Civ. App. 28/2025

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

AJATI A. SANKOH - DEFENDANT/ APPELLANT

AND

FASSALLY TARAWALY - PLAINTIFF/RESPONDENT
(Substituted for Fatmata Mary Fofana,
Administrator of the Estate of Umaru Fofana, deceased intestate)

JUDGMENT DATED THE 27TH OCTOBER 2026

Representations: M. P. Fofanah Esq. for the Appellant herein; and
I. Jalloh Esq. of Macauley, Bangura & Co. for the Respondent herein.

CORAM:- THE HON. MR. JUSTICE M.A.J. STEVENS JA - PRESIDING
THE HON. MR. JUSTICE S.O.M. TAYLOR JA
THE HON. MR. JUSTICE A.S. ALIEU JA

A. BACKGROUND OF THE CASE:

1. It is to be noted that both the Solicitors for the Appellant herein, **AJATI A. SANKOH, and the Respondent, FASSALLY TARAWALLY,** have respectively summarized each other's case and given the background of this [illegible] in their respective ways in the Appeal Synopsis filed by them. The Court notes the said background and will refer to it as and when necessary for the purposes of this Judgment, as this Court shall focus more essentially on the Grounds of Appeal filed and argued by the Appellant and the responses to them as argued by the Respondent.

B. THE GROUNDS OF APPEAL FILED – ARGUMENTS AND SUBMISSIONS CANVASSED BY THE RESPECTIVE COUNSEL:

GROUND ONE:

2. The Appellant's **Ground One** in his Notice of Appeal dated 5th March, 2025 reads:

That the Trial Judge **materially erred in fact and in law** respectively in reaching the following findings and conclusions against the Appellant in her **Final Judgment** – all of which are in **pages 447-450 of the Appeal Records**:

PARTICULARS OF THE ERRORS IN **GROUND ONE**:

a. At **para. 72 page 18 of the Judgment**, the Learned Trial Judge held as follows: "*Mr. Evelyn Lewis on acquiring the property on 16th November 2020 sold it to Mr. Umaru Fofana on 11th December, 2020.* ***There is no evidence that Mr. Lewis did not have the legal title to the property at the time he sold or that there was anything stopping him from selling the same, though his motivation to do so may have been to evade payment of the debt, ensuring that his property will not be used in execution of same. This he succeeded to do. Interestingly, Mr. Lewis owned the property for less than a month before he sold to Mr. Fofana***" [Emphasis added by the Appellant].

b. At **para. 73 page 18 of the Judgment**, the Learned Trial Judge also held as follows: "*I find that at the time of the sale to Mr. Fofana, though the process of execution of the judgment had commenced,* ***the legal title to the property was validly vested in Mr. Lewis and his conveyance to Mr. Fofana almost 10 months prior to the Conveyance to the Defendant [i.e. Ajati Sankoh] was valid***". [Emphasis added].

c. Moreover, at **para. 74 page 19 of the Judgment**, the Learned Trial Judge held as follows: "***I find that at no time was title passed to the Inspector-General of Police and Sheriff****. Evelyn Lewis had no title as at 20th October 2021 when the Conveyance of the Defendant was registered. That was only a document that could not possibly have passed title as the title to the property had gone".* [Emphasis added].

d. Furthermore, at **para. 84 page 20 of her Judgment**, the Learned Judge held that: "***I am of the view that the court order for the sale will state expressly that the property at 126 Regent Road should be sold. There is no order to that effect. Neither a memorial of judgment, a writ of fifa for execution against real estate, or an order vacating a stay of execution of that fifa amounts to an order of court for the sale of the property****. In the Rebecca Johnson case at page 2, reference is made to an order of the High Court dated 24th March 1996 wherein it was ordered that property at No. 13 Circular road, Freetown be sold by Public Auction or Private Treaty.* ***In view of the above, I hold that this case can be distinguished and is inapplicable to the present case.***" [Emphasis added].

he sold. There is no order to that effect. Neither a memorial of

e. Similarly, at **para. 85 page 20 of the Judgment**, the Learned Judge further held that: "***Similarly, the above quoted sections of Cap 22 will not apply as the debtor no longer had title to the property when the Sheriff executed the conveyance in the defendant's favour on 20th October, 2021. At the material time, valid title to the property based on the Conveyance dated 11th December, 2020 was vested in the Estate of Umaru Fofana who died on 22nd July, 2021***". [Emphasis added]

Legal Submissions of Counsel for *the Appellant* on *Ground One* above:

3. Counsel for the Appellant herein submits on Ground One that contrary to the above Particulars of Appeal set out by him, **at para. 37(d) to (h) and at paras. 38-46, pages 11-14 of the Judgment [see pages 440-443 of the Appeal Records]**, the Learned Trial Judge herself stated and summarised the following **facts** in her said Judgment:

a. That a Default Judgment (which is, with respect, an Order of Court) was obtained by Zenith Bank (SL) Ltd. on 29th May, 2019 against Evelyn Lewis, the Plaintiff's earliest predecessor in title, for him to pay to Zenith Bank (together with Mr. Michael Collier) the sum of US $130,000/=, as exhibited in **the Default Judgment found at page 285 of the Records]**. This was before the trial Court at all material times; same with **the Memorial of Judgment** prepared to that effect, which cited the disputed Property as being the property of inter alia Evelyn Lewis and as one of the persons in possession of the Property at the time the Memorial of Judgment was registered **[see pages 287-292 of the Appeal Records]**. Interestingly, and as noted earlier, Evelyn Lewis had himself bought the Property via an Order of Court to foreclose a mortgage deed that was executed in favour of Rokel Commercial Bank against a certain Fatmata B. Allieu **[see pages 178-182 of the Records]**.

b. That Evelyn Lewis' **Title deed/Conveyance deed found at pages 178-182 of the Records]** showed that the transaction to sell the Property to him by Rokel Bank (SL) Limited commenced in October, 2019 (when Evelyn Lewis was allowed by the Bank to survey the property); his survey plan was then signed by a licensed surveyor on 20th October, 2019 and endorsed by the Director of Surveys on 7th January, 2020. It is assumed that Evelyn Lewis then **went into possession** of the disputed Property upon paying the stated sum of Le. 1.6 Billion old Leones whilst waiting to register his deed of conveyance for the same. Otherwise, could Rokel Bank have allowed him to register a survey plan for the land without any concrete arrangement with the Bank to pay for the foreclosed property? Undoubtedly, no.

c. Consequently, whilst Evelyn Lewis was seised and possessed of the property in dispute, the Undersheriff executed the aforementioned Default Judgment (which is an Order of Court) on his property at Regent Road, Hill Station, Freetown, which is the disputed property herein that he later quickly sold to the late Umaru

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Fofana. **Paras. 16 to 22 of the Final Judgment** summarises the testimony and cross-examination of DW1, **the Undersheriff – Abdul Fatta Deen Gabisi** as follows: **i)** Following the Default Judgment against Evelyn Lewis and Michael Collier, DW1 conducted a sale of the disputed property to the Appellant herein, Mr. Ajati Sankoh, via **Cap 21 and Cap 22 (1960)** processes, and that the latter **Act (Cap 22)** involves selling the Defendant (the said Evelyn Lewis)'s real property by attaching the judgment debt to it; **ii)** The Undersheriff published two public notices about the public auction sale, dated 2nd February, 2020 and 9th May, 2020 – long before the actual sale was effected on 20th June, 2020, when the Appellant, Ajati Sankoh, eventually bought the property; **iii)** The said Undersheriff prepared a **Certificate of Sale** dated 23rd June, 2020 and **Returns about the sale** to Mr. Sankoh, after the latter had effected full payments for the property on the 1st and 2nd July, 2020 – **see pages 295 to 299 of the Appeal Records); iv)** Whilst preparing to convey and register a valid deed of conveyance for Ajati Sankoh/the Appellant herein, the High Court ordered or granted an interim Stay of execution of the Default Judgment on the 20th July, 2020, which was only vacated on the 25th June, 2021 – **see page 300 of the Appeal Records; v)** Much later, on the 11th December, 2020, and without any notice to the Undersheriff, Evelyn Lewis conveyed the disputed Property herein to Umaru Fofana by registering a conveyance to that effect - **see pages 170 to 177 of the Records); and vi)** The Sheriff, who had already sold the Property herein to the Appellant, much later proceeded to convey and register a deed of Conveyance for him on the 20th October, 2021 after the Stay of execution Order had been vacated – **see pages 259 to 267 of the Appeal Records herein.**

d. It is therefore totally unclear as to how a real property sold pursuant to a Default Judgment and through a public auction sale and an attachment process under Cap 22 of the Laws of Sierra Leone (i.e. the Execution Against Real Property Act) can be said by the Trial Judge NOT to amount to an "order of court" for the purpose of selling the real property! It is also unclear as to how the Sheriff who conducts a valid sale using the said process can be said NOT to have [illegible] title to pass on to the innocent purchaser (Ajati Sankoh) who comes forward to buy the real property with his hard-earned money, relying on public auction sale!

e. Similarly, it is unclear as to how the affected debtor (Evelyn Lewis) who sold the attached property to another person (Umaru Fofana) more than ten months after notices have been published for the "public" auction sale, and about five months after the actual "public" sale, can be said to convey "valid" title to the purchaser (Umaru Fofana herein) as against the Sheriff! Besides, Counsel posed the question, where a public auction sale has been commenced by the Sheriff on an attached property, does it not follow that private persons wishing to acquire it for themselves by private treaty should do due diligence on the affected property with the Sheriff/Under sheriff's office?

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f. In view of the above submissions and arguments, the Appellant further referred the Court to **section 6 of Cap 22 aforesaid**, which reads: "***The purchaser, his executors, administrators or assigns shall hold the premises purchased under the provisions of this [Act] free and clear of all judgments or recognisances whatsoever***, *by virtue whereof no execution has been executed upon the real estate so purchased, any law, usage or custom to the contrary thereof notwithstanding.*" [Emphasis added]. Moreover, **sections 4 & 5 of Cap 22** states that "***writ of fieri facias shall issue against any lands or other real estates***".

g. Also, Counsel for the Appellant submits that in the unreported Supreme Court of Sierra Leone case of **Rebecca Johnson & Ors. vs. The Administrator and Registrar-General & Ors. (SC. Civ. App. 2/2007)** by Judgment dated 7th February, 2012 at page 5 thereof, the Supreme Court of Sierra Leone re-echoed similar sentiments when it quoted the late Beccles-Davies JSC (as he then was) as saying that: "***The revocation of a grant of Letters of Administration would not affect the title of the Purchaser who has acquired any interest in real or personal property pursuant to an Order made under any statutory power of the Court***" [Emphasis added]. Further at **page 6 para. 3** of the above-mentioned Judgment, the Court concludes by holding that any bona fide purchaser for value without notice who buys pursuant to an order of court or the court's exercise of its statutory powers in that regard, "***so acquired a valid and unimpeachable title***". Unfortunately, the Learned Trial Judge construed the Court's statutory power to order sale to be outside the remit of **Cap 22;** confining her understanding to **"sale of land by court order"** as provided for in **Order 37 of the High Court Rules, 2007.**

Legal Submissions of Counsel for *the Respondent* on *Ground One* above:

4. On her part, Counsel for the Respondent submitted on **Ground One** as follows:

a. In response, Counsel for the Respondent firstly submitted that **paragraphs 72, 73, 74, 84 and 85** of the Trial Judge's Judgment **(found at pages 447 to 450 of the Appeal Records)** referenced by the Appellant in his submissions clearly reflect the facts of the matter emanating from the pleadings and evidence at the trial. What was submitted by the Appellant as being the **"summarized facts"** of the Learned Trial Judge in her Judgment at **paragraphs 37 (d) to (h)** and at **paragraphs 38-46** of her Judgment **(found at pages 440 to 443 of the Records)** was rather, that of the Trial Judge restating the submissions made by Counsel for the Appellant in his Closing Address in the lower court.

b. That in the referenced paragraphs complained of by the Appellant above, the Trial Judge primarily dealt with the issue of **Evelyn Ajibola Lewis'** title to the property at the time he sold the same to Umaru Fofana, as opposed to his title when the Appellant's conveyance was executed pursuant to execution on his real property by the Sheriff under **Cap 22.**

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c. That it was the Respondent's argument in the court below, which argument the Respondent still maintains, that title to the disputed property had passed to Umaru Fofana before the Sheriff executed a conveyance in favour of the Appellant. Counsel for the Respondent further submitted that it is worthy to note that both parties' claim of title to the property emanates from one person, Evelyn Ajibola Lewis. The Appellant claims that he bought the property by public auction following an execution on the real property of Evelyn Ajibola Lewis, whilst the Respondent claims he bought the property from the estate of Umaru Fofana (deceased) who had bought the property from Evelyn Ajibola Lewis aforesaid.

d. Counsel for the Respondent in her submissions moreover referred the Court to the principles articulated in the Supreme Court case of **Dr. C.J. Seymour Wilson vs. Musa Abess (Civ. App. 5/1979)** wherein it was held that a conveyance in itself does not automatically pass title. ***Specifically, mere execution of a conveyance does not transfer ownership unless the vendor holds a valid title to the property at the time of the execution of the conveyance. It was stated in the said case that "Registration of an instrument under the Act does not confer title on the purchaser, lessee, or mortgagee, etc., nor does it render the title of the purchaser indefeasible. What confers title (if at all) in such a situation is the instrument itself and not the registration thereof. So, the fact that a conveyance is registered does not ipso facto mean that the purchaser thereby has a good title to the land conveyed. In fact, the conveyance may confer no title at all, e.g. where the vendor had no title to pass.***" [Emphasis added].

e. Counsel for the Respondent similarly submitted that the Respondent had stated in the lower court, and that he still maintains that submission, that in the present case, the Sheriff & Inspector-General of Police did not possess title to transfer to the Defendant at the time his conveyance was executed as title had already passed from Evelyn Ajibola Lewis (against whom execution was being levied) to the Plaintiff's predecessor-in-title, Umaru Fofana. Respondent's Counsel then relied on the equitable maxim of ***nemo dat quod non habet*** (i.e. one cannot give what one does not have) as being applicable in the instant case.

f. Additionally, Respondent's Counsel stated that the Deed of Conveyance in favor **of Umaru Fofana** dated **11th December 2020 (found at pages 170 to 177 of the Appeal Records),** and the title to the property he acquired therein, predates that of the Appellant which was executed on **20th October 2021 (found at pages 259 to 267 of the Records).** Thus, at the time of the execution of the **Writ of Fieri Facias (found at pages 301 to 302 of the Records)** on to its completion, Evelyn Ajibola Lewis (against whom the execution was being levied) no longer held title to the property, thereby rendering any conveyance in the Defendant's favour by the Sheriff & Inspector-General of Police, invalid. Counsel also stated that the Appellant at **paragraph**

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7 of his **Closing Address (found at page 308 of the Appeal Records)** conceded that whatever title he claims to the property was only acquired on **20th October 2021** by stating that "... ***a Deed of Conveyance executed by the Inspector General of Police as the Sheriff in his favour on the 20th October 2021 (...). It is submitted that it was only at this stage that title in the disputed property fully passed on to the defendant herein".***

g. Besides the foregoing, the Respondent's Counsel submitted that the Appellant claims to have bought and paid for the property through the regular processes of the High Court, with a receipt, certificate of sale and conveyance issued/registered in his name as bona fide purchaser for value. Counsel then refers the Court to **Words and Phrases Legally Defined, Second Edition (1969) Volume 4,** in which a "**purchaser**" is defined as "***a purchaser in good faith for money or money's worth and includes a lessee, mortgagee or other person who in good faith acquires an interest in property for money or money's worth***".

h. The Respondent's Counsel further referred the Court to the Conveyancing and Law of Property Act, 1881 in its Interpretation of **"property, land, etc."**, and states that the section defined "**purchaser**" as "***unless a contrary intention appears, includes a lessee or mortgagee and an intending purchaser, lessee or mortgagee, or other person, who, for valuable consideration, takes or deals for any property...***"

i. Relying on the above definitions, the Respondent's Counsel submitted that during the trial, the Appellant failed to prove himself as **"purchaser"** after being declared the **"highest bidder"** at the auction conducted by the Under Sheriff and a subsequent certificate of sale issued to him dated **23rd June 2020 (found at page 299 of the Records)**. **The payments claimed to have been made by the Appellant, and upon which he relied at the trial were not made by him or in his name but were rather made by SCB - Structural AD I Fund AG and Ibrahim Bun Turay (found at pages 295 to 296 of the Records).** Counsel concluded that in view of the above, the absence of such material facts not only undermines the Appellant's claim to rightful ownership but also casts doubt on the validity of the purported public auction process in its entirety. [Emphasis added].

j. On another note, Respondent's Counsel claims that the Appellant's reliance on the Sierra Leonean case of **Rebecca Johnson & Ors. vs. The Administrator and Registrar General & Ors. (SC. Civ App. 2/2007)** in support of his submission that having bought the property pursuant to an order of court the Appellant acquired a valid and unimpeachable title, is flawed. Counsel notes that the facts of that case are completely different from the instant case, because Rebecca Johnson's case pertains to a court order for the sale of property relating to the administration of an estate. Counsel then submits that the principles established in the said Rebecca Johnson case are inapplicable,

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because the issues in the instant case before the Court relates to the sale of property pursuant to execution of a **Writ of Fieri Facias.**

k. Counsel opines that the Rebecca Johnson case authority and the provisions of **section 6 of Cap 22, - Execution Against Real Property of the Laws of Sierra Leone (1960)** are based on the premise that there was title in the first place that passed to the purchaser. If no title was passed, which Respondent's Counsel submit is the case here, the validity or unimpeachability of it will not come into question.

C. THE COURT'S DETERMINATION OF *GROUND ONE* OF THE APPEAL:

5. In disposing of Ground One of the Appellant's Appeal, it is essential to firstly outline the contentions that the Respondent and his Counsel have with the said Ground. These contentions include the following in summary:

   i. That the Respondent's argument in the court below and presently before the Court of Appeal has always been that title in the disputed property had passed on to Umaru Fofana (his predecessor in title) before the Sheriff executed a deed of conveyance in favour of the Appellant. In support of this contention, Counsel referred the Court to the Supreme Court case of **Dr. C.J. Seymour Wilson vs. Musa Abess (Civ. App. 5/1979)** wherein it was held that ***"a conveyance in itself does not automatically pass title. Specifically, mere execution of a conveyance does not transfer ownership unless the vendor holds a valid title to the property at the time of the execution of the conveyance. It was stated in the said case that "Registration of an instrument under the Act does not confer title on the purchaser, lessee, or mortgagee, etc., nor does it render the title of the purchaser indefeasible. What confers title (if at all) in such a situation is the instrument itself and not the registration thereof. So, the fact that a conveyance is registered does not ipso facto mean that the purchaser thereby has a good title to the land conveyed. In fact, the conveyance may confer no title at all, e.g. where the vendor had no title to pass."*** The Respondent to this end, states that the **Sheriff & Inspector-General of Police** did not possess title to transfer to the Appellant at the time his conveyance was executed, as title had already passed from Evelyn Ajibola Lewis (against whom execution was being levied) to the Respondent's predecessor-in-title, Umaru Fofana; reliance being placed on the ***nemo dat quod non habet* maxim**.

   ii. That since Umaru Fofana's conveyance dated **11th December 2020 (found at pages 170 to 177 of the Appeal Records)** predates that of the Appellant which was executed on **20th October 2021 (found at pages 259 to 267 of the Records)**, and that both Parties herein originate their title from **Evelyn Ajibola Lewis**, the conveyance executed by the **Sheriff & Inspector-General of Police** in the Defendant's favour is invalid, because, according to

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the Respondent, Evelyn Ajibola Lewis (against whom the execution was being levied) no longer held title to the property in order to pass the same on to the Appellant herein.

iii. That the payments claimed to have been made by the Appellant, and upon which he relied at the trial, were in fact not made by him or in his name but were rather made by a **certain SCB - Structural ADJ Fund AC and Ibrahim Bun Turay (found at pages 295 to 296 of the Records).** Respondent's Counsel concluded that in view of the above, the absence of such material facts not only undermines the Appellant's claim to rightful ownership but also casts doubt on the validity of the purported public auction process made therein in its entirety.

iv. And finally, that the Appellant's reliance on the Sierra Leonean case of **Rebecca Johnson & Ors. vs. The Administrator and Registrar General & Ors. (SC. Civ App. 2/2007)** in support of his submission that having bought the property pursuant to an order of court, he (the Appellant) acquired a valid and unimpeachable title, is flawed. Respondent's Counsel submits that the principles established in the said Rebecca Johnson case are inapplicable to the present case, because the issues in the instant case relates to the sale of property done pursuant to execution of **a Writ of Fieri Facias under Cap 22;** whilst Rebecca Johnson's case pertains to a court order for the sale of property relating to the administration of an estate, i.e. sale pursuant to a specific order by the court relating to an identified property. Also, the Respondent holds the view that Rebecca Johnson's case is not applicable to the present case because there was no title in the first place, that passed to the Appellant purchaser.

6. In answering the first contention above, this Court holds the view that the Respondent's Counsel has herself adequately responded to the contention by upholding the principle in Dr. C. L. [illegible] **5/1979)** that "***a conveyance in itself does not automatically pass title. Specifically, mere execution of a conveyance does not transfer ownership unless the vendor holds a valid title to the property at the time of the execution of the conveyance (...) Registration of an instrument under the Act does not confer title on the purchaser, lessee, or mortgagee, etc., nor does it render the title of the purchaser indefeasible. What confers title (if at all) in such a situation is the instrument itself and not the registration thereof. So, the fact that a conveyance is registered does not ipso facto mean that the purchaser thereby has a good title to the land conveyed. In fact, the conveyance may confer no title at all, e.g. where the vendor had no title to pass.***"

7 The circumstances of this case shows that the Respondent is merely using and relying on the fact that he has a Deed of Conveyance executed in his favour by the initial common title holder, Evelyn Ajibola Lewis that predates the Appellant's; and

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that ipso facto, the Appellant's deed of conveyance executed much thereafter in his favour by the Sheriff of Sierra Leone following a valid and lawful execution process premised on a lawfully obtained default judgement (the execution of which was initially stayed but later vacated) is therefore INVALID. This Court senses that the Respondent would prefer that the Court shuts its eyes to the clear circumstances of the case and the factors that led to the late execution of the Sheriff's conveyance in the Appellant's favour. Sadly, for the Respondent herein, this Court will not do that, especially considering that Evelyn Ajibola Lewis' conduct in hurriedly selling the property that was subject of a valid public auction process, which he undoubted knew about, smirks of fraud and deceit.

8. The fact also that Umaru Fofana bought the same property without due diligence and subject to public notice that the property was up for sale by auction, in addition to the fact that the said Umaru Fofana had surveyed the property in his name in **October 2020** even before Evelyn Ajibola Lewis obtained a deed of conveyance from the vendor Bank for it on **16th November, 2020 (see page 175 of the Appeal Records compared with page 178 thereof),** altogether puts this Court on notice of the possibility of some fraud been hurriedly perpetrated by both Evelyn as seller and Umaru as buyer.

9. This Court repeats and adopts the sequence of events narrated by the Appellant's Counsel in his submissions earlier mentioned herein below, which ought to have put any reasonable purchaser for value of the property on red alert before purchasing:

"Consequently, whilst Evelyn Lewis was seised and possessed of the property in dispute, the Undersheriff executed the aforementioned Default Judgment (which is an Order of Court) on his property at Regent Road, Hill Station, Freetown, which is the disputed property herein that he later quickly sold to the late Umaru Fofana.

*Paras. 16 to 22 of the Final Judgment summarises the testimony and cross-examination of DW1, **the Undersheriff – Abdul Fatta Deen Gabisi** as follows:*

i) ***Following the Default Judgment against Evelyn Lewis and Michael Collier, DW1 conducted a sale of the disputed property to the Appellant herein, Mr. Ajati Sankoh, via Cap 21 and Cap 22 (1960) processes, and that the latter Act (Cap 22) involves selling the Defendant (the said Evelyn Lewis)'s real property by attaching the judgment debt to it.***

ii) ***The Undersheriff published two public notices about the public auction sale, dated 2nd February, 2020 and 9th May, 2020 – long before the actual sale was effected on the 20th June, 2020, when the Appellant, Ajati Sankoh, eventually bought the property.***

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iii) ***The said Undersheriff prepared a <u>Certificate of Sale</u> dated 23rd June, 2020 and <u>Returns about the sale</u> to Mr. Sankoh, after the latter had effected full payments for the property on the 1st and 2nd July, 2020 – <u>see pages 295 to 299 of the Appeal Records</u>).***

iv) ***Whilst preparing to convey and register a valid deed of conveyance for Ajati Sankoh/the Appellant herein, the High Court ordered or granted an interim Stay of execution of the Default Judgment on the 20th July, 2020, which was only vacated on the 25th June, 2021 – <u>see page 300 of the Appeal Records</u>.***

v) ***Much later, on the 11th December, 2020, and without any notice to the Undersheriff, Evelyn Lewis conveyed the disputed Property herein to Umaru Fofana by registering a conveyance to that effect - <u>see pages 170 to 177 of the Records</u>).***

vi) ***The Sheriff, who had already sold the Property herein to the Appellant, much later proceeded to convey and register a deed of Conveyance for him on the 20th October, 2021 after the Stay of execution Order had been vacated – <u>see pages 259 to 267 of the Appeal Records herein</u>."***

10. Furthermore, this Court notes the further irregularities outlined by the Appellant's Solicitor in his Synopsis to this Court, all of which further raises the contention that Evelyn Lewis and Umaru Fofana and his privy **(Fassally Tarawally)** failed to act in good faith. These contentions, submissions and irregularities are reproduced below:

a. *The writ of summons was amended on the **15th June, 2023** by an Order of Court dated **5th June, 2023** directing that the current Plaintiff, **Mr. Fassally Tarawally, substitutes Fatmata Marv Fofana as Plaintiff therein [see pages 169 to 172 of the Appeal Records for the said Court Order and the Amended Writ].** This was on the basis that Mr. Tarawally claimed to have bought the disputed Property from **Fatmata Mary Fofana's** late husband **(Umaru Fofana)** before his death on the **22nd July, 2021** based on a sale agreement, but that no conveyance was prepared to that effect in favour of Mr. Tarawally up to the time of the demise of **Mr. Umaru Fofana.** The following matters are, however, worth noting about Mr Umaru Fofana and the said transaction:*

b. *The sale agreement for the disputed Property between Mr. Tarawally and Umaru Fofana was never exhibited or tendered in Court by Mr. Tarawally.*

c. ***<u>Umaru Fofana's death certificate</u>**, found at **<u>page 198 of the Appeal Records</u>, exhibited in two different Letters of Administration dated 4th November, 2021 and 27th July, 2022** respectively **<u>are in French</u>** and were*

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said to have been done in Senegal but without any notarization on it to that effect. No does any translation exist of the said death certificate nor is there anything in the Plaintiff's case to associate the deceased therein with the ***Umaru Fofana of 14 Vincent Drive, Regent Road, Lumley, Freetown in the Western Area of Sierra Leone.***

d. *It is also unclear as to how* ***Mrs. Fatmata Mary Fofana*** *could have done* ***two different Letters of Administration in respect of the same Estate, in lieu of doing "an Additional Grant"*** *for same. This is essentially so because at the time of* ***the first Letters of Administration*** *(****found at page 185 of the Appeal Records****) on* ***4th November, 2021,*** *only one Property situate at* ***14 Vincent Drive, Regent Road, Lumley, Freetown was declared.*** *It was* ***the second Letters of Administration obtained on the 27th July, 2022 (found at page 204 of the Appeal Records)*** *that declared the disputed Property at* ***126 Regent Road, SS Camp in Freetown as forming part of the Estate of Umaru Fofana****. It is submitted that the second Letters of Administration is therefore irregular and ought to be set aside as two different Letters of Administration cannot subsist at the same time for the same Estate and deceased person.*

Western Area of Sierra Leone.

e. *Umaru Fofana's vendor, Evelyn Lewis (****against whom a default judgment was obtained on the 29th May, 2019 to pay money in the sum of US $130,000/= to Zenith Bank (SL) Ltd.*** *– see* ***page 285 of the Appeal Records for the said default judgment and at page 287-292 of the said Records*** *for* ***the registered Memorial of Judgment to that effect),*** *first bought the disputed Property from* ***Rokel Commercial Bank (SL) Limited*** *and had it surveyed in* ***January, 2020,*** *with a Deed of Conveyance subsequently being done for him on the* ***16th November, 2020*** *(****see pages 178-182 of the Appeal Records herein****). Interestingly, Mr. Lewis also bought the Property based on an Order of Court dated* ***17th June, 2013;*** *but that even when he bought the disputed Property via an order of court, he neglected to pay the judgment sum obtained against him in this matter. Similarly, whilst the judgment sum was pending against him and Mr. Michael Collier, Mr. Lewis quickly sold the disputed Property to the late Umaru Fofana aforesaid, by registering a Conveyance in his favour on the* ***11th December, 2020*** *(****found at pages 170-177 of the Appeal Records****)* ***within 3 to 4 weeks after registering his (Lewis') own Deed of Conveyance.***

f. *What remains however unexplained is how the late Umaru Fofana is said to have prepared a survey plan in his name for the disputed Property on* ***the 11th October, 2020*** *(****found at page 175 of the Appeal Records****) even before Mr. Evelyn Lewis could register a Deed of Conveyance for the Property on the* ***16th of November, 2020*** *(****see page 178 of the Appeal Records****). This pattern is also reflected in Mr. Tarawally's documentation. His conveyance deed was done on the* ***25th January, 2023*** *and registered out of time by an Order of Court dated* ***8th May, 2023****. Similarly, his survey plan was done on, the* ***17th***

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October, 2022 long after the alleged death of Umaru Fofana – see altogether pages 163-169 of the Appeal Records. *All of these happened whilst this matter was before the High Court on trial and without any reference or deference to the said trial Court. The Plaintiff had long commenced this matter on the* ***16th of August, 2022 [see the Writ of Summons beginning this action found at pages 1-6 of Appeal Records]. Mr. Tarawally*** *on the* ***8th May, 2023,*** *approached another High Court Judge to register his title deed out of time without reference to the trial Court* ***[see the Court Order at page 165 of Appeal Records] [and without informing the other court about the ongoing trial as well]; but he immediately thereafter (by notice of motion dated 17th May, 2023)*** *sought the trial Court's leave to be substituted with* ***Mary Fofana,*** *the initial Plaintiff in the action, which said application was granted –* ***see trial Court's Order authorizing the substitution dated 5th June, 2023 found at pages 133-134 of Appeal Records.***

g. *Crucially too, the current Plaintiff/Respondent herein (Mr. Fasally Tarawally) testified and conducted his trial alone, with no witness to corroborate his case during the trial; not even Mrs. Fatmata Mary Fofana who is alive and had earlier commenced this action and whose husband is said to have sold the disputed Property to Mr. Tarawally, was called as a witness of fact to substantiate Mr. Tarawally's claim, whose witness statement is at* ***pages 237-238 of the Records.***

h. *Consequently, it is submitted that even before summarizing the Appellant/ Defendant's case herein, the Plaintiff/Respondent failed to show a strong title free from defect or encumbrance to the disputed Property, especially in view of the fact that he is raising a claim against a Defendant who innocently bought the Property based on a public auction sale lawfully conducted by the Sheriff (through his deputy) by virtue of a regular Order of Court, and who (as Sheriff) eventually executed and registered a valid deed of Conveyance in the Defendant's favour, as required by law.*

11. In view of the above submissions and arguments, this Court consequently ALLOWS GROUND ONE by upholding the strict provisions of **section 6 of the Execution against Real Property Act, Cap 22,** which reads that "***The purchaser, his executors, administrators or assigns shall hold the premises purchased under the provisions of this [Act] free and clear of all judgments or recognisances whatsoever". By virtue whereof no execution has been executed upon the real estate so purchased, any law, usage or custom to the contrary thereof notwithstanding.***" [Emphasis added]. **Sections 4 & 5 of Cap 22 also states that "*writ of fieri facias shall issue against any lands or other real estates*".**

12. This Court also considers and upholds the Default Judgment, pursuant to which the Sheriff proceeded to conduct a sale of the disputed property herein, as a valid Judgment of the High Court, especially where the initial stay of execution placed

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on it by Hon. Justice F.B. Alhadi was later rescinded or set aside. A Default Judgment under Order 13 of the High Court Rules, 2007 is a valid Judgment unless set aside by the Court, pursuant to Order 13 rule 9 thereof. The Sheriff was duty bound under law to enforce the said Judgment save where there was a stay of execution, which the High Court, in its wisdom, later vacated to allow a smooth completion of the auction sale. This Court is similarly duty bound, **under Cap 22 supra**, to protect such a sale, and we so do in view of the deceitful conduct of Evelyn Lewis in deliberately ignoring to pay the proven debt and the Court's lawful judgment and processes against him, and in proceeding to sell to the late Umaru Fofana who failed to act diligently and prudently in all circumstances before the court. This Court cannot aid deceptive acts.

13. Accordingly, this Court admits GROUND ONE of the Appeal, and notes in addition that the Respondent's contention that ***"the payments claimed to have been made by the Appellant, and upon which he relied at the trial, were in fact not made by him or in his name but were rather made by a certain SCB - Structural ADJ Fund AC and Ibrahim Bun Turay (found at pages 295 to 296 of the Records)"*** as unsustainable. This Court finds that the Sheriff (including the Under Sheriff) never at any time disputed or denied that the payment for the disputed property was made by or for and on behalf of the Appellant herein. Similarly, neither **SCB - Structural ADJ Fund AC nor Ibrahim Bun Turay** mentioned above ever appeared at the trial court to deny or challenge the said payment alleged to have been made by or for the Appellant. Neither or both of the said personalities has/have ever counterclaimed the said sum. In the circumstance, this Court holds that the Appellant, Mr. Ajati A. Sankoh, is the innocent purchaser that provided the purchase price for the disputed property to the Sheriff after his bid for it (through his attorney) had been declared as successful.

14. GROUND ONE therefore succeeds.

GROUND TWO:

15. The Appellant's **Ground Two** in his Notice of Appeal also reads:

That the Trial Judge similarly **erred in fact and in law** in reaching the following findings and conclusions in her Judgment in favour of the Plaintiff/Respondent's title, which findings and conclusions are contained in page 448 of the Records.

PARTICULARS OF THE ERRORS IN GROUND TWO:

At **para. 75 page 19 of the Judgment**, the Learned Judge found and concluded as follows: ***"The Defendant did not have a valid title and was never in possession of the property. Based on the evidence before me, Mr. Umaru Fofana not only had a valid conveyance but was effectively in possession of the property, The Plaintiff as successor to Mr. Fofana relied on Mr.***

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Fofana's acts of possession viz renovation, renting and collecting rents which he took over." [Emphasis added]

At **para. 79 page 19 of the Judgment**, the Learned Judge also found and concluded as follows: "***On the other hand, it is my view that possession of the property by Umaru Fofana and his acts of possession including the renovation and renting out of the property should have put the Defendant [i.e. Ajati Sankoh] on notice that the property was encumbered, as the acts of possession were not by the Sheriff & Inspector General of Police or Evelyn Lewis.***" [Emphasis added].

The Appellant's Submissions and Arguments on *Ground Two:*

16. The Appellant argued that there were too many references and findings of the Learned Trial Judge in her Judgment at especially **para. 37 (pages 440-441 of the Appeal Records)** that amounted to "**RED FLAGS**" for the Learned Trial Judge to have refrained from making the conclusions above in her Judgment. These red flags include the following:

    a. There was nothing before the Court to prove that "Umaru Fofana" ever existed! The Death Certificate exhibited of him was in French, said to be done in Dakar, Senegal but not translated or notarised. There is nothing in the certificate to link the said Umaru Fofana up with the Umaru Fofana in this matter. Moreover, Umaru's widow, Fatmata Mary Fofana, whom the Trial Judge admitted she "irregularly" took out two Letters of Administration in respect of the same Estate of Umaru Fofana and who in fact commenced this action before she was substituted by the current Plaintiff (Fassally Tarawally), never appeared in Court to testify or corroborate the story of the substituted Plaintiff. This is more crucial when it is noted that it was the Fatmata Mary Fofana that conveyed the disputed Property to Fasally Tarawally (the current Plaintiff/Respondent) as Administratrix of the estate of Umaru Fofana deceased intestate **[see pages 165-169 of the Records].**

    b. There is also no valid evidence to show that the said Umaru Fofana was ever in possession of the disputed property before it was sold to the Defendant herein by the Sheriff. The **tenancy agreement** that is purported to have been done by him with the current occupants as tenants **therein found at pages 223-230 of the Appeal Records** was neither dated, nor signed by the tenant; nor was it registered. It was also never witnessed by anyone; neither Mary Fofana nor the tenants came forward to confirm the tenancy's existence, if at all. Also, no tenant ever came before the Court to confirm that Umaru Fofana or Mary Fofana was their Landlord or Lessor; only letters were written and submitted on their behalf.

    c. Similarly, the sale agreement which the current Plaintiff (Fassally Tarawally) claims was the means he used to acquire the disputed property long before it

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was conveyed to him, was never produced or exhibited in Court. Besides, it was only during the subsistence of this matter that the current Plaintiff (Fassally Tarawally) obtained a survey plan for the disputed property in his name, and had it signed on the **17th October, 2022 (see page 168 of the Appeal Records). This matter had begun since the 16th August, 2022 (see page 1 of the Records)**

d. Moreover, and as earlier highlighted in this synopsis, the current Plaintiff (Fassally Tarawally) caused his conveyance to be prepared for the disputed property on the **25th January, 2023** and have it registered out of time by an Order of the High Court on the **8th May, 2023**, all done without any reference to the Trial Court/Judge or the Defendant/Appellant herein. Additionally, and as noted above, Mary Fofana, took out two Letters of Administration in respect of the same Estate of Umaru Fofana, in lieu of securing an Additional Grant for the second property – **see pages 185 and 204 of the Appeal Records.**

The Respondent's Submissions and Arguments on *Ground Two:*

17. The Respondent, in answer to Ground Two of the Appeal, submitted as follows:

a. That the whole of the evidence at the trial in the lower court showed that the Respondent (and before him his predecessor in title) was in possession of the property (and continues to be in possession of it), further reinforcing his claim to title and ownership. Counsel relied on **Halsbury's Laws of England, 3rd Edition, Vol. 15, at pages 284 & 285 to show that "possession is nine-tenths of the** law."

b. The Respondent's Solicitor submitted further that the Respondent's predecessor-in-title, Umaru Fofana, exercised significant acts of ownership over the property in issue. He undertook renovations and made necessary repairs, further affirming his control and dominion over the property. Additionally, Umaru Fofana proceeded to rent the property to the Sierra Leone Free Education Project Secretariat, Ministry of Basic and Senior Secondary School Education as tenant which the Plaintiff inherited and continues to collect rent as landlord. These actions – renovation, repairs, and the receipt of rental income constitute other indicia of **ownership (found at pages 223 to 229 and 235-236 of the Records)** as outlined in **Halsbury's** referred to supra. Counsel notes that the Appellant himself in his Pleadings **(Amended Statement of Defence and Counterclaim found at pages 143 to 145 of the Appeal Records) – at para. 2 of his Amended Defence (found at page 143)** pleaded that the **"Plaintiff placed a tenant in the disputed property and has since been collecting annual rents from the said tenant and has consistently blocked and prevented the Defendant from accessing his land".**

c. The Respondent also stated that upon the death of Umaru Fofana in **July 2021**, the property became vested in his estate for which Letters of Administration **(found at pages 185 to 22 of the Records)** were granted by the High Court of Sierra Leone in its Probate Division to his wife and next-of-kin, Fatmata Mary Fofana. The testimony of the Respondent at the trial in the lower court was that prior to Umaru Fofana's death he had contracted with him for the sale of the said property, paid the full purchase price but the said Umaru Fofana died before a conveyance could be executed in his favour. To this end, the Respondent's Counsel relied on the provisions of **Section 4(1) of the Conveyancing and Law of Property Act, 1881**, which provides that "***where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs generally, in any land, his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.***" According to Counsel, the subsequent transfer of the property from Fatmata Mary Fofana as Administrator of the Estate of Umaru Fofana to the Appellant (Fassally Tarawally) by deed of conveyance dated **25th January 2023 (found at pages 163 to 169)** further solidifies the Appellant's claim to title evidencing the sale of the property to him for valuable consideration.

d. Respondent's Counsel additionally relied on **Section 54(1) of the Conveyancing and Law of Property Act, 1881**, which provides that **"*a receipt for consideration, money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering same, without any further receipt for the same being indorsed on the deed.***" She submits that the receipt clause at **page 163 of the Appeal Records** is sufficient evidence of the Respondent having paid for the said property. Letters of Administration referred to supra have not been revoked or cancelled neither did the Appellant allege or plead fraud at the trial in the lower court. The matters now raised by the Appellant as "**red flags**" are therefore of no moment as all documents, including the said Letters of Administration (and the death certificate included therein) and the Respondent's conveyance, are prima facie evidence of the matters stated therein unless otherwise disproved, which the Appellant did not do at the trial in the lower court.

e. Moreover, the Respondent states that the institution of this matter by Fatmata Mary Fofana (the widow of the deceased Umaru Fofana) and the subsequent substitution of Fatmata Mary Fofana with the Respondent, serves as substantial corroboration of the Respondent's root of title.

THE COURT'S DETERMINATION OF GROUND TWO ABOVE:

18 This Court shall refer to and adopt its findings and opinion on GROUND ONE above in order to also uphold and admit **GROUND TWO** of this Appeal. The Court

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holds that even if Umaru Fofana, the Respondent's predecessor-in-title, were to be held as being in "possession" of the disputed property (a claim denied by the Appellant), the question remains as to whether he (Umaru) was in "lawful" and "undisputed possession" of it. The facts recited in **GROUND ONE** illustrate that there were hurried and deceptive efforts by both Evelyn Lewis and Umaru Fofana (both of whom were the current Respondent (Fassally Tarawally)'s predecessors-in-title) to convey the property to Umaru Fofana.

19. This Court is convinced that the said predecessors-in-title both knew, or ought to have known, that there was an auction sale in progress regarding the disputed property. They both acted hurriedly and deceptively to stall and place bottlenecks in the auction process by interjecting Umaru Fofana into the picture as an innocent purchaser of the property without notice of the auction sale. This Court, having discovered that conduct, cannot therefore declare that the Respondent and his predecessors-in-title were in "lawful" possession of the disputed property, even if it meant that they and the Respondent herein had themselves placed tenants in the property who were paying rents to them respectively, at different points in time.

20. Consequently, in upholding **GROUND TWO**, this Court shall repeat the often-quoted passage in the Supreme Court case of **Dr. C. J. Seymour Wilson vs. Musa Abess**, supra, which the Respondent's Counsel herself supplied this Court and relied on:

> ***"A conveyance in itself does not automatically pass title. Specifically, mere execution of a conveyance does not transfer ownership unless the vendor holds a valid title to the property at the time of the execution of the conveyance. It was stated in the said case that "Registration of an instrument under the Act does not confer title on the purchaser, lessee, or mortgagee, etc., nor does it render the title of the purchaser indefeasible. What confers title (if at all) in such a situation is the [illegible] conveyance is registered does not ipso facto mean that the purchaser thereby has a good title to the land conveyed. In fact, the conveyance may confer no title at all, e.g. where the vendor had no title to pass."***

21. The fact that Evelyn Lewis hurriedly executed a deed of conveyance for Umaru Fofana regarding the disputed property herein did not mean that Umaru Fofana therefore held a "valid title" for the property, especially by virtue of a possession that was not adverse for 12 years. Umaru Fofana acquired the property in December, **2020 (see his title deed at pages 170-177 of the Appeal Records);** by this time the auction sale process by the Sheriff was ongoing. The Appellant, Ajati Sankoh, obtained his conveyance a year later **in 2021 (see his title deed at pages 259-267 of the Appeal Records).** This Court holds the view that by virtue of the **Seymour Wilson decision** above, Umaru Fofana held or occupied the disputed property subject to the said auction process and its proceedings. He was

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not innocent. The references by the Respondent's Counsel to the provisions of **the Conveyancing and Law of Property Act, 1881** and **Halsbury's Laws of England, 3rd Edition on "possession"** are consequently unhelpful. It is the legal position of this bench that an interim stay of execution operates merely to freeze further steps by the Court/Officer. It does not retroactively invalidate or set aside the complete auction sale nor does it re-vests title in the judgment debtor. Equitable title passed at the public auction. Once the undersheriff sold the property at a valid auction the contract for sale was complete; hence an equitable title now vests in the Appellant herein **(Execution purchaser).** The Debtor had no title to convey. At the time the Judgment debtor purported to sell and convey to the third party (the original Plaintiff in the Court below), he had no beneficial or alienable interest in the property. Applying nemo dat quad non abet principle against the Plaintiff at the Court below, the Plaintiff could pass no title to his purchaser, who in turn will pass no title to the substituted Plaintiff. When Execution was levied and the undersheriff knocked down the property at a public auction, binding contract of sale was formed between the undersheriff acting under legal authority, and the auction purchaser. The Auction Purchaser acquired an immediate equitable interest in the real property. The Judgment debtor's right in the property were expropriated by operation of law leaving the debtor with no remaining beneficial ownership or authority to dispose of the property. Thus Evelyn Lewis' sale of the property to a third party {who happened to be the original Plaintiff in the Court below}, during the subsistence of the Interim stay; when he had already been divested of his beneficial ownership is legally untenable; the principle being nemo dat quad non abet. Thus, by extension, the Original Plaintiff had no title to pass on to the substituted Plaintiff Fassally Tarawally. See the case of **Whittaker vs. Wisdey (1852)12CB 44,** where it was held that execution process lawfully levied and completed by a Court officer creates rights that are not destroyed merely because subsequent proceedings or stays occurred before perfection, unless the underlying Judgment or sale itself is formally set aside by Court order. In the case of **Cave vs. Cave (1880)15ch. B639**, it was held that an earlier equitable interest created by a valid binding transaction takes priority over subsequent transfers particularly where the subsequent transferor had already lost the right to alienate the property.

22. For all the above foregoing, GROUND TWO is therefore upheld and admitted.

23. Furthermore, for the reasons cited by this Court on Grounds One and Two above, this Court considers arguments on Grounds Three, Four and Five as redundant. The Appeal is thus upheld on grounds of Grounds One and Two above.

FINAL DISPOSITION:

24. The following consequential Orders are therefore made by this Court:

1 The Judgment of Hon. Mrs J. E. L. King JA dated 25th April, 2025 is overturned and set aside in its entirety

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2. The Respondent's claims as contained in his amended writ of summons and pleadings dated 15th June, 2023 are accordingly dismissed as lacking in merit.

3. The Appellant (Ajati A. Sankoh)'s defence and counterclaim dated 7th October, 2022 and adopted by him is hereby UPHELD and the said Appellant/Defendant herein is accordingly DECLARED as the fee simple Owner of all that Piece of Land and House thereon situate, lying and being at No. 126 Regent Road, SS Camp, IMATT, Hill Station in Freetown, the Western Area of Sierra Leone as delineated on survey plan marked LS 1549/21 and contained in Deed of Conveyance dated 20th October, 2021 registered as No. 3120/2021 at page 139 in volume 925 of the Books of Conveyances kept with the Registrar-General.

4. The Appellant is also entitled to the full rental value of the above Property from 2022 to date; such rental value to be calculated per annum from 2022 to date.

5. The Appellant shall further have the costs of both this Appeal and the Court below, such costs to be taxed if not agreed upon by the Parties herein.

6. Liberty to Apply.

Dated the 27th day of October 2026.

Signed.....
Hon. Mr. Justice M.A.J. Stevens JA.

Signed.....
Hon. Mr. Justice Samuel O.M. Taylor, JA

27/10/26

Signed.....
Hon. Mr. Justice Simeon Alieu, JA

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