

IN THE HIGH COURT OF SIERRA LEONE

FAMILY AND PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF DR EDWARD TITUS MUSA
(DECEASED)

AND

IN THE MATTER OF THE DEVOLUTION OF ESTATE ACT, 2007

BETWEEN: MRS OLIVE MUSA - PLAINTIFF

(Widow and next-of-kin of

DR EDWARD TITUS MUSA, DECEASED)

AND

1. THE ADMINISTRATOR OF THE ESATE OF
ALHAJI A D SWARRAY (deceased intestate) - DEFENDANTS

2. MOHAMED HEDJAZIE
(Sued as Executors named in the
Last Will and Testament of DR EDWARD
TITUS MUSA, DECEASED

AND

1. AUGUSTINE CLARENCE MUSA (AKA JIMMY MUSA) -INTERVENERS
2. PHEBEAN MUSA
3. YATTA MATILDA MUSA
(As Intervening Parties named as Beneficiaries in the Last Will and
Testament of DR EDWARD TITUS MUSA, DECEASED)
4. ALEX MUSA
5. EDDIE MUSA
6. JULIE MUSA

COUNSEL:

J B JENKINS-JOHNSTON ESQ (now deceased), LEON JENKINS-
JOHNSTON ESQ and MRS F FORSTER for the Petitioners
M P FOFANAH ESQ for the Defendants and Interveners

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

JUDGMENT DELIVERED THE 12 DAY OF OCTOBER, 2021

REPRESENTATION FOR DECEASED DEFENDANT

1. This action commenced in 2009. Since then, two of the Defendants have passed away. At the second hearing before me on 22 November, 2010, Mr J B Jenkins-Johnston, himself now deceased, informed the Court that the 2nd Defendant Fadilu Lamin, had passed away, and he intended to discontinue the action against him. At the hearing on the subsequent date, 24 November, 2010, it was noted that the notice of discontinuance against the 2nd Defendant had been filed. As of that date, the action against the 2nd Defendant was discontinued. Had the case against the 2nd Defendant not been discontinued, it would have survived against his estate as provided for in Order 18 Rule 8(1) High Court Rules, 2007 - hereafter, "HCR, 2007".

2. Order 18 Rule 9 provides as follows:

"Rule 9(1) where a party to an action dies or becomes bankrupt, but the cause of action survives, the action shall not abate by reason of the death or bankruptcy."

"Rule 9(2) states: "Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to, or, devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first named party."

3. Further, the original three Defendants, Alhaji Swarray, Fadilu Lamin and Mohamed Hedjazie were not sued personally; they were sued in their respective representative capacities as Executors of the Will of Dr Musa. It follows that since the Plaintiff's action has not abated on the death of the 1st Defendant, it could be carried on against the estate of the deceased 1st Defendant. Much has not been said about the 3rd Defendant, but what I have said about the liability of the 1st Defendant, applies to him also. He has been sued in a representative capacity, and not in his personal capacity.

4. I therefore Order as follows:

- (1) The Administrator of the estate of Alhaji A D Swarray shall be substituted for the 1st Defendant as of today's date for the purpose of giving effect to the judgment of this Court, and for carrying out its terms. The judgment of this Court shall therefore be served on such Administrator. Consequently, the title of the 1st Defendant shall now read: THE ADMINISTRATOR OF THE ESTATE OF ALHAJI A D SWARRAY.

THE ACTION - TWO WRITS OF SUMMONSES ISSUED

5. This action concerns the estate of Dr Edward Titus Musa, who died testate in Freetown on 3 January, 2009, seised of several properties, one of which is situate at, and known as 15D Kingharman Road, Brookfields, Freetown. The main contention in these proceedings has been, first, whether the last will and testament made by the deceased testate, was, and is valid; and if so, who the beneficiaries ought to be; and second, whether the property at Kingharman Road, was the exclusive property of the deceased testate, and was not beneficially owned by both the Plaintiff and the deceased testate. I think I should point out that the issue of whether the said property was at the date of death of Dr Musa, owned beneficially by himself and the Plaintiff whether in equal or unequal shares, would ultimately determine whether Dr Musa could lawfully devise the entire beneficial interest in the said property to persons other than the Plaintiff, and without the Plaintiff's consent.

WRIT ISSUED ON 20 MAY, 2009

6. The action was commenced by way of writ of summons issued on 20th May, 2009. It was originally issued by the Plaintiff Mrs Olive Musa in her capacity as Widow and Next-of-kin of the Dr Edward Titus Musa, deceased -hereafter, the "deceased testate" or, "testator", - against just the 1st, 2nd and 3rd Defendants, Alhaji Swarray, Fadilu Lamin, and Mohamed Hedjazie, respectively. These Defendants were sued in their respective capacities as Executors of the Last Will and Testament of the deceased testate. These same persons were the respective parties in two separate actions: C.C 5/2009 and C C13/09. One action, C.C. 5/2009 was initially assigned to SEY,J who was then a Judge in our High Court; whilst, C C13/2009 was assigned to my Court. Eventually, as I shall set out below, both actions were consolidated, and were tried as one, by me.

7. In CC 5/09 issued on 20 May, 2009, the Plaintiff brought action against the above-named Defendants. She sought the following reliefs: a Declaration that the purported Last Will and Testament of Dr Edward Titus Musa dated 27 September, 2008 and registered as No 13/2009 at page 75 in volume 39 of the Record Books of Wills kept in the office of the Registrar-General, Freetown is not a valid Will, nor is it the true last will and testament of the deceased testate; a Declaration that the said deceased died intestate and that his property be disposed of in accordance with part II of the Devolution of Estates Act, 2007; alternatively, a Declaration that the disposition made at paragraph 4 of the said Will is unfair, unjust and unlawful, and ought to be set aside on the ground that the property at 15D Kingharman Road, Brookfields, Freetown, was jointly owned by the Plaintiff and the deceased testate, and that the deceased testate could not validly dispose of the same as if it were his sole property; a Declaration that the disposition made at paragraph 14 of the said Will is unfair, unjust and inequitable and ought to be set aside in that it includes all the deceased's various bank accounts and his properties in Bo and Kenema from which the Plaintiff has been excluded notwithstanding that she is his lawful widow and co-owner thereof; further or other order; and that the Defendants do give an account of all items of property belonging to the Deceased, such as vehicles, etc which they have taken charge of since the testator's death.
8. In her particulars of claim, the Plaintiff averred that she was the widow and next-of-kin of the testator as they were married at the Registry on 30 December, 1997. Her husband died on 3 January, 2009. In 1992 while she was employed at the Ministry of Education, she was assigned the quarters, B12, Kingharman Road, which became the matrimonial home after the wedding. In 1996, the testator had moved in with her. Early that year, she had a problem with one Mohamed Sandy who was putting up a structure in front of her quarters. The Ministry of Lands agreed to lease an adjoining piece of land to her and to the testator, and she agreed that the testator's name alone should appear on the lease. The Ministry's letter of offer is dated 19 February, 1996, and the acceptance by the testator is dated 22 February, 1996. After marriage, both of them continued to live in her quarters as man and wife until his death in 2009. Construction of the house on the leased land commenced in 1999, and it was undertaken between the two of them. She was then Consultant Project Director with the FAO, and she put all her earnings from this

consultancy into the building project. Additionally, she used earnings accruing from overseas travel and workshops and monies received from relatives abroad, on putting up the building. On completion, the house was numbered 15D, and was rented out to the HIV/AIDS Secretariat. On this basis, she is entitled to a 50 per centum share of the beneficial interest in the house. The testator retired in 2005 and she became the sole breadwinner. She also had their daughter, Ngadi to take care of. As to the chattels and other property in the residence at No 12, she had bought all of them and so they were not owned by the testator, and as such were not his to give away by will. During his lifetime, the testator told her he already had three children, Jimmy, Phebean and Yatta. As such, she was not aware that he had other children. She had bought a jeep jointly with the testator, but the 1st Defendant had taken it away after the burial of the testator. She contests the ability of the testator to have executed the will in question; further, that it may not have been executed by him at all. Lastly, she averred that the said will violated her rights as a co-owner of the Kingharman Road property. In the premises, she prayed for the reliefs recited above.

9. On 22 September, 2009, C F EDWARDS ESQ entered appearance for all three Defendants, and gave notice of the same to Plaintiff's Solicitors, the same day. On 20 October, 2009, he made his first appearance as Counsel in Court, and requested an adjournment in order to file a defence.

2ND WRIT ISSUED ON 3 NOVEMBER, 2009

10. CC13/09 is generally indorsed writ issued on 3 November, 2009. The Defendants are the same as the original Defendants in CC5/09. The Plaintiff claims therein as the widow and lawful relict and the person primarily entitled in the event of an intestacy to a grant of Letters of Administration to administer the estate of Dr Edward Titus Musa who died on 3 January, 2009, and to have probate of a pretended will dated 27th September, 2008 granted on 24 April, 2009 revoked, and for her to be given a Grant to administer the estate of her late husband. I am not aware that particulars of claim were filed by the Plaintiff before this action was consolidated with that in CC5/09.
11. Appearance was entered for the Defendants on 22 February, 2010 by M P FOFANAH ESQ. In CC. 5/09, Mr C F EDWARDS had entered appearance on behalf of the original three Defendants. So, there was no conflict or impropriety involved in Mr Fofanah entering appearance for the same

Defendants, as the action was, when instituted, a separate action, and required appearance to be entered. Eventually, as will be shown, Mr Fofanah emerged as sole Counsel for the original Defendants as well as for the Interveners or additional Defendants.

APPLICATION FOR JOINDER OF ALEX, EDDIE AND JULIE MUSA

12. By way of Notice of Motion dated 13th October, 2009, the late JOHN KEBBIE ESQ applied to this Court for ALEX MUSA, EDDIE MUSA and JULIE MUSA to be joined as parties to the action. The reasons for seeking this order are to be found in his affidavit in support of the motion deposed and sworn to on the same date. He deposed that the applicants were beneficiaries named in the Will, and that Probate of the Will had already been obtained by the existing Defendants on 24 April, 2009. The Grant of Probate was exhibited to his affidavit. It was taken out by ELVIS KARGBO ESQ. The Will was also exhibited. Probate was obtained notwithstanding that a Caveat had been entered on 3rd February, 2009 by Plaintiff's Solicitors on her behalf. No warning was entered by the Defendants to the Caveat as required by Rules of Court. A citation was therefore issued by Plaintiff's Solicitors on 30 October, 2009 commanding the Defendants and Mr KARGBO to bring in the Probate so that the same may be revoked. I shall return later to the outcome of the Caveat proceedings. However, on 24 November, 2009, SEY, J had cause to strike out the said Motion for joinder, due to the failure of the Applicants' Counsel, Mr Kebbie to proceed with it. At that hearing, also, Mr J B Jenkins-Johnston informed the Court that he had filed a second writ of summons, CC13/09, and that he would be applying for both actions to be consolidated.

ORDER FOR JOINDER MADE BY SEY, J

13. On 16 March, 2010 Mr Kebbie again moved the Court, still presided over by SEY, J on a Motion dated 19 February, 2010 for the three persons named above, to be joined as Defendants. The Order was granted, and thereafter, ALEX MUSA, EDDIE MUSA and JULIE MUSA became parties to the action in CC. 5/09.
14. The next hearing was on 25 March, 2010. SEY, J noted at page 11 of her minutes that the case file CC13/09 had not been specifically assigned to her. She therefore adjourned hearing to 24 April, 2010 by which time, the papers would have been regularised. No further proceedings were

taken before SEY, J before she left the jurisdiction sometime after October, 2010.

MOTION DATED 22 MARCH, 2010

15. Meanwhile, as of 26th March, 2010, a Motion dated 22 March, 2010 filed by M P FOFANAH ESQ was put before me. At that hearing Mr Fofanah informed the Court that the application for consolidation was being dealt with by SEY, J. I therefore noted in my minutes that the file should be sent back to the Master for the position to be clarified.

APPLICATION FOR CONSOLIDATION OF CC 5/2009 & 13/2009

16. On 15 November, 2010 the file was again put before me. The Plaintiff, through her Solicitors, had filed a notice of motion dated 18 March, 2010 for both actions, i.e. CC5/09 and CC13/09 to be consolidated. I ordered that notices of hearing be served on Solicitors for the several defendant parties. I adjourned the hearing to 22 November, 2010. At the latter hearing, as recounted above, Mr J B Jenkins-Johnston informed the Court that the 2nd Defendant, Fadilu Lamin was deceased, and that he would have to take steps to discontinue the action against him. By notice of discontinuance dated 22 November, 2010, the action was indeed discontinued against the 2nd Defendant. Nothing more could be done that day because case file CC5 /09 had not been formally assigned to me by the then Chief Justice. I therefore had to adjourn again to 2 December, 2010.

17. On 2 December, 2010, the Application for consolidation dated 18 March, 2010 filed by the Plaintiff finally came up before me for hearing. All the relevant documents which would later constitute part of the Court Bundle were exhibited to the affidavit deposed and sworn to by the Plaintiff. Reference was made by Mr J B Jenkins-Johnston to Order 4 Rule 4 of HCR, 2007. The Application was initially opposed by Mr Fofanah as on 23 March, 2010, months before the application was eventually heard, he had filed an affidavit in opposition deposed and sworn to by the 2nd Defendant. However, at the date of hearing of the said application, that defendant was already deceased. Eventually, the objection to consolidation was withdrawn. I proceeded to consolidate both actions, and to make the necessary consequential orders.

18. At the same time, Mr Fofanah drew the Court's attention to an application dated 22 March, 2010 in which Augustus Clarence Musa (AKA

Jimmy Musa), Phebean Musa, and Yatta Matilda Musa had applied to be joined as Interveners in the action. All three of them were also said to be children of the testate. That application was made pursuant to Order 55 Rule 11 HCR, 2007. Again, consequential orders were to be agreed between Solicitors and submitted to the Court for approval as noted by me on pages 4 and 5 respectively of my minutes. Sadly, when the drawn up Order was filed by Plaintiff's Solicitors, it merely recited the order for consolidation. There were no follow up orders.

19. On 23 March, 2010 Mr Fofanah again filed another motion asking that the writ of summons filed under CC13/09 be struck out and be dismissed as to go on with it would result in injustice. The issues raised in the general indorsement in that writ could be determined in the case file CC5/09. This application was not eventually pursued. Consolidation, was, as I have indicated above, ordered.

DIRECTIONS FOR TRIAL ISSUED

20. Nothing further happened until 19 April, 2011 when the matter came up for hearing before me on a summons for directions. Due to the absence of Counsel on both sides, hearing was adjourned to 9 May, 2011 when these directions were eventually given. At the compliance hearing on 23 June, 2011, trial was fixed to commence on 4 July, 2011, but due to the absence of Counsel, it could only commence on 7 July, 2011, close to the end of the Trinity or Easter Term.

PW1 - MRS OLIVE MUSA

21. The Plaintiff began her testimony that day, i.e 7 July, 2011. She said she was a civil servant, working at the Ministry of Education, then currently living at Government quarters B12, Kingharman Road, Freetown. The testator, Dr Musa was her husband and they got married at the Registry on 30 December, 1997. The testate died on 3 January, 2009. She tendered her witness statement as exhibit A, and asked that it form part of her evidence in chief, and I so Ordered. She said further that she was aware that the two actions commenced in her name had been consolidated, and asked that she be granted the reliefs prayed for in both of them. Cross-examination had to be deferred on several occasions because, as it turned out, some of the Defendants and the added parties had not filed respective statements of defence. Time had to be allowed for this to be done, and for further applications to be made. She was only

able to continue her testimony by being cross-examined by Mr Fofanah on 2 May, 2013. In between the two dates, i.e. 7 July, 2011 and 2 May, 2013 I had had to deal with several interlocutory applications including that for the committal of the 1st Defendant for contempt, and a few relating to the payment of the annual rent into Court. I shall deal with some of these interlocutory motions below, after which I shall return to Plaintiff's evidence during cross-examination.

APPLICATIONS FOR LEAVE TO FILE DEFENCE OUT OF TIME

22. By way of Notice of Motion dated 11th, but filed on 25 November, 2011, Mr Fofanah applied to the Court for leave to file a statement of defence out of time on behalf of the original three Defendants, and on behalf of Augustine Musa, Phebean Musa and Yatta Musa respectively. Leave was granted.
23. On 12 December, 2011, Mr Kebbie applied to the Court for leave to file a defence out of time on behalf of Alex Musa, Eddie Musa and Julie Musa as Interveners. Leave was granted by the Court.
24. On 4 January, 2012, Mr John Kebbie filed a statement of defence on behalf of the Interveners, Alex Musa, Eddie Musa and Julie Musa. The averments therein are the same as were two days later, pleaded on behalf of the other Defendants and Interveners respectively, and I need not here set them out in extenso. Mr Kebbie, regrettably passed away not long after filing this pleading, and the defence of all Defendants and Interveners was taken over by Mr Fofanah.
25. On 10 January, 2012 (though dated 6th January) Mr Fofanah filed a statement of defence on behalf of the original three Defendants, and on behalf of the additional three interveners, i.e. Augustine Clarence Musa AKA Jimmy Musa, Phebean Musa and Yatta Matilda Musa. The main contentions raised in this defence are that, first, the property at No 15D was conveyed into the name of the testator alone. This is a matter of fact. But they go on to deny that the Plaintiff contributed to the erection of the building. On the contrary, they aver that she was against the building project and that she personally stopped workmen from fetching water from the quarters both she and the testator were occupying. Second, they aver that the Plaintiff has been well provided for in other respects in the said will, and that she had in fact abandoned the testator for a period of time before his demise. They assert that the testator was in a proper state of mind when he executed his will. They

aver also that the Plaintiff mistreated the testator, and in fact, abandoned him when he was sick.

PAYMENT OF RENT BY HIV/AIDS SECRETARIAT

26. At the hearing on 24 January, 2012, I noted at page 13 of my minutes that I had received a letter dated 29 December, 2011 from the Director HIV/AIDS Secretariat stating that rent totalling USD49,750 for the year ending 30 November, 2011 had been paid to the 1st Defendant, Alhaji Swarray. Attached to the letter were vouchers and receipts evidencing the payments. The receipts showed that on 23 June, 2011, USD33,100 was paid to 1st Defendant and that on 30 November, 2011 another sum of USD16,650 was paid to him. I therefore proceeded to order that the total sum of USD49,750 be paid into Court by the 1st Defendant. I also granted an extension of time within which Plaintiff's Solicitors should file a reply to the respective statements of defence filed on behalf of the respective Defendants and/or Interveners.

1ST DEFENDANT ASKED WHAT HE HAD DONE WITH RENTS RECEIVED BY HIM - APPLICATION 7 MARCH 2012 FOR 1ST DEFENDANT'S COMMITTAL

27. On 8 February, 2012 the 1st Defendant appeared in Court. When asked what he had done with the money received as rent from the HIV/AIDS Secretariat, he said that there was no Court order forbidding him to distribute the monies received. At the hearing on 16 February, 2012, Mr Fofanah drew the Court's attention to an affidavit he had deposed and sworn to that morning exhibiting thereto, receipts dated 30 October, 2010 and on other days; a copy of a transfer dated 16 November, 2011; a transfer to the 2nd Intervener dated 7 December, 2011, and a notice of payment. As a result of the 1st Defendant's failure to properly account for all monies received by him belonging to the estate of the testate, the Plaintiff applied to the Court by way of Notice of Motion dated 7 March, 2012 for the 1st Defendant to be committed to prison for disobedience of an order of Court made by SEY, J on 11 August, 2009 forbidding the 1st Defendant from receiving rent directly from the Secretariat.

PLAINTIFF'S REPLY TO DEFENCES FILED

28. On 17 February, 2012, Plaintiff's Solicitors filed just one Reply to the respective statements of defence filed on behalf of, now 9

Defendants/Interveners in all. First, the Plaintiff joined issue with the Defendants upon their defence. Paragraph 2 of the Reply is in these words: "The Plaintiff avers the Lease of the property at 15D Kingharman Road, Brookfields was organised and negotiate by her, the same being part of the compound of her Government quarters where she was living before getting married to the deceased (who came to live with her there), and where she is still living to date. The Plaintiff avers that the whole building project was not only supervised by her, but that she contributed substantially to the building project by putting her own money into it, and by purchasing building materials for the said project. It is totally false that she prevented workmen from fetching water from B12 Kingharman Road, Brookfields, and that nothing could be further from the truth. She averred further that averments to the effect that she had been uncaring towards her deceased husband were false and libellous, as she tended to his needs up to his demise." She also averred that Probate of the will was obtained unlawfully as the Caveat had been entered on 3rd February, 2009.

ACTION ENTERED FOR TRIAL

29. That same day, i.e. 17 February, 2012, the Plaintiff entered the action for trial.

PROCEEDINGS FOR COMMITTAL OF 1ST DEFENDANT FOR CONTEMPT

30. On 20 March, 2012 the Plaintiff applied to the Court by way of the said Notice of Motion dated 7 March, 2012 for the 1st Defendant to be committed for contempt of an Order of Court dated 11 August, 2009. In C.C.5/2009, SEY, J on 11 August, 2009 granted the Plaintiff an Injunction restraining the Defendants from disposing of any of the properties forming part of the estate of the deceased testate. Her Ladyship also granted the Plaintiff an Injunction restraining the Defendants from obtaining Probate of the Will of the deceased testate dated 27th September, 2008 pending the hearing and determination of that action. She also ordered that that Order should be served on all Defendants as well as on the Probate Registry of the High Court and attached to the Caveat dated 3rd February, 2009 and filed in this Court's Registry. At page 1 of Her Ladyship's minutes of the proceedings for that day, i.e. 11 August, 2009, she notes that Defendants were absent but had been served. However, no evidence of service was provided by Plaintiff's

Counsel, Mr J B JENKINS-JOHNSTON although Counsel did say during his submission that affidavits of service were in the file. That notwithstanding, as the application therein was ex parte, and the Order made thereon was also ex parte, and no further inter partes hearing having been held, that Order was in effect interim, and not interlocutory. It should have expired not more than seven days after it was issued. Further, it was made during the 2009 long vacation of the High Court.

31. The said application was made pursuant to Order 51 rule 1(2)(b) HCR, 2007. Mr Jenkins-Johnston argued that the sum of USD49,600 received as rent by the 1st Defendant was disbursed by him without the authority of the Court. He relied on the case of KATAH v EL HAGE [1950-56] ALR SL 424, HC in support of his submission that the 1st Defendant ought to be committed for contempt. The application was resisted by the 1st Defendant. On 18 January, 2013, I dismissed the Plaintiff's application on the ground that the injunction had been granted ex parte by SEY, J and had expired by effluxion of time, seven days thereafter. But at the same time, I ordered, inter alia, as follows: "*.....that the order made by this Court on 24 January, 2012 should now be enforced by this Court. 1st Defendant shall either comply in full with that Order within 10 days of the date of this Order, or face Committal for Contempt of that Order, by this Court on 30 January, 2013. For this purpose, there shall be a hearing on 30 January, 2013.*"

CONTEMPT PROCEEDINGS

32. On 30 January, 2013, I heard 1st Defendant on the reasons why he should not be committed for contempt. The reasons were unconvincing. However, I directed Counsel on both sides to agree on a draft order, and when this was done, the draft was issued as an order of the Court. Apart from the Contempt proceedings, much else did not happen until the Plaintiff returned to the witness box on 2 May, 2013 for further cross-examination. Her testimony under cross-examination is at pages 30 - 35 of my minutes.

PLAINTIFF CROSS-EXAMINED BY DEFENCE COUNSEL

33. A summary of her evidence under cross-examination is as follows: She is, or, was at the time she testified, a Director, non-formal education, Ministry of Education. She had a daughter, Iris (also known as Ngadi or Ngadie), with the testator before they got married. At the time she gave

evidence, Iris who was born in 1985, was already an adult. She, i.e. Plaintiff, did not attend any meeting during which the will was read. She agreed that the testator had told her that Augustine, also known as Jimmy was his son. She was also aware that Yatta and Phebean are his daughters. She was not aware that Alex, Julie and Eddie were his children. Augustine Phebean and Yatta are older than Ngadie Iris. She did not know whether the testator owned properties before they got married. She explained how the testator came to own the property at No. 15D. It was part of the land housing her government quarters. Both of them took part in the negotiations for the land. She identified the letters exhibited as 1 and 2 respectively. They contained the offer to take the land on lease, and the testator's acceptance of the offer. She gave him a free hand to go on with the acquisition of the land, as it was being acquired for the benefit of the two of them. Both of them were living together in the Government quarters. Construction work started in 1999. At the time the deed of conveyance was prepared, she had not seen it. Construction work ended in 2004 and the property was rented out. The rent received was paid into a separate account opened and operated by the deceased. She was not aware that the testator had made a will. As regards the property in Makeni, she had bought it herself. Makeni was her maternal home. The Paramount Chief signed the deed conveying the property to her. She was shown the will, and she agreed that property was devised to her and to Ngadie in paragraph 5 thereof. There is a farm house on the land. She spoke about the properties she had had before she got married, and which were in her maiden name, Saghie. She did not know the mother of Augustine, Phebean and Yatta. They had not lived in the same together with the testator and herself, but they used to visit. The draft of the agreement for the property at No. 15D was shown to her, but that she was not in town when it was signed. She knew 1st Defendant as a friend of the testator. She also knew the deceased 2nd Defendant. She was shown letters - pages G1, 2 & 3 of Defendant's bundle - purportedly written by the testator to her. I shall refer to them later. She did not recognise the handwriting as that of the testator's. She denied that she had a dispute with the testator before his demise. She denied buying a 4 wheel drive jeep while her husband was ill. She denied stopping the builders from fetching water from her quarters. She asserted that she contributed to the construction of the house - 50% of the cost of the same. She recalled some of the contractors, Emmanuel

- Williams, for instance, a relative of the testator. She denied stopping Emmanuel from storing building materials in her quarters. She knew the Dyfans. They were neighbours. She did not know the lawyer, Elvis Kargbo.
34. Under cross-examination by Mr Kebbie, she had this to say: She repeated that the testator told her about Yatta, Phebean and Jimmy, but did not tell her about Alex, Julie and Eddie. She only got to know about them when she read the will. She explained how the relationship with the testator developed. It started in the 1970s. She was then a student. She knew Mrs Swarray Deen, then living in the Gambia. Their daughter, Ngadie had gone to live with her for a while. She re-affirmed that after the testate retired from active service, she had not asked him to contribute to the construction expenses. But, all the same, he would sometimes do so when he came across some money. She said she was not aware at what time the sum of Le90m was withdrawn from the testator's bank account after his demise. Later, 1st Defendant admitted doing so.
35. In re-examination, she re-affirmed that she made contributions towards the construction costs. As proof of this, she tendered in evidence certain receipts as exhibit 4 pages 1-14. These were evidence of payment by her for building materials.

PW2 - JOHNNY BROWNE - S L COMMERCIAL BANK

36. PW2 was Johnny Browne, Sub-Manager, Sierra Leone Commercial Bank Limited, Consumer Banking section. He attended Court in response to a subpoena served on the bank to produce statements of account in respect of the testator's account held at the bank. The account number is 001-101412-10001. The statement of account was tendered as exhibit A pages 153 to 174. As at 3 January, 2009, the date of death of the testate, the credit balance was Le89,959,648/77. Thereafter, several amounts were credited to the account by NASSIT. The account was debited three times with the respective sums of Le85m, Le411,000 and Le606/34. On 11 June, 2009 two bank drafts in the respective sums of Le4,497,982/34 and Le5,395,226/58 were drawn on the said account. The two other debits appearing on the statement were in respect of bank charges. He could not tell to whom the drafts were issued. As regards the US\$ account, on 11 June, 2009, the sum of US\$3,190 was paid out to Elvis Kargbo Esq.
37. The next witness was supposed to be the Executive Director of the National HIV AIDS Co-Ordinating Secretariat, Dr Brima Kargbo. He was

unavailable on several occasions despite, being served with notices of hearing by Bailiffs at the direction of the Court. This held up the proceedings between 2nd July, 2013 and 4 February, 2014, on which latter date, he finally appeared to give evidence.

PW3 - DR BRIMA KARGBO

38. Dr Kargbo was PW3. He said the Secretariat, of which he was the head at the time of giving evidence, had rented the Kingharman Rd property in 2003. Rent was paid to the testator before his demise. He tendered in evidence as pages 153 & 154 of exhibit A, a copy of a letter he had addressed to the Master and Registrar of the High Court relating to the payment of rent by the Secretariat. On 14 March, 2011, he had addressed a letter to the Attorney-General & Minister of Justice, seeking his advice as to whom rent should be paid. He received a response from Mr Brian Nelson-Williams, a State Counsel in the AG's office. He also tendered in evidence, other correspondence relating to the issue of the rent to be paid. When he received the Order of Court dated 20 December, 2012, he sought the advice of the AG's office. He could not recall whether rent was paid after November, 2011.

PW4 - DR ABDUL RAHMAN SESAY

39. As PW3 had relinquished the office of head of the HIV/AIDS Secretariat, it was necessary to call the current head at the time. In this respect, Plaintiff's Counsel was given leave to call, without filing a witness statement, Dr Abdul Rahman Sesay, Acting Director of the Secretariat at the time, as PW4. He confirmed that rent was paid on 30 November, 2011 for the period 1 August, 2011 to 31 July, 2012.

INTERIM ORDERS RELATING TO RENT PAID

40. At the end of PW4's evidence, I had cause to make two interim Orders, to wit:

(1) That rent for the 2 year period 1 August, 2012 to 31 July, 2014 be paid by the National Aids Secretariat into Court with immediate effect, or, until such funds are obtained from the Secretariat's donor agencies.

(2) If the Secretariat fails to comply with the above Order, Contempt proceedings will be instituted against the Secretariat's Executive Director.

(3) Liberty to Apply.

These Orders were necessary because, the Plaintiff was, as of the date of those Orders, a potential beneficiary of the testator's estate; yet still, she had derived no benefit from the rents and profits accruing from the property at Kingharman Road which formed part of the estate. Thereafter, the trial was adjourned to 3 March, 2014. On the latter date, the Plaintiff's case was closed. Mr Fofanah asked for time to open 1st Defendant's case.

1ST DEFENDANT GIVES EVIDENCE

41. 1st Defendant. Alhaji Ahmed Deen Swarray began testifying on 19 March, 2014. He said the testator and himself were from the same village, and regarded themselves as brothers. He knew Plaintiff as the testator's wife. He knew also that the testator had six children, all of them Defendants in the action herein. He identified the testator's Will made on 27 September, 2008. He was one of the appointed executors. The will was registered at the Registry. The will was prepared by Mr Elvis Krgbo, Solicitor. He, the witness, took out probate. He identified the probate at pages 18 -25 of exhibit B. He declared the property at Kingharman Road. It was valued at Le15m. A mud house in Makeni was valued at Le1m. The Kingharman Rd property was leased to the AIDS Secretariat for USD16,000 per annum. The testator died on 3 January, 2009. He tendered his witness statement as pages 49 & 50 of exhibit B. He relied on it and asked that it form part of his evidence in chief. I so ordered.
42. He said he wasn't sure Ngadie Musa was the testator' daughter. He agreed that the land and house at Makeni was devised to Ngadie. He said further that Plaintiff had a house at Marjay Town which the testator had helped her to build. He identified some letters written by the testator, relating the bad relationship between himself and the Plaintiff. He said that the Toyota vehicle mentioned in page 50 of exhibit B, was in the name of Eddie Musa jnr, but that the Plaintiff had taken possession of it. The Defendants, Yatta and Phebean were living in the USA. At the time, he said Yatta was in university and needed money to pay her fees. Clarice was in business here in Sierra Leone; and Alex, Julie and Eddie were in England. All three of them were students at the time. As to the receipt of rent, he said that the testator received rent for the first two years. Thereafter, he the witness began receiving rent, and he began distributing the same in accordance with the terms of the will. He

stopped receiving rent after the order made by the Court referred to above.

CROSS-EXAMINATION OF DW1

43. DW1 was cross-examined extensively by Mr J B Jenkins-Johnston. He agreed that both PW1 and the testator were living together at B12, the government quarters next to 15D Kingharman Rd. He said the house at Kingharman Rd was built by the testator, and not by Plaintiff. He was shown certain receipts issued in the name of the Plaintiff for the purchase of building materials. He had no knowledge of them. He accounted for the jeep which the testator owned prior to his death. He said it was used to transport people to the Provinces for the funeral, and it broke down on the way. It had to be towed to Bo, and left in a garage. It was later taken to his garage but it was no longer in use. He admitted that he was not present when the will was signed.
44. After the testator died, the total sum of Le95m+ was withdrawn from his bank account. The statement of account issued by the Sierra Leone Commercial bank shows that substantial amount of Le85,411, 666 was withdrawn on 9 June, 2009. No part of that amount was paid over to the Plaintiff or, to her daughter. The 1st Defendant claimed that the deceased 2nd Defendant in the action herein, had withdrawn the money and had disbursed the same. He, the witness was aware of the way in which the money was disbursed. Since that Defendant was already deceased, evidence about what he did with money belonging to the testator's estate, was really inadmissible hearsay. However, DW1 agreed that no part of the money was paid over to the Plaintiff. He said towards the end of his testimony that day, that if given time, he would be able to produce receipts for all the money he disbursed out of the estate. Before closing that day's proceedings, I entered in my minutes at page 59, the following: *"DW1 to lodge in Court and to serve Plaintiff's Solicitors with copies of his account."*
45. On the adjourned date, 5 May, 2014, I recorded the following minutes at the same page 59: *"1st Defendant present but unrepresented. On 11/04/14 Def's Solicitor, Mr Fofanah filed a copy of 2011 diary entry notes made by 1st Defendant. Trial cannot continue because of Mr Fofanah's absence"*. On the adjourned date, 12 May, 2014, DW1 was shown the document filed on his behalf, and which had been numbered "pages 51 & 52" of exhibit B. In answer to a question put to him by Mr Jenkins-

Johnston, he said that Le89m was disbursed. At this stage, Mr Fofanah appeared in Court. Mr Jenkins-Johnston carried on with cross-examination. The question and answer session that followed, went as follows: *"Do you have receipts for the payments? I have a receipt for valuation certificate. I have one issued by the Solicitor - Mr Elvis Kargbo. The money was being disbursed by the deceased Mr Lamin"*. As stated above, Mr Lamin, 2nd Defendant was deceased before the trial commenced.

46. DW1 carried on, saying that the will specified those to whom money should be paid; it did not state that Plaintiff should be paid any money. He admitted that no money had been paid to Plaintiff's daughter, though she was entitled under the terms of the will. DW1 said this was an oversight on the part of the deceased, Mr Lamin.
47. There was a delay of nearly a year, before Mr Fofanah was able to call his next witness on 10 February, 2015.

DW2 - AUGUSTINE JIMMYMUSA

48. DW2 was Augustine Jimmy Musa. He was unemployed at the time. He was a son of the testator. He acknowledged the Plaintiff as his step-mother. His siblings were Yatta, Phebean, Hannah (who had died a long time before then), Alex and Julie. Prior to the testator's death, he had been living in the USA. When he gave evidence in 2015, he was already 52 years old which means he was born in 1963. He left Sierra Leone in 1991, and returned for the first time in 2010 after the death of his father. His mother was one-time MP, Hon Theresa Koroma with whom he used to live at 155 Circular Rd, Freetown. He never lived at the property at Kingharman Rd. He was aware the property was leased to the HIV Secretariat. He had received a portion of the rent from 1st Defendant. As he was not in the country when the house was being put up, his evidence did not add much value to the issue of whether the house was built by his father alone, or, by his father together with the Plaintiff.

DW3 - EMMANUEL WILLIAMS

49. DW3 was the builder, Emmanuel Vaniwa Williams. My assessment of his evidence is that he could not tell who was providing the funds for the construction of the house he was asked to build.

PAYMENT OF RENT BY HIV/AIDS SECRETARIAT

50. At the hearing on 9 November, 2015, Mr Jenkins-Johnston produced in Court a letter dated 15 October, 2015 from the Director-General, HIV Secretariat addressed to the Master and Registrar. The Director-General notified the Master that the sum of USD49,950 being rent owed for the period 1 August, 2013 to 31 July, 2016 had been paid into the Master's account at Standard Chartered Bank (SL) Ltd. Details of the transfer were attached to the letter. I intimated Counsel that once the payment had been confirmed I would consider making an interim order. Eventually, the initiative was taken by Mr Jenkins-Johnston. He filed a Notice of Motion dated 16 November, 2015 which was heard on 3 December, 2015. In that motion, the Plaintiff was asking for a payment out to be made wholly, or, partly in her favour.

51. On 15 December, 2015, I ordered as follows:

- (i) That the sum of USD49,050 paid into Court on the 15 day of October, 2015 by the National HIV/Aids Secretariat as rent due the estate of DR EDWARD TITUS MUSA deceased for the cumulative period 1st August, 2013 to 31st July, 2016 be paid out in the following manner:
- (ii) The sum of USD24,525 shall be paid by the Judicial Sub-Treasury and/or by the Master and Registrar, to Mr J B JENKINS-JOHNSTON for and on behalf of the Plaintiff herein.
- (iii) The sum of USD24,525 shall be paid by the Judicial Sub-Treasury and/or by the Master and Registrar, to Mr M P FOFANAH for and on behalf of all the Defendants/Interveners
- (iv) Costs in the Cause.
- (v) Liberty to Apply
- (vi) The trial shall continue on Tuesday 19th January, 2016.

52. Discussions continued in Court about the outstanding rent, and I did indicate at one stage that I would be making a further order. Also, Mr Fofanah did indicate that he would be calling Mr Elvis Kargbo, Legal Practitioner to testify about the various amounts of money he was supposed to have received on behalf of the Testator's estate. However, nothing much happened between the date of the above order, and July, 2016 when Mr Jenkins-Johnston sent word to the Court that he was unwell, and that he would have to go away for medical treatment. The trial was then adjourned to 6th October, 2016. Sadly, Mr J B Jenkins-

Johnston passed away in September, and time had to be given to his junior in chambers Mr Leon Jenkins-Johnston to take over the matter.

DR MOMODU SESAY CALLED AS A WITNESS BY THE COURT

53. At the hearing on 18 November, 2016, Dr Momodu Sesay who had taken over from Dr Kargbo as Director-General of the AIDS Secretariat, was called to give an account of the payment of rent arrears by the Secretariat. The rent was indeed eventually paid as noted by me in my minutes recorded on page 84 on 25 November, 2016. At page 85 of my minutes, I ordered that the rent paid in, be paid out in equal shares to Mr L Jenkins-Johnston on behalf of the Plaintiff, and to Mr Fofanah on behalf of all the Defendants. Hearing was then adjourned to 2 December, 2016. There were several more hearings, but due to absence of Counsel on one side, or, on both sides, adjournments had to be taken. Finally, on 1 March, 2017, Mr L Jenkins-Johnston applied for the Defendants' case to be closed. I ordered the Defendants' case closed, and invited written addresses from Counsel. A notice to that effect was sent to Mr Fofanah's chambers. I adjourned to 31 March, 2017 for that to be done. The several parties were absent and unrepresented. I then reserved judgment.

54. However, the file was recalled for a hearing on 19 July, 2017 at the request of Mr Jenkins-Johnston. He had, on behalf of the Plaintiff, filed a Judge's Summons, asking for a variation of the Court Order of 15 December, 2015. Much difficulty had been encountered by both sides in accessing the rent paid into the Master's account. At page 90 of my minutes, I recorded that I was satisfied on the basis of the documents exhibited to Mr Jenkins-Johnston's affidavit of 12 July, 2017 that there was a case for varying the order of 15 December, 2015. I therefore ordered as appears on the said page 90, that the rent due and payable for the year 1 August, 2017 to 31 July, 2018, be paid out to Counsel on either side, respectively, in equal shares pursuant to Order 35 Rule 8 of the High Court Rules, 2007. Liberty to apply was also granted to both sides. The drawn up Order was filed by Plaintiff's Solicitors.

CASE FOR DEFENDANTS CLOSED

55. Subsequent to this order, addresses were eventually filed, and once more, judgment was again reserved.

ISSUES FOR DETERMINATION

56.Despite the sometimes circuitous course the present litigation has taken, two principle issues have to be determined. First whether the will dated 27 September, 2008 was and is valid. Second, whether the devise in clause 4 of the will should stand. The second issue depends on the state of the law as to what should happen when a testator purports to dispose of property to which he has legal title, but in respect of which he does not possess the entire beneficial interest. In the present instance, the Plaintiff contends that she has a valid beneficial interest in the property on the ground that she contributed to the purchase of the lease initially from the Government of Sierra Leone; subsequently, the purchase of the freehold from Government; and lastly, to the erection of the house on the land, numbered 15D Kingharman Road. She is relying on direct contributions to the purchase price, and also indirect contributions, by taking care of household expenses after the testator had retired from Government service.

VALIDITY OF THE WILL.

57.I must point out at once, that a wrong or ineffective devise in a will, does not by itself, invalidate a will. A will be declared invalid if it contravenes any of the provisions of the Wills Act, 1837. It will be declared invalid, if for instance, it is not signed by the Testator; or, if it is not witnessed by at least two persons. No evidence has been led before me that the will which was tendered in evidence as part of the Court Bundle was invalid in these respects. The Plaintiff did express some doubts about the testator's signature, but no cogent evidence was led by her as to what the testator's regular or normal signature was. It was for her to prove non est factum. She failed to do so. There was no evidence that prior to his death, the testator was physically or mentally disabled to such an extent that he would not have been in a position to give instructions for the preparation of a will, or, to sign one, after it had been made out for him. I find therefore that in its formal respects, the will was valid. I find also that the original Defendants, Alhaji Swarray, Fadilu Lamin, and Mohamed Hedjazie were properly appointed Executors and Trustees of the will. At page 35 of exhibit B are copies of two receipts. The one at the top is that issued by NRA on 21 October, 2008, evidencing the payment of the sum of Le20,000 for depositing the will at the Registry, Roxy Building, Walpole Street, Freetown. The one at the bottom is one issued by Mr Elvis Kargbo, Solicitor on 27 August, 2008, evidencing the payment of his

fee of Le500,000 for preparation of the will. The Plaintiff's prayer numbered 1 in her statement of claim, is therefore denied. As I have impliedly concluded that he died testate, Plaintiff's prayer numbered 2 is also denied. Dr Musa did not die intestate.

CAVEAT PROCEEDINGS

58. Much earlier in this judgment, I had said something about the caveat proceedings which were instituted by Plaintiff's Solicitor on 3 February, 2009. A Warning was not entered to the Caveat by any of the original three Defendants. Instead, regardless of the Caveat entered they proceeded to Probate the testator's will. Plaintiff, through her Solicitors, did on 30 October, 2009 issue a Citation to 1st and 2nd Defendants, and to Mr Elvis Kargbo, to bring into the Probate Registry the Probate wrongly granted, for it to be revoked. The Caveat proceedings were not pursued by the Plaintiff. However, because of the conclusion I have reached about the validity of the will, I do find it necessary to make a pronouncement on the Caveat proceedings.

CLAUSE 4 OF THE WILL

59. I now turn my attention to clause 4 of the will. It is the basis for the Plaintiff's third prayer in her writ of summons. It reads: "*4. I give and devise my house at No. 15D Kingharman Road Freetown to my children, PHEBEAN MUSA, JIMMY MUSA, YATTA MUSA as tenants-in-common.*" The Plaintiff is excluded from the devise; and so also, is the child of the marriage, Iris Ngadie. The Plaintiff's case is that she was and is beneficially entitled to half share of the property based on her contributions to its purchase, and to the erection of the building on the land. Whether or not the testator was unhappy about the way he was being treated by the Plaintiff, such unhappiness would not entitle him to deprive her of her beneficial interest in the property. I have read and noted the contents of the letter purportedly written by the testator to the Plaintiff on 29 October, 2008 at pages 41 to 43 of exhibit B. That he may have had reason to be disgruntled or dissatisfied with some parts of their married life together, could be true. When one reads the contents of pages 44 to 46, addressed to the family as a whole, it appears that the testator was in fear of imminent death. On page 45, he instructs that what he has written on pages 44 and 45 should be read post-mortem.

EVIDENCE OF PLAINTIFF'S CONTRIBUTIONS TO THE PURCHASE PRICE

60. It is therefore necessary to examine closely the facts on which the Plaintiff's claim to a beneficial interest is based. I take judicial notice of the fact that both Plaintiff and Defendant come from a traditional background. In certain communities, notwithstanding all the various laws passed to enhance the status of a woman, in the eyes of some men, women are still inferior to men. It is not surprising therefore, that even though the Plaintiff claims she was the prime mover in obtaining the Government lease in the first place; and then the freehold, before putting up the building, all the official papers in respect of all three transactions should be in the name of the testator alone. An examination of the facts led in evidence would show that the Plaintiff's version of how the land was acquired in the first place is true.
61. She was the occupant of the Government quarters B12, Brookfields. She was a highly placed official in one of the Government Ministries, and was also a Consultant Project Director for the Food and Agricultural Organization (FAO). She travelled abroad on official missions, and was able to accumulate monies paid to her as per diem allowances for these various travels. All the same, it would be prudent to examine all of the documentation relating to the acquisition of the property before deciding whether the Plaintiff has indeed established her beneficial claim to the property.
62. Both in her witness statement, and in her evidence in chief, the Plaintiff has explained why she suggested both she and the testate should acquire the land which was contiguous to her Government quarters. At the time, that is 1996, she was getting a lot of trouble from a Mr Mohamed Sandy, who was attempting to put up a structure which would have eventually restricted the view from her quarters, and even her access to the main road. It would also eventually abut her bedroom and her cesspit. This impelled her to make the approach to the Ministry of Lands for the acquisition of the rest of the land contiguous to her quarters. Her letter dated 15 July, 1996 addressed to the Director of Lands, is evidence of the inconvenience she was suffering.
63. The letter of offer of the State Land is at page 10 of exhibit B. It is dated 19 February, 1996 and is addressed to the testate at B12, the Plaintiff's residence. According to the Plaintiff in her witness statement, the testator and herself had been living there together since 1993, though they only got married in 1997. The letter offers a lease to the testator of the land he had applied for. The conditions of the offer are

stated. The testator accepted the offer by way of letter dated 22 February, 1996 - page 11 of exhibit B. According to the Plaintiff, construction work commenced in 1999. The house was completed in 2004 and then rented out to the HIV Secretariat. That same year, the freehold was conveyed into the name of the testate alone. It was done by way of deed of conveyance dated 30 September, 2004 and duly registered as No1363/2004 at page 55 in volume 578 of the record books of conveyances kept in the office of the Registrar-General, Freetown.

64. To substantiate her claim to a beneficial interest in the property, the Plaintiff has exhibited some receipts evidencing payment for supplies. I have not countenanced those issued in 2007, as at that time, the house had been completed. But pages 102 to 110 are copies of receipts issued to her for the purchase of materials to be used in construction. That aside, both of them were living together as man and wife as indeed they were until the testator's death.
65. In his closing written address, Mr Leon Jenkins-Johnston has cited some of the well-known authorities dealing with this area of the Law. They all support the conclusion that where there is evidence of a direct monetary contribution made by a wife or female partner to the purchase of property whether held in the name of the husband or male partner alone, the beneficial interest results to the wife or female partner equally. No contravention of section 4 of the Statute of Frauds, 1677, or, section 4 of the Registration of Instruments Act, Chapter 256 of the Laws of Sierra Leone, 1960 as amended, is involved. No disposition of a legal estate or beneficial interest is really involved. The principle applies to relationships where one party buys or acquires property in his or her name only, but because of the other party's contribution to the purchase price, whether direct or indirect, the law presumes that the person in whose name the property has been conveyed holds the same on a resulting trust for the two of them, sometimes in equal shares. Alternatively, the argument goes, the person in whose name the property is conveyed, holds part of the beneficial interest therein as a constructive trustee for the party whose name does not appear on the deed.
66. Further, the presumption of advancement, a principle well known in the law of equity, does not operate in favour of the husband, as against the wife. The modern view is well set out in this extract from HANBURY & MARTIN's MODERN EQUITY 17th edition at page 272, paragraph 11-002:

"The modern view is that marriage is a partnership between equals in which the wife has an economic contribution to make. But she does not always insist that on the matrimonial home being conveyed to the spouses jointly; or, on a declaration of trust of a share of the house in favour of herself. Nor is justice done to her by the presumption of a resulting trust, based on payment of the purchase money; first, because childcare and housework are not money-producing; and secondly, because if she has a job, her earnings may be spent on household expenses and not in contributing to the purchase price of the house. "The cock can feather the nest because he does not have to spend most of his time sitting on it...." The last quotation is attributed to Sir Jocelyn Simon, one time President of the Probate, Divorce and Admiralty Division of the High Court of England and Wales, and also quoted by LORD HODSON in *PETTITT v PETTITT* [1970] A C 777 at 811.

COMMON INTENTION & DETRIMENTAL RELIANCE

67. The Learned Authors go further to explain the principles which would apply where property has been conveyed into the name of one spouse alone, and the other spouse claims a beneficial interest in it. One of the first questions to be asked is whether the spouses had a common intention that the property would belong to the two of them beneficially. If no such common intention could be inferred, the next step would be to look at the direct contributions to the purchase price made by the spouse whose name has been left out of the deed. Such contributions would create a constructive trust in favour of the spouse whose name does not appear on the legal title of the property. This is the reasoning which one can glean from the case of *LLOYD'S BANK v ROSSET* [1991] 1 A C, 107, HL, a case also cited by Mr Leon Jenkins-Johnston in his closing written address. On the facts of this case, it is reasonable to conclude that there could have been a common intention between the testator and the Plaintiff that the property acquired would be shared beneficially by the two of them. It is reasonable to so conclude. The property was next to where the Plaintiff was living. As a civil servant, she would be given preference when applying for a lease. Though her name does not appear in the letter of offer, it is reasonable to conclude that her presence on the land could have been the deciding factor in making the offer. Both of them were living there together like any other married couple. As such, the principle of detrimental reliance could be invoked in her favour. Her

contributions to the purchase of the freehold and the erection of the house would satisfy the requirements of detrimental reliance. The Learned Authors quoted above, have also opined at their paragraph 11-005 that: "*Where a constructive trust arises from an express common intention coupled with direct and indirect contributions (such as labour and contribution to household expenses) the latter may increase the share beyond that which would otherwise arise under a resulting trust.*"

68. There is no clear evidence as to the proportions which each party paid towards the purchase of the freehold and the building of the house. The only credible evidence of the living arrangements of both parties has come from the Plaintiff. None of the Defendants, nor DW2, Jimmy Musa, the testator's son had lived together with both parties in the house. Therefore, the only sensible conclusion this Court can reach, is that the Plaintiff must have contributed the lion's share. The testator did retire from active service before he died, but by then, the house had been completed. His bank statement shows his earnings had dropped after his retirement even though he was kept on as a lecturer by the University of Sierra Leone. A lump sum, Le80m, was indeed credited to his account on 30 December, 2008, a few days before he died, but that sum constituted proceeds accruing from the disinvestment of Treasury Bearer Bonds. The amounts credited between 2006 and 2009 were basically monthly accruals from his lectureship.

69. The conclusion I have reached is that I believe the Plaintiff has proved on a balance of probabilities that she is entitled beneficially to a share in the property at Kingharman Road. I believe her when she said she paid for most of the construction work. It is unlikely the testator would have embarked on the construction of that house without the encouragement and material assistance given to him by the Plaintiff. It follows that the testator was not in a position to devise the whole of the legal estate as he did in clause 4 of his will. He was holding as a constructive trustee, the Plaintiff's beneficial interest in the property. That interest I value as 50 per centum. Thus, the Plaintiff is entitled to a one-half share in the said property. It follows also, that the testator died intestate in respect of that property. The devise in clause 4 of his will is therefore null and void, and is set aside. As she was his wife until his death, the Plaintiff is also entitled to 50 per centum of all the personal property in the house, not just what the testator devised to her in clause 7 of his will. The jeep which she also claims perhaps no longer exists after all these years. I


believe it is unnecessary to make an order in respect of an item of personal property which no longer exists.

70. Taking all the circumstances of the case into consideration, I have come to the conclusion that there has been much bad blood between the Plaintiff on the one side, and the Defendants including the Testator's children, on the other. If this had not been the case, litigation would have been avoided, or, would have been settled several years ago. The only solution I can think of is that the property should be sold and the proceeds thereof be distributed equitably according to the conclusion I have reached.
71. The Plaintiff is also contesting the residuary devise made in clause 14 of the Will. As she has not led any evidence to substantiate her claim, I would dismiss this claim as well. It may be galling that she has been totally excluded from benefitting from anything which was owned solely by the testator, but as I have held that the will is valid, I cannot at this stage interfere with the bequests made by the testator. That which concerns the Plaintiff, I have dealt with.
72. The Plaintiff has also contended that the house at Makeni is hers, and that she had acquired it before her marriage. There has been no serious contention that it ever belonged to the testator. The devise in clause 5 of the testator's will is therefore invalid, null and void and of no effect. In my view, it amounted to no more than a pretence that he was doing something for his child Ngadi.
73. The Plaintiff has also prayed for an account to be rendered by the Executors. Two of them are now deceased, and in any event, much time was spent during the course of proceedings to get the 1st Defendant to account for his dealings with the estate, with little or no success. Mr Elvis Kargbo who would have shed some light on all the outgoings from the estate, was not called as a witness, though his name appears on the Defendants' list of witnesses. At least, the Court ensured that 1st Defendant was stopped from receiving rents in respect of the Kingharman Road property, and all payments due the Plaintiff were forwarded to her Solicitors on her behalf.
74. In the result, the Plaintiff succeeds in prayer numbered 4, in her writ of summons. The necessary Orders will now follow:
- THIS HONOURABLE COURT ADJUDGES AND ORDERS as follows:
- (1) The Plaintiff succeeds in her prayer numbered 3 in her statement of claim. This Honourable Court Declares and Orders that the

devise made in clause 4 of the will of Dr Edward Titus Musa dated 27th September, 2008 to wit: "I give and devise my house at No. 15d Kingharman Road Freetown to my children PHEBEAN MUSA, JIMMY MUSA and YATTA MUSA as tenants in common" is invalid, null and void, and is therefore struck down on the ground that the Testator was not the sole beneficial owner of the property. Consequently, this Honourable Court declares that deed of conveyance dated 30 September, 2004 and duly registered as No 1363/2004 at page 55 in volume 578 of the record books of conveyances kept in the office of the Registrar-General, Freetown and expressed to be made between the Government of Sierra Leone, therein expressed of the one part, and Dr Edward Titus Musa of the other part, is cancelled and should be expunged from the said books of conveyances

- (2) This Honourable Court Declares that the Plaintiff herein MRS OLIVE MUSA is beneficially entitled to a one-half share in all that piece of land and the buildings thereon situate, lying and being at 15D Kingharman Road, Freetown in the Western Area of Sierra Leone, and has been so entitled since 1996.
- (3) This Honourable Court declares that the property situate lying and being in Makeni, in the Northern Province of Sierra Leone, which the said testator, Dr Edward Titus Musa purported to devise in clause 5 of his said will, is invalid, null and void and of no effect as the property belongs solely to the Plaintiff, Mrs Olive Musa.
- (4) Pursuant to the Order made in paragraph (2) above, this Honourable Orders that the said property situate at and known as 15D Kingharman Road, Brookfields, Freetown be sold for the highest possible price that could be obtained by private treaty or public auction, the sale price to be approved by the Court. The proceeds of sale shall be divided equally as follows: 50 per centum thereof shall be paid to the Plaintiff, Mrs Olive Musa. 5 per centum thereof shall be paid to NGADI MUSA, the daughter of both the testator and the Plaintiff. The remaining 45 per centum thereof shall be paid to Mr M P Fofenah in his capacity as Solicitor and Counsel for the following Defendants: ALEX MUSA, YATTA MUSA, JULIE MUSA, EDDIE MUSA JNR, PHEBEAN MUSA and JIMMY MUSA. No payments out shall be made to any of the persons aforementioned without an Order of the Court.

- (5) Solicitors' fees shall be deducted from the sale price. Such fees shall amount to, and shall not exceed in the case of Solicitors for the Plaintiff, 10 per centum of the total purchase price; and for Solicitor and Counsel for the Defendants, 10 per centum of the purchase price.
- (6) After payment of the purchase price as directed above has been effected, the successful purchaser shall submit his deed of conveyance to the Master and Registrar for engrossment.
- (7) The Administrator of the estate of the deceased 1st Defendant shall bear the Costs of the action, such Costs to be taxed if not agreed.
- (8) Liberty to Apply


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