

CIV. APP. 61/2013

IN THE COURT OF APPEAL OF SIERRA LEONE

Between : ALHAJI WURIE JALLOH - Appellant

And : ISTIASACO ENTERPRISES - Respondents

CORAM

HON. MR. JUSICE ALLAN B. HALLOWAY JSC

HON. MR. JUSTICE M. SENGU KOROMA JSC

HON MR. JUSTICE JOHN B. ALLIEU JA

COUNSEL

A.M. KAMARA ESQ. for the Appellant

A. SHOWERS ESQ. for the Respondents

JUDGEMENT

DELIVERED THIS ^{4th} DAY OF Nov. 2021

ALHAJI WURIE JALLOH, the Appellant herein, being aggrieved by and dissatisfied with the Decision/Judgment delivered by the **HON. MR. JUSTICE ABDULAI H. CHARM J** (as he then was), dated the 10th January 2013, hereby on the 7th October 2013, appeal the said Decision/Judgment on the following grounds:

1. That the Learned Trial Judge erred in Law in holding that the Appellant's affidavit showing cause against the Respondents' application made pursuant to Order 16 Rule 1(1) of the **HIGH COURT RULES 2007**, did not raise triable issues, the Learned Trial Judge having failed to avert his mind to the fact that there were triable issues to warrant the matter to proceed to trial.
2. That the learned Trial Judge was wrong in law by holding for the Respondents herein, the said Learned Trial Judge having failed to avert his mind that the property had passed to the Appellant herein, before the sale to the Respondents was concluded.

3. That the Learned Trial Judge misdirected himself by failing to place the appropriate weight and emphasis on a crucial exhibit, the same being Exhibit 'AWJ 5' which is an agreement between the Appellant herein and one LAMIN KARGBO, the same going to the root of the matter herein.
4. That the Judgment is against the weight of the evidence.

Wherefore ALHAJI WURIE JALLOH, the Appellant herein, pray that the Decision/Judgment delivered by **HON. MR. JUSTICE ABDULAI H. CHARM J** (as he then was) dated 10th January, 2013 be set aside and the matter entered for trial.

The Learned Trial Judge **HON. MR. JUSTICE ABDULAI H. CHARM J** (as he then was) on the 10th January 2013 ordered as follows:

1. That the Respondents herein are the owners and persons entitled to possession of all that piece or parcel of land and hereditaments situate lying and being at Off Wilkinson Road, Lokotti, Freetown in the Western Area of Sierra Leone measuring an area of 0.1012 Acre.
2. Recovery of Possession of the said piece or parcel of land and hereditaments situate, lying and being at Off Wilkinson Road, Lokotti, Freetown in the Western Area of Sierra Leone measuring an area of 0.1012 Acre.
3. That the Appellant herein pay damages for trespass in the sum of Ten Million Sierra Leone Leones (SLL 10,000,000/00).
4. That a Perpetual Injunction is hereby granted, restraining the Appellant herein whether by himself, his servants, agents, privies or howsoever called from entering or remaining on the Respondents' piece or parcel of land and hereditaments aforesaid or any portion thereof, or interfering with the Respondents said piece or parcel of land or any portion thereof in any way whatsoever and for any reason whatsoever.
5. That the costs of the application assessed at Two Million Five Hundred Thousand Sierra Leone Leones (SLL 2,500,000/00) be borne by the Appellant herein.
6. Liberty to apply.

The Orders aforesaid were granted pursuant to an application made for and on behalf of ISTIASACO ENTERPRESISES, the Respondents herein, by way of a Judges Summons dated the

20th January 2012, principally praying for an order that Judgment be entered for the said Respondents, against the Appellant herein, pursuant to the provisions of Order 16 Rule 1(1) of the **HIGH COURT RULES 2007**, for the reliefs as set out in the Statement of Claim accompanying the Writ of Summons in the action herein, issued on the 3rd June 2011, the said reliefs prayed for being as follows:

1. A Declaration that the Respondents herein, are the owners and persons entitled to possession of all that piece or parcel of land and hereditaments, situate lying and being at Off Wilkinson Road, Lokotti, Freetown in the Western Area of Sierra Leone, measuring 0.1012 Acres.
2. Recovery of Possession of the said piece or parcel of land and hereditaments, situate lying and being at Off Wilkinson Road, Lokotti, Freetown aforesaid.
3. Damages for trespass.
4. A Perpetual Injunction restraining the Appellant herein, whether by himself, his servants, agents, privies or howsoever called from entering on and remaining on the said piece or parcel of land and hereditaments or any portion thereof or interfering with the Respondents' use and enjoyment of the said piece or parcel of land and hereditaments or from disposing of the same or any portion thereof, in anyway whatsoever and by any reason whatsoever.
5. Any further relief(s) that this Honourable Court may deem fit and just.
6. Costs.

Order 16 Rule 1(1) of the **HIGH COURT RULES 2007** pursuant to which the application for an order that Judgment be entered for the Respondents herein against the Appellant herein, was made provides thus:

'Where in an action to which this rule applies, a Defendant has been served with a statement of claim and has entered Appearance, the Plaintiff may, on notice apply to the Court for Judgment against the defendant on the ground that the Defendant has no Defence to a claim included in the Writ, or to a particular part of the claim, except as to the amount of damages claimed'.

Without any doubt, the application aforesaid concerns an action in which the Appellant herein was served with a Statement of Claim, the said Appellant who entered an Appearance dated 21st June 2011, found at Page 6 of the Records of Appeal herein, to the Writ of Summons issued on the 3rd June 2011, found at pages 1 to 5 of the Records of Appeal, which the Statement of Claim

accompanies. As seen from the said Statement of Claim, the reliefs prayed for, contained above, are claims which Order 16 Rule 1(1) aforesaid would apply to, being other than an action which includes a claim by the Plaintiff for Libel, Slander, Malicious Prosecution, False Imprisonment or Seduction and an Admiralty Action in Rem, exempted as contained in Order 16 Rule 1(2) of the rules aforesaid.

Order 16 rule 2(1) of the **HIGH COURT RULES 2007** provides thus:

'An application under Order 16 Rule 1(1) aforesaid, shall be made by Summons supported by an affidavit, verifying the facts on which the claim, or part of a claim to which the application relates is based and stating that in the deponent's belief there is no Defence to that claim or part as the case may be, or no Defence except as to the amount of any damage claimed'.

Clearly, as is seen from and contained in pages 70 to 73 of the Records of Appeal herein, the application for an order that Judgment be entered for the Respondent herein against the Appellant herein was made by Judges Summons dated 20th January 2012 and supported by the affidavit of ABU TURAY, sworn to on the 20th January 2012, the said affidavit verifying the facts on which the claims to which the application aforesaid related to is based, the said ABU TURAY who in the said affidavit, deposes at paragraph Twelve (12) and Thirteen (13) that, he is reliably informed that the said Appellant does not have a good Defence to the action as contained in the Statement of Claim accompanying the Writ of Summons issued on the 3rd June 2011 aforesaid and verily believes that the Appellant's Defence is a sham and does not show any legal title or right of the said Appellant to the property at Off Wilkinson Road, Lokotti, Freetown aforesaid, subject matter of the action herein.

Order 16 rule 3(1) of the **HIGH COURT RULES 2007** provides thus:

'Unless at the hearing of an application under Order 16 Rule 1(1) aforesaid, either the Court dismisses the application or the Defendant satisfies the Court with respect to the claim or the part of a claim to which the application relates, that there is an issue or question in dispute which ought to be tried or there ought for some other reason to be a trial of that claim or part, the Court may give such Judgment for the Plaintiff against the Defendant or part as may be just, having regard to the nature of the remedy or relief claimed'.

Clearly, the application by Judges Summons dated 20th January 2012 aforesaid, for an order that Judgment be entered for the Respondent herein, against the Appellant herein, was not dismissed by the Learned Trial Judge, the **HON. MR. JUSTICE ABDULAI H. CHARM J** (as he then was). It cannot be disputed that the Learned Trial Judge indeed gave Judgment for the Respondent herein against the Appellant herein, the said Decision/Judgment dated 10th January 2013, outlined above which is sought to be appealed herein. This Court holds the view that, what it needs to initially determine is whether the said Decision/Judgment dated 10th January 2013, was given because the Appellant herein was unable to satisfy the Learned Trial Judge with respect to the claims of the Respondent herein to which the application aforesaid related, that there is no issue or question in dispute which ought to be tried or there might for some other reason, to be trial of that claim. The

Learned Trial Judge, in his Decision/Judgment aforesaid outlined the principles under which he gave the said Decision/Judgment. Contained in an excerpt found at pages 35 to 36 of the Records of Appeal herein, the Learned Trial Judge had this to say :

'Before deciding on the application, let me first attempt to state the principles underpinning an application for summary Judgment. A summary Judgment is a case management tool. Before the Court can grant a summary Judgment, it must be satisfied that the Applicant or Movant has a real prospect of success and that he is entitled to a Judgment as a matter of law. Being entitled to a Judgement as a matter of fact, means that the law as applied to the undisputed facts of the case must mandate Judgment for the moving party. Either the Plaintiff or the Defendant can apply for Summary Judgment. A Plaintiff can apply for Summary Judgment when he is of the conviction that the Defendant has no Defence to an action and in the same vain, a Defendant can apply for Summary Judgment when he/she feels that the Plaintiff has no real prospect of success in his/her claim. In a Summary Judgment application, the burden is on the Applicant to prove that the Respondent has no real prospect of success. It is only when the Applicant has discharged this burden that the Respondent can then demonstrate to the Court that he has a reasonable chance of success. It is against these principles that I will determine this application before me'.

This Court holds the view that with the greatest of respect and quite apart from the statement of the Learned Trial Judge above that, Summary Judgment, under Order 16 Rule 3(1) aforesaid, is a case management tool, the principles as stated in the excerpt above, by the Learned Trial Judge as the ones used to determine the application by Judges Summons dated 20th January 2012 aforesaid, made pursuant to Order 16 Rule 1(1), cannot be the ones as provided by law. It should be initially pointed out that, from a long line of decided cases, it has been well established that the purpose of Order 16 of the **HIGH COURT RULES 2007** is to enable a Plaintiff to obtain Summary Judgement without a trial, if he can prove his claims clearly and if the Defendant is unable to set up a bonafide Defence or raise an issue against the claim which ought to be tried. In the case between **ANGLO ITALIAN BANK** and **WELLS** (1850) L.T. 197 C. A. **JESSEL MR** stated at page 201 as follows:

'Where the Judge is satisfied not only that there is no Defence but no fairly arguable point to be argued on behalf of the Defendant, it is his duty to give Judgment for the Plaintiff'.

This Court holds the view that from Order 16 Rule 3(1) of the **RULES** as stipulated above and from the opinion of **JESSEL MR** in the case between **ANGLO ITALIAN BANK** and **WELLS** cited above, it follows that if the application aforesaid was not dismissed by the Learned Trial Judge, as has been stated above on some preliminary or technical objection, Judgement would be given by the Learned Trial Judge for the Respondents herein, if the Appellant herein was unable to set up a bonafide Defence or raise an issue against the claims of the Respondent which ought to be tried. In other words, in so far as the application aforesaid is concerned and by reason that the same was not dismissed on some preliminary or technical objection, the Appellant herein who sought

unconditional leave to defend the Respondents' claim aforesaid must have satisfied the Learned Trial Judge that there is a fair and reasonable probability of him having a credible Defence and not merely that there is a faint possibility that he had a good Defence.

Even though as stated above, it has been said that the principle which the Learned Trial Judge used to determine the application by Judges Summons dated 20th January 2012 aforesaid, made pursuant to Order 16 Rule 1(1) of the **HIGH COURT RULES 2007**, cannot be the ones as provided by law, the fact that the Decision/Judgment herein dated 10th January 2013, was given in favour of the Respondents herein, pursuant to the application aforesaid, means that, in his view the Appellant herein was unable to set up a bonafide Defence or raise an issue against the claims of the Respondents herein which ought to be tried. Indeed, this is what the appeal herein is all about, in that in so far as Grounds One (1), Two (2) and Three (3) are concerned, the contention of the Appellant herein, is that they were not only able to set up a bonafide Defence but also raised issues against the claims of the Respondent herein which ought to have been tried. In order for this Court to determine whether it should uphold the said contention of the Appellant herein, it should consider how the said Appellant went about setting up a bonafide Defence or raised an issue against the claims of the Respondents herein, which ought to have been tried. In accordance with Order 16 rules 4(1), 4(2) and 4(3) of the **HIGH COURT RULES 2007**, it is required as follows:

'That the Defendant may show cause against a Plaintiff's application under Order 16 Rule 1(1) aforesaid, by affidavit or otherwise to the satisfaction of the Court, such affidavit which unless the Court otherwise directs may contain statements of information or belief with the sources and grounds thereof, the Court which may give a Defendant against whom such an application is made, leave to defend the action with respect to the claim, or part of a claim to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit'.

It is evident that the Appellant herein opposed the application by Judges Summons dated the 20th January 2012 aforesaid, made pursuant to Order 16 Rule 1(1) aforesaid, as seen from the affidavit of ALHAJI WURIE JALLOH, sworn to on the 8th February 2012, in opposition to the said application for an order that Judgment be entered for the Respondents herein against the said Appellant, the said affidavit found at pages 14 to 16 of the Records of Appeal herein. This Court holds the view that the said affidavit was the Appellant's way of showing cause that, he has a good Defence to the claims of the Respondent on the merits and the raising of issues against the said claims which ought to have been tried and wishing to be granted unconditional leave to defend the Respondent's claim aforesaid, such unconditional leave which will not have been granted unless the Learned Trial Judge was satisfied that there is a fair and reasonable probability of the Appellant having a credible Defence and not merely that these is a faint possibility that he had a good Defence.

As contained in Exhibit 'AT 1' which is the Statement and Particulars of the Respondents' claim herein, the same which is annexed to the affidavit of ABU TURAY, sworn to on the 20th January 2012, the said Affidavit found at pages 72 to 73 of the Records of Appeal herein, the Respondents'

principal claim is for a Declaration that, they are the owners and persons entitled to possession of all that piece or parcel of land and hereditaments, situate lying and being at Off Wilkinson Road, Lokotti, Freetown in the Western Area of Sierra Leone, measuring an area of 0.1012 acre. In his affidavit aforesaid, ABU TURAY deposes that, by a Deed of Conveyance dated 26th October 2006, expressed to be made between DAVID DUMBUYA as Vendor and PA SAMURA TURAY and LAMIN KAMARA as Purchasers, PA SAMURA TURAY and LAMIN KARGBO became seised of the said piece or parcel of land and hereditaments situate lying and being at Off, Wilkinson Road, Lokotti, Freetown aforesaid, a portion of which the Respondents herein, are claiming a Declaration of title to. He deposes further that the said PA SAMURA TURAY died on the 25th December 2009 and Letters of Administration dated 31st May 2010 were granted to KELVIN DUMBUYA for him to administer the Estate of PA SAMURA TURAY (Deceased) inclusive of the piece or parcel of land and hereditaments aforesaid, conveyed to PA SAMURA TURAY and LAMIN KARGBO by Deed of Conveyance dated 26th October 2006 aforesaid. He deposes further that by Deed of Conveyance dated 23rd November 2010, expressed to be made between the said KELVIN DUMBUYA and LAMIN KARGBO as Vendors and ISTIASACO ENTERPRISES, the said ISTIASACO ENTERPRISES became seised in fee simple absolute in possession of all that piece or parcel of land and hereditaments, situate lying and being at Off Wilkinson Road, Lokotti, Freetown aforesaid, measuring an area of 0.1012 Acre. In his affidavit aforesaid ABU TURAY deposes that sometime in late 2010, the Appellant herein started Interfering with the Respondents' piece or parcel of land and hereditaments aforesaid, conveyed to them by Deed of Conveyance dated 23rd November 2010 aforesaid, the said Appellant erecting zinc structures on portions of the said piece or parcel of land and hereditaments without, the knowledge and or consent of the Respondents herein, who through its representatives, warned the said Appellant that he was wrongfully dealing with their piece of parcel of land and hereditaments and that he should desist from so doing, the said warning which it is claimed, the Appellant herein ignored but continued with his actions aforesaid.

In his affidavit aforesaid, ALHAJI WURIE JALLOH the Appellant herein, deposes that he is the owner of the piece or parcel of land at Off Wilkinson Road aforesaid, by virtue of an unregistered Conveyance dated 10th February 2008, a portion of which the Respondents herein are claiming a Declaration of title to. He deposes that he is in the process of registering the said Conveyance with the Registrar General in Freetown and could not have registered same before then, because the survey plan which should have been attached to the Conveyance aforesaid, before the same is registered, the same dated 12th December 2011 and numbered LS 2658/11 delineating his property at Off Wilkinson Road, Lokotti, Freetown aforesaid, measuring an area of 0.4984 acre, was only recently signed by the Director of Surveys and Lands. He deposes that, by an agreement dated 13th September 2010, one of his predecessor-in-title LAMIN TURAY acknowledged receipt of the sum of Three Million Five Hundred Thousand Sierra Leone Leones (SLL3,500,000/00) from him for the purpose of refunding the same to one MOMODU KARGBO and who the said LAMIN TURAY had mistakenly sold a portion of the piece or parcel of land aforesaid to and who bought for and on behalf of the Respondents herein. He deposes that he has a good Defence to the action on its merits, the said Defence filed by the said Appellant on the 12th July 2011, averring that when he

bought the piece or parcel of land aforesaid, he constructed a structure on the same, which has always been occupied by himself and his family, deposing also in the said affidavit that his Solicitors informed him that they shall be filing an amended Defence and Counterclaim to the action instituted by the Respondents, a copy which was annexed to the said affidavit marked Exhibit 'AWJ 17'.

It is seen from the above that, the main thrust of the issue raised by the Appellant herein, to the claim of the Respondents herein is that, the piece or parcel of land which the said Respondents claim a Declaration of title to, is a portion of the piece or parcel of land, which the Appellant claims was conveyed to him by way of an unregistered Conveyance dated 10th February 2008, prior to it being conveyed to the said Respondents by way of a Deed of Conveyance dated 23rd November 2010 and registered as No. 2149/2010 in Volume 668 at page 139 of the Book of Conveyances kept in the office of the Registrar General in Freetown. Contrary to the submission of A. SHOWERS ESQ of Counsel for the Respondents herein, that apart from his averment that when he bought the piece or parcel of land aforesaid, he constructed a structure on the same which has always been occupied by himself and his family, the Appellant's Defence delivered and filed on the 12th July 2011 aforesaid, the same found at page 68 of the Records of Appeal herein contained only general denials to the claims of the Respondents herein, this Court finds that the same contains the Appellants averment that all that piece or parcel of land and hereditaments situate lying and being at Lokotti, Off Wilkinson, Freetown in the Western Area of the Sierra Leone, which is the subject matter of the action herein, is his property. Clearly, this on its own is an issue which ought to be tried. This, in addition to the Appellant's averment aforesaid that, when he bought the piece or parcel of land aforesaid, the said date of purchase which could only have been on or about the 10th February 2008, he constructed a structure on the same, which has always been occupied by himself and his family, which said facts obviously indicates that it was the Appellant herein who first purchased the piece or parcel of land aforesaid, contrary to the position of the Respondents herein, considering that as contained in the affidavit of ABU TURAY aforesaid, the Respondents herein have deposed that it was sometime in late 2010 when the Appellant herein started interfering with the Respondents piece or parcel of land and hereditaments aforesaid, the Appellants averment that all that piece or parcel of land and hereditaments situate lying and being at Lokotti, Off Wilkinson, Freetown in the Western Area of the Sierra Leone, which is the subject matter of the action herein is his property, raised in Defence of the Respondents claim aforesaid is further an issue which ought to be tried, in view of the submission of A. SHOWERS ESQ denying that the unregistered Conveyance aforesaid, purportedly signed by PA SAMURA TURAY and LAMIN KARGBO, by virtue of which the Appellant herein claims title to the piece or parcel of land a portion of which in the subject matter of the action herein was undated.

Notwithstanding the submission of A.M. KAMARA ESQ of Counsel for the Appellant herein that the party's respective survey plans delineating their respective piece or parcel of land and hereditament are both based on a sub-division of the Survey Plan numbered LS 1217/95, which said fact lends credence to the fact that the parties herein have common predecessors-in-title to

their respective piece or parcel of land and hereditaments, it is yet to be conclusively established that the piece or parcel of land and hereditaments claimed by the Respondent herein measuring 0.1012 acre in area and delineated in Survey Plan dated 18th September 2009 and numbered LS 477/09 attached to Deed of Conveyance dated 23rd November 2010 aforesaid, by virtue of which the Respondents herein became seized in fee simple of, is a portion of the piece or parcel of land and hereditaments claimed by the Appellant herein measuring 0.4984 acre in area and delineated on survey plan dated 12th December 2011 and numbered LS 2658/11 attached to the unregistered Deed of Conveyance dated 10th February 2008 by virtue of which the Appellant herein became seized in fee simple of. Again this is an issue which, though not specifically raised by any of the parties herein, the assumption which apparently was that the piece or parcel of land and hereditaments claimed by the Respondents herein is a portion of the piece or parcel of land and hereditaments claimed by the Appellant herein, the said issue ought to have been conclusively determined by the Learned Trial Judge by either getting the party's respective Surveyors to agree by conducting a visit to the Locus-in-quo or by a trial of the matter where, if an agreement could not be reached, an expert witness on surveying would resolve this issue, the said issue being a triable issue which amounts to a cause being shown why leave ought to have been given for the Appellant to defend the Respondents claim herein.

As seen from the above, it cannot be disputed that several issues were raised by the Appellants herein against the claims of the Respondents which ought to have been tried. In this regard, it is clear that the affidavit of ALHAJI WURIE JALLOH, the Appellant herein, sworn to on the 8th February 2012, was one showing cause that, the said Appellant had a good Defence to the claims of the Respondent on the merits. In the circumstance, the Learned Trial Judge ought to have granted unconditional leave for the Appellant herein, to defend the Respondents' claim aforesaid. What he did on the contrary could be interpreted as him saying that he was not satisfied that there was a fair and reasonable probability of the Appellant herein having a credible Defence. Indeed, in upholding Grounds One (1), Two (2) and Three (3) of the Appeal herein, the Learned Trial Judge failed to avert his mind to the fact as established above that, there were triable issues to warrant the matter to proceed to trial, the Learned Trial Judge failing further, to place the appropriate weight and emphasis, on a crucial evidence contained in Exhibit 'AWJ 5' annexed to the affidavit of ALHAJI WURIE JALLOH aforesaid, the same being a receipt issued by LAMIN KARGBO, a common vendor to both the Appellant herein and the Respondent herein, in respect of their respective portions of the piece or parcel of land and hereditaments in question, which said evidence, had it been properly evaluated after a trial of the issues, would have led the Learned Trial Judge to avert his mind as to whether the piece or parcel of land and hereditaments in question, had passed to the Appellant herein before the sale of it to the Respondents was concluded.

It is clear that, rather than grant the Appellant herein, unconditional leave to defend the claims of the Respondent herein pursuant to Order 16 Rule 4(3) of the **HIGH COURT RULES 2007** which as stipulated above, gives the Learned Trial Judge power to grant the Appellant herein against whom

the application under Order 16 Rule 1(1) aforesaid was made, leave to defend the same, which would have caused the matter herein to proceed to trial and the parties herein, each adducing evidence in support of and or against their respective claims, such evidence which would have been eventually evaluated before Judgment is delivered, the Learned Trial Judge proceeded to consider and evaluate only the evidence contained in the affidavit of ABU TURAY sworn to on the 20th January 2012, in support of the application for Summary Judgment, by Judges Summons dated 20th January 2012, aforesaid and the affidavit of ALHAJI WURIE JALLOH sworn to on the 8th February 2012, in opposition to the said application. Having said that the Learned Trial Judge ought to have granted Appellant herein, unconditional leave to defend the claims of the Respondent herein, the pertinent question is whether or not this Court should have the matter herein remitted to the High Court for those issues aforesaid, raised by the Appellant herein, showing cause that he has a good Defence to the claims of the Respondent, to be tried ? In so far as the powers of this Court is concerned, Rules 31 and 32 of the **COURT OF APPEAL RULES 1985** provides as follows:

'The Court of Appeal may from time to time make any order, necessary for determining the real question in controversy in the appeal and may amend any defect or error in the record of appeal and may direct the Court below to enquire into and certify its findings on any question which it thinks fit to determine before final Judgment in the appeal and may make any interim order or grant any injunction which the Court below is authorised to make or grant and may direct any necessary enquires or accounts to be made or taken and generally shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Court of Appeal as Court of first instance and may rehear the whole case or may remit it to the Court below to be reheard or to be otherwise dealt with as the Court may direct. The Court of Appeal shall have power to give any Judgment and make any order that ought to have been made and to make such further or other order as the case may require, including any order as to Costs. These powers may be exercised by the Court of Appeal, notwithstanding that the Appellant may have asked that part only of a decision may be reversed or varied, and may also be exercised in favour of all or any of the Respondents or parties, although such Respondents or parties may not have appealed from or complained of the decision'.

Clearly, Rules 31 and 32 aforesaid, empowers this Courts to determine those issues, raised by the Appellant herein, showing cause that he has a good Defence to the claims of the Respondent herein. This Court finds that there are sufficient facts contained in the affidavits of ABU TURAY aforesaid and ALHAJI WURIE JALLOH aforesaid, which makes it possible for this Court to determine the matter herein rather than remit the same to the Court below for trial.

Even though as stated above that, it is yet to be conclusively established that the piece or parcel of land and hereditaments claimed by the Respondents herein measuring 0.1012 Acre in area and delineated on survey plan dated 18th September 2009 and numbered LS 477/09, attached to the Deed of Conveyance dated 23rd November 2010 aforesaid, by virtue of which the Respondents

herein claim to have become seized in fee simple of, is a portion of the piece or parcel of land and hereditaments claimed by the Appellant herein, measuring 0.4984 acres in area and delineated on survey plan dated 12th December 2011 and dated 10th February 2008, by virtue of which the Appellant herein, claim to have become seized in fee simple of, this Court finds no evidence contradicting the fact that, indeed the Respondents' piece or parcel of land and hereditaments claimed is a portion of the Appellant's piece or parcel of land and hereditaments claimed. By reason that there can no longer be a trial of matter herein, it should be safe to conclude that the piece or parcel of land and hereditaments claimed by the Respondents herein is a portion of the piece or parcel of land hereditaments claimed by the Appellant herein, in the absence of any evidence to the contrary.

It is seen from the above, that in his bid to establish his contention that the piece or parcel of land and hereditaments claimed by the Respondents herein, had already been sold to him before it was sold to the Respondents, the Appellant relied on an unregistered Conveyance which he deposes was executed by PA SAMURA TURAY and LAMIN KARGBO on the 10th February 2008, as contained in his affidavit, sworn to on the 6th February 2012, the said Conveyance annexed to the said affidavit and marked Exhibit 'AWJ 2'. ALHAJI WURIE JALLOH, the Appellant herein deposed further in his affidavit aforesaid that he was unable to register the Conveyance aforesaid by reason that the survey plan which should have been attached to the said Conveyance before it was registered, was only recently signed by the Director of Surveys and Lands, the same which is dated 12th December 2011 and numbered LS 2658/11 annexed to his affidavit aforesaid and marked 'AWJ 4'. Exhibits 'AWJ 2' and 'AWJ 4' are documents which the Learned Trial Judge out rightly dismissed stating in his Decision/Judgement delivered on the 10th January 2013, that the two Exhibits do not in any way help the Appellant in his bid to establish his contention aforesaid, his reasoning being as contained in the excerpt from his Decision/Judgment aforesaid as follows: -

'Exhibits 'AWJ 2' is alleged to have been made or prepared in 2008 and it bears the alleged thump prints of PA SAMURA TURAY and LAMIN KARGBO as Vendors. There is no survey plan attached to 'Exhibit 'AWJ 2'. The survey plan is Exhibit 'AWJ 4'. However in Exhibit 'AWJ 2', mention is made of the survey plan which was only signed in 2011 and not only is the LS number which was obtained in 2011 stated therein (in computer type print) but that one of the beacons mentioned therein bears the number H 3475/11, which clearly shows that the land was surveyed in 2011. I am fortified in this assertion by the date the Licensed Surveyor inserted on the said Survey Plan which is 7th July 2011. How could an LS number issued in 2011 find its way (in Computer type form) in a Conveyance prepared in 2008? Even if this Court is to accept that the Conveyance was actually made in 2011, after the land had been surveyed, how could one explain the presence of a thump print on the said Conveyance of PA SAMURA TURAY who is alleged to have died in December 2009. It is clear that Exhibit 'AWJ 2' and Exhibit 'AWJ 4' are not helpful to the case of the Appellant herein'.

This Court holds the view that the question posed by the Learned Trial Judge aforesaid, as to how could one explain the presence of the thump print of PA SAMURA TURAY, who is alleged to have died on the 25th December 2009, in the unregistered Conveyance, seems to be a suggestion that the said thump print, even if it was one put on the said unregistered Conveyance before the death of PA SAMURA TURAY, could not have been put there by him. Coupled with this suggestion, is the submission of A. SHOWERS ESQ of Counsel for the Respondents herein that, by his own sworn evidence, the Appellant herein only had an undated Conveyance purportedly signed by PA SAMURA TURAY and LAMIN KARGBO, denying also that the unregistered Conveyance by virtue of which the Appellant herein claims title to the piece or parcel of land and hereditaments, a portion of which is the subject matter of the action herein, was dated 10th February 2008. Obviously, there is not an iota of evidence, even remotely, suggesting that the signature of PA SAMURA TURAY was not put on the said unregistered Conveyance by him. By reason of this and the fact that PA SAMURA TURAY died on the 25th December 2009, it cannot be disputed that the unregistered Conveyance aforesaid was signed before the said date by the said PA SAMURA TURAY. In this regard, it cannot be said that the unregistered conveyance aforesaid was never signed by the said PA SAMURA TURAY before his death.

Notwithstanding that A. SHOWERS ESQ vehemently denies the submission of A.M. KAMARA ESQ that both the Appellant herein and the Respondents herein derive their title to their respective pieces or parcels of land herein, through a common Vendor in the persons of PA SAMURA TURAY and LAMIN KARGBO, it is claimed through, as contained in Exhibit 'AT 1', which is the statement and particulars of the Respondents' claim, the same annexed to the affidavit of ABU TURAY, sworn to on the 20th January 2012, in support of the application aforesaid, by Judges Summons dated 20th January 2012, that the said PA SAMURA TURAY and the said LAMIN KARGBO became seized of the piece or parcel of land at Off Wilkinson Road, Lokotti, Freetown aforesaid, by way of a Deed of Conveyance dated 26th October 2006 and registered as No. 3113/2006 in Volume 612 at page 128 of the Book of Conveyances kept in the office of the Registrar General in Freetown, a portion of which was conveyed to the said Respondents herein. A. SHOWERS ESQ of Counsel for the Respondents herein submitted further that the said PA SAMURA TURAY died intestate on the 25th December 2009 and Letters of Administration to administer the Estate of the said PA SAMURA TURAY (Deceased) was granted to KELVIN DUMBUYA, the next of kin of the said PA SAMURA TURAY (Deceased) on the 31st May 2010. A. SHOWERS ESQ of Counsel for the Respondents submitted also that it was the said KELVIN DUMBUYA and the said LAMIN KARGBO who sold the piece or parcel of land and hereditaments to the said Respondents, which they claim a declaration of title to.

It cannot be disputed that, notwithstanding the fact that it is true that, both the Appellant herein and the Respondent herein did not derive their title to their respective piece or parcel of land and hereditaments though a common Vendor, as submitted by A. SHOWERS ESQ, it cannot be said that their respective predecessors in title to their respective pieces or parcels of land and hereditaments are not the same in the persons of PA SAMUARA TURAY and LAMIN KARGBO. In

the affidavit of ALHAJI WURIE JALLOH aforesaid to which is annexed Exhibit 'AWJ 1' being the unregistered conveyance dated 10th February 2008, it is recited therein that, PA SAMURA TURAY and LAMIN KARGBO became seised in fee simple absolute of the piece or parcel of land at Off Wilkinson Road, Lokotti, Freetown aforesaid, measuring 0.4984 acre in area, which was conveyed to the Appellant herein by the said PA SAMURA TURAY and LAMIN KARGBO by virtue of a Deed of Conveyance dated 26th October 2006 and registered as No. 3113/06 in volume 612 at page 128 in the Book of Conveyances. Despite the fact that the issue of an unregistered Conveyance aforesaid, signed by PA SAMURA TURAY and LAMIN KARGBO was introduced into the matter herein by the Appellant, the fact that the Respondents themselves contend that the same was not signed by the said persons in view of this Court's determination that the respective predecessor-in-title to the party's respective piece or parcel of land and hereditaments herein, makes the issue herein as between the Respondents and the Appellant triable ones, it has been established herein on the other hand that both have a common predecessors-in-title to the parties respective pieces or parcels of land and hereditaments.

This Court holds the view that the fact though, that the parties herein have common predecessors-in-title to their respective pieces or parcels of land and hereditaments, amplifies the Appellant's main issue raised by him as to why leave ought to be given to him to defend, the same being that the piece or parcel of land claimed by him was first conveyed to him before it was conveyed to the Respondents herein. It is clear from the above that the only reason why it is not PA SAMURA TURAY and LAMIN KARGBO who jointly conveyed the piece or parcel of land and hereditaments claimed by the said Appellant are not the same persons who jointly conveyed the piece or parcel of land and hereditaments claim by Respondents herein, is because as submitted above by A. SHOWERS ESQ of Counsel for the Respondents herein, PA SAMURA TURAY died Intestate on the 25th December 2009. This undisputed fact, being the case, it ought to have considered and determined whether KELVIN DUMBUYA, to whom letters of Administration of the estate of PA SAMURA TURAY (Deceased Intestate) was granted on the 31st May 2010 and who was one of the Vendors with LAMIN KARGBO who jointly conveyed the piece of parcel of and hereditaments in question to the Respondents herein, inherited in particular, the piece or parcel of land and hereditaments aforesaid, which he could convey. In other words the pertinent question is, was the piece or parcel of land and hereditaments declared as forming part of the estate of the said PA SAMURA TURAY (Deceased Intestate). Clearly there is no indication from the records that the said Letters of Administration under seal was produced and clearly, no indication that the Learned Trial Judge even considered an answer to the pertinent question aforesaid. As stated above, and contained in his affidavit in opposition to the application by Judges Summons aforesaid, the said affidavit which was meant to show cause and for leave to defend, the Appellant herein deposed that one of his predecessor in title, LAMIN KARGBO acknowledged receipt of the sum of Three Million Five Hundred Thousand Sierra Leone Leones (SLL 3,500,000/00) from him for the purpose of refunding the same to one MOMODU KARGBO who he had mistakenly sold the piece or parcel of land and hereditaments, the subject matter of the action herein, to and who bought for and on behalf of the Respondents herein.

As seen from the above LAMIN KARGBO is a common Vendor to both the Appellant herein and the Respondents herein in respect of their respective portions of the piece or parcel of land and hereditaments in question, the Appellant herein claiming that the portion conveyed to the Respondents herein, falls within the piece or parcel of land and hereditaments conveyed to him by the said LAMIN KARGBO and PA SAMURA TURAY, an issue which in itself has already been determined to be a triable one. This Court holds the view that in as much as it agrees with the Learned Trial Judge when he stated at page 38 of the Records of Appeal herein that, there is nothing in the affidavit in opposition of ALHAJI WURIE JALLOH aforesaid to show that the Thumb print found in the Deed of Conveyance dated 23rd November 2010, by virtue of which the Respondents herein became seised in fee simple absolute in possession of all that piece or parcel of land and hereditaments situate lying and being at Off Wilkinson Road, Lokotti, Freetown measuring an area of 0.1012 Acre is not that of LAMIN KARGBO aforesaid, so also is it a fact that nothing has been shown to contradict that Exhibit "AWJ 5" annexed to the affidavit of ALHAJI WURIE JALLOH aforesaid which is the document containing the thumb print of LAMIN KARGBO showing that LAMIN KARGBO acknowledged receipt of the sum of Three Million Five Hundred Thousand Sierra Leone Leones (SLL 3,500,00/00), is not the thumb print of the said LAMIN KARGBO. In that regard, this Court holds the view that the learned Trial Judge ought to have paid considerable attention to the contents of Exhibit 'AWJ 5' in deciding whether or not to give Summary Judgment as he did or grant leave to the Appellant herein to defend pursuant to the application by Judges Summons herein dated 20th January 2010. The contents of Exhibit 'AWJ 5' aforesaid found at page 108 of the Records of Appeal reveal that the purpose of the sum of Three Million Five Hundred Thousand Sierra Leone Leones (SLL 3,500,000/00) which the said LAMIN KARGBO acknowledged receipt of, was to refund same to MOMODU KARGBO, who bought the piece or parcel of land and hereditaments aforesaid for and on behalf of the Respondents herein because the said LAMIN KARGBO who was not present when an agreement for the sale of the piece or parcel of land and hereditaments aforesaid was made, came to realize that the same had already been sold to the Appellants. Clearly, notwithstanding the fact that a determination of the veracity of the contents of Exhibit 'AWJ 5' aforesaid could not have been made at the hearing of the application by Judges Summons aforesaid, the issue raised by Exhibit 'AWJ 5' is a triable one and dwells squarely on the Appellants claim that the piece or parcel of land and hereditaments in question was first conveyed to him before it was to the Respondents. The issue aforesaid will still remain a triable one notwithstanding the fact that, as stated above it was not shown that the thumb print found in the Deed of Conveyance dated 23rd November 2010 aforesaid is not that of LAMIN KARGBO, which said fact this Court views as suggesting that despite Exhibit 'AWJ 5' aforesaid, LAMIN KARGBO still went ahead and signed the Deed of Conveyance aforesaid, when he could easily have refused to sign same after realizing his mistake.

Clearly, the above establishes the fact that PA SAMURA TURAY and LAMIN KARGBO executed, the unregistered Conveyance aforesaid, conveying to the Appellant herein, the piece or parcel of land and hereditaments, a portion of which the Respondents herein claim a Declaration of title to, before the death of PA SAMURA TURAY, which could have been any time before the 25th

December 2009, there being no evidence brought forward contradicting the fact that the same was executed on the 10th February 2008. In addressing the doubts expressed by the Learned Trial Judge, in his Decision/Judgment aforesaid, as to how the LS number of the survey plan being Exhibit 'AWJ 4' in respect of a survey done in 2011 found its way (in computer type form) in an unregistered Conveyance executed on the 10th February, 2008, it should be pointed out that, it has been made abundantly clear that the Conveyance executed on the 10th February, 2008 aforesaid, remained an unregistered one by virtue of the fact that the survey plan which should have been attached to it was yet to be signed by the Director of Surveys and Lands. It cannot be disputed that, the said survey plan numbered LS 2658/11 was only signed by the Director of Surveys and Lands on the 12th December 2011. The question how the LS number of the survey plan aforesaid found its way (In Computer type form) in an unregistered Conveyance executed on the 10th February 2008 cannot be a difficult one to answer. Certainly the LS number of the survey plan aforesaid, found its way (In Computer type form) into the unregistered Conveyance aforesaid after the said survey plan was signed by the Director of Surveys and Lands on the 12th December 2011. It cannot be disputed that the well known practice of Legal Practitioners in Sierra Leone is for them to prepare Conveyances for their clients and get Vendors to execute same before survey plans are done and signed by the Director of Surveys and Lands, inserting the schedules into these Conveyances already executed after the survey plans are done and signed.

It should be pointed out that, the relevant and paramount consideration here, is not when the survey plan delineating the piece or parcel of land was prepared by the Licensed Surveyor and or when the same was signed by the Director of Surveys and Lands. It is the date on which the Conveyance conveying the said piece or parcel of land and hereditaments was executed. In this case and as stated above, there being no evidence adduced herein, contrary to the fact that the thumb print of PA SAMURA TURAY contained in the unregistered Conveyance aforesaid was his, it can safely be said that the same was executed by the said PA SAMURA TURAY and LAMIN KARGBO, before the death of PA SAMURA TURAY, which could have been any time before the 25th December 2009, including the 10th February 2008, there being no evidence brought forward contradicting the fact that the same was executed on the 10th February 2008. In this regard, it is immaterial that the Learned Trial Judge, as stated in the excerpt of his Decision/Judgment above, is fortified that the Licensed Surveyor signed the survey plan numbered LS 2658/11 on the 7th July 2011, in his assertion that one of the beacons on the survey plan bears the number OH 3475/11 which clearly shows that the piece or parcel of land was surveyed in 2011.

Clearly it cannot be said that because the survey plan aforesaid was signed by the Licensed Surveyor on the 7th July 2011, the survey itself was done in 2011 rather than in 2008 when the unregistered Conveyance was executed. Of course, there could be several reasons why the Licensed Surveyor signed the same on the 7th July 2011, including the fact that the original survey plan bearing a date on or around 2008, might have been discarded on the request of the Director of Surveys and Land who would more likely be inclined to sign a survey plan signed by the Licensed surveyor bearing a date closer to the date on which he signs rather than one bearing a

date several years before he signs. Moreover, the fact that one of the beacons on the said survey plan bears the number OH 3475/11, does not in any way show that the survey itself was done in 2011. Certainly, it cannot be said that because of the fact that the other beacon numbers on the survey plan aforesaid found on page 25 of the Records of Appeal, bear the numbers J 213/95, J 214/95, J 215/95, J 216/95, J 217/95, J 218/95 and J 219/95 show that the survey itself was done in 1995. Again, as regards the survey plan dated 18th September 2009 and numbered LS 477/09 signed by a Licensed Surveyor on the 19th August 2009, the same delineating the piece or parcel of land and hereditaments claimed by the Respondents herein, found at page 112 of the Records of Appeal, it cannot be said that because the survey plan bears beacon number M 179/79 and J 215/95 which is the same beacon number as one of the beacon number found in the survey plan delineating the piece or parcel of land and hereditaments claimed by the Appellant herein, the survey of the Respondents' piece or parcel of land and hereditament claimed by them was done in 1979 and or 1995.

The conclusion which one would draw from the analysis above is that, the Learned Trial Judge completely erred in his analysis of Exhibit 'AJW 2' and Exhibit 'AWJ 4' annexed to the affidavit of ALHAJI WURIE JALLOH, the Appellant herein, sworn to on the 8th February 2012, in opposition to the application for Summary Judgment aforesaid and his conclusion stated in his Decision/Judgment aforesaid that the two exhibits aforesaid do not in any way help the Appellant in his bid to establish his contention that the piece or parcel of land and hereditaments, claimed by the Respondents herein had already been sold to him before it was sold to the said Respondents. This Court's analysis above, clearly establishes that Exhibit 'AWJ 2' aforesaid though unregistered, was executed by PA SAMURA TURAY and LAMIN KARGBO before the death of PA SAMURA TURAY on the 25th December 2009, which could have been any time before that date inclusive of the 10th February 2008, there being no evidence contradicting the same. This Court holds the view that the said analysis further establishes that, Exhibit 'AJW 2' aforesaid was unregistered by reason that Exhibit 'AJW 4' aforesaid which should have been attached to Exhibit 'AJW 2' before it is registered was not signed by the Director of Surveys and Lands until the 12th December 2011.

It cannot be disputed that if the analysis above, establishes that Exhibit 'AJW 2' aforesaid, was executed by PA SAMURA TURAY and LAMIN KARGBO before the death of PA SAMURA TURAY on the 25th December 2009, which could have been any time before that date inclusive on the 10th February 2008, then the contention of the Appellant herein that, the piece or parcel of land and hereditaments claimed by the Respondents herein, had already been sold to the said Appellant before it was sold to the said Respondents on the 23rd November 2010, as seen from the Deed of Conveyance annexed to the affidavit of ABU TURAY sworn to on the 20th January 2012 and marked Exhibit 'AT 8', ought to be upheld. This Court holds the view that, the position aforesaid would hardly change, notwithstanding the fact that A. SHOWERS ESQ of Counsel for the Respondents vehemently denies the submission of A. M. KAMARA ESQ of Counsel for the Appellant that both the Appellant herein and the Respondents herein derived their title to their

respective the pieces or parcels of land through a common vendor in the person of PA SAMURA TURAY and LAMIN KARGBO.

It is seen that, the above establishes the fact that the piece or parcel of land and hereditaments claimed by the Respondents, the subject matter of the application for Summary Judgment aforesaid, herein delineated on survey plan dated 18th September 2009 and numbed LS 477/09 aforesaid, situate at Off Wilkinson Road, Lokotti, Freetown measuring 0.1012 acre in area, is a portion of the piece or parcel of land and hereditaments which the Appellants herein contend is his, the same which is delineated on survey plan dated 12th December 2011 and numbered LS 2658/11 aforesaid, situate at off Wilkinson road, Lokotti, Freetown measuring 0.4984 acre in area. It has been established further that, the said Respondents claim title to their piece or parcel of land and hereditaments aforesaid, by virtue of a Deed of Conveyance dated 23rd November 2010 and registered as No. 2149/2019 in volume 668 at page 139 of the Book of Conveyances kept in the office of the Registrar General in Freetown and that the Appellant herein claim title to his piece or parcel of land and hereditaments aforesaid, by virtue of an unregistered Conveyance executed at a date before the 25th December 2009, which said date could be the 10th February 2008, there being no evidence contradicting that, the same was so executed on the said date. It has been established also that, notwithstanding the fact that both the Respondents herein and the Appellant herein do not have common vendors, they have both derived title to their respective piece or parcel of land hereditaments through common predecessors in title, in the persons of PA SAMURA TURAY and LAMIN KARGBO, the said PA SAMURA TURAY who died on the 25th December 2009, the said death being the only reason why it was not him and LAMIN KARGBO, the vendors of the Appellants, who conveyed to the said Respondents.

This being the case, it cannot be disputed that before KELVIN DUMBUYA, the Administrator of the Estate of PA SAMURA TURAY and LAMIN KARGBO, executed the Deed of Conveyance dated 23rd November 2010 aforesaid, in favour of the Respondent herein in respect of the piece or parcel of land and hereditament being the subject matter of the application for Summary Judgment aforesaid, the said PA SAMURA TURAY and LAMIN KARGBO had already executed a Deed of Conveyance on a date before the death of PA SAMURA TURAY aforesaid, which said date could be the 10th February 2008, there being no evidence contradicting that the same was so executed on the said date, in favour of the Appellant herein, in respect of the piece or parcel of land and hereditaments which the said Appellant contend is his, a portion of which is the piece or parcel of land and hereditaments being the subject matter of the application for Summary Judgment aforesaid. But for the fact that the Deed of Conveyance, by virtue of which the Appellant herein claim title to his piece or parcel of land and hereditaments aforesaid is unregistered, this Court could well at this stage have determined the Appellant's contention that his piece or parcel of land and hereditaments aforesaid, was sold to him by PA SAMURA TURAY and LAMIN KARGBO before a portion of it was sold to the Respondents by KELVIN DUMBUYA, the Administrator of the Estate of PA SAMURA TURAY and LAMIN KARGBO. The reason why it would not do so at this

stage, is because this Court should consider the provisions of Section 2 (2) (a) of the **REGISTRATION OF INSTRUMENTS (AMENDMENT) ACT 1964** which provides as follows: -

'Every Deed, Contract or Conveyance executed after the 1st day of June 1964, SHALL BE VOID, so far as regards any land to be thereby affected, unless it is registered within the appropriate period limited for such registration which in accordance with Section 4(1) of the REGISTRARION OF INSTRUMENTS ACT, CHAPTER 256 of the LAWS OF SIERRA LEONE 1960 as amended shall be within Ten (10) days from its date of execution, PROVIDED that any person prejudiced by the avoidance of any transaction under the provisions of this subsection may apply by Originating Summons to a Judge for permission to register after the expiration of the period limited for registration, and if the Judge is satisfied that either, the failure to register was not due to any fault of the Applicant or the Applicant's failure to secure registration in time was in all the circumstances of the case excusable, he may permit the applicant to register out of time and the transaction in question shall be deemed never to have been avoided and shall take effect as against other transactions affecting the same land from such date as shall be deemed to the Judge to be just'.

Clearly, by reason of Section 2 (2) (a) aforesaid, the Deed of Conveyance aforesaid, executed by PA SAMURA TURAY and LAMIN KARGBO in favour of the Appellant herein in respect of the piece or parcel of land and hereditaments situate at Off Wilkinson Road, Lokotti, Freetown which he contends is his, title to a portion of which is being claimed by the Respondents herein, would be declared void by reason that as at the 8th February 2012, which said date was the date on which the Deed of Conveyance aforesaid, was exhibited and annexed to the affidavit of ALJAH WURIE JALLOH and marked Exhibit 'AWJ 2', it had remained unregistered for more than Ten (10) days from the date on which it was so executed, the said date being before the death of PA SAMURA TURAY aforesaid, which said date could be the 10th February 2008, unless it is shown that an application to register the said Deed of Conveyance out of time was made by or on behalf of the Appellant herein pursuant to section 2 (2) (a) aforesaid. A. SHOWERS ESQ of Counsel for the Respondents submitted that there is no evidence of any application for permission to register the Deed of Conveyance aforesaid after the lapse of the period limited for its registration. On the contrary and found at page 20 of the Records of Appeal herein, is an order of the Court dated 8th March 2012, granting leave inter alia to the Appellant herein to register out of time the Deed of Conveyance aforesaid, expressed to be made between PA SAMURA TURAY and LAMIN KARGBO on the one hand and the Appellant herein on the other hand. Notwithstanding the fact that the Records of the Appeal herein do not reflect the contents of the application, pursuant to which the order aforesaid was made, the Court Order itself reveal that, the grant of the Order aforesaid, was made pursuant to an application made by way of an Originating Summons dated 7th January 2012. In the absence of any evidence contradicting the existence of an Originating Summons dated 7th January 2012 aforesaid, this Court finds that indeed an application for permission to register the Deed of Conveyance aforesaid, after the lapse of the period limited for

registration, was made by the Appellant herein, the said findings which would in effect amount to overruling the submission of A. SHOWERS ESQ., aforesaid.

The submission of A. SHOWES ESQ., aforesaid seem to have been first made and contained in his synopsis of arguments dated the 10th January 2019. Notwithstanding the fact that the Records of Appeal do not in any way reveal arguments in this regard, the fact that the Court Order aforesaid, is contained in the Records of Appeal herein is suggestive of the fact that A. SHOWERS ESQ. ought to have known that the Appellant herein, filed an application to register the Deed of Conveyance aforesaid out of time pursuant to Section 2 (2) (a) of the **REGISTRATION OF INSTRUMENTS (AMENDMENT) ACT 1964**, having regard to the fact that the Records of Appeal herein were settled before the same was printed and bound. It stands to reason then that, by reason of the fact that the submission of A. SHOWERS ESQ. was made, as is contained in his synopsis of arguments aforesaid on the 10th January 2019, it beats the imagination of this Court as to the reason(s) why the submission aforesaid, was made when there was glaring evidence contradicting such a submission. The only conclusion one would draw from this is that, the same was made so as to cover up the fact that steps had been taken to deliberately side step and avoid addressing the issue of registration of the Deed of Conveyance aforesaid out of time, the same which should have been paramount in helping the Learned Trial Judge reach a conclusion on the application for Summary Judgment, by way of a Judges Summons dated 20th January 2012. The conclusion aforesaid can best be put in perspective, when the chronology of the undisputed and uncontroverted sequence of events up to and leading to the Decision/Judgment delivered by the **HON. MR. JUSTICE ABDULAI H. CHARM – J.** (as he then was) dated the 10th January 2013, is outlined.

The piece or parcel of land and hereditaments situate lying and being at Off Wilkinson Road, Lokotti, Freetown in the Western Area of Sierra Leone measuring 0.4984 acre in area was conveyed to the Appellant herein by way of a Deed of Conveyance executed by PA SAMURA TURAY and LAMIN KARGBO on a date before the death of PA SAMURA TURAY on the 25th December 2009, which said date could be the 10th February 2008, there being no evidence contradicting that the same was so executed on the said date. A portion of the same piece or parcel of land and hereditaments measuring 0.1012 acre was conveyed to the Respondents herein by Way of a Deed of conveyance executed by KELVIN DUMBUYA, the Administrator of the Estate of PA SAMURA TURAY and LAMIN KARGBO on the 23rd November 2010, the same registered as No. 2149/2010 in Volume 668 at page 139 of the Book of Conveyances kept in the office of the Registrar General in Freetown. The Respondents herein commenced an action against the Applicant herein in respect of the piece or parcel of land and hereditaments aforesaid by way of a Writ of Summons issued on the 3rd June 2011, the said Writ of Summons and its accompanying Statement and Particulars of Claim, which was apparently served on the Appellant herein, who entered an Appearance on the 24th June 2011, delivered and filed a Defence to the claims of the Respondents on the 12th July 2011. The survey plan delineating the piece or parcel of land and hereditaments measuring 0.4984 acre in area which said survey plan should have been attached

to the Deed of Conveyance executed in favour of the Appellant herein to effect registration of it, but which was not so attached by reason that it was not signed by the Director of Surveys and Lands at the time was eventually signed by him on the 12th December 2011 and numbered LS 2658/11. An application to register the Deed of Conveyance aforesaid out of time, by way of an Originating Summons dated 7th January 2012, was filed for and on behalf of the Appellant herein. An application for an order that Judgment be given summarily on the Respondents claim as contained in his Statement of Claim accompanying the Writ of Summons aforesaid, on the ground that the Appellant has no Defence to the said claims, by way of Judges Summons dated 20th January 2012, was filed for and on behalf of the Respondents herein. By an order of the Court dated 8th March 2012, the Appellant herein was granted leave to register the Deed of Conveyance executed by PA SAMURA TURAY and LAMIN KARGBO aforesaid out of time pursuant to the application by way of an Originating summons dated 7th January 2012 aforesaid. The Deed of Conveyance aforesaid was registered with the Registrar General in Freetown on the 13th March 2012, as No. 463/2012 in Volume 685 at page 127 in the Book of Conveyance kept with the Registrar General aforesaid. The Decision/Judgment that Respondents enter Judgment in respect of their claims against the Appellant herein as contained in his Statement of Claim accompanying the Writ of Summons aforesaid, the same which is being appealed herein, was delivered on the 10th January 2013, almost a year after the Appellant's Deed of Conveyance aforesaid, in respect of the piece or parcel of land which he lay claims to, a portion of which is the subject matter of the action herein, was registered. .

The chronology of the sequence of events outlined reveal the undisputed fact that, from the very onset, the issue of the registration of the Deed of Conveyance executed by PA SAMURA TURAY and LAMIN KARGBO aforesaid was one which should have been the ultimate deciding factor in so far as the ownership of the piece or parcel of land and hereditaments, which is the subject matter of the proceedings herein is concerned. The Respondents cannot in any way say that, they were unaware of the fact that PA SAMURA TURAY and LAMIN KARGBO had dealt with the Appellant herein prior to their dealings with them and KELVIN DUMBUYA the Administrator of the Estate of PA SAMURA TURAY and of the existence of a Deed of Conveyance executed by PA SAMURA TURAY and LAMIN KARGBO, particularly so when the piece or parcel of land and hereditaments which they claim a declaration of title to measuring 0.1012 acre in area was only a portion of the piece or parcel of land and hereditaments which the Appellant claims is his, measuring 0.4984 acre in area. It stands to reason that, having regard to the fact that the Appellant's contention is that, the piece or parcel of land and hereditaments which he claims is his, a portion of which is the piece or parcel of land and hereditaments which the Respondents claim a Declaration of title to, was conveyed to him first, by PA SAMURA TURAY and LAMIN KARGBO by the unregistered Deed of conveyance aforesaid.

In this regard, this Court holds the view that the Respondents herein, knew that their ultimate success, if at all, in their claims would only be achieved if steps are taken to completely avoid bringing up and addressing the issue of the unregistered Deed of Conveyance aforesaid. The

justification for this Courts holding aforesaid, could be found from the fact that, after claiming a Declaration of title to the piece or parcel of land and hereditaments, subject matter of the proceedings herein, by their Statement of Claim accompanying the Writ of Summons, issued on the 3rd June 2011 and after the Appellant herein had an Appearance entered on the 24th June 2011, delivered and filed a Defence on the claims of the Respondents herein on the 12th July 2011, the Respondents herein had filed, for and on their behalf an application for an order for Summary Judgment to be given on their claims, on the 20th January 2012, only after the Director of Surveys and Lands had signed the survey plan delineating the piece or parcel of land and hereditaments aforesaid, which the Appellants claims to be his, on the 12th December 2011 and after the Appellant herein filed an application to register this unregistered Deed of Conveyance aforesaid on the 7th January 2012. By reason that the application for Summary Judgement to be given on the claims of the Respondents ought to have been made immediately after the Appellant herein entered an appearance on the 24th June, 2011 and logically before the said Appellant delivered and filed his Defence on the 12th July 2011, having regard to the fact that an application for Summary Judgement is made on the grounds that a Defendant has no Defence to the Plaintiffs claim and not the grounds that the Defendant's Defence is a sham, this Courts holds the view that the Respondent's filing of the application for Summary Judgment only after the occurrence of the events aforesaid, was clearly a step to frustrate the Appellant's bid to have his Deed of Conveyance aforesaid registered out of time.

Notwithstanding the fact that it cannot be said that the Respondents filing of the application for Summary Judgement by way of a Judges Summons dated 20th January 2012, did not in any way frustrate the Appellant's bid to have registered, out of time, the Deed of Conveyance executed by PA SAMUARA TURAY and LAMIN KARGBO in his favour, in respect of the piece or parcel of land and hereditaments delineated on survey plan dated 12th December 2011 and numbered LS 2658/11, one cannot say that the bringing up and addressing of this issue seems to have been somewhat frustrated during the hearing of and determination of the application for Summary Judgement aforesaid. Again, a review of the chronology of the sequence of events aforesaid would reveal the impossibility of avoiding the address of the issue of the registration of the Deed of Conveyance aforesaid out of time, avoidance of which could only amount to suppressing the ultimate deciding factor in so far as the ownership of the piece or parcel of land and hereditaments which is the subject matter of the proceedings herein is concerned.

It is seen from the above that, before the application for an order granting leave that the Respondents herein enter Judgment on his claims against the Appellant herein was filed on the 20th January 2012, the Appellant had filed an application for the registration out of time, of his Deed of Conveyance in respect of the piece or parcel of land and hereditaments, a portion of which is the piece or parcel of land and hereditaments claimed by the Respondents herein, on the 7th January 2012. In view of the fact that, the affidavit of ALHAJI WURIE JALLOH, the Appellant herein, showing cause that he has a good Defence to the claims of the Respondents herein on the merits and raising issues against the said claims which ought to be tried, was sworn to on the 8th February

2012 and that the orders granting leave to register the Deed of Conveyances, executed by PA SAMURA TURAY and LAMIN KARGBO aforesaid, was made only a month later on the 8th March 2012, whilst the hearing of the application for Summary Judgment aforesaid was ongoing, determination of which was done about Ten (10) months later on the 10th January 2013, it cannot be disputed that the issue of the registration out of time of the Appellant's Deed of Conveyance aforesaid, is bound to have been raised during the hearing of the application aforesaid. Unfortunately, this Court cannot confirm this and cannot also confirm the length of time during which proceedings in Court of the hearing of the application aforesaid lasted, because the records of the proceedings detailing all the oral arguments made by Counsel during the hearing aforesaid are entirely omitted from the Records of Appeal herein.

Even though, it cannot be disputed that registration out of time of the Appellant's Deed of Conveyance aforesaid is bound to have been raised during the hearing of the application for Summary Judgement aforesaid, the Learned Trial Judge ought to have addressed the said issue in his Decision/Judgement delivered on the 10th March 2013, having regard to the fact that, the mere mention in his affidavit, sworn to on the 5th February 2012 of the fact that, ALHAJI WURIE JALLOH, the Appellant herein is in the process of registering his Deed of conveyance aforesaid, should have caused the Learned Trial Judge to raise an eyebrow and consider the fact that if it was unregistered and therefore void, pursuant to Section 2(2) of the **REGISTRATION OF INSTRUMENTS (AMENDMENT) ACT 1964**, then the mention that the said Deed of Conveyance was in the process of being registered could only mean that an application for an order granting leave to register the same out of time was ongoing or that an order in that regard had already been made. Obviously, the Learned Trial Judge failed to avert his mind to this fact and failed also to address the issue of registration out of time of the Appellant's Deed of Conveyance aforesaid, in his Decision/Judgement herein, sought to be appealed against. This Court holds the view that had the Learned Trial Judge averted his mind to the fact that the mere mention that the Deed of Conveyance aforesaid, was in the process of being registered, could only mean that an application for an order granting leave to register the same out of time was ongoing or that an order in that regard had already been made or had the Learned Trial Judge addressed the issue of the registration out of time of the Appellant's Deed of Conveyance aforesaid, his conclusions would obviously have been different from the one he arrived at in his Decision/Judgement aforesaid.

By reason that the Learned Trial Judge comprehensively dealt with and concluded that the unregistered Deed of Conveyance aforesaid and the survey plan which was signed by the Director of Survey and Lands on the 12th December 2011, delineating the Appellant's piece or parcel of land and hereditaments, measuring 0.4984 acre in area, do not in any way help the Appellant's cause thereby discarding same, but refused to comment on Exhibit 'AWJ 5' annexed to the affidavit of ALHAJI WURIE JALLOH aforesaid, the same which reveals evidence of a common vendor to both the Appellant herein and the Respondents herein, in the person of LAMIN KARGBO acknowledging that the piece or parcel of land herein was first sold to the Appellant herein, before a portion of it was sold to the Respondents herein, an issue which is inextricably linked to the issue

of the registration out of time of the Appellant's Deed of Conveyance aforesaid, it cannot be disputed that the failure of the Learned Trial Judge to address the issue of the registration out of time of the Appellant's Deed of Conveyance aforesaid was deliberate, considerably tainting the Learned Trial Judge's Decision/Judgement aforesaid.

It has been determined above that the Appellant's bid to have registered out of time, the Deed of Conveyance executed by PA SAMURA TURAY and LAMIN KARGBO in his favour in respect of the piece or parcel of Land and hereditaments delineated on survey plan dated 12th December 2011 and numbered LS 2658/11 was not in any way frustrated by the Respondents' filing of the application for Summary Judgement, done by way of the Judges Summons dated 20th January 2012. Indeed as established aforesaid and pursuant to an application by way of an Originating Summons dated the 7th January 2012, for permission to register the Deed of Conveyance aforesaid, after the lapse of the period limited for its registration, an order of the Court dated 8th March 2012, granting leave to the Appellant herein to register out of time the Deed of Conveyance aforesaid was made. It cannot be disputed that the said order could only have been granted by the Judge aforesaid, by reason that he was satisfied that either the failure to register the Deed of Conveyance aforesaid within the time limited for its registration was not due to any fault of the Appellant herein or that the Appellant's failure to secure registration in time was in all the circumstances of the case excusable. In this regard, the uncontroverted excuse given by the Appellant herein is that his failure to register the Deed of Conveyance aforesaid, was because the survey plan which should have been attached to the said Deed of Conveyance before registration of it could be effected, remained unsigned by the Director of Surveys and Lands until the 12th December 2011, when it was so signed.

It has also been determined above that, notwithstanding the fact that it is true that both the Appellant herein and the Respondents herein did not derive their title to their respective pieces or parcels of land and hereditaments through a common Vendor, it cannot be said that their respective predecessors in title to their respective piece or parcel of Land and hereditaments are not one and the same, in the persons of PA SAMURA TURAY and LAMIN KARGBO. As stated above, the fact as established above that the party's respective survey plan dated 12th December 2011 and 18th September 2009 and numbered LS 2658/11 and LS 472/09 respectively are both based on a subdivision of the survey plan numbered LS 1217/95 lends credence to the fact that the party's herein have common predecessors-in-title to their respective piece or parcel of Land and hereditaments, this Court having also established that the piece or parcel of Land and hereditaments which the Respondents herein seek a Declaration of title to, delineated on survey plan dated 18th September 2009, numbered LS 477/09, measuring 0.1012 acre in area, is a portion of the piece or parcel of Land and hereditaments which the Appellant herein claim to be his, as delineated on survey plan dated 12th December 2011 and numbered LS 2658/11, measuring 0.4984 acre in area. It cannot be disputed that, as seen from the title deeds of the parties herein, the Appellant's being Exhibit 'AWJ 2' annexed to the affidavit of ALHAJI WURIE JALLOH, sworn to on the 8th February 2012 and the Respondents' being Exhibit 'AT 8', annexed to the affidavit of

ABU TURAY, sworn to on the 20th January 2012, LAMIN KARGBO is a common vendor to both the Appellant herein and the Respondents herein. It has been made clear that the only reason why it is not PA SAMURA TURAY and LAMIN KARGBO who jointly conveyed the piece or parcel of Land and hereditaments which the Respondents herein claim a Declaration of title to, is because PA SAMURA TURAY died intestate. These facts aforesaid are a restatement of an excerpt, as contained in the Decision/Judgement of the HON. MR. JUSTICE ABDULAI H. CHARM J (as he then was) as follows:

'Exhibit 'AT 8' (annexed to the affidavit of ABU TURAY, sworn to on the 20th January 2012) is the Conveyance of the Respondents herein. It is dated 23rd November 2010 and the vendors are KELVIN DUMBUYA and LAMIN KARGBO. The piece or parcel of Land originally belonged to PA SAMURA TURAY and LAMIN KARGBO. Upon the death of PA SAMURA TURAY on the 25th December 2009, KELVIN DUMBUYA took out Letters of Administration to administer the Estate of PA SAMURA TURAY, his late brother. It is by reason of this that, KELVIN DUMBUYA came to be a Co-vendor with LAMIN KARGBO. By reason that, the survey plan numbered LS 477/09 delineating the piece or parcel of Land which the Respondents herein claim a Declaration of title to and attached to Exhibit 'AT 8' aforesaid is signed on the 18th September 2009, about Three (3) months before the death of PA SAMURA TURAY, the inference to be drawn from these facts and dates are that PA SAMURA TURAY must have known about the sale of a portion of their piece or parcel of land and hereditaments to the Respondents herein and that KELVIN DUMBUYA took out Letters of Administration to complete the sale together with LAMIN KARGBO, after the death of PA SAMURA TURAY his late brother'.

It is clear that, from the above excerpt, KELVIN DUMBUYA jointly with LAMIN KARGBO executed the Conveyance in respect of the piece or parcel of land and hereditaments, which the Respondents herein claim a declaration of title to and which is a portion of the piece or parcel of land and hereditament which the Appellant claim is his, by virtue of him being the Administrator of the Estate of PA SAMURA TURAY, otherwise had it not been for his death, it would have been PA SAMURA TURAY himself jointly with LAMIN KARGBO, who have executed the same. As established above, PA SAMURA TURAY and LAMIN KARGBO jointly executed the unregistered Conveyance aforesaid conveying to the Appellant herein, the piece or parcel of land and hereditaments, a portion of which the Respondents claim a Declaration of title to, before the death of PA SAMURA TURAY, which could have been any time before the 25th December 2009 and there being no evidence brought forward contracting the fact that the same was executed on the 10th February 2008. In this regard, this Court holds the view that on the 23rd November 2010, when KELVIN DUMBUYA and LAMIN KARGBO jointly executed Exhibit 'AT 8' aforesaid in respect of the piece or parcel of land and hereditaments which the Respondents herein claim a Declaration of title to and which is a portion of the piece or parcel of land and hereditaments which the Appellant herein claims is his, PA SAMURA TURAY and LAMIN KARGBO had on a date before the death of PA SAMURA TURAY, which could have been any time before the 25th December 2009 including

the 10th February 2008, there being no evidence contradicting the fact that it was so executed on that date, jointly executed Exhibit 'AWJ 2' aforesaid, in respect of the piece or parcel of land and hereditaments which the Appellant herein claim is his. Accordingly, KELVIN DUMBUYA and LAMIN KARGO could not have jointly executed Exhibit "AT 8" aforesaid in favour of the Respondents herein, by reason that, at the time they so executed same, they did not possess any title to the piece or parcel of land and hereditaments in respect of which Exhibit 'AT 8' aforesaid relates, as PA SAMURA TURAY and the said LAMIN KARGBO had already dispossessed themselves of the piece or parcel of land and hereditaments, a portion of which Exhibit 'AT 8' aforesaid relates to, on a date before the death of PA SAMURA TURAY which could have been any time before the death of PA SAMURA TURAY, including the 10th of February 2008, there being no evidence contradicting the fact that it was so executed on that date, in favour of the Appellant herein. The principle in this regard is as follows:

'No one can transfer a better title to goods than that which he possesses, the same more neatly expressed by the maximum NEMODAT QUOD NON HABET'.

This Court holds the view that from the above, it can safely conclude that, Exhibit 'AT 8' annexed to the affidavit of ABU TURAY aforesaid, the same which is the Deed of Conveyance dated 23rd November 2010, executed in favour of the Respondents herein, in respect of the piece or parcel of land and hereditaments which they claim a Declaration of title to, is clearly invalid. This Court holds the view further that, even if its holding above were absolutely wrong, it cannot be disputed that Exhibit 'AT 8' aforesaid is a competing document with Exhibit 'AWJ 2' annexed to the affidavit of ALHAJI WURIE JALLOH, sworn to on the 8th February 2012, the same which is the unregistered Deed of Conveyance executed by PA SAMURA TURAY and LAMIN KARGBO on a date before the death of PA SAMURA TURAY on the 25th December 2009, which said date could be the 10th February 2008, there being no evidence contradicting the fact that it was so executed on that date, in respect of the piece or parcel of land and hereditaments, a portion of which the Respondents claim a declaration of title to, in favour of the Appellant herein, by virtue of the fact that by the Order of the Court dated the 8th March 2012 aforesaid, leave was granted to the Appellant herein to register out of time Exhibit 'AWJ 2' aforesaid, the same having been registered as No. 463/2012 in Volume 685 at page 127 of the Book of Conveyances kept with the Registrar General in Freetown. Section 4(1) of the REGISTRATION OF INSTRUMENTS ACT, CHAPTER 256 of the LAWS OF SIERRA LEONE 1960 as amended, provides as follows:

'Every Deed, Contract or Conveyance executed after, the 9th February 1857, so far as regards any land to be thereby affected shall take effect as against other Deeds affecting the same land, from the date of its registration'.

As stated above, Exhibit 'AWJ 2' aforesaid, became registered with the Registrar General aforesaid, pursuant to an Order of the Court dated 8th March 2012. By virtue of the same Court Order dated 8th March 2012, stipulating that the registration aforesaid shall take effect from the 10th February 2008, it cannot be disputed that the effective date of registration of Exhibit 'AWJ 2'

aforesaid, would be the 10th February 2008. In this regard, this Court holds the view that, Exhibit 'AWJ 2' having been registered on the 10th February 2008, takes precedence over Exhibit 'AT 8' which was registered almost Three (3) years later on the 23rd November 2010, Exhibit 'AT 8' aforesaid, which will remain a worthless document. Accordingly, this Court holds the view that the consideration by the Learned Trial Judge contained in his Decision/Judgement dated 10th January 2013, of the Respondents claim for a Declaration of title to the piece or parcel of land and hereditaments situate at Off Wilkinson Road, Lokotti, Freetown in the Western Area of Sierra Leone, the same delineated on Survey Plan dated 18th September 2009 and numbered LS 477/09 by virtue of Exhibit 'AT 8' which is the Deed of Conveyance dated 23rd November 2010 and registered as No. 2149/2010 in Volume 668 at page 139 of the Book of Conveyances kept in the Office of the Registrar General in Freetown is clearly unnecessary. This Court holds the view further that this notwithstanding, the Learned Trial Judge erred by proceeding to consider the Respondents' claim aforesaid, by stating at page 37 of the Records of Appeal that, he will examine the case for the Respondents herein, by applying the principles enunciated by **LIVESEY LUKE CJ** in the case between **SEYMOUR WILSON** and **MUSA ABESS** Civ. App. No. 5/79 in the Supreme Court of Sierra Leone (unreported) as follows:

'But in a case for 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 in evidence 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 other than the vendor or the Plaintiff, the Plaintiff would have failed to discharge the burden upon him'.

Clearly, even on the assumption that the Learned Trial Judge was correct by proceeding to consider the Respondents claim aforesaid, this Court holds the view that he considered the said claim by wrongly applying the principles enunciated by **LIVESEY LUKE CJ** aforesaid, as seen in the excerpt above, from the Decision/Judgment of the Learned Trial Judge delivered on the 10th January 2013, found at pages 37 to 38 of the Records of Appeal, the pith and substance of which was to rely on the weakness of the Appellant's case when he concluded that, Exhibit 'AWJ 2' annexed to the Affidavit of **ALHAJI WURIE JALLOH** aforesaid, and which is the Deed of Conveyance executed in favour of the Appellant herein, in respect of the piece or parcel of land and hereditaments which the said Appellant claim to be his, a portion of which is the piece or parcel of land and hereditaments which Respondents claim a declaration of title to, does not in any way help the said Appellant over and above the Respondents production of Exhibit 'AT 8' annexed to the affidavit of **ABU TURAY** aforesaid and which is the Deed of Conveyance dated 23rd November 2010, executed in favour of the said Respondents, in respect of the piece or parcel of land and hereditaments which they claim a Declaration of title to, rather than determine whether the said Respondents have gone further than just the mere production of Exhibit 'AT 8' aforesaid and proved the same to entitle them to a declaration of title. The pertinent question then is, 'what

proof should the Learned Trial Judge have searched for, in order for the Respondents to succeed in their claim for a Declaration of title to the piece or parcel of land and hereditaments aforesaid, on the assumption that the Learned Trial Judge was correct by proceeding to consider the Respondents' claim aforesaid'. In this regard, **RENNER-THOMAS CJ** in the case between **SORIE TARAWALLIE** and **SORIE KOROMA** Civ. App. No. 71/2004 in the Supreme Court of Sierra Leone (unreported) expressed thus:

'a distinction should be made between a documentary or paper title and a possessory title. In the Western Area of Sierra Leone which used to be a Crown Colony before combining with the Protectorate of Sierra Leone to become the unitary state of Sierra Leone at independence in 1961, in theory at least, the absolute or paramount title to all land was originally vested in 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 vested in the state, as successors in title of the Crown. According to the STATE LANDS ACT NO. 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 LAND ACT aforesaid. Thus a Declaration of title in favour of a Plaintiff without more, is shorthand for saying, that Plaintiff is seized of the said piece or parcel of land in fee simple'.

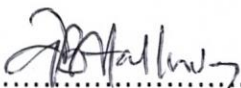
Clearly, Exhibit 'AT 8' aforesaid, which is a Deed of Conveyance dated 23rd November 2010, is the document by virtue of which the Respondents herein claims fee simple ownership of the piece or parcel of land and hereditaments, which is the subject matter of the proceeding herein, the same which could be referred to as documentary or paper title. From the expression above of **RENNER-THOMAS CJ** in the case between **SORIE TARAWALLIE** and **SORIE KOROMA** cited above, it is clear that for a person relying on documentary or paper title to be declared the fee simple owner of a piece or parcel of land, he must be able to trace his title to some grant by the Crown or State. It is seen that, from Exhibit 'AT 8' aforesaid, the Respondents predecessors-in-title to the piece or parcel of land and hereditaments aforesaid **PA SAMURA TURAY** and **LAMIN KARGBO** became seized of the piece or parcel of land and hereditaments a portion of which is the piece or parcel of land and hereditaments aforesaid, by virtue of a Deed of Conveyance dated 26th October 2006, registered as No. 3113/2006 in volume 612 at page 128 of the Book of Conveyance kept in the office of the Registrar General in Freetown, the same which is annexed to the affidavit of **ABU TURAY**, sworn to on the 20th January 2012 and marked Exhibit 'AT 6'. It is seen that from Exhibit 'AT 6' aforesaid, the predecessor-in-title of **PA SAMURA TURAY** and **LAMIN KARGBO** is **DAVID DUMBUYA** who became seized of the piece or parcel of land and hereditaments aforesaid by virtue of a Deed of Conveyance which remained unexecuted by one **JOKO NOX MACAULEY** (Deceased).

It is clear from the above that the Respondents herein who seek to rely on a documentary or paper title to be declared the fee simple owner of the piece or parcel of land and hereditaments which is the subject matter of the proceedings herein, were unable to trace their title to some grant by the Crown or state, a requirement which, as enunciated by **RENNER-THOMAS CJ** in the case

between **SORIE TARAWALLIE** and **SORIE KOROMA** cited above, is one which should be met before one is declared the fee simple owner of a piece or parcel of land. In upholding Ground Four (4) of the appeal herein, it is clear that, the Decision/Judgement herein is against the weight of evidence contained in the affidavit aforesaid. In this regard, the **Hon. Mr. JUSTICE ABDULAI H. CHARM J** (as he then was), the Learned Trial Judge erred in law when in his Decision/Judgment dated 10th January 2013, he ordered that the Respondents herein are the owners of and persons entitled to possession of all that piece or parcel of land and hereditament situate lying and being at Off Wilkinson Road, Lokotti Freetown in the Western Area of Sierra Leone measuring an area of 0.1012 acre. As a consequence, the Learned Trial Judge, further erred in law by ordering that the said Respondents recover possession of the same from the Appellant herein, erred in law by ordering the said Appellants to pay Damages of Ten Million Sierra Leone Leones (SLL10,00,000/00) to the Respondents herein, erred in law by ordering a Perpetual Injunction restraining the said Appellant from entering or remaining on the said piece or parcel of land and hereditaments or any portion of it, or interfering with it or any portion thereof in any way whatsoever and by any reason whatsoever and erred in law by ordering that the costs occasioned by the proceedings, at the Lower Court of Two Million Five Hundred Thousand Sierra Leone Leones (SLL2,500,000/00) be borne by the Appellant herein. Having held above that the Learned Trial Judge, erred in law by ordering that the Respondents recover possession of all that piece or parcel of land and hereditament situate lying and being at Off Wilkinson Road, Lokotti Freetown in the Western Area of Sierra Leone measuring an area of 0.1012 acre from the Appellant herein, it is obvious that the Respondents herein, ought to be restrained from taking possession of the piece or parcel of land and hereditaments aforesaid, by unlawful means which might provoke a reopening of this matter with a claim being made against the said Respondents by the said Appellant. Accordingly, the Appellant is entitled to the grant of an Injunction. Consequently this Court allows the appeal herein and order as follows: -

1. That the Decision/Judgement delivered by the **HON. MR. JUSTICE ABDULAI H. CHARM J** (as he then was) dated 10th January 2013 is hereby **WHOLLY SET ASIDE**.
2. A Perpetual Injunction restraining the Respondents from entering or remaining on the piece or parcel of land and hereditaments situate lying and being at Off Wilkinson Road, Lokotti Freetown in the Western Area of Sierra Leone measuring an area of 0.1012 acre, or any portion of it, or interfering with it or any portion thereof in any way whatsoever is hereby **GRANTED**.

3. That the Costs occasioned by the proceedings at the Court below and the Costs of the Appeal herein, the same which shall be taxed, if not agreed upon, **BE BORNE** by the Respondents herein.



HON. MR. JUSTICE ALLAN B. HALLOWAY JSC

I agree 

HON. MR. JUSTICE M. SENGU KOROMA JSC

I agree 

HON. MR. JUSTICE JOHN B. ALLIEU JA