For the reasons stated this summons must be dismissed. The summons is dismissed, the applicant to pay the respondents' costs incident to the summons. Costs are to be taxed.

Application dismissed with costs.

PRATT *v.* KAMARA

SUPREME COURT (Bankole Jones, C.J.): July 7th, 1964
(Civil Case No. 361/63)

[1] **Limitation of Actions—land—adverse possession—superior title—acknowledgement of superior title during limitation period defeats adverse possession:** Where a person acknowledges another's superior title to land during the limitation period he cannot acquire a possessory title by adverse possession under the Statute of Limitations (page 74, lines 20–27).

[2] **Land Law—adverse possession—superior title—acknowledgment of superior title defeats adverse possession:** See [1] above.

[3] **Land Law—tenancy at will—absence of transferable interest—tenant cannot convey full title:** A "life" tenant at will has no corporeal interest in the premises and so cannot convey them in fee simple (page 74, lines 2–13).

[4] **Landlord and Tenant—tenancy at will—absence of transferable interest—tenant cannot convey full title** See [3] above.

The plaintiff brought an action against the defendant seeking a declaration of her title in fee simple to certain premises, possession of the premises and mesne profits.

Under the will of her grandfather the plaintiff received a tenancy in common with her sister and three brothers subject to a tenancy at will in favour of Hannah Thompson. Hannah Thompson lived in the premises for over 20 years; at her death one of the plaintiff's brothers took possession and employed the defendant as a caretaker. The defendant then occupied the premises for over 20 years. One brother and sister of the plaintiff each died childless and her two other brothers conveyed their shares in the tenancy in common to the plaintiff, leaving her the sole owner of the premises. The defendant then paid the plaintiff rent for several months until he was given notice to quit. The defendant refused to quit.

The plaintiff contended that she was entitled to ownership and possession under the will and that the defendant had no title to the property.

The defendant contended that as he had occupied the premises for over 20 years his claim was protected by the Statute of Limitations. He also contended that Hannah Thompson conveyed the premises to him during her lifetime, that she had a valid claim to the premises as she had received only a tenancy at will under the will and not a life interest and therefore the Statute of Limitations ran in her favour giving her a possessory title at the time of her death.

Case referred to:

(1) *N'jie* v. *Hall* (1931), 1 W.A.C.A. 100, distinguished.

Wyndham for the plaintiff;
McCormack for the defendant.

BANKOLE JONES, C.J.:

The plaintiff's claim is as follows: (a) a declaration of her title in fee simple to the premises numbered 2 Lumley Street in Freetown; (b) possession of the said premises; and (c) mesne profits from May 1st, 1962 until delivery of possession.

There is no doubt whatever on the evidence that the premises formerly numbered or described as 4 or 4A Lumley Street and now numbered or described as 2 or 2A, 2B and 2C Lumley Street are one and the same in the minds of both plaintiff and defendant, and that each is laying claim to the identical *corpus*.

The plaintiff bases her claim in part on the probated will of her grandfather, one Thomas Jonathan Johnson, who died in 1922 after devising these premises to the plaintiff, her three brothers and a sister as tenants in common with, it appears, a "life" tenancy at will created in favour of his sister, Hannah Thompson. Hannah Thompson died in 1941 and the plaintiff's sister and brother, a spinster and a bachelor respectively, died, each of course without leaving any issue surviving. Also in 1961, by separate deeds of conveyance the remaining two brothers, namely Arthur Ekundayo Johnson Wright and Reuben Oluwole Johnson Wright each conveyed his own share to the plaintiff, which left the plaintiff the sole owner of the premises in question.

The defendant, who is in occupation of the premises and has been for over 20 years, except for a period of about a year when

he was forced to be away (he denies this), claims to be protected under the Statute of Limitation. In his evidence, however, he not only represents himself to be the bastard cousin of the plaintiff, being the offspring of the daughter of Hannah Thompson and his father who was a "native" working under Thomas Jonathan Johnson deceased, but swears that Hannah Thompson, his grandmother, conveyed the premises to him during her lifetime and that he handed the document to Arthur Ekundayo Johnson Wright after collecting it from the Master of the Supreme Court six years after he had been told by Wright that they were relations. The weakness of this part of his case, which was not pleaded, is that Hannah Thompson had no corporeal interest in the premises and so could not give what she did not have.

Mr. McCormack has advanced an ingenious argument, namely that as only a tenancy at will was carved out for Hannah Thompson under the will of Thomas Jonathan Johnson and not the creation of a life interest, the Statute of Limitation ran in her favour until she died in 1941, by which time she had acquired a possessory title against the devisees under the will. He cited the case of *N'jie* v. *Hall* (1), but with respect I do not think this case applies. But even if Mr. McCormack's contention is tenable (I doubt whether it is on a proper construction of the will), the evidence is that Arthur Ekundayo Johnson Wright, one of the devisees, immediately took possession of the entire property and employed the defendant as a caretaker. If this is the position, the defendant cannot acquire the possessory title, if she had one at all, of Hannah Thompson, because he acknowledged a superior title.

On the whole of the evidence, I accept the case of the plaintiff. I find as a fact that the defendant was a caretaker for consideration in relation to the premises for the period 1941 to 1961 and that when the plaintiff became sole owner in 1961, he paid rent of £4 per month for several months until he was given notice to quit.

It may be understandable what his feelings were when he was faced with the certainty of being ousted from the possession of a property which he had occupied for so long, but what I find disgraceful is his attempt to enthrone himself as the owner of property which he knows does not belong to him. I dismiss his entire story as without merit and palpably false.

The plaintiff therefore succeeds and I give judgment for her. I declare her to be the fee simple owner of the premises described by her in her pleadings and at present occupied by the defendant. I

order the defendant to give up possession within seven days and pay to the plaintiff mesne profits at the rate of £4 per month as from May 1st, 1962 until possession is given up. I order him also to pay the costs of these proceedings.

Order accordingly.

KAMARA and FIVE OTHERS *v.* COMMISSIONER OF POLICE

SUPREME COURT (Cole, J.): July 10th, 1964
(Mag. App. No. 54/63)

[1] **Courts — magistrates' courts — procedure — charges—charge may be amended before plea:** A magistrate may amend a charge without first calling upon the accused to plead to it (page 78, lines 17–23).

[2] **Courts — magistrates' courts—procedure—pleas—unnecessary before amendment of charges:** See [1] above.

[3] **Criminal Procedure—appeals—appeals against conviction—charge unlawfully substituted—trial a nullity:** A trial upon an unlawfully substituted charge is a nullity (page 80, lines 6–8).

[4] **Criminal Procedure—charges—amendment—charge may be amended before plea in magistrate's court:** See [1] above.

[5] **Criminal Procedure — charges — amendment — substitution of new charge not permissible—trial a nullity:** The power to amend a charge given by s.90 of the Criminal Procedure Act (*cap.* 39) extends only to the amendment of the original charge and does not authorise the substitution of an entirely new and different charge (page 79, lines 33–36; page 80, line 3).

[6] **Criminal Procedure—charges—preferring charge—new and different charge—to be preferred by nolle prosequi and trial de novo not amendment:** An entirely new and different charge cannot be preferred by amending the original charge and the prosecution should enter a *nolle prosequi* on the original charge and commence proceedings *de novo* on the new charge (page 79, lines 33–39; page 80, line 3).

[7] **Criminal Procedure — pleas — amended charge — unnecessary to take plea before amending charge:** See [1] above.

The appellants were charged in the Police Magistrate's Court, Port Loko, with assault.

They were not called on to plead to the charge. It was amended to a charge of wounding and on that they were tried and convicted