C . C. 2/10 2010 T No 1

IN THE HIGH COURT OF SIERRA LEONE

(FAMILY AND PROBATE DIVISION)

BETWEEN:

MRS MARION TURAY

AUGUSTINE TURAY JNR - PLAINTIFFS

AND

TAMBA KELLIE TURAY - DEFENDANTS

BAI TURAY

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT

COUNSEL:
MOHAMED P FOFANAH ESQ for the Plaintiff
N D TEJAN-COLE ESQ (now deceased) & I S YILLA ESQ for the Defendants

JUDGMENT DELIVERED THE 8 DAY OF SEPTEMBER, 2020

THE PLAINTIFFS' CLAIM

1. The proceedings herein, started with the issuing of a writ of summons by the Plaintiff on 3rd March, 2010 against the Defendants herein. By Order of this Court dated 24th November, 2010, the said writ was amended, and for the purposes of this Judgment, the writ will hereafter be referred to in its amended form. The action was brought in respect of house and land situate at, and known as 15B Regent Road, Lumley, Freetown. It was said to have been owned by the deceased husband of the 1st Plaintiff, who was also the father of the 2nd Plaintiff. The deceased died on 4th November, 1997 during the AFRC Junta rule. Evidence of the deceased's ownership is recorded in deed of conveyance dated 12th May, 1988 duly registered as No.644/88 at page 135 in volume 444 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown. The deceased bought the property from a Mrs Georgiana Dolly Macauley for valuable consideration, the same whereof is recorded in the deed of

conveyance. The landed property is delineated in survey plan No. LS 4220/87 attached to the said deed.

2. The Plaintiffs claim further that on the demise of the deceased, the Defendants moved into the house, and displaced them, and the other children of the deceased, namely Paul Turay and Augusta Turay. Thereafter, the Defendants rented out the property to various persons, and have since then, retained the profit accruing from the said rental. By their conduct, the Defendants have deprived the Plaintiffs of possession of, and of their entitlement to the enjoyment of the said property. The Plaintiffs therefore prayed that this Court declare that they were the lawful beneficiaries of the estate of the deceased, and that therefore, they were legally and beneficially entitled to the property which formed part of the estate of the deceased. Further, that this Court declares that the Defendants are trespassers on the property. In addition, the Plaintiffs prayed also for recovery of possession of the said property, an Injunction directed at and to the Defendants, and for a statement of account of the Defendants' dealings with the property since 1998. Lastly, they prayed for the Costs of the action.

THE DEFENDANTS' STATEMENT OF DEFENCE

3. The Defendants filed a defence to the action on 10th December, 2010. They denied that the 1st Plaintiff was the widow of the deceased by virtue of a traditional marriage conducted under Islamic rites. They do not admit that the 2nd Plaintiff, together with Paul Turay and Augusta Turay are natural issue of the deceased. They aver that the 2nd Plaintiff had taken out a grant of Letters of Administration under this pretext. They aver further that both of them were brothers of the full blood of the deceased who had died professing the Christian faith. They contend that they, together with their two sisters were born and grew up on the property known as 15B Regent Road, Lumley. This property, they contend, was family property, and was purchased by their mother who had pre-deceased the deceased in 1986, for the benefit of all of them. According to them, the Plaintiffs were not occupying the property at the date of death of the deceased, but were invited to occupy the property in order for them to participate in the funeral rites. Contrary to the claims of the Plaintiffs, at that point in time, the 2nd Defendant and one their two sisters were residing in the property. Most importantly, they claim that

the deceased fraudulently had the property conveyed into his name alone in 1988. They only got to know about his fraudulent behaviour when the action herein was instituted. In this respect, they claim that they too are beneficiaries of the said property. They deny that they drove the Plaintiffs out of the property. The Plaintiffs moved out when they found the deceased's title deed amongst his personal property. Lastly, they aver that the second heading of the action, that is the reference to the Devolution of Estate Act,2007, is inapplicable to the action. The reason, I believe is because the deceased died before the Act was passed and became law in this jurisdiction. In effect, the Defendants are asking that the case be determined on the pre-2007 law.

4. I have pointed out above, briefly, that the writ was amended. The amendments ordered by this Court were in respect of the whole writ of summons. The initial action was brought by the 2nd Plaintiff only. The 1st Plaintiff was added by virtue of the amendment sought and obtained. Also, that appearance was originally entered on the Defendants behalf by Serry-Kamal & Co on 9th March, 2010. By virtue of notices dated 30th July, 2010 but only filed on 2 September, 2010, the late Mr Tejan-Cole was appointed and became Solicitor for the Defendants.

ISSUES IN DISPUTE FILED BY BOTH SIDES

5. On 25th March, 2011, pursuant to a summons for directions issued out by the Plaintiffs, I gave directions for the future conduct of the action. On 1st June, 2011, pursuant to these directions given, the Plaintiffs filed a combined Court Bundle. This Bundle, in proper compliance with the requirements of Order 40 High Court Rules, 2007, contained documents central to the case of the Defendants as well. Also, it contained the issues for determination identified by the Plaintiffs and by the Defendants. The issues identified by the Plaintiffs, were quite apparent on a reading of their pleadings. On the other hand, the issues in dispute identified by the Defendants were as follows: "*Whether (1) the Plaintiffs are the beneficiaries of the estate of the deceased intestate in the absence of legal and recognised wedding between the deceased intestate and the first Plaintiff; and (2) whether the second Plaintiff, his brother, and sister, children of the first Plaintiff all being illegitimate (Bastards) are entitled to the estate of the deceased intestate; (3) whether the*

first and second Defendants and their sisters, Monday Turay and Sambo Turay are not in law the only beneficiaries of the estate."

6. Also included in the Bundle, were the statements of witnesses, the birth certificates of the three children of the deceased, the Letters of Administration granted to the 2nd Plaintiff, the deed in respect of the property at 15B Regent Road, Lumley, the certificate of Mohammedan marriage issued on 28 July, 1988 evidencing the marriage under Islamic law between the deceased and the 1st Plaintiff and signed by the Registrar, Alhaji Gibril Saccoh.
7. Documents included in the Bundle at the Defendants' request were correspondence between Mr Tejan-Cole, and the then Registrar-General, Ms Seray Kallay. Mr Tejan-Cole had requested information about the authenticity of the marriage certificate filed by the 1st Plaintiff. Ms Kallay responded by letter dated 8th September, 2010 stating that it was not authentic. In addition, there was a copy of the funeral service pamphlet evidencing the fact that the deceased was accorded a Christian funeral at Our Lady Star of Sea Church, Juba, Freetown on Thursday 13th November, 1997. A "*To whom it may concern*" note written by Father Martin Bassie of the Our Lady Star of the Sea, confirming that the funeral service was held at the Church, forms part of the Bundle.

ACTION ENTERED FOR TRIAL AND STATEMENT OF DEFENCE AMENDED

8. On 15th June, 2011, the action was entered for trial by the Plaintiffs, and notice of the same was filed and served on the Defendants' Solicitor. By Order of this Court dated 30th June, 2011, the Defendants through their Solicitor, Mr Tejan-Cole, on 4th July, 2011, filed an amended defence to the Plaintiffs' claim. A paragraph 11 was added stating: "*The Defendants say that the secnd Defendant, his brother and his sister Paul Turay and Augusta Turay are nullius filius and being illegitimate, have no right to either of their parents' estate.*" In plain English, the Defendants were here claiming that these children were all illegitimate, and were not therefore entitled to a share in the deceased's estate.
9. In return, the Plaintiffs filed an amended reply on 5th July, 2011 to the effect that the children of the deceased and of the 1st Plaintiff were their natural issue having been born during the course of a traditional union between them.

THE COURSE OF THE ACTION

10. The action first came up before me on a Motion for Judgment dated 31 May, 2010. At the time, Mr Fofanah was Counsel for the Plaintiffs, and Messrs Serry-Kamal & Co were Solicitors on record for the Defendants. It appeared, at this opening stage as recorded on page 3 of my minutes, that the opposing parties were ready to settle the matter by consent. But at a later hearing, the Defendants informed the Court that they had dispensed with the services of Serry-Kamal & Co. They later retained the services of Mr Tejan-Cole, as indicated above. The trial proper began finally on 8 July, 2011 with the 1st Plaintiff giving evidence, but due to several interventions recorded in my minutes at pages 11 – 14, she was only able to continue on 22 November, 2011.

PLAINTIFFS' CAPACITY TO SUE

11. One matter which ought to be attended to at once, is the Plaintiffs' individual capacity to bring the action herein. The Plaintiffs have brought the action in their joint capacity as beneficiaries of the estate of Augustine Turay, deceased. Notwithstanding the fact that the 2nd Plaintiff did obtain a grant from this Court, he has not brought this action as Administrator of his late father's estate. Had he done so, the action would have failed, as he himself said in evidence that he was a Christian, and that his father was also a Christian. The 1st Plaintiff, giving evidence as PW1 did also say at page 15 of my minutes, that the deceased was a Christian. She reiterated this under cross-examination – page 16. In this respect, section 9(1) of the Muslim Marriage Act, Chapter 96 of the Laws of Sierra Leone, 1960 as amended by Act No. 10 of 1988, is of importance. It states: *"If any party to a Muslim Marriage and being at the date of his death a Muslim, or, if any person being unmarried and being at such date a Muslim, shall die intestate, the estate real and personal of such intestate shall be distributed in accordance with Muslim Law."* The use of the conjunctive *"and"* in the first line of this statutory provision indicates that the deceased must not only have entered into a Muslim marriage before his demise, but must also be a Muslim at the date of his death. The deceased was clearly not a Muslim at the date of his death, even though, according to the Plaintiffs, he had gone through a Muslim ceremony of marriage with the 1st Plaintiff. That notwithstanding, the resulting marriage was valid in the eyes of the Law as I shall explain

below. The Grant made to the 2nd Plaintiff therefore has no bearing on the issues in dispute in this action, and consequently, this Judgment.

STATUS OF THE MARRIAGE IN BOTH CHRISTIAN AND MUSLIM LAW

12. Nevertheless, in terms of the Christian Marriage Act, Chapter 95 of the Laws of Sierra Leone, 1960, the deceased would be considered a married man, as he had gone through a ceremony of marriage, whatever the status of the marriage. As such, he would have been guilty of the crime of Bigamy, if he had attempted to go through a second ceremony of marriage, without first divorcing the 1st Plaintiff. This is the sum effect of section 57 of the Offences against the Person Act, 1861. It is the going through the ceremony of marriage a second time without divorcing the first wife which is the offence; not the validity of otherwise of the second marriage. So long as the first ceremony was known to the law, the marriage is valid for the purposes of the criminal law, and it matters not that a further process, for instance, registration of the same, was not embarked upon. Section 7 of Cap 95 is very clear on this. It states: *"No marriage may be celebrated under the provisions of this Act – (1), (2), (3) between persons either of whom is already married to some person other than a party to the intended marriage."* The statutory provision does not distinguish between the types of marriages.

ISSUES FOR DETERMINATION

13. It seems to me therefore, that the primary issue I have to decide first, is whether there was a valid marriage between 1st Plaintiff and the deceased; and if so, whether she is entitled beneficially to his estate, or, to a portion thereof; second, whether the 2nd Plaintiff, together with his sister and brother, are also beneficially entitled to their deceased father's estate, or, to a portion thereof; third, whether the landed property belongs, as claimed by both Defendants, to the Turay family on the basis that the property was really bought by their deceased mother, in which case, their deceased brother, Augustine, the wife and the father of both Plaintiffs respectively, would have also been entitled on the mother's demise as he, Augustine, Turay, snr, was still alive at the time, and was therefore entitled to also share in her estate. It follows that if he would have been entitled, his widow and children should likewise be beneficially entitled to, at a minimum, a portion of that property.

14. Having gone through the testimony of each witness, I have come to the conclusion that there is no evidence that the mother of the Turays, Seray Turay, paid for the property at any point during her lifetime. The Deed of conveyance being a deed, is conclusive as to its contents. Extrinsic evidence is not admissible to vary, nor to contradict its contents. There have been instances when the Courts have allowed extrinsic evidence in, to clarify, or, to amplify the contents of a deed, but this is not one of such situations. And as the Defendants have not contended, nor testified that they contributed to the purchase price of the property, they cannot claim a beneficial interest in the property in their own right. There was no common intention between the parties, i.e between the Defendants and their deceased brother that the property would be purchased for the benefit of all of them; nor was there any evidence that either or both Defendants contributed towards its purchase. Such contribution would have enabled either or both Defendants to seek in aid the now well-established concept or principle in the law of equity, known as detrimental reliance, that is, that the Defendants relied on the bona fides of the deceased that they would all be joint owners of the property, but to their detriment, the property was conveyed into the name of the deceased alone. Such reliance may, I put it no higher than that, have also permitted the Defendants to argue that the deceased held the property on a constructive trust for themselves and himself, as joint tenants, or, as tenants-in-common. No resulting trust could be implied as they had not themselves contributed to the purchase price. The only basis on which the Defendants could make a claim in view of the evidence led at the trial, is that by virtue of their kinship with their deceased brother, they are entitled to share in his estate.
15. Most importantly, in my view, is the absence of any evidence of the state of the property when the Turays began living there in the childhood and youth, and the state it was in when the deceased died in 1997. For instance, was there a concrete structure on the land when the Defendants and the deceased were living there with their parents during their childhood? On the basis of the evidence led at the trial, it seems to me that at the time of the trial, or even long before that and before the deceased passed away, there must have been something more substantial in the way of a building, or, more than one building on the land, to allow

for the property to be occupied at one and the same time by several people, including the Plaintiffs and the two other children of the deceased; the Defendants, and also paying tenants or, according to the Defendants, non-paying tenants. That this must have been the case is supported by the evidence of DW1, the 1st Defendant. At page 25 of my minutes, he is recorded as saying: "……*There are 3 different properties at 15 – 15A, 15B and 15*……." He also said on the same page, when testifying about the amount of money his late mother was said to have paid Mrs Macauley, that his mother paid her Le1,000, and that in 1998, that amounted to a lot of money. That is evidence which is unacceptable. Apart from the absence of any note or memorandum evidencing the payment, in 1998, Le1,000 could not have been a lot of money in 1998 for purchase of property at Lumley. He added that the structure where he and his siblings were born was the one numbered 15B, and that it was a 'pan-body'. It was burnt down it seems, while the trial was on-going.

16. There's also the additional issue of, if, there was such a concrete structure, or, concrete structures on the land, who put it, or, them, up, so as to enable so many people to live there? The Defendants have not contended that they contributed any sum of money to the purchase of the land, or, to the construction of any building or buildings which may have been erected on the land. And as they are clearly adults, they certainly cannot claim to be entitled to share in their deceased brother's estate on any other known principle of the law or equity.
17. Nevertheless, I shall go through the evidence led at the trial so as to buttress the points I have made in the above paragraphs.

PW1 – MRS MARION TURAY

18. PW1 was the 1st Plaintiff, Marion Turay. Augustine Turay, the deceased was her husband. They were married at her then residence, 13 Havelock Street, Freetown, in the presence of her "father", Alpha Gray, her elder brother, PW3, Alpha Kamara, and , though this has been denied, by the 2nd Defendant, Bai Turay. She tendered in evidence the marriage certificate, exhibit A page 1. Exhibit A, page 1 shows that the marriage was solemnized on 27th July, 1988. The deceased gave his address as 15B Regent Road, Lumley, and the 1st Plaintiff gave hers as 13B Havelock Street, Freetown. The deceased gave his father/guardian's name as Alpha Gray who signed as one of the witnesses. The other witness was Santigie

Kargbo, whose name appeared in the father/guardian column in respect of the 1st Plaintiff. Alhaji Gibril Saccoh's name appears beside the title: Imam or Officiator.

MR TEJAN-COLE CHALLENGES THE AUTHENTICITY OF THE MARRIAGE CERTIFICATE

19. Mr Tejan-Cole did challenge the authenticity of this certificate during the course of the trial. First, that it was not registered. He therefore submitted that it had no validity in establishing the marriage. Second, he argued that Alhaji Gibril Saccoh was not the Imam of the Madingo Mosque at the time; that it was Alhaji Muctarr Kallay who was the then Imam. He was supported in this claim by the letter written by Ms Seray Kallay, then Administrator and Registrar-General in reply to a letter of his. I do not think the exchange of correspondence really matters. If the suggestion here is that Alhaji Saccoh's name was fraudulently inserted, then proof of such fraud should have come from the Defendants. Civil cases are decided on the balance of probabilities. He who asserts, must prove; and the burden of proving fraud rests on the party making the allegation. There was no such proof tendered during the trial. Ms Kallay was not called to give evidence of the truth of what she had asserted in her letter. Fraud is a serious allegation, and should be proved strictly. This Court is not prepared to rely on the out-of-court assertion of someone not called as a witness during the trial as cogent proof of fraud.

THE MUSLIM MARRIAGE ACT CAP 96 AS AMENDED

20. The provisions of the Muslim Marriage Act, Cap 96 as amended by Act No. 29 of 1972, and Act No 10 of 1988, are of importance, here. I shall begin with the long title which reads: "*An Act to define the Law relating to Muslim Marriages in Sierra Leone and to provide facilities for giving proof of such marriages.*" We then move on to section 2 which states as follows: "*Every marriage entered into and subsisting between persons professing the Muslim faith and domiciled in Sierra Leone which is valid according to Muslim Law (hereinafter called a Muslim marriage) shall be valid for all civil purposes.*" It seems to me that in order to describe a marriage as a Muslim marriage, both husband and wife should be muslim. The evidence discloses, and this was un-contradicted, that the deceased died a practising Catholic, and was buried along Catholic rites. It follows

that this could not have been a Muslim marriage as prescribed in section 2 of Cap 96. When one reads sections 5 and 6 together, in this context, one would realise that the obligation on the Registrar of Muslim Marriages is to register Muslim marriages. As I have said above, there is, in this case, a certificate of marriage issued by Alhaji Gibril Saccoh, but it was not registered in the office of the Registrar-General, Freetown as required by section 6(2) of Cap 96. The importance of registration is made clear in section 6(3) of the Act. It states: "*A certified copy in English of any entry which has been filed as aforesaid shall be received by all Courts of Sierra Leone, and by any person having authority by law or consent of parties to hear or examine witnesses, as prima facie evidence that the marriage is a Muslim marriage.*" As the deceased was not a Muslim, the marriage could not have been a Muslim marriage. All that the certificate does is that it shows that the deceased went through a ceremony of marriage recognised by Muslims, including his wife, the 1st Plaintiff who was, and is, a Muslim, and whose parents had requested it according to her. The certificate also has some importance for the purposes of the law of Bigamy as the deceased was a Christian. I'll return to this matter later in this Judgment.

21. In any event, it is the view of this Court that registration is permissive, but not necessarily, mandatory. Nor would non-registration render the marriage invalid. If this had been the intention of the Legislature, it would have been clearly spelt out. I am fortified in this view by the express words of section 5 of Cap 96, to wit: "*Muslim marriages and final divorces may be registered.....*" No compulsion can be implied in these words. These words are, in my view, merely permissive, as I have said above, or, directory. Again, I must stress that the absence of registration does not affect the validity of the ceremony itself. No proceedings have been instituted by any person in order to declare the marriage invalid, or void. Nor has there has been any serious contention that what was contracted between the two parties was a traditional marriage under native law and custom. Mr Tejan-Cole did suggest this construction of the events of 28th July, 1988, but that was because he was of the view that the marriage had failed for want of registration. I have said already that that was not the case.

22. PW2 was the 2nd Plaintiff, Augustine Turay jnr. He also adopted his witness statement as part of his testimony. Under cross-examination, in

support of their joint claim that they were thrown out of the house at Regent Road, Lumley, he testified that when his father died, they were staying at the premises together with tenants, about six of them. Neither of the Defendants, nor their siblings were living there.

23. PW3 was 1st Plaintiff's cousin, Alpha Kamara. He too adopted his witness statement as part of his testimony. In Court, he corroborated PW1.s testimony that the 2nd Defendant, Bai Turay, witnessed the wedding ceremony between PW1 and the deceased. During cross-examination, he was asked at length to dilate on the formalities, significance and content of a 'nikao' marriage and of the 'Toobi' ceremony. As I have already reached a conclusion on the import of the marriage ceremony, PW3's evidence did not add much to the strength of the case argued by the Defendants that the marriage was invalid. Thereafter, Plaintiffs closed their case.

DEFENCE CASE

24. DW1 was the 1st Defendant. He also adopted his witness statement as part of his evidence in chief. He testified as to what transpired between his late father and the Macauleys relating to his late father's wish to buy the property at Regent Road, Lumley. But he conceded that whatever may have been the strength of those discussions, nothing became of them, as his father died before anything concrete could be done. He testified further, that after the father's death, their late mother continued the negotiations, and even paid over to Mrs Macauley the sum of Le1,000. No documentary evidence was produced to support the payment. As the transaction relates to the purchase of a land, some documentary evidence of payment is required to enable a Court to enforce the transaction. This is the sum effect of section 4 of the Statute of Frauds, 1677 which still applies in Sierra Leone by virtue of section 74 of the Courts' Act, 1965 as amended; and of section 4 of the Registration of Instruments Act, Chapter 256 of the Laws of Sierra Leone, 1960. Further, in order to seek relief under the equitable principle of part performance granted where payment has been made for a purchase, whether partly or in full, evidence of such payment, is absolutely necessary. This kind of evidence was not forthcoming. Further, DW1 admitted he had been living on the property together with his sisters and other relatives until he was transferred as a Pastor to Hamilton.

25. At paragraph 15, supra, I have set out some of the other important portions of his evidence as they bear on the right to ownership of the Regent Road property, and as to who may be entitled to the same, after the passing away of the deceased in whose name the property was conveyed. DW1's evidence does not really support any claim he may have to the property in his own right.
26. DW2 was the 2nd Defendant, Tamba Kellie Turay. He denied attending the wedding ceremony of the deceased and 1st Plaintiff. Being young at the time, he did not have first-hand knowledge of any transaction between his late mother and Mrs Macauley. He was told about it by his mother. He was about 13 years old at the time. But under cross-examination, he said he and his brother were laying claim to the Regent Road property because their mother bought it. After the conclusion of his evidence, the defence closed.

CONCLUSIONS

27. Counsel on both sides submitted written addresses canvassing the several and various points each side was relying on in support of their respective cases. Whatever may be the merits of Mr Tejan-Cole's arguments, there was really no evidence that his clients, the 1st and 2nd Defendants, or, their brothers and sisters, made any payment towards the purchase of the property at Regent Road, Lumley. The deed of conveyance in the deceased's name is conclusive as to who has title to the property. Equity cannot help the Defendants because they made no contributions towards the purchase price for the property. Equity does not normally assist a volunteer. There was no common intention between themselves and the deceased as to ownership of the property. Nor, could they say that they relied on any understanding, to their detriment, that they would be made co-owners of the property. And as their mother pre-deceased the execution of the deed of conveyance in favour of the deceased Augustine Turay – she died in 1986; the deed was executed in 1988 - they cannot legitimately claim that they are beneficially entitled to a share in the property through their late mother. Whether or not the marriage between the deceased and the 1st Plaintiff was duly registered matters not, in my view. The important point is that the deceased went through a ceremony of marriage, and being a Christian throughout his life and at his

death, he would have been liable to a charge of bigamy had he attempted to go through a second marriage without divorcing the 1st Plaintiff.

28. Clearly, the 2nd Plaintiff and his brother were born outside wedlock and as the Law stood prior to the passing of the Devolution of Estates Act, 2007, they would not have been entitled automatically to a share in their late father's estate as he died intestate, and as a Christian. No evidence was led as to the tribe of the deceased which might have resulted in this Court invoking the powers conferred on it by section 43 of the Administration of Estates Act, Chapter 45 of the Laws of Sierra Leone, 1960 as amended by Act No 16 of 1975. That statutory provision deals with the administration of the estates of persons classified as Natives, as defined in section 4(1) of the Interpretation Act, 1971. The name "Turay" is common among people who originated from the Northern Province, but it is not conclusive proof that a person who bears that name is, in the words of section 4(1) a native, any more than that anyone who bears the surname Brown or Browne, has his roots in the Western Area and/or is therefore of the Creole tribe. This case was not fought on those grounds, and it would not be proper for this Court to found its decision on a ground not canvassed by Counsel.

29. Further, where children are born outside wedlock, they could, prior to 2007 have had to apply to this Court under section 29 of Cap 45 in order to stake a claim to a deceased father's estate. This notion was based on the premise that as they were born outside wedlock, they did not fall within the category of next-of-kin under the Common Law. To establish a claim, they would have had to petition this Court on equitable or moral grounds. But there was another method available to such children, in my view. They could come to this Court under section 23(1) of the Act. That statutory provision enables any person claiming any title, right or interest in the estate of a decease intestate to apply by petition to the Court or by summons to a Judge in chambers for directions in any question respecting the possession, custody, control, management or disposal of any property forming part of the assets of a deceased intestate. In my view, it is much broader in its terms and effect than section 29. The initiator of the action is not restricted to the Administrator of the estate. It could be any person claiming any title, right or interest in the intestate's estate. Such action is not limited to a person claiming legal title to the intestate's property. It extends to other categories: persons

having a right or an interest in the estate of the intestate. Clearly, the children born outside marriage have an interest in their late father's estate. But as they have not approached this Court under the terms of this statutory provision, I cannot grant them the relief it affords applicants.

30. The only other option open to this Court, is to give effect to the second schedule to section Cap 45. This schedule provides for the method of distribution of the estate of an intestate. Its governing provision is section 19 of the Act. Paragraph 2 of the schedule states: "*If a man die intestate leaving a widow and children or issue the wow shall be entitled to one third of the estate, and the children* or issue the remaining two-thirds equally between them per stirpes." As in 1997 when the intestate died, the 2nd Plaintiff could not have been considered as issue at common law as he was born before his parents married, Marion Turay born in August, 1990 after the marriage would be the only child to fall within this category. It follows that the true beneficiaries of the estate as the law stood in 1997 would be the 1st Plaintiff, and the daughter of the marriage, Marion. The Legitimacy Act, 1988 was passed before the deceased passed away. It was meant to restore legitimacy to children born outside wedlock, but whose parents subsequently married. But a special procedure is set out in the Act before this could be done. Of course, this was not done in this case. Much as I am in sympathy with the 2nd Plaintiff, I must non-suit his claim.

31. Having settled the issue of entitlement in law, I must now go on to deal with the claim for possession. Clearly, on the evidence, the Plaintiffs are not in possession of the property. Whether they were living there before the deceased died as they claim, and were driven out by the Defendants thereafter, or, whether they were never living there before the deceased passed away, as contended by the Defendants, is neither here nor there. The fact remains that they are not living there now, but are entitled to possession of the property. I shall so order.

32. Having decided that the 1st Plaintiff and her daughter are lawfully entitled to the property at Regent Road, and that they are also lawfully entitled to possession of the same, it follows that those who dispossessed them and went into possession of the same, are liable to the 1st Plaintiff in damages for wrongful deprivation of the use of the same, and for Trespass. The effective date of dispossession is said by the Plaintiffs to

be 4th November, 1997. It follows that possession should be restored to the 1st Plaintiff forthwith, and that the Defendants should be restrained from interfering with the 1st Plaintiff's right to possession of the property.

33. Also, by depriving the 1st Plaintiff of the rents and profits accruing from user or occupancy of the premises during the period beginning 4th November, 1997 to date, the 1st Plaintiff is entitled to a statement of account in respect of all such rents and profits. However, the Defendants have denied renting out the property for profit. They claim that their siblings are the persons occupying the same. No evidence was led at the trial by the Plaintiffs to establish that there were paying tenants living on the property. It puts this Court in an invidious position. It cannot act without evidence, much as it would like to do. In such cases as this one, where the claim is for s statement of account which has not been tendered during the trial, the trial judge could order that the Master and Registrar inquire into the matter after judgment. But as much time has elapsed, I do not believe that this would be a proper order to make at this late stage. And it is the view of the Court that Damages for trespass for a period extending over 23 years should adequately compensate the 1st Plaintiff for any loss she may have suffered over the whole period of time during which she and her children have been out of possession.
34. In the premises, the 1st Plaintiff succeeds in her claim, save for prayer numbered 5, that is, the prayer for an account. There shall be judgment for the 1st Plaintiff in the following terms:

ORDERS

1. This Honourable Court Adjudges, Declares, and Orders that the 1st Plaintiff, Mrs Marion Turay and her daughter, Augusta Turay are the persons legally and beneficially entitled to ownership and possession of the land and premises situate at and being at 15B Regent Road, Lumley, Freetown in the Western Area of Sierra Leone as delineated in survey plan LS4220/87 drawn and attached to deed of conveyance dated 12th May, 1988 duly registered as No 644/88 at page 135 in volume 414 of the Record Books of Conveyances kept in the office of the Registrar-General, Freetown
2. As one of the owners of the property, the 1st Plaintiff is entitled to, and is awarded Damages for Trespass for the period beginning 4th

November, 1997 to the date of this Judgment, such Damages assessed in the sum of Le44 million, i.e. Le2m for each completed year of dispossession.

3. The 1st Plaintiff is entitled to the immediate recovery of possession of the said property situate, lying and being at 15B Regent Road, Lumley,
4. This Honourable Court grants the 1st Plaintiff an Injunction restraining the Defendants and their servants or agents from interfering or dealing with the said property in any way whatsoever, as of the date of this Judgement.
5. The prayer for an account is dismissed.
6. The 1st Plaintiff shall have the Costs of the action, such Costs to be taxed, if not agreed.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT