CC: 331/22 2022 B. N0.39

Between:

Anwar Baydoun

(Administrator of the Estate of Emad Ramez Baydoun) - Plaintiff/Applicant

(Suing by His Attorney Muna Baydoun)

Cape Light House Road

Freetown

And

Mohamed Sanussi Jalloh - Defendant/Respondent

N0.16 Percival Street

Freetown

Counsel:

B. S. Kamara, Esq. for the Plaintiff/Applicant

A. Bah, Esq. for the Defendant/Respondent

Ruling on an Application for the Disposal of this Matter on a Point of Law, Pursuant to Order 17 of the High Court Rules, 2007 Constitutional Instrument N0.8 of 2007 (Hereinafter referred to The HCR, 2007), Delivered on Tuesday, 23 April 2024, by The Hon. Justice Dr. Abou B. M. Binneh-Kamara, J.

1.1 The Application and Its Context

The application that this ruling determines was made by a notice of motion, dated 7th November, 2023 for the determination of this matter on a point of law. The application is supported by the affidavit of Muna Baydoun, businessman, of Cape Light House Road, Freetown of the Western Area of the Republic of Sierra Leone. The said Muna Baydoun being the lawful attorney of Emad Baydoun, the administrator of the estates of Anwar Baydoun. There are nine (9) exhibits attached to the said affidavit supporting the application. Again, a supplemental affidavit in support of the application was deposed and sworn to on 28th February, 2024 by Boniface Sidiki Kamara (the Applicant's Counsel), Barrister-at-Law and Solicitor of the High Court of Sierra Leone, and of Eddie Turay and Associates, Sanda Chambers, Sanders Street, Freetown, in the Western Area of the Republic of Sierra Leone. Contrariwise, the Respondent Counsel, did not file any affidavit in opposition to the application, even though he was given ample time to do so. The court's records clearly depict that he was aware of the application for the determination of this matter on a point of law. There is evidence on file that he was served with the requisite processes, culminating in the determination of this application.

In fact, before this Bench withdrew the file for a ruling, so many adjournments were taken; and a torrent of notices of hearing were sent to him, but he kept on sending in letters requesting so many unnecessary adjournments without filing any papers, opposing the application. A prudent practitioner would have really seen the need to file an affidavit in opposition to an application that had been on file for almost four (4) months, before it was heard. The Court is still oblivious of the reason(s) why the Respondent's Counsel decided not to contest the application. Consequent on the peculiarity of the facts of this case, the said Counsel cannot say he was not given the opportunity to be heard; or the Court prevented him from exercising his client's constitutional right to prevent his case. Nonetheless, it behoves any reasonable tribunal of facts to conscientiously exercise its functions consonant with the rule of law. So, when applications are made, whether the other side chooses to respond to them or not, it is the constitutional responsibility of the Courts to determine them on their merits; to the exclusion of any other extraneous considerations. Therefore, this Bench will now proceed to determine whether the application should or should not granted, based on the relevance, admissibility and weight of the evidence on file.

1.2 The Law

Sierra Leone's Superior Court of Judicature has continued to hand down quite a good number of decisions on decided cases that have no doubt shaped and guided the extent to which applications on disposal of cases on points of law are being made, as opposed to those on summary judgments. Whereas Order 16 of The HCR 2007, concerns summary judgment; Order 17 of same exclusively deals with disposal of cases on points of law. The application to be determined here is based on Order 17. This determination is underscored by a clear connect between two aspects of the applicable law in our jurisdiction. The first dovetails with the declaration of title to property in the Western Area; and the second is cognate with the adjectival law, regarding the circumstances, pursuant to which cases can be summarily adjudged or disposed of on points of law. The interconnectedness between these two areas of the law are thus articulated in 1.3 and 1. 4

1.3 *Declaration of Title to Property*

This aspect of Sierra Leone's civil law is structured on the country's land tenure system. The law concerning ownership of realty in the Provinces is different from that of ownership in the Western Area. So, it would be in contradistinction to the substantive law, should a writ of summons be issued by the Registry of the High Court of Justice in respect of any realty in any Chiefdom of any district of the Republic of Sierra Leone, concerning any dispute relative to a declaration of title to property {see Sections 18 and 21 of the Courts Act N0.31 of 1965}. However, questions concerning the determination of ownerships of realty in the Western Area, fall within the purview of the original exclusive jurisdiction of the High Court of Justice {as generically stated in Section 132 of Act N0. 6 of 1991 and pedantically articulated in the Third Schedule of the Courts Act N0.31 of 1965}. The jurisprudence of land ownership in the Western Area (as it has evolved with decided cases and the subsisting legal doctrines) is underpinned by two main considerations; vis-à-vis documentary and possessory titles.

1.3.1 Documentary Title.

Documentary title is by no means the only way (it is only one of the ways) by which the legal fee simple absolute in possession can be established in our jurisdiction. The question which must be addressed at this stage is what must claimants to actions that rely on documentary titles establish to convince a court of competent jurisdiction to declare that they are the owners of the estates of fee simple absolute in possession? This question was incisively unraveled by the Hon. Justice Dr. Ade Renner-Thomas C. J. in the locus classicus of Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004) in the following words:

> 'In the Western Area of Sierra Leone which used to be a crown colony before combining with the protectorate to become the unitary State of Sierra Leone at independence in 1961… the absolute or paramount title to all land was originally vested on the Crown in the same way as in England, the largest estate a person deriving title from the Crown can hold being the fee simple. After independence, such absolute title was deemed vested in the State as successor in title to the Crown. According to the State Lands Act N0.19 of 1960, all grants of such title made by the Crown and later the State was said to be made in fee simple as seen in section 2 of the State Lands Act aforesaid. Thus, a declaration of title in favour of a Plaintiff without more is shorthand for saying that the Plaintiff is seized of the said piece or parcel of land in fee simple'.

Significantly, what is clearly discernible from the above analysis, is that claimants seeking for declaration of titles to property in the Western Area, are obliged to trace their titles, to some grant by the Crown or the State. This point of law had hitherto been enunciated by the Hon. Justice Livesey Luke C. J. in the other locus classicus of Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) in the following words:

> 'But in a case for a declaration of title the Plaintiff must succeed by the strength of his title. He must prove a valid title to the land. So, if he claims a fee simple title, he must prove it to entitle him to a declaration of title. The mere production of a conveyance in fee simple is not proof of a fee simple title. The document may be worthless. As a general rule, the Plaintiff must go further and prove that his predecessor in title, had title to pass to him. And of course, if there is evidence that the title to the same land vest in some person other than the vendor or the Plaintiff, the Plaintiff would have failed to discharge the burden upon him'.

Meanwhile, the foregoing compellable point on declaration of title to property, was also echoed by The Hon. Justice Bash-Taqi in Rugiatu Mansary **v.** Isatu Bangura (Civ. APP. 49/2006: Unreported) in the following laconic statement:

> 'The law is settled that when the issue is as to who has a better right to possess a particular piece of land the law will ascribe possession to the person who proved {sic} a better title'.

However, does the mere registration of an instrument, pursuant to section 4 of Cap. 256 of the Laws of Sierra Leone, 1960 (As Amended), ipso facto, confer title to that holder of a registered instrument? Does Cap.256 in fact deal with registration of title? Thus, I will answer the first of these two questions in the

negative; and simultaneously provide succour for this position with another notable quotation from Livesey Luke, C.J. in Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79):

> 'Registration of an instrument under the Act (Cap. 256) does not confer title on the purchaser, lessee or mortgagee etc., nor does it render the title of the purchaser indefeasible. What confers title (if at all) in such a situation is the instrument itself and not the registration thereof. So*, the fact that a conveyance is registered does not ipso facto mean that the purchaser thereby has a good title to the land conveyed. In fact, the conveyance may convey no title at all'* (my emphasis in italics).

Thus, it logically and legally follows from the foregoing that the said statute, does not deal with registration of title. This is clearly seen in its long title, which reads 'An Ordinance to Amend and Consolidate the Law Relating to the Registration of Instruments'. The principal thrust of the statute thus concerns 'registration of instrument' and 'not registration of title'. And there is no provision in all its thirty-one (31) sections and three (3) schedules, that speaks about 'registration of title'. Thus, Livesey Luke C.J., in the aforementioned locus classicus, espoused the fundamental distinction between 'registration of instrument' and 'registration of title' by reference to the position in England and with a clearly articulated thought experiment (rationalised in his analysis between pages 74 and 81):

> '… it should be made abundantly clear that there is a fundamental and important difference between registration of instruments and registration of titles. Cap 256 does not provide for, nor does it pretend to contemplate, the registration of titles. It states quite clearly in the long title that it was passed to provide for the registration of instruments' (see page 76).
>
> '… the mere registration of an instrument does not confer title to the land effected on the purchaser etc. Unless the vendor had title to pass or had authority to execute on behalf of the true owner…' (page 78)

Essentially, the following salient points must be singled out (from the above analysis) with the apposite prominence and valence, for purposes of the analytical component of this ruling:

1. A claimant that relies on any title deed will succeed on an action for a declaration of title to property on the strength of that title deed.
2. The mere production of a conveyance (title deed) in fee simple is no proof of a fee simple title, because such a conveyance can even be worthless.
3. The claimant must go further to prove that he/she factually acquired good title from his/her predecessor in title.
4. In the circumstance where there is evidence that title to the same land vests in another person other than the claimant or his predecessor in title (vendor), declaration cannot be done on his/her behalf.

1.3.2 Possessory Title.

Another way by which Plaintiffs can stablish their case for declaration of fee simple titles to land is through long term possession. Meanwhile, in Swill **v.** Caramba-Coker (CA Civ. App. N0.5/71), this long-term possession is deemed to span for up to forty-five (45) years. Nevertheless, the test in the aforementioned case, was taken to another level by the Supreme Court in Sorie Tarawallie **v.** Sorie Koroma, referenced above. Thus, I will deal with

the level to which the test has been taken as this analysis unfolds. However,

the most immediate question that can be posed at this stage is whether proof of possessory (as opposed to documentary) titles, can be sufficient to establish good titles, for declaration of fee simple titles to property.

Thus, the Courts' decisions in Cole **v.** Cummings (N0.2) (1964-66) ALR S/L Series p. 164, Mansaray **v.** Williams (1968-1969) ALR S/L Series p. 326, John and Macauley **v.** Stafford and Others SL. Sup. Court Civ. Appeal 1/75, are articulately indicative of instances in which judgments have been entered in favour of owners of possessory titles, in even circumstances where their contenders, were holders of registered conveyances. This position is also satisfactorily bolstered by Livesey Luke C. J. in Seymour Wilson **v.** Musa Abbes, referenced above (see page 79):

> 'I think it is necessary to point out that until 1964, registration of instruments was not compulsory in Sierra Leone. It was the Registration of Instruments (Amendment) Act, 1964 that made registration of instruments compulsory in Sierra Leone. So, there are possibly hundreds of pre - 1964 unregistered conveyances … it would mean that any person taking a conveyance of a piece of land after 1964 from a person having no title to the land and duly registering the conveyance would automatically have title to the land as against the true owner holding an unregistered pre-1964 conveyance. The legislature would not have intended such absurd consequences'.

Furthermore, the Hon. Justice Dr. Ade Renner-Thomas C. J. in Sorie Tarawallie **v.** Sorie Koroma (referenced above), as an addendum to this issue of possessory title, stated that a claimant who relies on possessory title (either by himself or his predecessor in title), must prove more than just mere possession; he must go further to establish a better title not only against the defendant, but against any other person. This can be done by proving that the title of the true owner has been extinguished in his favour by the combined effect of adverse possession and the statute of limitation. This legal position is strengthened by subsection (3) of section 5 of the Limitation Act N0.51 of 1961, which thus provides:

> '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 occurred to him, or if it first accrued to some person through whom he claims to that person'.

Essentially, the following salient points must be singled out (from the above analysis) with the appropriate prominence and valence, for purposes of the analytical component of this ruling:1. Possessory title is as weighty in evidence as documentary title. 2.Claimants that rely on possessory titles must go beyond proving more than just mere long-term possessions.3. They must go further to establish a better title not only against the Defendant, but against any other person.4. They can do so by establishing that the title of the true owner has been extinguished in their favour by the combined effect of adverse possession and the statute of limitation. Meanwhile, it has since been common in our jurisdiction, for possessory title to be transformed into documentary title. This practice, regarding ownership of realty in the Western Area, has been sanctioned by the requisite provisions of the Statutory Declaration Act of 1835, which is applicable in Sierra Leone, by virtue of the reception clause: Section 74 of the Courts Act of 1965. Thus, statutory

declarations' recital clauses posit that declarants or their predecessors, have or had been in possession and control of the lands, as demarcated in their survey plans, attached to such declarations, as documentary proves of titles. Since statutory declarations are registrable instruments, their holders are bound to register them, pursuant to Section 15 of Cap. 256 of the Laws of Sierra Leone, 1960. Upon being registered, they become admissible in evidence for purposes of litigation, by virtue of Section 3 of the Evidence (Documentary) Act, Cap. 26 of the Laws of Sierra Leone 1960. The locus classicus of this legal position in our jurisdiction is Roberts **v.** Bright (1964-1966) ALR S.L 156. However, it should be noted, that the mere registration and admissibility in evidence of a statutory declaration does not presuppose the establishment of a valid title. In Fofanah **v.** Kamara (1964-66) ALR S.L 413 Livesey Luke Ag. **J.** as he then was, held that 'a statutory declaration is no prove of title'. To this, I will bring in the addendum that the facts in the registered instrument, might have been concocted and hence misleading. Therefore, a statutory declaration might be as useless as any fictitious evidence, that a reasonable tribunal of facts, can easily relegate to the doldrums. So, a statutory declaration should only be considered as evidence of title (not as a document of title). Its relevance is coterminous to any other admissible evidence (oral or documentary). Thus, the weight to be attached to it, is contingent on the decision of the Courts.

1.3.3 Title by Succession and Inheritance

A third category of the law that is as well cognate with declaration of title to property is embedded in the law of succession and inheritance. This aspect of property law, is not unconnected with the acquisitions of property by documentary and possessory titles. The acquisition of title by inheritance resonates with the rules of testate and intestate successions. The law on succession and inheritance is also inextricably linked with a plethora of rules in the law of equity and trusts. The Wills Act of 1837 (which is applicable in our jurisdiction by virtue of section 74 of the Courts Act of 1965) is very instrumental in the determination of cases, concerning 'testate succession'. Nevertheless, the position of the law on 'intestate succession' is principally within the purview of the Devolution of Estates Act N0.21 of 2007 and the Administration of Estates Ordinance, Cap. 45 of the Laws of Sierra Leone, 1960. The beauty and novelty in our jurisdiction of Act N0.21 of 2007 (which amended specific portions of Cap. 45) is that it concerns testate and intestate successions. Thus, originally, Cap. 45 of the Laws of Sierra Leone 1960, was not applicable to intestate successions, regarding the estates of Muslims. The estates of Muslims who died intestate, were statutorily administered under Cap.96 (The Mohammedan Marriage Ordinance) of the Laws of Sierra Leone, 1960. Nonetheless, the estates of Muslims, who died intestate can now be administered, pursuant to the provisions of Act N0.21 of 2007.

Section 38 of same accordingly amended Section 9(1) of the Mohammedan Marriage Ordinance, Cap. 96. However, what is more important for this analysis is that, both Cap. 45 and Act N0.21 of 2007 are germane to the determination of cases of intestate succession. Analytically, the law concerning intestate succession in both statutes is this: When deceased persons did not will their estates to any beneficiaries, their spouses are bound to take out Letters of Administration in the Probate Registry of the High Court of Justice. This done, they must proceed to take out vesting deeds in respect of such estates. Nonetheless, in circumstances wherein Letters of Administration have not been taken, the estates vest in the Administrator and Registrar-General, until that

statutory procedure is fulfilled. Thus, in such circumstances, persons meddling with such estates are dubbed interlopers, because the estates have not yet been vested in the beneficiaries.

1.4 Disposal of Cases on Points of Law

This aspect of the ruling concerns issues relating to evidence and procedure, which is broadly considered as the principles of adjectival law. Evidentially, in actions for declarations of fee simple titles to land, the legal burden of proof, regarding ownerships is on the claimants, who must establish their cases on balance of probabilities. But in situations where defendants counterclaimed ownerships, they assume the same legal burden as the claimants. In general, questions on declaration of titles to land in the Western Area hardly go beyond three factual situations, which the High Court of Justice, has mostly been grappling with. Such questions often concern situations, where the same piece or parcel of land is claimed by both parties. Where there are two separate pieces or parcels of land adjacent to each other and there are indications of encroachment and trespass unto the other. And where two separate and distinct pieces or parcels of land (that are not adjacent at all), but one of the parties is relying on his/her own title deed to claim the other. Thus, regarding all the foregoing permutations, the parties to the disputes, are procedurally obliged to file their respective pleadings and the Court is bound to give appropriate directions, pursuant to Order 28 of the HCR 2007, before even the appropriate notices of motions are filed, setting such matters down for trials. Nonetheless, without even proceeding to trials, Order 17 Rule 1 (1) of The HCR 2007, directs Judges of the High Court of Justice, to dispose of any case (including that which concerns a declaration of title to property) on points of law. The sub-rule thus reads:

> '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 the matter subject only to any possible appeal, the entire cause or matter or any claim or issue in the entire cause or matter'.

Thus, the authors of the English Supreme Court Annual Practice 1999, extensively unpacked the criteria that shall be met for courts of competent jurisdictions to grant such orders; and the significance of Order 17 (in the civil litigation process) in their quite pedantic analysis found between paragraphs 14A/1 and 14A/2 of Pages 199 - 202. Significantly, a point which the said authors made quite prominent is that the foregoing provision has to be read and interpreted in tandem with particularly Orders 16 (dealing with summary judgment) and 21 Rule 17 (concerning the striking out of pleadings by courts of competent jurisdiction). Thus, an analysis of the above provision, consequent on the analytical exposition in the English Supreme Court Annual Practice 1999, depicts the following salient points about the aforementioned provision.

First, it is entirely directory and (not mandatory). This is by virtue of the semantic value of the auxiliary verb 'may' as used in the very sentence preceding Paragraph (a) of Sub-rule (1). Second, the disposal of any matter on appoints of law can be done pursuant to applications made by either of the parties to the litigations, or by the Court on its own volition. Third, in circumstances where

the Court is bound to deal with the construction of any document, it can at any stage of the proceedings do so, where it is inter alia satisfied, that such task can be done, without any need for a trial. Analytically, the foregoing interpretation of the provisions in Order 17, strikes a chord with that of the Hon. Mr. Justice Fynn, J.A. in Betty Mansaray and Others **v.** Mary Kamara Williams and Another (Misc App. N0. 4 of 2017) {2018) SLCA 1277 (10 June 2018). Meanwhile, in circumstances wherein the Court is bound to deal with the construction of any document, it can at any stage of the proceedings do so, where it is inter alia satisfied, that such task can be done, without any need for a trial. Nonetheless, this Honourable Court is mandated not to determine such a question, unless the parties have had an opportunity of being heard on that question; or consented to an order or judgment on the determination {see Sub-rules (3) and (4) of Rule 1 of Order 17 of The HCR, 2007}. The significance of Order 17 applications is seen in the basic facts that they can save the courts, the barristers and the litigants, from going through the protracted trial processes that are quite expensive and time consuming. Essentially, should the facts of a case depict that it can be disposed of on a point of law, it would be therefore legally and rationally expedient for it not to proceed to trial.

1.4.1 Summary Judgment

Thus, it should be noted that the application to be determined is also not devoid of the considerations in Order 16, which concerns summary judgment. The authors of the English Supreme Court Annual Practice of 1999 (The White Book), upon which Sierra Leone's HCR 2007 is constructed, clearly articulated the legal significance of Order 16 applications, regarding summary judgments, between pages 162 and 199. The authors' pontification in Paragraph 14/1/2 found in page 163 is so pertinent to the Court's jurisdiction (in its determination of applications on summary judgments), that I am obliged to replicate here:

> 'The scope of Order 14 (Order 16 of The HCR 2007) proceedings is determined by the rules and the Court has no wider powers than those conferred by the rules nor any other statutory power to act outside and beyond the rules or any residual or inherent jurisdiction where it is just to do so' (*my emphasis in italics*).

Thus, the importance of Order 16 is justified in circumstances wherein there are certainly or rather plainly, no available defences to negate the statement of claims. Further, applications for summary judgments are as well rationalised in circumstances, wherein the defences to specific claims are constructed on an ill-conceived or unfounded points of law. The Courts' decisions in C.E. Health plc **v.** Ceram Holding Co. (1988) 1 W.L.R 1219 at 1228 and Home Office **v.** Overseas Investment Insurance Co. Ltd. (1990) 1 W.L.R. 153-158, are quite instructive on this realm of procedural justice. Rules 1, 2 and 3, which are the structural architecture upon which Order 16 applications are constructed, depict the following conditions precedent to enter an order for summary judgment: - the defendant must have filed a notice of intention to defend; the statement of claim must have been served on the defendant and the affidavit supporting the application must have complied with Rule 2(1) of Order 16. That is, the deponent of the facts to the affidavit must have been certain that there is indeed no defence to part of or all of his/her claims. This presupposes that it is a crucial condition precedent that the application's supporting affidavit, must have unequivocally serialised and verified the facts of the case, the cause of action, what is being claimed, and the conviction that there is no defence to the action, must as well be supported by the facts. However, a court of

competent jurisdiction, frowns at granting a summary judgment order, in every circumstance, wherein the affidavit evidence depicts, that there are contentious and triable issues, which can only be determined, pursuant to the conduct a full-blown trial.

The criticality of an Order 16 application is that, should the court grant it, in an instance wherein it should not be granted; the defendant is automatically denied the opportunity of benefiting from the fruits of a fair trial, conducted by an independent and reasonable tribunal of facts. And this will be certainly interpreted as a violation of the constitutional principle, that justice should not only be done, but it must be seen done {see Sections 23 (1), (2) and (3) and 120 (6) of Act N0.6 of 1991}. The Hon. Justice V. A. D. Wright, J.S.C., in Aminata Conteh **v.** The All Peoples Congress (SC. Civ. App. 4/2004) commented obiter, on the criticality of summary judgment, in the following explicit statement:

> The object of the order is to ensure a speedy conclusion of the matters or cases where the plaintiff can establish clearly that the defendant has no defence or triable issues. This draconian power of the court in preventing the defendant from putting his case before the court must be used judiciously. A judge must be satisfied that there are no triable issues before exercising the discretion to grant… a summary judgment. The judge is also obliged to examine the defence in detail to ensure that there are no triable issues.

Thus, the rationale for a critical examination of the defence is crucial to the granting of a summary judgment order. This process entails the ability to discern defences that are sham, concocted and fanciful, from those that are factual, genuine and clothed with real prospects of success {see Swain **v.** Hallman and Another (2001) All ER page 91}. The process further requires a clear sense of ratiocination and judicial discernment. Significantly, the granting of a summary judgment, behooves a reasonable tribunal of facts, to thoroughly unpick and unpack the facts, relative to the substantive law and the procedural rules, underpinning the application. This has been the approach that has guided the courts in making orders of summary judgments.

1.5 The Analysis

In this triangulated analysis, I will first unpack the case for the Applicant, before proceeding to unpick the Respondents' case, in the context of the application. Thus, an examination of the papers filed, does not expose any procedural incongruence that would have warranted the Court to strike out the application on the ground of any procedural nullity. Nonetheless, what is befitting to determine at this stage, is whether the application, resonates with the dictates of Order 17 of The HCR, 2007, concerning the discontinuation of this matter on points of law. This approach clearly necessitates the need to put the facts of this case in a clear perspective. Thus, the ownership of the realty which is being contended was a State land. The realty was initially put on a three (3) lease to Fathmeh Baydoun on the 28th day of February 2020(see Exhibit MB4). Subsequently, she requested from the Ministry of Lands, Housing and Country Planning for a permission to erect a perimeter fence on the realty. The permission was eventually granted on the 6th day of September 2022(see Exhibit BM5). Fathmeh Baydoun expended huge sums of money in erecting the fence and simultaneously developing the land. This was in compliance

with the terms of the lease.

The Ministry of Lands, Country Planning and the Environment, later granted freehold to her. She met the financial terms of the purchase price and was given a receipt in acknowledgement of her payment. The offer letter of the freehold is marked Exhibit MB6. The Government of Sierra Leone, through the Ministry of Lands, Country Planning and the Environment, executed a conveyance (see ExhibitMB7) dated 25th day of April 2018, passing title of the realty to Fathmeh Baydoun. The said conveyance was registeredasN0.888/367008/2018 at Volume 809 in page79 of the Record Book of Conveyances of 2018, kept in the Office of the Administrator and Registrar-General at Walpole Street, Freetown in the Western Area of the Republic of Sierra Leone. The Applicant is the Administrator of the Estates of Emad Baydoun(deceased). And Emad Baydoun became the fee simple owner of the realty by virtue of a Deed of Settlement dated the 22nd day of February, 2018 and duly registered as N0. 77/2018at Volume 136 in page 33 of the Record Books of Deed of Settlement kept in the Office of the Administrator and Registrar-General (see Exhibit MB8) executed in his favour by Fathmeh Baydoun.

The Respondent's case is based on only a letter of request for a lease in respect of the very realty, which the Government of Sierra Leone had already given freehold to Fathmeh Baydoun, from whom Emad Baydoun's title is claimed. Significantly, since the 14th day of March 2023, when an order was made for the Ministry of Lands, Country Planning and the Environment to be made a party to this action, no appearance was entered until after this matter was withdrawn for a ruling on this application on the 19th day of March 2024.And considering the seriousness of this application, it would be unfair for it to be left to fester undetermined. In fact, one wonders why the Respondent chose to bring the Ministry of Lands, Country Planning and the Environment into this matter. Paragraph 6 of the affidavit supporting the ex parte notice of motion, dated the 7th day of March,2023, requesting that the said Ministry be made a party to this action states:

> 'The proposed thirty lease the 'res' of this action to the Defendant and as such owes the defendant a continuous implied and expressed covenant of quit enjoyment and a duty to indemnify the Defendant from any adverse claim to his use and enjoyment'.

The foregoing paragraph is quite misleading, because there is nothing in evidence, depicting that the Ministry had granted any leasehold of any realty to the Respondent. In fact, it is impossible for the Ministry to put on lease a realty, for which there is a subsisting freehold, which it had transferred to another person.

I will now proceed to answer the main question upon which the other subsidiary questions to this application is based. The question is whether the Applicant is a bona fide purchaser of the freehold interest of the realty at Cape Light House Road, Aberdeen, Freetown offered to his predecessor (Fathmeh Baydoun) by the Ministry of Lands, Country Planning and the Environment, pursuant to a Conveyance executed by the Government of Sierra Leone on behalf of the said Fathmeh Baydoun? Thus, it should be noted that the Respondent according to the evidence, has not contended the ownership of the Applicant, by filing any affidavit in opposition. In fact, he has not directly negated the documentary title to the realty which the Applicant has claimed. Nonetheless, the fact that the Respondent, has not directly challenged the Applicant's title deed, does not presuppose that this tribunal of facts, cannot probe into whether the Applicant has acquired the realty, pursuant to the requisite statutory processes. First, the Applicant's predecessor (Fathmeh Baydoun) applied for a lease of the realty from her predecessor-in-title (the State). Second, the leasehold was transformed into freehold. Third, the State got a lawyer (Osman Kanu Esq.) attached to the Law Officers' Department, in the Office of the Attorney-General and Minister of Justice, to prepare a conveyance. Fourth, the conveyance was signed by the appropriate authorities in the presence of representatives from the Ministry of Lands, Country Planning and the Environment. Fifth, the conveyance was registered as N0.888/367008/2018 in Volume 809 at page 77 of the Records Book of Conveyances of 20i8, kept in the Office of the Administrator and Registrar-General, Roxy Building, Walpole Street. Lastly, the said conveyance, which authenticity has not been challenged, has been accordingly exhibited. Again, the fact that the Applicant has produced a conveyance in respect of the realty in dispute does not mean that the Court can now proceed to declare that he owns the property.

Thus, a claimant that relies on any title deed, according to The Hon. Justice Livesey-Luke C.J. in Seymour Wilson **v.** Musa Abess (referenced above) and The Hon. Justice Dr. Ade Renner-Thomas, C.J. in Sorie Tarawallie v. Sorie Koroma (referenced above), will succeed in an action for declaration of title to property after having successfully established: the strength of his/her title deed; the mere production of a conveyance (title deed) in fee simple is no proof of a fee simple title, because such a conveyance can even be worthless; the claimant must go further to prove that he/she acquired good title from his predecessor in title; in the circumstance where there is evidence that title to the same land vests in another person other than the claimant or his predecessor in title (vendor), declaration cannot be done on his/her behalf. Characteristically, it is clear from the foregoing evidence, that the Applicant's case meets the threshold established, in the aforementioned locus classicus, for a declaration of title to property. In the light of the above analysis,

I therefore declare as follows:

1. That the Applicant is the fee simple owner and/or person well and sufficiently entitled to possession of the land encroached by the Respondent situate, lying and being at Light House Off Cape Road, Aberdeen Freetown, in the Western Area of the Republic of Sierra Leone, which is more particularly delineated on survey plan LOA N0.3853 attached to the Deed of Conveyance, dated 25th April 2018 duly registered as N0.888/2018 at page 77 in Volume 809.
2. The cost of this application assessed at Le20,000, 00 shall be borne by the Respondent.
3. I so order.

The Hon. Justice Dr. Abou B. M. Binneh-Kamara, J.

Justice of Sierra Leone's Superior Court of Judicature.

Thus, a Deed of Conveyance, dated 1st February 2008, was characteristically executed on behalf of the Government of Sierra Leone, transferring ownership of all that piece or parcel of land situate, lying and being at Off Pademba Road, Back of PWD Quarter, Freetown. And that a deed of conveyance, acknowledging the transfer of ownership from the Government of Sierra Leone to the Applicant was prepared and registered as N0. 232/2008 at page 35 in Volume 638 of the Record Book of Conveyances, kept in the Office of the Administrator and Registrar-General at Walpole Street, Freetown. The records of the foregoing legal processes: The application, offer letter and Deed of Conveyance, are exhibited and marked A1-3.

Further, the Ministry of Lands also issued a building (dwelling house) permit (see Exhibit B1-2) for the construction of a structure. Significantly, Paragraph 5 of the application's supporting affidavit, states that the Applicant has always been in possession and quiet occupation of the realty, since the Government of Sierra Leone transferred ownership to him. And that he had since been taking necessary steps to prevent squatters and trespassers from having any access to the realty. Meanwhile, Paragraph 6 of the same affidavit states that it was in 2021 that the Respondents, aided by some hoodlums, trespassed on the realty and alleged that they had had a leasehold interest from the Ministry of Lands in respect of same. This is the Applicant's case.

Nevertheless, the Respondents' case is built on the following facts. The Respondents are community stakeholders and custodians of the realty, which they say belongs to the Sumaila Town Community. They said have been in control and possession of the realty for over 60 years, which ownership is now in dispute. Thus, on 30th June 2011, an application for a leasehold (for the construction of a school, hospital and community centre) was addressed to the Ministry of Lands, for and on behalf of the Sumaila Town Community. Thus, on the 24th December 2020, in response to that application, the Ministry of Lands offered the realty on lease to the said

community, which by virtue of that correspondence, now claims a leasehold interest in the realty in dispute.

Further, the Acting Director of Surveys and Lands, on 12th November 2020, signed a survey plan, in the name of the Sumaila Town Community, delineating the realty numbered LOA 15349 measuring 0.1172 acre (see Exhibit JNC 4a, b &c). In fact, in 2013, the Respondents on the one hand and Mr. Taiwo Cullen and Mr. John Kainde Cullen on the other hand, were embroiled in a conflict, regarding the ownership of the realty. And Mr. Ibrahim Dumbuya sent a correspondence of protest, on behalf of the Sumaila Town Community, to the Ministry of Lands (see Exhibit JNC 5). The Ministry of Lands thus conducted investigations into the contents of the correspondence, serialising the issues, culminating in the protestations; and subsequently produced a report, detailing the outcomes of the investigations (see Exhibit JNC 6).

The report thus concludes that:

> 'Based on the physical condition on the ground, Mr. James T. Cullen is to resurvey according to his site plan… and Mr. John K. Cullen also to take possession of LOA 8534 and not the area shown to me within their site plan and the balance land to be used by the community'.

Thus, it is clear from the above that the underlying fact that permeates the case for the Applicant and Respondents, is that both parties have come to claim possession and ownership of the realty in dispute from the same predecessor in title (The Government of Sierra Leone through the Ministry of Lands). Against this backdrop, the fundamental issue that must be distilled from the foregoing facts, underpinning the contention herein, is whether the processes culminating in the various interests of the respective parties, were appropriately gone through in accordance with the requisite applicable statutory provisions in our jurisdiction. Significantly, the Crown (now State) Lands Act N0.19 of 1960 (hereinafter referred to as Act N0. 19 of 1960) and the Crown (now State) Lands (Amendment) Act N0. 37 of 1961 (hereinafter referred to as Act N0.37 of 1961) are sacrosanct on the legal processes,

pursuant to which the State can grant any interest in realty to any person, a creature in being or juridical. By Section 1 of Act N0. 19 of 1960, a grant includes fee simple absolute in possession, leasehold and licences. Thus, the procedure for a grant is simple:

Section 3 of Act N0.37 of 1961, which amended Section 4 of Act N0.19 of 1960, empowers the Minister of Lands to grant leasehold interests to persons whom he deems fit to acquire such interest, which is only equitable, until the freehold (legal) interests are subsequently granted, after due considerations of some other conditions stipulated in Act N0. 19 of 1960 (As Amended). Thus, when freehold is granted, it means the State no longer has any remaining interest to pass to any other person in respect of which the right to fee simple absolute in possession has been acquired. So, the State is thus left with nothing, concerning any realty for which the reversionary interest now vests in the owner of the fee simple absolute in possession (i.e. the person who now holds the freehold). Characteristically, the freehold interest is itself confirmed, when some other elaborate processes are gone through. First, Section 9 of Act N0. 19 of 1960 (As Amended) must have been complied with. The section provides that:

> 'No Crown (State) land shall be granted in any manner whatsoever under this Ordinance until it has been surveyed and demarcated by a Government or licensed surveyor and the plan thereof has been approved and signed by the Director of Surveys and Lands or by an officer of his department acting on his behalf'.

Secondly, Section 15 of the Surveys Act Cap. 128 of the Laws of Sierra Leone 1960, requires the Ministry of Lands to keep records of the survey plans, which have been duly signed by licensed surveyors and the Director of Surveys and Lands in its record books. The essence of this statutory compulsion is for the Ministry of Lands to exercise due diligence in granting State lands; and to be simultaneously mindful and conscientious not to duplicate the grants of realties that might already been granted to some other persons. This means that should the Ministry of Lands, adopt this approach, as a matter of strictissima juris, most of the matters that are

normally brought to the High Court of Justice for determination of titles to property, would not have darkened the doors of the Superior Court of Judicature. Thirdly, the grantor (The Government of Sierra Leone through the Ministry of Lands) must execute a conveyance transferring possession and ownership of the grant to the grantee. Fourthly, the conveyance must have been prepared and signed by a law officer in the service of the Government of Sierra Leone, attached to the Law Officers Department, in the Office of the Attorney and Minister of Justice.

Fifthly, the grantee (who now owns the fee simple absolute in possession) must proceed to register the signed conveyance (by the Minister of Lands in the presence of another State operative), in the Office of the Administrator and Registrar-General, pursuant to the provisions in Caps. 255 and 256 of the Laws of Sierra Leone, 1960. Furthermore, the conveyance must be recorded in the record book of conveyances of the year in which it is registered with the appropriate serial number. Thus, when these processes are gone through, then the conveyance transferring ownership can be evidentially relied on for purposes of litigation, concerning declaration of title to property. Meanwhile, the application for the disposal of this case on a point of law is built on a number of questions, which I should now answer, consonant with the facts and facts-in- issue (evidence) and the law (substantive and adjectival).

1.4.2