

SC. CIV. APP. 5/2006

BAIMBA KAMARA
(SUBSTITUTED BY ALIKALIE
KAMARA)

- APPELLANT

AND

VERONICA O. THOMAS
(ADMINISTRATRIX OF THE ESTATE OF
FESTUS B. THOMAS (DECEASED)
INTESTATE)

- RESPONDENT

CORAM

HON. MRS. JUSTICE S. BASH-TAQI	-	J.S.C.
HON. MR. JUSTICE P.O. HAMILTON	-	J.S.C.
HON. MRS. JUSTICE V.A. WRIGHT	-	J.S.C.
HON. MR. JUSTICE G.B. SEMEGA-JANNEH	-	J.S.C.
HON. MR. JUSTICE S.A. ADEMOSU	-	J.A.

E.E. SHEARS MOSES ESQ. FOR THE APPELLANTS
A.B. TEJAN-COLE ESQ. FOR THE RESPONDENT

JUDGMENT DELIVERED ON THE 29th DAY OF April 2010

WRIGHT JSC - This is an appeal against the Judgment of the Court of Appeal.

The facts of the case are that Baimba Kamara was a Fisherman and Farmer who lived in the Loko Masama Chiefdom in the Port Loko District. The Respondent's late husband, Festus B. Thomas, was his brother. He told the Respondent's husband that he wanted to buy a house in Freetown, and he was shown 95 Fourah Bay Road, Freetown, after which a Conveyance was prepared in his name. The house was purchased for Le 80,000 (Eighty Thousand Leones). He left the Conveyance with a

bank as a collateral for a loan to a Lebanese Nadim Asab. Baimba Kamara said that he told Festus B. Thomas to use the rent from 95 Fourah Bay Road towards the maintenance and education of his five children who were living with him and to buy fishing nets when requested. The transaction was carried out by the Respondent's deceased husband, Festus B. Thomas, on behalf of Baimba Kamara.

The Respondent's deceased husband, Festus B. Thomas, later identified a partly completed house at 31^A Old Railway Line, Brookfields, which was purchased by Baimba Kamara for Le60,000 (Sixty Thousand Leones) with money provided by him. The property was conveyed to Baimba Kamara, as beneficial owner. All these transactions were carried out by the Respondent's deceased husband, Festus B. Thomas, on behalf of Baimba Kamara. The Respondent's husband, Festus B. Thomas, was to carry out the necessary repairs to the properties and discharge all rates and taxes imposed on the said properties. Baimba Kamara gave the Respondent's husband, Festus B. Thomas, Le 15,000 (Fifteen Thousand Leones) for the repairs and Le 15,000 to complete this house. Baimba Kamara said that when his brother died the Respondent continued to live at 31^A Railway Line, Brookfields. Before the Respondent's husband, Festus B. Thomas, died she drove the Appellant's son, Alikali, from the house. Baimba Kamara told the Court that he sent money, rice and fish to the Respondent's husband Festus B. Thomas.

On the death of the Respondent's husband Festus B. Thomas the Respondent engaged the services of a Solicitor with instructions to evict all tenants from his two houses.

Baimba Kamara permitted the deceased to occupy the top Floor of the property at 31^A Old Railway Line, Brookfields, rent free as he was looking after his children who were living with him. The Respondent invoked the doctrine of a trust implied by law i.e. a resulting trust.

Baimba Kamara caused a Writ of Summons to be issued in the High Court against the Respondent, O.S. Lewis, Mrs. M. Lewis and Mrs. Nellie Longstretch jointly and severally for a Declaration that the Appellant is the fee simple owner of properties 31^A Old Railway Line, Brookfields, and 95 Fourah Bay Road, Freetown, and also for immediate possession and mesne profits against the 1st, 2nd, 3rd and 4th Defendants for the properties occupied by them. Also for an order setting aside the Declaration made by the 1st Defendant on the 6th November 1991 of the asset of Festus B. Thomas (Deceased) who died on the 27th July, 1991 prior to granting her Letters of Administration for the Deceased's estate.

The 1st Defendant (now the Respondent) filed a defence and counterclaim to declare that the properties 95 Fourah Bay Road and 31^A Old Railway Line, Brookfields were held by her on a resulting trust in favour of the estate of Festus B. Thomas Deceased. The 2nd, 3rd and 4th Defendants also filed defences.

After considering the evidence and reviewing the relevant law the High court gave judgment:

- (a) That the Plaintiff is the fee simple owner of the property at 95 Fourah Bay Road, Freetown;
- (b) That the Plaintiff is the fee simple owner of the property at 31^A Old Railway Line, Brookfields, Freetown. And made the following consequential orders:

(c)

1. That the Plaintiff do recover possession of the top floor premises of 31^A Old Railway Line, Brookfields, occupied by the 1st Defendant.
Execution of the writ of possess^(b) to be stayed until 31st May 1995.
2. That the Plaintiff do recover possession of the bottom floor premises of 31^A Old Railway Line, Brookfields, occupied by the tenants therein.
3. That the Plaintiff recover possession of the bottom floor premises of 95 Fourah Bay Road, Freetown occupied by the 3rd Defendant (Mrs. Lewis).

The 3rd Defendant to pay mesne profits at the rate of Le10,000.00 per month from the 1st August 1991 until possession is delivered up.

4. That the Plaintiff do recover possession of the top floor premises occupied by the 4th Defendant (Mrs. Nellie Longstreth).

That the 4th Defendant do pay mesne profits at the rate of Le10,000.00 per month from the 31st May 1995 until possession is delivered up.

5. An order that the declaration made by the 1st Defendant on the 6th November 1991 in so far as it relates to 31^A Old Railway Line, Brookfieldes, Freetown and 95 Fourah Bay Road, Freetown as assets of Festus B. Thomas (deceased) prior to the granting of the Letters of Administration (Exhibit A) be set aside.

In the result the High Court dismissed the counterclaim. Mrs. Thomas being dissatisfied with the decision and appealed to the Court of Appeal on two grounds, namely:

1. The decision is against the weight of the evidence.
2. The learned trial Judge erred in law in admitting inadmissible evidence in that he admitted hearsay evidence of a statement alleged to have been made by the first Appellant's husband when he was ill.

In essence the decision of the majority judgement held that Mr. Baimba Kamara's claim was statute barred, upheld the appeal and made the following orders:-

1. I order that the Master and Registrar of the High Court do execute the relevant conveyance transferring the legal estate of the said premises 95 Fourah Bay Road and 31^A Old Railway Line, Brookfields, respectively to the Defendant/Appellant's name as the administratrix of the estate of Festus B. Thomas, deceased.
2. Mesne profits ordered by the learned trial Judge in his judgement if already paid be refunded to the Defendant-Appellant.
3. The Defendant/Appellant shall have the costs of this appeal and the costs below, such costs to be taxed.

During the period the matter was before the Court of Appeal Baimba Kamara died and Alikalie Kamara was put in substitution. Mr. Alikalie Kamara in substitution for

Baimba Kamara (deceased) was dissatisfied with the majority judgment and appealed to this Court on the following grounds:

1. The learned Justices wrongly held that the Respondent before this Court had complete and exclusive possession of the properties at 95 Fourah Bay Road, Freetown and 31^A Old Railway Line, Brookfields, Freetown.
2. The learned Justices failed to consider the entire circumstances leading to the Respondent's husband paying the rates for the properties while not paying rent.
3. The learned Justices failed to consider the relationship between the deceased Respondent/Defendant husband and the Appellant who provided monies for the purchase of the properties
4. The learned Justices allowed themselves to be influenced by evidence as to why the properties were purchased in the name of the Appellant without considering the period of purchase in relation to the claim of trying to avoid a creditor.
5. The learned Justices erred in holding that the Appellant was not vigilant to take up his interest in possession of his right within the limitation period thus contradicting themselves having held that he was not the owner of the properties;

At the hearing Counsel for the Appellant relied on the case filed with the amendments on page 3 of his case. He said that the claim cannot be time barred

since the 12 year limitation did not arise in this case and there was no adverse possession. Counsel for the Respondent also relied on his case and emphasized that there was a resulting trust in favour of the Respondent.

The learned Justice in the Court of Appeal stated that the trial Judge did not properly evaluate the evidence because he considered certain statements to be in consistencies in the evidence. Let me highlight the evidence.

Baimba Kamara in the High Court said "I am a Fisherman and Farmer I know one Festus Thomas. He was my brother. I know the property at 95 Fourah Bay Road, I am the owner. I bought it after I told my brother Festus Thomas that I wanted a house in Freetown. He told me that he had found a house in Freetown for sale. I agreed to buy the house. I gave him the money. My brother then made a paper for me and sent it to me. I have left the paper with a bank as a collateral for a loan to a Lebanese Nadim Aseb. When my brother bought the house for me I was having five of my children in Freetown. They were staying with my deceased brother Festus Thomas. He died sometime last year. I told him to be using the rent from Fourah Bay Road towards the education of the children and to give me some money whenever I requested it for buying fishing net. I gave my brother Le80,000 for purchasing the house. I know 31^A Old Railway Line Brookfields. I gave the purchase money of Le60,000 to my brother. He then gave me a Conveyance for the house. I also gave my brother Le15,000 for repairs to the house. The 1st Floor of the house was not completed and he was to take this amount of Le15,000 to complete it". He said that after his brother died his wife the Respondent continued to live in the house and when his brother was seriously ill, the wife drove away his son Alkalle from the

house. "I went with one Mr. Hassan M. Kolleh who is now dead and Alikalie Kamara to investigate the matter. The wife interrupted me and did not allow me to investigate the matter. My brother told his wife to leave Alikalie alone as he was not the owner of the house".

The learned trial Judge said "there is no evidence that the purchase money or part of it was provided by the Deceased Festus B. Thomas on the basis that the Deceased was an affluent man who was engaged in fishing and poultry business and also worked as a Paymaster in the Sierra Leone Military Forces, and he managed those properties without accounting to the Plaintiff in the management of them. What is required is positive evidence that the person claiming the benefit or for whose estate the benefit is claimed must have provided the purchase money. As I have said there is uncontroverted evidence that the Plaintiff provided the purchase money, and which was corroborated by the evidence of D.W 6 the 1st Defendant that the receipt for Le5,000 the balance of the purchase price for 31^A Old Railway Line was issued by Stella John in the name of the Plaintiff".

"The evidence is that the possession of these premises by the Deceased was permissive of the Plaintiff. There is evidence that the children of the Plaintiff were staying with the Deceased at 31^A Old Railway Line up to the time of his death. It cannot be said that he had exclusive possession of the premises see Pratt v Nicol 1937/49 AER 277".

In the light of the above and reading through the judgment it cannot be said that the learned trial Judge did not properly evaluate the evidence. I shall deal with this more fully in my judgment.

I will now turn to ground (1) of the appeal. It is clear from the evidence that the husband of the Respondent Festus B. Thomas was in possession with the consent and under the permission of Baimba Kamara. Baimba Kamara as P.W 3 said "when my brother bought the house for me, I was having five of my children in Freetown. They were staying with the Deceased brother Festus Thomas. He died sometime last year. I told him to be using the rent from 95 Fourah Bay Road towards the education of the children and give me some money whenever I requested for buying fishing net".

In Cross examination he also said that he gave his brother the 2nd Floor of his property at Brookfields for the duration of his life and to use the rents for the maintenance of his children.

I agree with learned Counsel for the Appellant that the learned Justices were not correct in finding that there was no evidence of an agreement between Festus B. Thomas the Respondent's husband and the Appellant. This case is clearly different from what was referred to in Nicol v Spilsbury 1937-49 ALR S.L. 395.

I agree with learned Counsel for the Respondent's submission that at no time during the trial did the Appellant base his claim on possessory title. Therefore cases like Rahman v Elba 1950-56 ALR S.L. 88 and Spaine v Abdullah Muctaru 1950-56 ALR

S.L. 384 Pratt v Nicol 1937-49 ALR S.L.877 which stated that the Plaintiff must rely on the strength of his title are in applicable to the Appellant's case in this case.

The evidence is very clear on the matter that the Appellant provided the monies for the purchase of the two properties, namely, 95 Fourah Bay Road and 31^A Old Railway Line, Freetown and that the rents were to be used for the up keep of the Appellant's children and the upkeep of the houses and the payment of rates.

From the evidence it is clear that Baimba Kamara and the Respondent's Deceased husband were brothers of the same mother. The Appellant resided in Loko Masama Chiefdom in the Port Loko District and engaged in farming and fishing. The 1st Respondent's Deceased husband was a very educated man who had a job at the IDA an International Agency. Baimba Kamara told the 1st Respondent's husband that he was interested in buying a house in Freetown whereby he told him about a house at 95 Forurah Bay Road, Freetown. The Appellant gave the deceased the Le80,000 which was the purchase price for the house and a Conveyance was prepared in his name. He told the deceased that the rents to that property were to be used for the education of his five children who were living with him, and to buy fishing nets when requested. The Appellant guaranteed a loan for a Lebanese by putting his title deeds of that property as a security. The deceased agreed to that arrangement.

The Deceased was later shown an incomplete building at 31^A Old Railway Line, Brookfields for sale and the Appellant told him that he was interested in buying it.

The evidence of the Respondent was that after her marriage to the deceased she lived and cohabited at the top floor of 31^A Old Railway Line, Brookfields, rent free.

The Respondent's Deceased husband paid the City Rates for both properties until his death. It was after the death of the Defendant's husband that the names of the holders of the properties were changed. In relation to the defence the Respondent's husband accounted to no one for the rents received from the tenants. She said that her deceased husband was a Businessman engaged in fishing business, pig and poultry and was also a Paymaster in the Sierra Leone Military Forces. She also said that she accompanied her deceased husband to 31^A Old Railway Line, Brookfields when it was under construction with barely four walls without windows or doors. She said that on another occasion she accompanied a Mr. Ralph Woode to the Vendor, Mrs. Stella John, and the Deceased paid her Le5,000. She said the Deceased told Mr. Ade Hamilton who was preparing the Conveyance that the receipt of payment for the house was in the name of Baimba Kamara and that the Conveyance was to be prepared in his name as a lady with whom her husband had children was threatening to take court action. She said that she accompanied her deceased husband to demand rent for 31^A Old Railway Line, Brookfields.

After her husband became ill she took over the maintenance of the properties and did repairs. She told the court that she had been living with her children at 31^A Old Railway Line as a wife of Festus B. Thomas, and he never paid rent to anyone.

The Court of Appeal, in its majority judgement of the 2nd May 2006, positively held in agreement with the trial Judge that "the doctrine of resulting trust cannot apply here" (meaning this case) and refrained from finding a resulting trust in favour of

Mrs. Thomas as Administratrix of the estate of Festus B. Thomas (deceased). In spite of the conclusion the Court failed to make positive findings that Baimba Kamara

(deceased) provided the purchase price for the said respective properties and that he was the owner of the said properties. And yet it is clear that a primary issue in the controversy is who provided the purchase price of the respective properties and, as a consequence, the presumptive owner.

In my view, it behoved the Court of Appeal to have made a finding on the issue. However in the circumstances, the irrefutable implication or conclusion is that Baimba Kamara (deceased) provided the said purchase price for the respective properties and was the owner.

Before proceeding further, I will deal with the matter of the admission by the High Court of this piece of evidence:

"When my brother was seriously ill the wife drove away my son Alkali from the house. I went with Hassan Kolleh who is now dead and Alhaki to investigate the matter. The wife interrupted me and did not allow me to investigate the matter. My brother (Festus B. Thomas deceased) then told his wife to leave Alkali alone as he was not the owner of the house".

This piece of evidence, in my view, is neither a dying declaration nor hearsay as stated in ground 2 of the grounds of appeal to the Court of Appeal. The statement did not appear from the evidence to have been made at the point of death. The evidence is that he died a month after (see ^{page} 49 L5 of the Record). It was not hearsay as Baimba Kamara (deceased) was repeating what was said to his hearing and in his presence. It is not hearsay just as the evidence of Mrs. Thomas when she stated:

"This is a conveyance (Exhibit D) between Stella John and Baimba Kamara and Mr. Ade Hamilton prepared this conveyance when Mr. Thomas (Festus B. Thomas, deceased) handed over the receipt to Mr. Ade Hamilton I can remember Mr. Hamilton, asking him why the receipt was issued in the name of Baimba Kamara. Mr. Thomas explained that it was because he had some children with another woman who had threatened to take court action against him because the money he used to buy the property was hers. That was why he wanted the name of Baimba Kamara on the conveyance".

The quoted alleged statement of Festus B. Thomas (deceased) was rightly described by the Court of Appeal as a declaration against interest. To the credit of Mr. Valesius Vs. Thomas, of Counsel, for Mrs. Thomas in the High Court, he objected to its admission on some other grounds and not on the basis of hearsay or a dying declaration.

In my view the admission of the declaration against interest was rightly made. The weight that was to be given to the evidence was up to the trial Judge as the judge of fact. The statement does go to the pith or substance of the controversy: who owns the said properties? In proof of his assertion of ownership Baimba Kamara (deceased) adduced substantial oral evidence including the provision of the purchase price of the respective properties, and also material documentary evidence such as the conveyances (Exhibits B and D) Mortgage Deed (Exhibit G) and the agreement between himself and Nadim Assaf (Exhibit F). I am of the considered opinion that all these pieces of evidence weighed heavily on the trial Judge's mind in coming to his conclusions.

The interpretation of the trial Judge's words by the Court of Appeal that led them to the conclusion that Baimba Kamara's (deceased) claim of ownership of the said properties turned on Exhibit B and D – the documentary title to the respective properties, and that his "case stands or falls on his documentary titles", with due respect, was misconstrued. The trial Judge relied on more than the documentary titles when he stated:

"The only evidence before me is that the Plaintiff provided the purchase price money for both properties. In respect of 95^A Fourah Bay Road, Freetown, Le80,000.00 albeit, Le5,200.00 is recorded in Exhibit B and in respect of 31^A Old Railway Line, Brookfields, Le10,00.00 being recorded as the consideration in Exhibit D. There is no evidence that the purchase money or part of it was provided by the deceased Festus B. Thomas".

The quotation clearly shows that the trial Judge believed the oral evidence of Baimba Kamara (deceased) that he provided the respective sums of Le80,000.00 and Le60,000.00 to purchase 95 Fourah Bay Road, Freetown, and 31^A Old Railway Line, Brookfields, Freetown, notwithstanding that the conveyances respectively reflected the prices of Le5200.00 and Le10,000.00. He then contrasted this evidence with the absence of evidence that Festus B. Thomas, (deceased) provided the purchase prices or even part thereof. The trial Judge also relied on the evidence of Mrs. Thomas the Respondent (DW 6) when she gave evidence that the receipt for the balance of the purchase price for 31^A Old Railway Line, Brookfields, Freetown, was in the name of Baimba Kamara (deceased) (see page 91, Lines 1 to 5 and page 59 Lines 13 to 18 of the record). Implicit in the evidence of Mrs. Thomas is that the receipts for the payment of the purchase price of the respective properties are in the name of Baimba Kamara (deceased).

Let me now deal briefly with the issue of adverse possession and the Statute of Limitation, 1961.

I share the view of the Court of Appeal in its interpretation of the Limitation Act, 1961, in relation to acquisition of land through adverse possession expressed in the majority judgement. However, I say, in my view that in the circumstances of this case there is no adverse possession. Baimba Kamara (deceased) was neither dispossessed nor did he discontinue possession of the said properties. There is a clear distinction between occupation and possession. One can be in possession of premises without being in occupation and, vice versa, being in occupation without being in possession. There is ample evidence upon which the trial Judge reached his conclusions. Clearly, the trial Judge believed the evidence of Baimba Kamara (deceased) that he purchased the properties through and with the help of his brother, Festus B. Thomas, deceased and that he permitted him to stay in the top floor premises with his family and members of his family, manage the properties and from the rents to pay the rates and meet other outgoings and to support the family. The payment of rates, outgoings, repairs and family maintenance expenses were all done according to arrangement between the two brothers. Festus B.

Thomas (deceased) was looking after and was responsible for the children of Baimba Kamara (deceased) in Freetown even before he purchased the properties and the responsibility continued after the purchase of the said properties (see page 45 lines 1 to 8) page 49 lines 6 to 8). Upon believing that Baimba ^{Kamara} ~~Kalmara~~ (deceased) provided the purchase price of the said properties, which the High Court did and by irresistible implication so did the Court of Appeal including the dissenting Justice, it is not a quantum leap in believing the arrangement given in

evidence by Baimba Kamara (deceased) regarding the properties and his children; In my view, it is a mere step across. In fact, such an arrangement is not strange anywhere particularly in an African cultural context; it is a fairly common occurrence in our cultures. In the circumstance, the "acts of possessions referred to by the Court of Appeal and which led the Court to the conclusions that Baimba Kamara (deceased) slept on his rights which resulted in adverse possession in favour of Festus B. Thomas, deceased, are nothing more than acts done for and on behalf of Baimba Kamara (deceased). In effect, Festus B. Thomas (deceased) position vis-à-vis the properties was "permissive" in that Baimba Kamara (deceased) was neither dispossessed nor did he abandon his possession of the properties.

Before concluding let me deal with the matter of a "rehearing" on appeal. The Court of Appeal gave a splendid expatiation of the meaning of a "rehearing" in relation to or in terms of Rule 9(1) of the Court of Appeal Rules of 1985 which states:

"9(1) All appeals shall be by way of rehearing and shall be brought by notice to be filed in the Registry of the Court which shall set forth the grounds of appeal....."

The Court of Appeal cited, among others, the case of Amadu Wurrie Vs Wilson Shomefun and Foday Bangura, Civ. App. No. 8/81 (unreported) when Tejan J.S.C., delivering the judgment of the Supreme Court, concluded that "by way of rehearing" is "simply a rehearing on the record". In hearing an appeal, especially on the facts, one would be well advised to heed the words of Livesey Luke C.J. in the case of Dr. C.J. Seymour ^{Wilson} Vs Abess (supra) at page 67 of the Book of Judgments when he stated:

"There is no doubt that an Appellate Court has power to evaluate the evidence led in Court below, come with its own conclusions and in a suitable case to reverse the finding of fact of a trial Judge. But these powers are exercisable on well – settled principles, and an Appellate Court will not disturb the findings of fact of a trial Judge unless those principles are applicable"

The learned Livesey Luke C.J. went on to buttress his point by citing WATT or THOMAS (1947) A.C. 484 which encapsulates the principles and clearly advises that on the facts an Appellate Court in reviewing the record of evidence should attach the greatest weight to the opinion of the trial Judge because he saw and heard the witnesses, "and should not disturb the judgement unless it is plainly unsound" or perverse if I may add. Of course the Appellate Court is free to reverse the conclusions of the trial Judge if the grounds given by him "therefore" are unsatisfactory by reason of material inconsistencies or inaccuracies" or he failed to take proper advantage of having seen and heard the witnesses. In the instant case the Court of Appeal came to the conclusion that the trial Judge did not properly evaluate the evidence before arriving at his decision in favour of Baimba Kamara (deceased).

In my view the trial Judge evaluated the evidence and certainly must have taken advantage of having seen and heard the witnesses before coming to a preference of the evidence in favour of the case for Baimba Kamara (deceased). In fact the Court of Appeal did not substitute its own conclusion on the core finding of material fact that Baimba Kamara (deceased) provided the purchase prices for the

said properties. To me the Court of Appeal agreed on this issue with Baimba Kamara (deceased). In my humble view the statements found by the Court of Appeal to be contradictions and discrepancies are really not so or can easily be explained. For examples, the children of Baimba Kamara (deceased) were under the care of his brother, Festus B. Thomas (deceased) long before he purchased the properties. Baimba Kamara (deceased) did say in evidence in chief that rents from 95 Fourah Bay Road, Freetown, in part were to be used for the education of his children (page 41 lines 25-26 of the Record). Further in his evidence in chief he stated:

"Before I bought 95 Fourah Bay Road my children were living with my brother (Festus B. Thomas, deceased). I used to give him money as well as other articles like rice and fish for the maintenance of the children. After I bought the house I continued to send money rice and fish. My brother paid the rates and taxes from the house. He was to pay the rates and taxes from the rentage".

Obviously maintenance embraces cost of education of the children and better reflect Festus B. Thomas' responsibility for the children while they were in Freetown. This was the material issue. As regards the difference between what

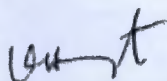
Baimba Kamara (deceased) gave as the purchase prices and what is reflected on the conveyances respectively, is common knowledge that Lawyers very often represent a lesser figure on the conveyance than the purchase price actually paid for reasons well known to them. Furthermore Baimba Kamara (deceased) was an illiterate and, apparently, not concerned with what was written in the conveyances. Perhaps, his

only concern was receiving the conveyance (paper). Finally, Festus B. Thomas (deceased) received the receipts and these were not produced in evidence. No one, including Festus B. Thomas said less than the amounts said to have been provided by Baimba Kamara (deceased) were paid. Mrs. Thomas did not call the vendors who could have thrown light on the actual purchase prices paid. In the circumstances, I am of the considered view that the judgement of the trial Judge was sound and that he could, and did, reasonably come to judgement on the facts.

In the circumstance, I hereby:

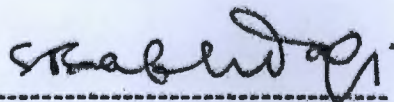
1. Affirm the judgment and orders of the High Court made on the 20th March 1995.
2. Order that Mrs. Veronica O. Thomas ^{and} all tenants and occupants of the premises situate ~~at the~~ known as 95 Fourah Bay Road, Freetown and 31A Old Railway Line, Brookfields, Freetown respectively vacate and deliver up possession of that part of the said respective premises being occupied by the respective tenants/occupants not later than 31st May 2010 failing which a writ of possession to issue.
3. Order Mrs. Veronica O. Thomas to render an account of all rents and mesne profits derived from the premises situate at and known as 95 Fourah Bay Road, Freetown and the premises situate at and known as 31^A Old Railway Line, Brookfields, Freetown, from the 29th February 1992 until possession of the said premises is delivered up.

4. Order that the Registrar of the Supreme Court takes accounts of the mesne profits received in respect of the said premises from 29th February 1992.
5. Set aside the Orders of the Court of Appeal made in its majority judgment dated the 2nd day of May 2006.
6. Order that if the said properties, namely, 95 Fourah Bay Road, Freetown and 31A Old Railway Line, Brookfields, Freetown, have respectively been conveyed by the Master and Registrar of the High Court to Mr. Veronica O. Thomas as Administratrix of the estate of Festus B. Thomas (deceased), made pursuant to the Order of the Court of Appeal, the said conveyances are to be expunged from the Register of Deeds and Books of Record in the office in Freetown of the Registrar-General who is hereby ordered to forthwith expunge same from the said Register and Books of Record.
7. The Respondent is to pay the Costs of the Supreme Court assessed at Le3,000,000 and the costs of both the High Court and the Court of Appeal and if paid to be refunded.



HON. MRS. JUSTICE V.A.D. WRIGHT

JSC



HON. MRS. JUSTICE S. BASH-TAQI

JSC

I AGREE

Q0

[Signature]

I AGREE

HON. MR. JUSTICE P.O. HAMILTON

- JSC

[Signature]

I AGREE

HON. MR. G.B. SEMEGA-JANNEH

- JSC

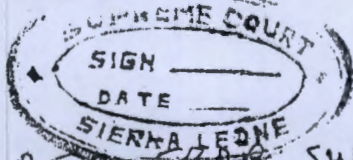
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I AGREE

HON. MR. JUSTICE S.A. ADEMOSU

- JA

CERTIFIED TRUE COPY



Ag. REGISTRAR, SUPREME COURT