



## **1.2 The Principal thrusts of the Application**

The Applicants' Counsel's notice of motion requests for an order that pursuant to Order 17 Rule 1 of The HCR 2007, the Court determines whether the issues in disputes outlined below between the Applicants and the Respondents herein, and as prayed for in the Applicant's statement of claim dated 23<sup>rd</sup> February, 2022 are suitable for determination by the Court on a point of law without the need for a full trial; and whether the said determination will finally adjudge the issues in dispute between the parties herein subject only to an appeal:

- a) Whether in view of the statement of defence filed by the Respondents herein dated 4<sup>th</sup> April, 2022 the Respondents have any legal title or claim of right whatsoever to the property (land and house) claimed herein by the Applicant situate, lying and being at NO. 29 Old Railway Line, Wilberforce, Freetown in the Western Area of the Republic of Sierra Leone measuring 0.192 acre as delineated on survey plan marked L.S 271/ 93 dated 2<sup>nd</sup> April, 1993 attached to a Deed of Conveyance dated the 23<sup>rd</sup> June 1993 expressed to have been made between Lucy Edith Kanu (as Settlor) AND THE SAID Lucy Edith Kanu (as 1<sup>st</sup> Trustee/Beneficiary) and the Applicant herein (as 2<sup>nd</sup> Trustees/Beneficiaries); which is duly registered as Number 568/1993 at Page 43 Volume 470 of the Books of Conveyances kept in the Office of the Administrator and Registrar- General in Freetown; and
- b) Whether, in the circumstances, the Respondents' statement of defence raises any triable issue at all and whether it has any substance at law to try.

2. That should the Court answer questions (a) and (b) in the negative, judgments be accordingly pronounced for the Applicants herein; and the reliefs as prayed be immediately granted.

3. Any other order that the Court deems appropriate, including the cost of the application.

## **1.3 The Applicants' Counsel's Submissions**

Counsel argues that the case falls within the Court's jurisdiction to determine it on a point of law based on the pleadings before the Court. Counsel says he is compelled to make this submission on the strength of the compelling evidence attached to his supporting affidavit; together with the facts deposed to in that affidavit and the affidavit in reply. Exhibit A is the writ of summons. Exhibit B is the statement of defence. Exhibit D is the deed of conveyance in the Applicant's name, which was executed by virtue of a settlement. Exhibit E is a deed of conveyance from the Government of Sierra Leone to the Applicant's mother.

## **1.4 The Respondents' Counsel's Submissions**

Counsel relies on the entirety of the affidavit in opposition and the supplementary thereto. Attached to that affidavit are three exhibits and they are marked MYK1-3. Counsel reiterates his opposition to the application, based on reasons serialised in his affidavit and the supplemental thereto; and the grounds raised in his statement of

defence. Limitation of time is pleaded in the defence as filed. Counsel refers the Court to section 5 (3) of the Limitation Act, 1961 and also referenced the case of Gooding v. Allen, with no citation that would enable the Bench to locate the authority. He cautioned that the Respondents have occupied the property for up to twenty-nine (29) years; so they cannot be dispossessed by virtue of the Limitation Act, 1961.

## **1.5 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

### **1.5.1 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.

### **1.5.2 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. NO. 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.

### 1.5.3 **Possessory Title.**

Another way by which Plaintiffs can establish 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 Abbas*, 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.

#### ***1.5.4 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.

#### ***1.6 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 wherein 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, wherein the same piece or parcel of land is claimed by both parties. Wherein 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 wherein 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. NO. 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.

### **1.6.1 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, 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:my emphasis in italics*) 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'.

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 have been granted; the defendant would have been 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 NO.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, behoves 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.

## 1.7 The Analysis

The Applicants have laid claim to the realty, which ownership is to be determined, by producing a conveyance which is accordingly registered, pursuant to the provisions of Caps. 255 and 256 of the Laws of Sierra Leone, 1960. Exhibit D is the deed of conveyance, which is the Applicants' names. And the origins of that conveyance is rooted in Exhibit E, which is a deed of conveyance from the Government of Sierra Leone to the Applicants' mother. As seen in 1.5.2 above, the mere production of conveyance in fee simple does presuppose a genuine proof of fee simple in title, because such a conveyance may even be worthless: *Seymour Wilson v. Musa Abess* (SC Civ. App. NO. 5/79), *Sorie Tarawallie v. Sorie Koroma* (SC Civ. App. 7/2004). Is the Applicants' conveyance worthless? Is it fraudulent and concocted? These questions are framed in accordance with Paragraph 1 of the defence filed by the Respondents' Counsel in contravention of Paragraph 1 of the Applicants' particulars of claim. For ease of reference, the said paragraph is produced herein:

*'The Defendants (Respondents) deny Paragraph 1 of the Plaintiffs' (Applicants') particulars of claim and would state that the property situated at NO.29B Old Railway Line, Wilberforce, Freetown was owned by their father James Yayah Kanu (deceased) and that the deed of conveyance of the Plaintiffs (Applicants) was fraudulently made by their step mother Lucy Edith Kanu, who changed the name James Yayah Kanu to Lucy Edith Kanu on the face of the survey plan after the execution of their father James Yayah Kanu on the 29<sup>th</sup> December, 1992 to the exclusion of the Defendants (Respondents) who are also beneficiaries of the estate of James Yayah Kanu (deceased).'*

The first limb of the foregoing paragraph is the averment that the realty in question was owned by the Respondents' father, James Yayah Kanu, who was executed on 29<sup>th</sup> December, 1992. Whether he was executed or died a natural death, does not have any relevance to the facts and facts-in-issue of this litigation. What is important for this analysis is whether he was the owner of the realty. Thus, there is nothing in evidence, justifying the averment that the realty belonged to the deceased. So, this bit of Paragraph 1 in the Respondents' defence does not hold good. No court of competent jurisdiction would give credence to an unsubstantiated averment in the context of civil litigation and justice dispensation. The said

paragraph's second limb, avers that the Applicants' conveyance is fraudulently made by Lucy Edith Kanu, who changed the name James Yayah Kanu to Edith Kanu on the face of the survey plan. This Bench is not convinced that this averment is true.

First, the name Edith Kanu is not only found in the survey plan; it is also in the face of the registered conveyance (see Exhibit E), which the Government of Sierra Leone executed in her name; and it was from this conveyance that the Applicants' conveyance was born. Second, there is nothing in evidence that the transaction between the Government of Sierra Leone and Edith Kanu was fraudulent in any way. The evidence depicts that the procedures to obtain leasehold and eventually freehold in respect of any realty in the Western Area from the State of Sierra Leone, which since 1961, had had the fee simple absolute in possession of all hitherto Crown lands in the Western Area, were accordingly complied with (see the State Lands Act N0.19 of 1960). Thirdly, there is no evidence before the Court, depicting that the Government of Sierra Leone had put the realty on lease to James Yayah Kanu; and he subsequently acquired freehold, for which the Government of Sierra Leone executed a conveyance on his behalf. Exhibit MYK1, which is a site plan in the name of James Yaya Kanu is not a title deed executed on his behalf by the Government of Sierra Leone. Exhibit MYK2, which is a property demand notice is as well not a prove of title. In the light of the available evidence, I would say that the averment that the Applicants' conveyance is born in the womb of a fraudulent conveyance is misleading, unfair, unreasonable, unjust; and it is contrived to prevent the Court to be able to determine this matter on its merit.

The next issue to be determined, is whether the Applicants' registered conveyance is worthless. This Bench is convinced that the said conveyance is not worthless. Apart from the fact that it genuinely went through the registration process, consonant with the provisions of Caps. 255 and 256, the Applicants have evidentially established that they genuinely and legally acquired the realty from their mother, who had acquired good title from her predecessor- in- title (the Government of Sierra Leone). Thus, by virtue of the State Lands Act N0.19 of 1961, no other person could have come forth to claim the realty, because it belonged to the State, which eventually passed title to the Applicants' predecessor-in-title. Meanwhile, Paragraph 3 of the defence is the next paragraph that worth alluding to in this analysis. Among other things, the paragraph avers that the Respondents' father had commenced erecting a concrete storey building on the realty in 1988, before his execution on 29<sup>th</sup> December, 1992. This Bench cannot accept this bit of the affidavit evidence as true. It has already been established that the Applicants' predecessor- in-title acquired a genuine title from the Government of Sierra Leone.

And Paragraph 5 of the Applicant's supporting evidence states that it was in 1993 that their mother started erecting the structure on the land. It stands to reason, that if James Yayah Kanu hadn't any equitable or legal interest in the realty, as shown

in the documentary evidence before the Court, it would have been impossible for him to have started erecting a structure on a realty, in which he held no interest. Further, there is no evidence of a building permit in the name of James Yayah Kanu, issued by the Ministry of Lands for the construction of a structure on the realty. Again, the affidavit in reply to the affidavit in opposition, denied the claim that James Yayah Kanu commenced erecting a structure on the realty in 1988. Nevertheless, the other limb of Paragraph 3 that the Applicants and Respondents, together with their mothers have been living in the realty, since the execution of their father and husband, cannot be more correct. This fact has come out clearly in the supporting and opposing affidavits.

Meanwhile, the fact that they have been living together since the deceased's death would seem not to have anything to do with the fact that the Applicants have evidentially established a very good claim of right to the fee simple absolute in possession. But it is definitely cognate with whether the defence of adverse possession put forth in the Respondents' affidavit and defence holds good in the circumstance. The doctrine of adverse possession presupposes possessory title. And the threshold which the Claimant that relies on possessory title must meet to establish genuine ownership is established in both the Seymour Wilson and Sorie Tarawallie cases referenced above. Both Supreme Court decisions are very instructive on this point. The Hon. Justice Dr. Ade Renner-Thomas C.J. in Sorie Tarawallie case 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 NO.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'.*

Thus, the Respondents only raised adverse possession as a defence, but have not counterclaimed ownership. Again, it is hard to believe that adverse possession as a defence is applicable in this context, because it came out clearly in the evidence that the Applicants' predecessor-in-title had been in possession and had begun erecting structures on the realty before she travelled out of the jurisdiction, leaving the property in the care of her mother and younger brother. The Respondents averred that it was their deceased father that started the construction in 1988 before he was executed. But this Court does not accept this averment as true because there is nothing before the Court to establish that the deceased had any legal or equitable interest in the

realty, so it would be hard to convince any reasonable tribunal of fact that it was he that commenced the construction. But it came out clearly in the evidence that the parties to this action have been living together. If this is the case, there is no way the doctrine of adverse possession would apply here, because the Applicants' predecessor-in-title did not abandon the realty at any time according to evidence. In fact, it was she, who according to the opposing supplemental affidavit that asked Bai Moses Kanu (the 1<sup>st</sup> Respondent) to quit, because she wanted to renovate the structure on the realty. On the strength of the conveyance which the Government of Sierra Leone had executed on her behalf (see Exhibit E), the Respondents were not living in the realty as quarters. They were there with her consent. And they could best be described as tenants-at-will. So, the Applicants who claim the realty through her, on the strength of Exhibits D and E have every justification to come to this Court for the remedies as prayed in the writ of summons commencing this action. I will therefore answer the foregoing questions on the notice of motion of 7<sup>th</sup> May 2022 as follows: The first question is answered in the affirmative. And the second question is answered in the negative.

I therefore order as follows:

1. A declaration is hereby made that the Plaintiffs (Applicants) are the fee simple owners and persons that lawfully entitled to the absolute ownership of all that piece and parcel of land and hereditaments thereon situate, lying and being 29 B Old Railway Line, Wilberforce, Freetown in the Western Area of the Republic of Sierra Leone measuring 0.1927 acres as delineated on survey plan marked LS271/93 dated 23<sup>rd</sup> June 1993 expressed to have been made between Edith Kanu (as a Settlor) and the said Lucy Edith Kanu (as 1<sup>st</sup> Trustee/Beneficiary) and the Plaintiffs (Applicants) herein as (2<sup>nd</sup> Trustees/Beneficiaries); and which is duly registered as Number 568/1993 at Page 43 Volume 470 of the Record Books of Conveyances kept in the Office of the Administrator and Registrar-General in Freetown.
2. A declaration is also made that the Plaintiffs (Applicants) are entitled to absolute possession of the said piece of land and hereditaments thereon free from all encumbrances.
3. Recovery of possession of the said land and hereditaments from the (Defendants) Respondents herein is also ordered.
4. A perpetual injunction is further ordered restraining the Defendants (Applicants) herein whether by themselves, their servants, privies, relations, heirs, administrators, employees and/or agents from entering upon, occupying, remaining on, depositing any material or equipment on the said land, disposing of or selling the land, constructing or building any structure thereon or in any way interfering with the Plaintiffs (Applicants') use of and access to their said land and hereditaments.
5. Damages to be assessed.
6. A cost of Twenty Thousand Leones (Le 20,000) is imposed on the Defendants (Respondents).

I so order.

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

Justice of Sierra Leone's Superior Court of Judicature.



