled Lands Act 1882 which provides that a Tenant for Life may sell the land which is the subject matter of the Settlement. The Power granted in that Section is not absolute. However, the Settled Lands Act 1882 is silent as to the circumstances in which such a sale is to take place.

She submitted that it cannot be the intention of the Legislature that an Act which makes Provision for the creation of a life tenancy will go on to give that life tenant power to deal with the property as if it were theirs absolutely. Referring to "Ex LJJ11", she submitted that Sergeant Major Saffa Lahai was aware that the property in question did not belong to Hannah Johnson absolutely. He was aware that she was only an Executor of the Estate and a life tenant. This, therefore, means that he had notice of the interests of the Plaintiffs in the property. He could not take the property as if the interests of the Plaintiffs did not exist.

In relation to paragraph C of her Notice of Motion dated 4<sup>th</sup> October 2018, she stated that an Executor is a person appointed by a Testator to ensure that the wishes contained in the Will is carried out. She submitted that an Executor is in a position of Trust and must ensure that their actions are in the interest of all the Beneficiaries under the Will. In doing this, the Executor should ensure that the Beneficiaries enjoy the benefits conferred upon them by virtue of the Will and they should not be deprived without their consent.

Counsel further submitted that where an Executor wishes to dispose of any property which forms part of his Estate, they must seek the consent of all the beneficiaries who had an interest in that property or obtain an Order of Court to sell the said property – referred to Section 21 of the Administration of Estate Act, Cap 45 of the Laws of Sierra Leone 1960.

Mrs. Hannah Johnson, the purported Vendor of the property was both an Executor and a Beneficiary of the Estate of Joseph Christopher Johnson. There is no evidence that she sought the consent of the other beneficiaries of the Estate or obtained an Order of the Court before allegedly disposing of the property at No. 1 Cape Palmas Street, Freetown. She submitted that the purpose of the purported sale was to deprive the Plaintiffs/Applicants herein of their beneficial interest under the Will and that this will be unjust.

In relation to paragraph (d) of the Notice of Motion dated 4<sup>th</sup> October 2018, Counsel for the Plaintiffs/Applicants submitted that a Statutory Declaration is a document by which a person seek to establish their possessory title to land, and it is usually sworn to by the person seeking to establish his title and two (2) other persons who are familiar with the said property. Sergeant Major Saffa Lahai and two (2) other persons swore to a Statutory Declaration in 1983, the same exhibited as "LJJ10". In his Declaration, he claimed that Hannah Johnson had sold the property to him and executed a Conveyance in his favour but the said Conveyance was never registered. The Statutory Declaration was sworn to after the demise of Hannah Johnson. She died in 1974 and the Statutory Declaration was sworn to in 1983. Counsel submitted that the Statutory Declaration does not and cannot confer a title on Sergeant Major Saffa Lahai and relied on the case of Wright Vs. Robert 1964 -66 ALR SL 156, a portion of the said case which was quoted in the case of Sorie Tarawally Vs. Sorie Koroma S/C Civ/App 7/2004 (unreported).

Counsel further submitted that the Statutory Declaration cannot extinguish the interests of the Plaintiffs which is derived under the Will of Joseph Christopher Johnson (deceased). She submitted that the interests of the Plaintiffs, in the absence of anything else, gives the Plaintiffs a better right to possession of the property and definitely gives them a better claim of title to the property.



In relation to paragraph (E) of the Notice of Motion dated 4<sup>th</sup> October 2018, Counsel for the Plaintiffs/Applicants submitted that it is only a person who is an owner of property and who is entitled to possession thereof can lawfully grant to another person a leasehold of that property. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents having been the Administrators of the Estate of Sergeant Major Saffa Lahai cannot lease the property to another person, as they had done because the said Sergeant Major Saffa Lahai neither owned nor was he entitled to possession of the property.

In relation to paragraph (F) of the Notice of Motion dated 4<sup>th</sup> October 2018, Counsel for the Plaintiffs/Applicants submitted that the 1<sup>st</sup> Defendant/Respondent has no interest in the property which is the subject matter of this action and as such cannot defend this action because he lacks the locus to do so. The Lease Agreement from which his rights to possession stems has expired by effluxion of time since September 2017 – refer to the Lease Agreement exhibited as “LJJ13”.

## II

Counsel for the Defendants/Respondents, M. Dumbuya, opposed the Application and referred to the Affidavit in Opposition deposed to by Lansana Lahai on the 13<sup>th</sup> day of March 2019.

She also referred to a Supplemental Affidavit in Opposition deposed to by her on 26<sup>th</sup> June 2019.

Attached to the Affidavit of Lansana Lahai are the following Exhibits;

- “LL1” - Copy of Letters of Administration obtained on 11<sup>th</sup> June 2003 in the Estate of Lahai Kobba Saffa Diagboi by Kobba Lahai and Lansana Lahai
- “LL2” - Copy of Letter of Probate granted to Hannah Johnson on 9<sup>th</sup> July 1954.
- “LL3” - Copy of a Vesting deed dated 10<sup>th</sup> September 2002 registered as No. 1169/2002 in Volume 557 at Page 46 of the Record Book of Vesting Deeds between Bankole A. Doherty as Lawful Attorney and Beneficiary of the one part AND John S. Doherty, Oludele Doherty and Jane Doherty as beneficiaries of the other part;
- “LL4” - Copy of Statutory Declaration sworn to by Lahai Kobba Saffa Diagboi on 15<sup>th</sup> August 1983 as the 1<sup>st</sup> Declarant.
- “LL5” - Copy of Court Order in respect of the matter intitled 1047/91 D. No. 45 between Magnus O. Doherty (Plaintiff) and Mohamed Khalil (Defendant).
- “LL6” - Copy of a Lease Agreement dated 23<sup>rd</sup> February 1993 made between Mohamed Lahai, Kobba Lahai, Patrick Jakka and Lansana Lahai of the one part and Fawzi Fayez Ayoub of the other part and registered as No. 29/93 in Volume 87 at Page 102 of the Record Book of Leases.
- “LL7” - Copy of a Lease of Assignment dated 11<sup>th</sup> December 1997 between Fawzi Ayoub of the one part and Kishore Shankerdas Mahboobani of the other part, the same registered as No. 67/97 in Volume 91 at Page 98 of the Record Book of Leases.
- “LL8” - Copy of Telephone bills in respect of No.1 Cape Palmas Street, Kroo Town Road, Freetown for the months of September and October 1983.
- “LL9” - City rate in respect of No.1 Cape Palmas Street, Kroo Town Road, Freetown from the Freetown City Council for the year 2000 to 2001.
- “LL10” - Copy of a Letter dated 11<sup>th</sup> May 1983 addressed to the Town Clerk of Freetown City Council together with various copies of correspondences relating to the issue of the house burnt down in a fire accident at No.1 Cape Palmas Street, Kroo Town Road, Freetown.
- “LLJ11” - Statement of Defence dated 23<sup>rd</sup> day of December 2004 filed on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup>



Defendants in respect of this matter.

Attached to the Supplemental Affidavit in Opposition deposed to on 26<sup>th</sup> June 2019 is;

“EX.MD1” - Copy of a Death Certificate in respect of Kobba Lahai, the 2<sup>nd</sup> Defendant herein.

Counsel for the Defendants/Respondents relied on the entirety of the Affidavit filed together with all the Exhibit attached.

Counsel for the Defendants/Respondents, M. Dumbuya, presented a written submission dated 27<sup>th</sup> February 2020, in which several points were argued.

She submitted that the Orders prayed for in the Notice of Motion dated 4<sup>th</sup> October 2018 are not suitable for determination without a full trial of the action to get the full facts and law that relates to the case before this Hon. Court. She made reference to the White Book at Page 200 under the rubric “Effect of the Rule” and submitted that with the use of the word “may”, it is not mandatory for the Court to apply the rule taking into consideration the operative words “may” and “appropriate case”. The content of the prayers set forth in the Motion are not appropriate to be dealt with in this Application as under the rubric “Effect of the Rule” provides that;

“if the only question and issue between the parties is one of law, it may be possible to decide this at this stage of a contended Application for an interim injunction determination may be made on an Application for interlocutory injunction” –

*Per Lord Jauncy in R.V. Secretary for Transport, Ex. P Factortame Ltd (No. 2) (1991) AC 603.*

She submitted that the prayers set out in the Motion of the Application and in their Writ of Summons are not just based on law but relates to evidence of facts as well – refer to claim No. 4 in “Ex LJJ4” in which the Applicants are seeking perpetual injunction in their claim. From the totality of the Respondents’ Affidavits before this Hon. Court, it cannot be said that the issues before this Court are only in respect of law and not facts. Other facts to be taken into consideration, according to her, are that the Respondents have been in occupation of the property since 1960 and even prior to the demise of Hannah Johnson. Further, the fact that the premises was burnt down whilst the Respondents and their deceased father were in occupation should be taken into consideration.

Other issues to be taken into consideration, according to her arguments under this limb are as follows;-

- (a) That a Statutory Declaration was executed and duly registered in favour of the deceased Father of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants which said reason for the Statutory Declaration is contained in paragraph 6 thereof. The Statutory Declaration is exhibited as “LL4”.
- (b) That there was a sale of the property by the said Hannah Johnson to the father of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents, Sergeant Major Saffa K. Lahai (deceased).
- (c) The deposition contained in paragraph 7 of the Affidavit in Opposition that since 1960 up to the time of his death in 1986, the said Sergeant Major Saffa Lahai “was in free open and undisturbed possession of the property at No. 1 Cape Palmas Street, Kroo Town Road, Freetown”,
- (d) The deposition contained in paragraph 14 of the Affidavit in Opposition that the Defendants/Respondents paid taxes for the said premises.

She submitted that claims No. 1,2,5,6,7,8, as contained in Ex LJJ4 - the Writ of Summons require



full trial in order to properly deal with the issues in dispute and deliver Justice. Witnesses can give evidence so that the Court will determine the peculiar events and facts that are present in this case which will enable her to arrive at the conclusion of whether it was lawful to grant the Orders prayed for against the Respondents and their deceased father who had lived in the property since 1960, undisputed, paying rates and has a Statutory Declaration duly registered.

It was submitted that the various purported registered documents exhibited must be duly tendered in Court by the Lawful Authorities, in order to verify their authenticity as duly registered and recorded in the lawfully designated court records and this can only be done in a full trial.

Counsel for the Defendants/Respondents referred to the case of *Doe Freeman Vs. Prince Claude Kaetu Smith (Executor of the Will of Ben Freeman) and Wlaegbeh Smith, Kloe Smith and Ben Kaetu Smith CC. 8/2008 F. No. 2 (unreported)* and submitted that it relates only to law and not facts as is evidenced in the present case before this Hon. Court.

She submitted that the requirements set out in the Supreme Court Practice at Page 100, Order 14A/2/2/3 have not been fully satisfied in order to grant the Orders prayed for by the Applicants in this Court. The entire Orders sought before this Court by the Applicants are not suitable to be dealt with as envisaged by our rules. In the present case, there are no questions before the court that are suitable for determination and if so, determined will not be final to settle the issues before the Court. The case before the Court depends on the facts and law and as such there is need for full trial in order to be fair to all the parties. The Declaration of title is a weighty issue with far reaching effects to be decided in a Motion Application where other issues are involved. There must be full trial.

The Order to expunge from the records any duly registered document is also weighty with far reaching effects and must thus be decided at a full trial.

She further submitted that from the entire evidence before the Court from both parties, it cannot be said that the Defendants/Respondents are bound to fail in their defence.

It was submitted that the claims for trespass requires evidence and from the totality of the Affidavits filed in this matter, it can be seen that the Defendants have been in occupation for many years. Even one of the Administrators, the deponent of the Affidavit in opposition has been on the premises the whole of his life, with the exception of when it was burnt down in 1983.

In relation to question A, Counsel for the Defendants/Respondents submitted that the Court should consider the position of a purchaser who purchased property from a tenant for life.

The fact that the deceased purported purchaser and the Respondent have lived on the property for such a long and disputed time since 1960 is indicative that they must have paid value for the property and are innocent purchasers for value. The sale was complete but the 1<sup>st</sup> Plaintiff/Applicant refused to accept it stating that whether Hannah Johnson obtained a loan or otherwise from the deceased purported purchaser, she had no right to sell the said property situate at No. 1 Cape Palmas Street, Kroo Town Road, Freetown.

In relation to question C, Counsel submitted that Hannah Johnson is a beneficiary to the property in dispute.

In relation to question D, Counsel submitted that there was a sale of the property and that the Statutory Declaration conferred ownership/possession issue on Sergeant Major Saffa Lahai (now deceased) which



said Statutory Declaration was duly registered in compliance with our Laws. He was an innocent purchaser for value. The deceased, Hannah Johnson, sold the said property to him since she was unable to repay the loan obtained from the said Sergeant Major Saffa Lahai.

Counsel for the Defendants/Respondents challenged the Vesting Deed, Ex LJJ5, of Bankole Doherty, the 1<sup>st</sup> Plaintiff/Applicant herein on the grounds that he had no business to vest the property in himself as he was not named Executor of the Estate of Joseph Christopher Johnson (deceased Testate). She maintained that the 1<sup>st</sup> Defendant/Respondent leased the property based on the Statutory Declaration and long possession. The Plaintiffs/Applicants, in this case, must succeed on the strength of their title and not on the weakness of the Defendant's title- refer to the *case of Seymour Wilson Vs. Musa Abess, Civ/App No. 5/79 (unreported)*.

Counsel for the Defendants/Respondents submitted that the Plaintiffs/Applicants are Statute barred by Section 5(3) of the Limitations Act 1961 and therefore cannot come to this Court to seek relief in 2003-2020 when, if any, their cause of action arose in 1961.

The said Section states as follows:

*"No action shall be brought by any other person to recover land after the expiration of twelve years from the date on which the right of the action accrued to him, or if it first accrued to some person through him he claims to that person"*

Cases referred to in respect of the above are:

*Mohamed Gassama Vs. Hannah Sama & Fouad Sheriff Civ/App 23 and 28/2008 (unreported)*  
*Baxter Vs. Wilson 1970 -71 ALR SL 351 at page 359 HC.*

Counsel for the Defendants /Respondents finally submitted that the Applicants Motion should not be entertained and must be struck out with costs because they have no business in this Hon. Court when Hannah Johnson sold the property intervivos to an innocent purchaser for value who ended up in possession since 1960 to date hereof.

### III

Counsel for the Plaintiffs/Applicants, F. Forster, filed an Affidavit in reply deposed to on the 11<sup>th</sup> June 2018 by Leon Jenkins-Johnston Esq. to which the following Exhibits are attached:

- "LLJ 1-3 " - Death Certificates of Magnus Oludele Doherty, Hannah Amba Johnson and Susannah Doherty
- "LLJ4" - Letter dated 21<sup>st</sup> December 1961.
- "LLJ5" - Letter dated 12<sup>th</sup> December 1982

Reliance was also placed on the entirety of the Affidavit and the exhibits attached thereto as well.



## IV

### **THE APPLICATION OF ORDER 17 RULE 1(1) OF THE HIGH COURT RULES 2007.**

This is an Application made pursuant to the above mentioned Order which states as follows:-

1(1) The Court may on the Application of a party or of its own Motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the court that:-

- (a) The question is suitable for determination without a full trial of the action; and
- (b) The determination will finally determine subject only to any possible appeal, the entire cause or matter or any claim or issue in the cause or matter.

The effect of the above-mentioned rule can be found in paragraph 14A/2/2 page 200 of the Supreme Court Practice 1991 Vol.1, Sweet & Maxwell, 1998, where it is stated that this Order empowers the Court to make a final determination of a question of law and further provides an alternative procedure to that provided by Order 5 Rule 4 by way of Originating Summons for the construction of a document or some other question of law.

Paragraph 14A/2/2 page 200 of the authority referred to went further to state the requirements of an Order 17 Rule 1(1) Application as follows:-

- (a) The Defendant must have given notice of intention to defend;
- (b) The question of law or construction is suitable for determination without a full trial of the action.
- (c) Such determination will be final as to the entire cause or matter or any claim or issue therein;
- (d) The parties had an opportunity of being heard on the question of law or have consented to an Order or Judgment being made on such determination.

In relation to the abovementioned requirements, I am of the considered view that they are prevalent in this pending application.

Further paragraph 14A/2/5 page 200 of the authority referred to went on to state the suitable question of law or construction and that the ambit of this application was considered by the Court of Appeal in the case of *Korso Finance Establishment Anstalt Vs. John Wedge* (unrep. Feb.15, 1994, CA Transcript No. 94/387) in which the following principles were laid down.

1. An issue is "a disputed point of fact or law relied on by way of claim or defence".
2. A question of construction is well capable of constituting an issue.
3. If a question of construction will finally determine whether an important issue is suitable for determination under this Order and where it is a dominant feature of the case a court ought to proceed to so determine the issue.
4. Respondents to an Application under this Order are not entitled to contend they should be allowed to hunt around for evidence or something that might turn up on discovery which could be relied upon to explain or modify the meaning of the relevant document. If there were material circumstances of which the Court should take account in construing the document, they must be taken to have been known, and could only be such as were known, to the parties when the Agreement was made. In the absence of such evidence the court should not refrain from dealing with the Application.



Having opined that taking all the circumstances into consideration, that this is a proper application to be made under Order 17 Rule 1(1) of the High Court Rules 2007, I will now proceed to address the issues requiring construction leading to a final determination of this action without recourse to a trial herein.

(a) **PARAGRAPH 9 OF THE LAST WILL AND TESTAMENT OF JOSEPH CHRISTOPHER JOHNSON (DECEASED) TESTATE.**

It states as follows:

*“I give and devise all that my house and land numbered 1 situate and being at Cape Palmas Street, in Freetown aforesaid unto and to the use of my dear wife Hannah Johnson for and during the term of her natural life and after her death or remarriage, I give and devise the same unto and to the use of Elizabeth Macauley for and during the term of her natural life and after her death to my grandchildren born of the said Susannah Cordelia Cashopeh Doherty absolutely forever as tenants in common.”*

From the above provision of the Will, it is apparent that:

- (a) *Hannah Johnson, widow of the Deceased Testate, Joseph Christopher Johnson, has a life time interest in the property Situate at 1 Cape Palmas Street, Freetown in so far as she did not remarry. If she remarried then her life time interest in the said Property is extinguished.*
- (b) *Elizabeth Macauley has a life time interest in the property situate at 1 Cape Palmas Street, Freetown but only after the death or remarriage of Hannah Johnson.*
- (c) *The children of Susannah Cordelia Cashopeh Doherty, who are the Plaintiffs/Applicants herein, Bankole A. Doherty, John Doherty, Oludele Doherty and Jane Doherty have an interest in the property situate at 1 Cape Palmas Street, Freetown as Tenants-in-Common but only after the death of Elizabeth Macauley.*
- (d) *There being no evidence that Hannah Johnson, widow, of the Testator, Joseph Christopher Johnson, remarried, she thus had a life time interest in the said property Situate lying and being at 1 Cape Palmas Street, Freetown.*

In Re Amos (1891) 3 ch. 159, it was established that a devise by a Testator to a beneficiary for his life and the life of his heir gives the beneficiary an Estate during his own life and that of his heir.



Applying the above principle laid down in *Re Amos* (1891) 3 ch. 159 to the instant case, taking Hannah Johnson and Elizabeth Macauley, both having a life time interest in the said property, gives Hannah Johnson an Estate during her own life time and thereafter to Elizabeth Macauley as well.

A Life Estate is referred to as property that an individual owns only through the duration of his/her lifetime. It is also referred to as a tenant for life and life tenant.

A life Estate has been defined as the vehicle by which the property owner or the grantor, transfers legal ownership to another person or the life tenant. Typically, the Deed will state that the occupant of the property is allowed to use it for the duration of his/her lifetime. The Estate cannot continue beyond the life of the beneficiary.

Most Deeds creating a life Estate will also name a remainderman, the person or persons who gets the property when the life tenant dies.

A life Estate is restrictive in that it prevents the beneficiary from selling the property before his/her death.

However, in our Jurisdiction, the Settled Land Act, 1882, which is Cap 38 of the Laws of Sierra Leone 1960 also applies. A Tenant for life is defined in Section 2(5) as follows:

*“The person who is for the time being, under a Settlement, beneficially entitled to possession of Settled land, for his life, is for the purposes of this Act the tenant for life of that land, and the Tenant for life under this settlement.”*

Part III of the Act's General Powers and Regulations states in Section 3(i) thereof as follows:

*“A tenant for life –  
May sell the settled land, or any part thereof, or any  
Easement, right or privilege of any kind, over or in  
Relation to the same;”*

Q1 - Whether or not in light of Paragraph 9 of the Last Will and Testament of Joseph Christopher Johnson (Deceased) Testate, his widow Hannah Johnson had any right to grant and/or convey the property situate lying and being at No. 1 Cape Palmas Street, Freetown to Sergeant Major Saffa Lahai considering that she only had a lifetime interest in the said property.

I have already considered the Legal principles relating to a tenant for life; the general legal principle restricting the holder of a life estate from disposing of property but rather to enjoy it during his/her lifetime and Cap 38 of the Laws of Sierra Leone 1960, the Settled Land Act, 1882, in Part III, Section 3(i) thereof, giving a tenant for life the power to dispose of property.

In the instant case, both Hannah Johnson and Elizabeth Macauley had respective life interest in the property situate lying and being at No. 1 Cape Palmas Street, Freetown, with the said Elizabeth Macauley required to enjoy her life Estate after Hannah Johnson would have enjoyed hers.



Hannah Johnson, a tenant for life, purportedly sold the property to Sergeant Major Saffa Lahai. By so doing, she did not only exclude the interest of the other life tenant, Elizabeth Macauley, from enjoying the property during her life time but the beneficiaries as well, the Plaintiffs who are the Testator's Grandchildren born of Susannah Cordilia Cashopeh Doherty and who were required to be Tenants in Common.

Referring to the principles laid down in *Re Amos* (1891) 3 ch.159, where there are respective holders of a life Estate, both of them are entitled to enjoy their said life interest.

Therefore, the purported acts of Hannah Johnson, a life tenant, to dispose of the property during her lifetime to Sergeant Major Saffa Lahai is not only unjust to the interest of the other life tenant, Elizabeth Macauley, but a deliberate ploy to exclude her and the remaindermen, the Plaintiffs herein from enjoying their own interests.

Although Section 3(i) of the Settled Land Act 1882, Cap 38 of the Laws of Sierra Leone 1960, gives a tenant for life power to dispose of a Settled Land, I am however of the considered view that such right is not an absolute one.

It would therefore be inconceivable for Hannah Johnson to dispose of the property well knowing that other interests are at stake all with the deliberate ploy of excluding the other life tenant, Elizabeth Macauley and the remaindermen, the Plaintiffs herein, from enjoying their own interests.

I am of the candid opinion that the purport of Section 3(i) of the Settled Land Act 1882, Cap 38 of the Laws of Sierra Leone 1960 is not to foreclose other life interest in the same property and that of remaindermen as well.

The answer to Q1 will therefore be in the NEGATIVE.

Q2 Whether or not in the absence of any proof of lawful ownership of the property situate lying and numbered No. 1 Cape Palmas Street, Freetown, Hannah Johnson can under the 'nemo dat quad non habet' principle, pass any good title to Sergeant Major Saffa Lahai.

The first question have already decided that Hannah Johnson only have a lifetime interest in the property situate lying and being at No. 1 Cape Palmas Street, Freetown. It follows that she cannot be the absolute owner of the said property.

In relation to the second question, what is uncontroverted here is that Hannah Johnson, on the 9<sup>th</sup> day of July 1954 obtained Probate in respect of the Estate of Joseph Christopher Johnson (deceased) Testate. She did so in her capacity as one of the Executors named in the Last Will and Testament of the said Joseph Christopher Johnson (deceased) Testate – refer "Ex. LJJ7" and "ExLL2" respectively. There is no evidence before this Hon. Court; according to the several exhibits filed by the respective Counsel in this matter, that Hannah Johnson as one of the Executors named in the said Last Will and Testament of Joseph Christopher Johnson (deceased) Testate and having obtained Probate to that effect in respect of the property situate lying and being at No. 1 Cape Palmas Street, Freetown, went on to obtain a Vesting Deed in respect of the said property.

In the absence of a Vesting Deed by Hannah Johnson as one of the Lawful Executors of the Last Will and Testament of Joseph Christopher Johnson (deceased) Testate and having obtained Probate to that effect, is there any proof of lawful ownership by her of the property situate lying and being at No. 1 Cape Palmas Street, Freetown, requiring her to pass any good title to Sergeant Major Saffa Lahai? Certainly not. Any



purported disposal of the said property by Hannah Johnson to Sergeant Major Saffa Lahai, in the absence of a Vesting Deed by the said Hannah Johnson, is of no legal effect.

The answer to Q2 will therefore be in the NEGATIVE.

Q3 - Whether or not the grant of Probate to one of three Executors named in the Last Will and Testament of Joseph Christopher Johnson is an implied agreement of all the beneficiaries of the Estate of Joseph Christopher Johnson for the said Executor to dispose of property forming part of the said Estate.

Paragraph 2 of the Last Will and Testament of Joseph Christopher Johnson (deceased) Testate states as follows:

*"I hereby nominate constitute and appoint my lawful wife  
Hannah Johnson of 23 Naimbana Street, Freetown aforesaid,  
Magnus O. Doherty and Susannah Cordelia Cashopeh  
Doherty (Nee Johnson) both of 25 Robert Street, Freetown  
aforesaid the Executors and Trustees of this my Will"*

From the abovementioned paragraph of the said Will there are 3 (three) Executors and Trustees named therein:

- (a) Hannah Johnson
- (b) Magnus O. Doherty
- (c) Susannah Cordelia Cashopeh Doherty (nee Johnson).

It was only Hannah Johnson who obtained Probate in respect of the said Estate on 9<sup>th</sup> July 1954. See "Ex LJJ7" and "Ex LL2" respectively.

She did so in her capacity as "One of the Executors named in the said Will."

Hannah Johnson obtained a loan of £500 (Five Hundred Pounds) from Sergeant Major Saffa Lahai which culminated in a purported sale of the property situate lying and being at No. 1 Cape Palmas Street, Freetown by the said Hannah Johnson to Sergeant Major Saffa Lahai.

The purported sale of the said property was stoutly challenged by Magnus O. Doherty who in a correspondence dated 23<sup>rd</sup> December 1961 informed Sergeant Major Saffa Lahai that the said Hannah Johnson only have a life time interest in the Estate that there are other beneficiaries of the said Estate and advised the said Sergeant Major Saffa Lahai to pursue the said Hannah Johnson for the loan as the same was personally obtained by her. See "Ex LJJ11".

Serious disagreements later on ensure between two (2) of the Executors; Hannah Johnson and Magnus O. Doherty as to their respective renunciation of their rights and title to the Probate and execution of the Last Will and Testament of Joseph Christopher Johnson (deceased) Testate. See "ExLL2".

The loan of £500 (Five Hundred Pounds) obtained by Hannah Johnson from Sergeant Major Saffa Lahai was for her own personal use and benefit. In a correspondence dated 21<sup>st</sup> December 1961 from Sergeant Major Lahai Saffa to Hannah Johnson, the same exhibited as "LJJ4", attached to the Affidavit in Reply dated 11<sup>th</sup> June 2018 by Leon Jenkins-Johnston Esq., the said Sergeant Major Saffa Lahai acknowledged that there are serious problems with respect to the said premises and requested the said Hannah Johnson to:



*“take immediate action either to refund the sum of £500 (Five Hundred Pounds) paid to you for the Sale of the property or alternatively arrange to prepare another Deed including the sales of all beneficiaries conveying the property.”*

Based on all the foregoing, it cannot be said that the grant of probate to Hannah Johnson as one of the three (3) Executors named in the Last Will and Testament of Joseph Christopher Johnson (deceased) Testate is an implied agreement of all the beneficiaries of the said Estate for the said Executrix, Hannah Johnson, to dispose of the property situate lying and being at No. 1 Cape Palmas Street, Freetown which forms part for the said Estate of Joseph Christopher Johnson (deceased) Testate.

The answer to Q3 will therefore be in the NAGATIVE.

Q4 Whether or not a Statutory Declaration predicated on an unregistered conveyance can confer a good root of title on Sergeant Major Safa Lahai

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents claimed titled to the premises situate lying and being at No. 1 Cape Palmas Street, Freetown, through their deceased father, Sergeant Major Saffa Lahai . They obtained Letters of Administration in respect of the said Estate as Lawful sons and next of kin of the deceased, Sergeant Major Saffa Kobba Lahai - see “Ex LL1”.

In paragraph 6 of the Affidavit in Opposition of Lansana Lahai, the 3<sup>rd</sup> Defendant/Respondent herein, the same deposed to on 13<sup>th</sup> March 2019, he had this to say:

*“I was informed by my father Sergeant Major Lahai K. Saffa and I verily believe that he bought the property situate at No. 1 Cape Palmas Street, Freetown, from Mrs. Hannah Johnson sometime In 1960 but that the Deed of Conveyance which was executed by the said Hannah Johnson was destroyed in a fire.”*

In paragraph 4 of the Statutory Declaration of Sergeant Major Saffa Kobba Lahai exhibited as “LL4” deposed to on 15<sup>th</sup> August 1983, he stated as follows:

*“That in the year 1960 the said Hannah Johnson sold the property aforesaid to me and after a Deed of Conveyance was prepared and executed by the said Hannah Johnson (deceased), it was witnessed by Patrick Jakka whom I had known in the Siera Leone Police force for many years.”*

In paragraph 5 thereof, it is stated that the said property was destroyed by fire in 1983.

What is portrayed here, in its simplest form, is that Hannah Johnson sold the said property to Sergeant Major Saffa Kobba Lahai in 1960. A Conveyance was executed to that effect but was unregistered and the said unregistered conveyance was in possession of the said Sergeant Major Saffa Kobba Lahai who omitted to register same. Hannah Johnson died on 29<sup>th</sup> June 1994 (see Ex. LJJ<sup>1-3</sup>)- 14 (fourteen) years prior to her death (1960-1974), the executed conveyance still in possession of Sergeant Major Saffa Kobba Lahai was not registered.



The situation still remained the same until the unregistered but executed conveyance was destroyed by fire in 1983, which is 23 (twenty-three) years after its execution thereof. Thereafter, in the same year, Sergeant Major Saffa Kobba Lahai declared in a Statutory Declaration that "he is the Estate owner, well acquainted with the property situate lying and being at No. 1 Cape Palmas Street, Freetown, and have been in possession and occupation uninterrupted and undisturbed enjoying the rents and profits therefrom." Sergeant Major Saffa Kobba Lahai died on 12<sup>th</sup> June 1986 – see "Exhibit LL1".

Counsel for the Plaintiffs/Applicants have now come up with the question whether the Statutory Declaration of Sergeant Major Saffa Lahai which is predicated on an unregistered conveyance can confer a good root of title on him.

*The Seymour Wilson Vs. Musa Abbess case, Civ/App No. 5/79 (unreported)* also underscores the importance that in order to establish a good root of title the declarant should have been in free open and undisturbed possession for at least 30 (thirty) years last past.

In the instant case, the good root of title of Sergeant Major Saffa Lahai, can only be traced to 23 (twenty-three) years, that is from 1960-1983. As for the unregistered conveyance, the circumstances leading to its non registration are so bizarre and untidy that it is doubtful whether there was really an executed but unregistered conveyance in possession of Sergeant Major Saffa Lahai which was burnt down in a fire incident in 1983.

Based on all the foregoing, the answer to Q4 will therefore be in the NEGATIVE.

Q5 - Whether or not in the absence of such a good root of title, Sergeant Major Saffa Lahai can lawfully lease the property to another party.

The answer to Q4 have already determined that Sergeant Major Saffa Lahai did not have a good root of title in respect of his Statutory Declaration of 15<sup>th</sup> August 1983.

However, he rented the said premises to a certain Tamba Nyumah Kemoh who lived therein for over 12 (twelve) years paying rents to him.

It must be noted that during this period, according to the Last Will and Testament of Joseph Christopher Johnson (Deceased) Testate, the life tenancy of the Estate now belonged to Elizabeth Macauley, Hannah Johnson having passed away on 29<sup>th</sup> June 1974.

It is my considered view that Elizabeth Macauley being a life tenant of the Estate from 29<sup>th</sup> June 1974 coupled with the fact that Sergeant Major Lahai Saffa did not possess a good root of title, the said Sergeant Major Saffa Lahai cannot lease or rent the property to another party more particularly from the period 29<sup>th</sup> June 1974 (the demise of Hannah Johnson) to 28<sup>th</sup> August 2004 (the demise of Elizabeth Macauley)

Based on the foregoing, the answer to Q5 will be in the NEGATIVE.

Q6 - Whether or not the 1<sup>st</sup> Defendant can maintain and defend this action in light of the fact that the Lease Agreement from which his right to possession is derived has expired since the 30<sup>th</sup> day of September 2017 (25 years since 1<sup>st</sup> October 1992).

Who really is the 1<sup>st</sup> Defendant, Mohamed Khalil in this matter?



From all the documents filed in respect of this matter, I was able to make out the following:

- (a) That there was a Lease Agreement dated 23<sup>rd</sup> February 1993 made between Mohamed Lahai, Kobba Lahai, Patrick Jakka and Lansana Lahai as Lessors of the one part and Fawzi Faye Ayoub as Lessee of the other part for a Lease term of 25 (twenty-five) years certain commencing from 1<sup>st</sup> October 1992 in respect of Land situate lying and being at No. 1 Cape Palmas Street, Freetown, in the Western area of the Republic of Sierra Leone the same registered as No.29/93 in volume 87 at page 102 in the Book of Leases – See “Ex. LJJ13” and “LL6” respectively.
- (b) That there was a Deed of Assignment dated 11<sup>th</sup> December 1997 made between Fawzi Ayoub as Assignor of the one part and Herkishin Kishore Shankerdas Mahboobani as Assignee of the other part for the unexpired term of the Principal Lease for the said property, the same registered as No. 67/97 in volume 91 at page 98 in the Book of Leases – see “ExLJJ14” and “LL7” respectively.

From the above, it is apparent that the 1<sup>st</sup> Defendant, Mohamed Khalil did not derive any right of possession to the property whether by lease or otherwise.

The property was demised for a period of 25 (twenty-five) years CERTAIN starting from 1<sup>st</sup> October 1992. The term expired on 30<sup>th</sup> September 2017. Therefore, any occupant of the property after 30<sup>th</sup> September 2017, in the absence of proper legal documents, is deemed to be a trespasser.

I failed to see any legal documents from which the 1<sup>st</sup> Defendant, Mohamed Khalil derived right of possession to the property situate lying and being at 1 Cape Palmas Street, Freetown after 30<sup>th</sup> September 2017. If he occupied the said property or continue to occupy it after the said period, then his occupation is unlawful as he has no legal basis to occupy same and he is therefore deemed to be a trespasser.

Based on all the foregoing, the answer to Q6 will be in the NEGATIVE.

## VI

There are other issues in dispute which this Hon. Court will now consider.

- (a) The Vesting Deed dated 10<sup>th</sup> September 2002 made between Bankole A. Doherty, as Lawful Attorney and Beneficiary of the Estate of Joseph Christopher Johnson of the one part and John S. Doherty, Oludele Doherty and Jane Doherty as Beneficiaries of the other part and registered as No. 1169/2002 in volume 557 at Page 46 in the Book of Conveyances.

Before instituting this action, the 1<sup>st</sup> Plaintiff, Bankole A. Doherty obtained a Vesting Deed in respect of the property situate lying and being at No. 1 Cape Palmas Street, Freetown – See “ExLJJ5” and “LL3” respectively.

Counsel for the Defendants/Respondents strongly argued that the 1<sup>st</sup> Plaintiff/Applicant, Bankole Doherty has no business to vest the property in himself because he is not an Executor of the Estate of Joseph Christopher Johnson and Probate of the Estate of the said Joseph Christopher Johnson was not granted to him. Therefore, the vesting Deed is of no legal effect as the Plaintiffs lacked legal authority to vest the property in themselves. Indeed, the Plaintiffs were not named as Executors in the Last will and Testament of Joseph Christopher Johnson (deceased) Testate.



But the Plaintiffs instituted this action in their Representative Capacity as “Beneficiaries of the Estate of Joseph Christopher Johnson” pursuant to order 6 Rule 4(1) (a) and 4(2) of the High Court Rules 2007.

Would obtaining a Vesting Deed in respect of the property situate lying and being at No. 1 Cape Palmas Street, Freetown, by the Plaintiffs herein, though not Executors of the said Estate defeats their cause of action against the Defendants or rather prevents them from instituting this action against the Defendants?

I do not think so. A Vesting Deed is essential if an Executor intends to dispose of property either by sale or otherwise.

In the instant case, there are no indications that the Plaintiffs intend to dispose of the said property in which case the arguments advanced by Counsel for the Defendants/Respondents would have been tenable. Obtaining a Vesting Deed is not a sine qua non for this action to be instituted by the Plaintiffs in accordance with Order 6 Rule 4(1) (a) and 4(2) of the High Court Rules 2007.

Therefore, the Plaintiffs, complying with the aforementioned Order and Rules of the High Court 2007, in instituting this action, suffices.

(b) The Statute of Limitations

Counsel for the Defendants/Respondents argued that this action is statute barred by virtue of the provisions of the Limitations Act No.51 of 1961. Section 5(3) of the Limitations Act 1961 states as follows:-

*“No action shall be brought by any other person to recover land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims to that person.”*

Referring to “ExLJJ11”, Counsel for the Defendants/Respondents submitted that this cause of action arose on 23<sup>rd</sup> December 1961 when Magnus O. Doherty, one of the Executors in the Last Will and Testament of Joseph Christopher Johnson (deceased) Testate wrote a letter to Sergeant Major Saffa Lahai in respect of the said premises situate lying and being at No. 1 Cape Palmas street, Freetown. Therefore the 12 (twelve) years period as provided in Section 5(3) of The Limitations Act 1961 should have elapsed taking it from the period 23<sup>rd</sup> December 1961 to the time this action was instituted by the Plaintiffs.

However, it must be recalled that as at the time referred to by Counsel for the Defendants/Respondents, that is 23<sup>rd</sup> December 1961, Hannah Johnson had a lifetime interest in the said property. She died in 1974. Thereafter, Elizabeth Macauley became entitled to her lifetime interest in the said property. The beneficiaries, that is, the Plaintiffs herein, only became entitled to the Estate as Tenants-in-Common upon the demise of Elizabeth Macauley.

In the following cases:

*Archer Vs. Iegan (1837) 8 sim.446*  
*Wellaston’s Settlement (1860) 27 B. 642*  
*Powirs Vs Matthews (1863) 11 W.R. 662*  
*Olney Vs. Bates (1855) 3Dr. 319*  
*Heasman Vs. Pearse (1872) 7 ch.660*  
*Re Milne (1888) 57 L.T. 828*



It was established that in the case of a gift to A for life, remainder to B for life, remainder to a class "then living" the word "then" refers to B's death, whether B dies before A or not.

Taking into consideration the above-mentioned principles as established, the interest of the Beneficiaries in respect of the property will be upon the demise of Elizabeth Macauley. It cannot therefore be said that this action is statute barred when the same was instituted by the Beneficiaries as at the time they became entitled to it and not in 1961 when as at that time, they had no interest in the said property; Hannah Johnson as at that time having a life interest.

## VII

The present scenario in respect of the Estate situate lying and being at No. 1 Cape Palmas Street, Freetown in the Western Area of the Republic of Sierra Leone.

In accordance with all that have been stated in this ruling, the state of affairs of the said premises, in its summary form, is as follows:

1. Hannah Johnson one of the Executors and a tenant for life in respect of the said premises died on 29<sup>th</sup> July 1994. See "Ex LLJ8".
2. Elizabeth Macauley, a tenant for life in respect of the said premises died on 28<sup>th</sup> August 2004. See "ExLJJ9".
3. Magnus O. Doherty, an Executor named in the Last Will and Testament of Joseph Christopher Johnson (deceased) Testate, died on 11<sup>th</sup> March 2002. See "Ex LJJ1" of the affidavit in Reply dated 11<sup>th</sup> June 2018
4. Susannah Cordelia Cashopeh Doherty (nee Johnson) one of the Executors named in the Last Will and Testament of Joseph Christopher Johnson (deceased) Testate died on 30<sup>th</sup> August 2001. See "Ex LJJ3" of the Affidavit in Reply, dated 11<sup>th</sup> June 2018.
5. Saffa Kobba Lahai, to whom the said premises was purportedly sold in 1960 by Hannah Johnson, one of the Executors and a tenant for life, died on 12<sup>th</sup> June 1986. See "Ex.LL1".
6. The 2<sup>nd</sup> Defendant, a lawful son and one of the next of kin of Saffa Kobba Lahai (deceased), died on 8<sup>th</sup> March 2010. See "ExMD1" of the Supplemental Affidavit dated 26<sup>th</sup> June 2019.
7. The 1<sup>st</sup> Defendant, Mohamed Khalil, having no interest in the said property, the Lease granted to Fawzi Fayeze Ayoub for a term of 25 (Twenty-five) years certain, the same having expired on 30<sup>th</sup> September 2017.
8. The Plaintiffs herein Bankole A. Doherty, John S. Doherty, Oludele Doherty and Jane Doherty, grand children of Joseph Christopher Johnson (deceased) Testate, they been the children of Susannah Cordelia Doherty (nee Johnson) one of the Executors named in the Last Will and Testament of the said Deceased Testate.
9. The Plaintiffs herein, Bankole A. Doherty, John S. Doherty, Oludele Doherty and Jane Doherty, having instituted this action as beneficiaries of the Estate in respect of the said property "absolutely forever as Tenants-in-Common" with all of them been alive.

And Counsel for the Plaintiffs/Applicants having posed Six (6) questions in her Notice of Motion dated 4<sup>th</sup> October 2018 in which all the answers given are in the NAGATIVE



VIII

COURT ORDERS

It is hereby ordered as follows:

1. That the Plaintiffs are the beneficiaries of the Estate of Joseph Christopher Johnson and are entitled to possession of all that piece or parcel of land situate lying and being at No. 1 Cape Palmas Street, Freetown, in the Western Area of the Republic of Sierra Leone.
2. That the Statutory Declaration dated 15<sup>th</sup> August 1983 registered as No. 190/83 at Page 73 in Volume 23 of the record books of Statutory Declarations be cancelled and expunged from the records of the Administrator and Registrar General in Freetown.
3. That a perpetual injunction is granted restraining the Defendants, by themselves, their servants and or agents or howsoever otherwise from trespassing and/or remaining on the Plaintiffs land.
4. That all agreements and or conveyances flowing from the Statutory Declaration stated in Order 2 hereof are null and void.
5. That all Agreements, Leases and or Conveyances emanating from Order 4 above be expunged from the records of the Administrator and Registrar General.
6. That the Plaintiffs are hereby entitled to recover possession of the piece or parcel of land situate lying and being at No. 1 Cape Palmas Street, Freetown, in the Western Area of the Republic of Sierra Leone.
7. That damages are awarded to the Plaintiffs for trespass, such damages to be assessed.
8. Costs of this Application to be borne by the Defendants/Respondents, if they can be traced, or if they are alive, such costs to be agreed upon by the respective Counsel in this matter, and if not agreed, such costs to be taxed.



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**HON. MR. JUSTICE JOHN BOSCO ALLIEU J.A.**