CC: 398 2020 K. 82

In the High Court of Sierra Leone

(Land & Property Division)

Between:

Chief Pa. Alimamy Kanu II -1st Plaintiff/Respondent

Marie Kanu -2nd Plaintiff/Respondent

N0.13 Maheux Street

Hastings

Freetown

And

Umaru Bah -1st Defendant/Respondent

Foday Mohamed Turay -2nd Defendant/Respondent

Hassan Kamara -3rd Defendant/Respondent

Daniel Cole -4th Defendant/Respondent

N0.31 Burgoyne Street

Hastings

Freetown

AND

CC: 399/2020 2020 K. N0. 83

In the High Court of Sierra Leone

(Land & Property Division)

Between:

James Mohamed Kamara - Plaintiff

(Suing Through His Lawful Attorney)

Ahmed Amid Kamara

N0.9A Lower Allen Town

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Allen Town

Freetown

And

Umaru Bah	-1st Defendant
Foday Mohamed Turay	-2nd Defendant
Hassan Kamara	-3rd Defendant
Samuel Sesay	- 4th Defendant
Daniel Cole	-5th Defendant

N0. 31 Burgoyne Street

Hastings

Freetown

Counsel:

Elvis Kargbo Esq. for the Defendants/Applicants

Y. M. Kamara Esq. for the Plaintiffs/Respondents

Ruling on an Application for a Determination of This Matter on a Point of Law, Pursuant to Order 17 of the High Court Rules 2007, Constitutional Instrument N0. 8 of 2007, Delivered by the Hon. Justice Dr. Abou B.M. Binneh-Kamara, J. on Wednesday 1st March 2023.

1.1 The Application's Background and Context

This is a ruling, consequent on a notice of motion, filed by Elvis Kargbo Esq. of Betts and Berewa Solicitors and dated the 7th February 2022, on behalf of the Defendants/Applicants (hereinafter referred to as Applicants). The application is bolstered by the affidavit of one Joseph Magnus French, Barrister-at-Law and Solicitor of the High Court of Sierra Leone, attached to the same chambers. The application's principal thrust is for a determination of the aforementioned matter on a point of law, pursuant to Order 17 of the High Court Rules 2007,

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Constitutional Instrument N0.7 of 2007 (hereinafter referred to as The HCR 2007). The application is built on the architecture of two pertinent questions, which the Court has been requested to answer and simultaneously establish whether the prayers, underscoring the statement of claims (in the writ of summons), can be determined on a point of law (without even going into a full-blown trial). The Applicants' Counsel started addressing the Court on the content of the application's twelve (12) paragraphs supporting affidavit on the 12th April 2022, and concluded his submissions on the 17th May 2022. Contrariwise, on 21st and 30th June 2022, Y. M. Kamara Esq. (the Respondents' Counsel) of Gavao & Associates (Mamuto Chambers) of 31 Old Railway Line, Brookfields, Freetown, moved the Court on the content of a fifteen (15) paragraph affidavit and its supplemental version, sworn to by Chief Pa. Alimamy Kanu and dated the 12th April and 20th June 2022, respectively.

1.2 The Applicants' Counsel Submissions

Elvis Kargbo Esq. made the following submissions to convince the Bench to grant the application:

1.The questions upon which the application is predicated are: **(a)** whether or not the Respondents' survey plan attached to their title deed in respect of the action CC398/20 K. N0. 82 i.e. Pa Alimamy Kamara II and Others **v.** Umaru Bah, Foday Mohamed Turay and Others **AND** 399/2020 i.e. James Mohamed Kamara and Others **v.** Umaru Bah and Others, comply with Section 9 of the Crown Lands Act N0.19 of 1960? (**b)** whether or not by virtue of a letter dated 2nd November 2020 the survey plans L. S11051/20 L. S11O52/20 L.S 11053/20 L.S 11054/20, L.S 11055/20, L.S 11O56/20, L.S 111056, L.S 11050/20, L.S 11069/20, L. S11070/20, bearing the names of the Plaintiffs herein passed

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through the normal processing channels, before being ascribed the foregoing L.S Numbers?

2.Should the foregoing questions be answered in the affirmative, whether: **(a)** The writ of summons dated 20th November 2020 between Chief Pa. Alimamy Kanu II and Others **v.** Umaru Bah and Others **AND** the writ of summons dated 20th November2020 between James Mohamed Kamara and Others **v.** Umaru Bah and Others should be struck out with costs (**b)** that judgment be entered pursuant to the counterclaim filed for and on behalf of the Applicants herein **(c)** any other order(s) that this Honourable Court may deem fit in the circumstance **(d)** that the costs of the application be borne by the Respondents.

3.That the Respondents' survey plans lack the requisite approval of the Director of Surveys and Lands. They cannot under any circumstances be relied upon, because they do not comply with section 9 of the Crown Lands Act N0.19 of 1960. Exhibit JMF 8 attached to the affidavit in opposition's reply, is a correspondence directed to the Administrator and Registrar-General, by the Director-in-Charge of Private Lands, Housing and Country Planning, requesting her not to process the conveyances of the Respondents for registration, because the survey plans herein, did not go through the normal processing channels, pursuant to which survey plans are accordingly prepared.

1.3 <u>The Respondents' Counsel's Submissions</u>

Y.M. Kamara Esq. made the following submissions to convince the Bench to refuse the application:

1. There is an affidavit in opposition, deposed to by Chief Pa Alimamy Kanu and dated 12th April 2022, and a supplemental affidavit sworn to on 20th June 2022,

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filed on behalf of the Respondents. There are nine exhibits attached therein and marked CPAK1-9. The Respondents are the true owners of the realty. Their title deeds are attached to their opposing affidavit and marked CPAK1-5. The realty has been a family property, which the Respondents have come to acquire through inheritance.

2. There are indeed triable issues in this action, which the Court can determine through the conduct of a formal trial. This matter cannot be disposed of on a point of law. The submission that the Respondents' survey plan did not go through the normal processes of the Ministry of Lands is quite inaccurate; and it is debunked by Exhibit CPAK 1-5, which are copies of the survey plans (with L. S Numbers), signed by the License's surveyor and Director of Surveys and Lands. Therefore, the Respondents' survey plans went through the normal processes of the Ministry of Lands, as required by law. Thus, section 15 of Cap. 128 is also referenced.

3. Exhibit CP2 of the supplemental affidavit is a report of the Director of Surveys and Lands, dated 13th April 2021, born out of a request from the Anti-Land Grabbing Unit, East End Division (Ross Road Police Station), for an expert opinion on a case of an alleged trespass and malicious damage against the realty of the Respondents.

4. E. Kargbo's reliance on section 9 of the Crown Lands Act of 1960, does not have anything to do with the action, which concerns declaration of title to property. In fact, the question of law raised in the application, cannot be determined by a Court of competent jurisdiction, without the conduct of a full-blown trial.

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5. The 'res' which the Applicants are laying claims to is distinctively different from that of the Respondents. This submission is tied to the Applicants' title deed, as exhibited together with a survey plan.

6. Should the Court answer the questions in the affirmative, that will necessitate the conduct of trial, to give the opportunity to the Director of Surveys and Lands to testify on oath.

1.4 <u>The Reply to the Respondents' Counsel's Submissions</u>

The Applicants' Counsel made the following submissions in contradistinction to the foregoing:

1.The aforementioned responses are quite outlandish and far-fetched from what the application seeks to achieve. The application concerns a determination of this matter on a point of law, based on Order 17. The point of law that underscores the application is rooted in Section 9 of the Crown Lands Act N0.19 of 1960. The reference to section 15 of Cap. 128 of the Laws of Sierra Leone, 1960 is of no relevance to the application.

2.The affidavit in reply to the affidavit in opposition on file, contains two exhibits, marked A and B. Exhibit A1-4, encompass copies of the survey plans to be expunged from the Court's records. Exhibit B confirms that the property belongs to the Applicants. Thus, it was on the 27th November 2019, that the Respondents applied for a lease of the realty from the Ministry of Lands. Thus, the report exhibited in CPAK 8, has nothing to with the Respondents. It practically says that the property belongs to the Sierra Leone Army.

1.5 <u>The Law</u>

Sierra Leone's Superior Court of Judicature has continued to hand down quit a good number of decisions that have no doubt shaped and guided the extent to

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which applications on disposal of points of law are being made, as opposed to those of summary judgments. Whereas Order 16 of The HCR 2007, concerns summary judgment; Order 17 of same exclusively deals, with disposal of cases on points of law. The application to be determined resonates with that concerning disposal of this case on a point of law (see 1.1). The determination of the application is thus underscored by a clear connect, between two aspects of the applicable law in our jurisdiction. The first dovetails with the substantive law on declaration of title to property in the Western Area of Sierra Leone. And the second is cognate with the adjectival law, regarding the circumstances, pursuant to which cases can be disposed of on points of law. The interconnectedness/interconnectivity between these two areas of the law, are thus articulated in 1.6 and 1.7.

1.6 <u>The Law on Declaration of Title to Property</u>

Questions relating to the determination of ownership of a realty in the Western Area, falls within the purview of the original exclusive jurisdiction of the High Court of Justice as articulated in both Section 132 of Act N0.6 of 1991 and the Third Schedule of Act N0.31 of 1965. The jurisprudence of land ownership in the Western Area (as it has evolved with decided cases and the subsisting legal literature) is underpinned by two main considerations vis-à-vis documentary and possessory titles (statutory declarations). There has also been a third category i.e. acquisition by succession and inheritance, which principally concerns testate and intestate succession, but this aspect of acquisition is not unconnected with documentary and/or possessory acquisition of titles to property in the Western Area.

1.6.1 <u>Documentary Title.</u>

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Documentary title is by no means the only way (it is only one of the ways) by which the legal fee simple absolute interest in possession can be established in our jurisdiction. The question which must be addressed at this stage is, what must claimants to actions that rely on documentary titles, establish to convince a court of competent jurisdiction, to declare that they are the owners of the estates of fee simple absolute in possessions? This question was incisively unraveled by the Hon. Justice Dr. Ade Renner-Thomas C. J. in the locus classicus of Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004) in the following words:

> 'In the Western Area of Sierra Leone which used to be a crown colony before combining with the protectorate to become the unitary state of Sierra Leone at independence in 1961… the absolute or paramount title to all land was originally vested on the Crown in the same way as in England, the largest estate a person deriving title from the Crown can hold being the fee simple. After independence, such absolute title was deemed vested in the state as successor in title to the Crown. According to the State Lands Act N0.19 of 1960, all grants of such title made by the Crown and later the state was said to be made in fee simple as seen in section 2 of the State Lands Act aforesaid. Thus, a declaration of title in favour of a Plaintiff without more is shorthand for saying that the Plaintiff is seized of the said piece or parcel of land in fee simple'.

Significantly, what is clearly discernible from the above analysis, is that claimants seeking for declaration of titles to property in the Western Area, are obliged to trace their titles, to some grant by the Crown or the State. This point of law had hitherto been enunciated by the Hon. Justice Livesey Luke C. J. in the other locus classicus of Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) in the following words:

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> ’But in a case for a declaration of title the Plaintiff must succeed by the strength of his title. He must prove a valid title to the land. So, if he claims a fee simple title, he must prove it to entitle him to a declaration of title. The mere production of a conveyance in fee simple is not proof of a fee simple title. The document may be worthless. As a general rule, the Plaintiff must go further and prove that his predecessor in title, had title to pass to him. And of course, if there is evidence that the title to the same land vest in some person other than the vendor or the Plaintiff, the Plaintiff would have failed to discharge the burden upon him’.

Meanwhile, the foregoing compellable point on declaration of title to property, was also echoed by The Hon. Justice Bash-Taqi in Rugiatu Mansary **v.** Isatu Bangura (Civ. APP. 49/2006: Unreported) in the following laconic statement:

> ’The law is settled that when the issue is as to who has a better right to possess a particular piece of land the law will ascribe possession to the person who proved {sic} a better title’.

However, does the mere registration of an instrument, pursuant to section 4 of Cap. 256 of the Laws of Sierra Leone, 1960 (As Amended), ipso facto, confer title to that holder of a registered instrument? Does Cap.256 in fact deal with registration of title? Thus, I will answer the first of these two questions in the negative; and simultaneously provide succour for this position with another notable quotation from Livesey Luke, C.J. in Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79):

> ’Registration of an instrument under the Act (Cap. 256) 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 convey no title at all*’’ (my emphasis in italics).

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Thus, it logically and legally follows from the foregoing that the said statute, does not deal with registration of title. This is clearly seen in its long title, which reads 'An Ordinance to Amend and Consolidate the Law Relating to the Registration of Instruments'. The principal thrust of the statute thus concerns 'registration of instrument' and 'not registration of title'. And there is no provision in all its thirty-one (31) sections and three (3) schedules, that speaks about 'registration of title'. Thus, Livesey Luke C.J., in the aforementioned locus classicus, espoused the fundamental distinction between 'registration of instrument' and 'registration of title' by reference to the position in England and with a clearly articulated thought experiment (rationalised in his analysis between pages 74 and 81):

> '… it should be made abundantly clear that there is a fundamental and important difference between registration of instruments and registration of titles. Cap 256 does not provide for, nor does it pretend to contemplate, the registration of titles. It states quite clearly in the long title that it was passed to provide for the registration of instruments' (see page 76).
>
> '… the mere registration of an instrument does not confer title to the land effected on the purchaser etc. Unless the vendor had title to pass or had authority to execute on behalf of the true owner…' (page 78)

Essentially, the following salient points must be singled out (from the above analysis) with the apposite prominence and valence, for purposes of the analytical component of this ruling:

1. A claimant that relies on any title deed will succeed on an action for a declaration of title to property on the strength of his/her title deed.

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2. The mere production of a conveyance (title deed) in fee simple is no proof of a fee simple title, because such a conveyance can even be worthless.
3. The claimant must go further to prove that he factually acquired good title from his predecessor in title.
4. In the circumstance where there is evidence that title to the same land vest in another person other than the claimant or his predecessor in title (vendor), declaration cannot be done on his/her behalf.

1.6.2 Possessory Title.

Another way by which claimants can stablish their case for declaration of fee simple titles to land is through long term possession. Meanwhile, in Swill **v.** Caramba-Coker (CA Civ. App. N0. 5/71), this long-term possession is deemed to span for up to forty-five (45) years. Nevertheless, the test in the aforementioned case, was taken to another level by the Supreme Court in Sorie Tarawallie **v.** Sorie Koroma, referenced above. Thus, I will deal with the level to which the test has been taken as this analysis unfolds. However, the most immediate question that can be posed at this stage is whether proof of possessory (as opposed to documentary) titles, can be sufficient to establish good titles, for declaration of fee simple titles to property.

Thus, the Courts' decisions in Cole **v.** Cummings (N0.2) (1964-66) ALR S/L Series p. 164, Mansaray **v.** Williams (1968-1969) ALR S/L Series p. 326, John and Macauley **v.** Stafford and Others S. L. Sup. Court Civ. Appeal 1/75, are articulately indicative of instances in which judgments have been entered in favour of owners of possessory titles, even in circumstances where their contenders, were holders of registered conveyances. This position is also

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satisfactorily bolstered by Livesey Luke C. J. in Seymour Wilson **v.** Musa Abbes, referenced above (see page 79):

> 'I think it is necessary to point out that until 1964, registration of instruments was not compulsory in Sierra Leone. It was the Registration of Instruments (Amendment) Act, 1964 that made registration of instruments compulsory in Sierra Leone. So, there are possibly hundreds of pre - 1964 unregistered conveyances … it would mean that any person taking a conveyance of a piece of land after 1964 from a person having no title to the land and duly registering the conveyance would automatically have title to the land as against the true owner holding an unregistered pre-1964 conveyance. The legislature would not have intended such absurd consequences'.

Furthermore, the Hon. Justice Dr. Ade Renner-Thomas C. J. in Sorie Tarawallie **v.** Sorie Koroma (referenced above)**,** as an addendum to this issue of possessory title, stated that a Plaintiff who relies on possessory title (either by himself or his predecessor in title), must prove more than just mere possession; he must go further to establish a better title not only against the Defendant, but against any other person. This can be done by proving that the title of the true owner has been extinguished in his favour by the combined effect of adverse possession and the statute of limitation. This legal position is strengthened by subsection (3) of section 5 of the Statute of Limitation Act of 1961, which thus provides:

> 'No action shall be brought by any other person to recover any land, after the expiration of twelve (12) years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims to that person'.

Essentially, the following salient points must be singled out (from the above analysis) with the appropriate prominence and valence, for purposes of the analytical component of this ruling:

1. Possessory title is as weighty in evidence as documentary title.

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2. Claimants that rely on possessory titles must go beyond proving more than just mere long-term possessions.
3. They must go further to establish a better title not only against the Defendant, but against any other person.
4. They can do so by establishing that the title of the true owner has been extinguished in their favour by the combined effect of adverse possession and the statute of limitation.

1.6.3 Title by Succession and Inheritance

A third category of the law that is as well cognate with declaration of title to property is embedded in the law of succession and inheritance. This aspect of property law, is not unconnected with the acquisitions of property by documentary and possessory titles. The acquisition of title by inheritance resonates with the rules of testate and intestate successions. The law on succession and inheritance is also inextricably linked with a plethora of rules in the law of equity and trusts. The Wills Act of 1837 (which is applicable in our jurisdiction by virtue of section 74 of the Courts Act of 1965) is very instrumental in the determination of cases, concerning 'testate succession'.

Nevertheless, the position of the law on 'intestate succession' is principally within the purview of the Devolution of Estates Act N0.21 of 2007 and the Administration of Estates Ordinance, Cap. 45 of the Laws of Sierra Leone, 1960. The beauty and novelty in our jurisdiction of Act N0.21 of 2007 (which amended specific portions of Cap. 45) is that it concerns testate and intestate successions. Thus, originally, Cap. 45 of the Laws of Sierra Leone 1960, was not

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applicable to intestate successions, regarding the estates of Muslims. The estates of Muslims who died intestate, were statutorily administered under Cap. 96 (The Mohammedan Marriage Ordinance) of the Laws of Sierra Leone, 1960. Nonetheless, the estates of Muslims, who died intestate can now be administered, pursuant to the provisions of Act N0.21 of 2007.

Section 38 of same accordingly amended Section 9(1) of the Mohammedan Marriage Ordinance, Cap. 96. However, what is more important for this analysis is that, both Cap. 45 and Act N0.21 of 2007 are germane to the determination of cases of intestate succession. Analytically, the law concerning intestate succession in both statutes is this: When deceased persons did not will their estates to any beneficiaries, their spouses are bound to take out Letters of Administration in the Probate Registry of the High Court of Justice. This done, they must proceed to take out vesting deeds in respect of such estates. Nonetheless, in circumstances wherein Letters of Administration have not been taken, the estates vest in the Administrator and Registrar-General, until that statutory procedure is fulfilled. Thus, in such circumstances persons meddling with such estates are dubbed interlopers, because the estates have not yet been vested in the beneficiaries.

1.7 Disposal of Cases on Points of Law

This aspect of the ruling concerns issues relating to evidence and procedure, which is broadly considered as the principles of adjectival law. Evidentially, in actions for declarations of fee simple titles to land, the legal burden of proof, regarding ownerships is on the claimants) to establish their cases on balance of probabilities. But in situations where Defendants counterclaimed ownerships, they assume the same legal burden as the Plaintiffs. In general, questions on declaration of title to land in the Western Area hardly go beyond three factual

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situations, which the High Court of Justice, has mostly been grappling with. Such questions often concern situations, where the same piece or parcel of land is claimed by both parties.

Where there are two separate pieces or parcels of land adjacent to each other and there are indications of encroachment and trespass unto the other. And where two separate and distinct pieces or parcels of land (that are not adjacent at all), but one of the parties is relying on his/her own title deed to claim the other. Thus, regarding all the foregoing permutations, the parties to the disputes, are procedurally obliged to file their respective pleadings and the Court is bound to give appropriate directions, pursuant to Order 28 of the HCR 2007, before even the appropriate notices of motions are filed, setting such matters down for trials. Nonetheless, without even proceeding to trials, Order 17 Rule 1 (1) of The HCR, 2007, directs Judges of the High Court of Justice, to dispose of any case (including that which concerns a declaration of title to property) on points of law. The sub-rule thus reads:

> 'The court may on the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the court that – (a) the question is suitable for determination without a full trial of the action; and (b) the determination will finally determine the matter subject only to any possible appeal, the entire cause or matter or any claim or issue in the entire cause or matter'.

Thus, the authors of the English Supreme Court Annual Practice 1999, extensively unpacked the criteria that shall be met for courts of competent jurisdictions to grant such orders; and the significance of Order 17 (in the civil litigation process) in their quite pedantic analysis found between paragraphs 14A/1 and 14A/2 of Pages 199 to 202. Essentially, a point which the said authors made quite prominent is that the foregoing provision has to be read

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and interpreted in tandem with particularly Orders 16 (dealing with summary judgment) and 21 Rule 17 (concerning the striking out of pleadings by courts of competent jurisdiction). Thus, an analysis of the above provision, consequent on the analytical exposition in the English Supreme Court Annual Practice 1999, depicts the following salient points about the aforementioned provision. First, it is entirely directory and (not mandatory). This is by virtue of the semantic value of the auxiliary verb 'may' as used in the very sentence preceding Paragraph (a) of Sub-rule (1).

Second, the disposal of any matter on appoints of law, can be done pursuant to applications made by either of the parties to litigations, or by the Court on its own volition. Third, in circumstances where the Court is bound to deal with the construction of any document, it can at any stage of the proceedings do so, where it is inter alia satisfied, that such task can be done, without any need for a trial. Analytically, the foregoing interpretation of the provisions in Order 17, strikes a chord with that of the Hon. Mr. Justice Fynn, J. A. in Betty Mansaray and Others **v.** Mary Kamara Williams and Another (Misc App. N0. 4 of 2017) {2018) SLCA 1277 (10th June 2018).

Meanwhile, in circumstances wherein the Court is bound to deal with the construction of any document, it can at any stage of the proceedings do so, where it is inter alia satisfied, that such task can be done, without any need for a trial. Nonetheless, this Honourable Court is mandated not to determine such a question, unless the parties have had an opportunity of being heard on that question; or consented to an order or judgment on the determination {see Sub-rules (3) and (4) of Rule 1 of Order 17 of The HCR, 2007}. The significance of Order 17 applications is seen in the basic facts that they can save the courts, the barristers and the litigants, from going through the protracted trial

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processes, that are quite expensive and time consuming. Essentially, should the facts of a case depict that it can be disposed of on a point of law, it would be therefore legally and rationally expedient for it not to proceed to trial.

1.8 <u>The Analysis: Triangulating and Relating the Applicable Laws to the Facts</u>

In this triangulated analysis, I will first unpack the case for the Respondents (who are the Plaintiffs in the original action), before proceeding to unpick the Applicants' case in the context of the application. Thus, it is befitting at this stage to note, that the Respondents' Counsel's submission that the question of law upon which the application is built, cannot be determined without the conduct of a full-brown trial (see Paragraph 13 of the affidavit in opposition), does not hold good in this context. The application is predicated on a disposal of this matter on a point of law, against the backdrop of Order 17. The legal framework and procedural issues, embedded in Order 17 is conspicuously analysed in 1.7.

And an examination of the papers filed, does not expose any procedural incongruence that would have warranted the Court to strike out the application on the ground of a procedural nullity. What is of importance at this stage, is to determine whether, the application, resonates with the legal framework of Order 17. Thus, it should be noted that the application is entirely devoid of the considerations in Order 16. The authors of the English Supreme Court Annual Practice of 1999 (The White Book), upon which Sierra Leone's HCR 2007 is constructed, clearly articulated the legal significance of Order 16 applications, concerning summary judgments between pages 162 and 199. The authors' pontification in Paragraph 14/1/2 found in page 163 is so pertinent to the Court's jurisdiction (in its determination of applications on summary

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judgments), that I am obliged to replicate here, to address the concerns raised in Paragraph 13 of the affidavit in opposition:

> 'The scope of Order 14 (*Order 16 of The HCR 2007*) proceedings is determined by the rules and the Court has no wider powers than those conferred by the rules nor any other statutory power to act outside and beyond the rules or any residual or inherent jurisdiction where it is just to do so' (my emphasis in italics)**.**

Thus, the importance of Order 16 is justified in circumstances wherein there are certainly or rather plainly, no available defences to negate the statement of claims. Further, applications for summary judgments are as well rationalised in circumstances, wherein the defences to specific claims are constructed on an ill-conceived or unfounded points of law. The Courts' decisions in C.E. Health plc **v.** Ceram Holding Co. (1988) 1 W.L.R 1219 at 1228 and Home Office **v.** Overseas Investment Insurance Co. Ltd. (1990) 1 W.L.R. 153-158, are quite instructive on this realm of procedural justice. Rules 1, 2 and 3, which are the structural architecture upon which Order 16 applications are made, depict the following conditions precedent to enter an order for summary judgment: The defendant must have filed a notice of intention to defend; the statement of claim must have been served on the defendant and the affidavit supporting the application must have complied with Rule 2 (1) of Order 16. That is, the deponent of the facts to the affidavit must have been certain that there is indeed no defence to part of or all of his/her claims. Thus, the application to be determined, has not been made on the basis of the foregoing conditions precedent.

It is rather predicated on Section 9 of the Crown Lands Act N0.19 of 1960 as Amended by the Crown Lands (Amendment) Act N0.37 of 1961. So, the determination of this matter on a point of law is not contingent on the conduct of a full-blown trial. The said Section 9 does not have anything to do with the

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considerations for a summary judgment. Therefore, the disposal of this matter on a point of law is entirely contingent on the applicability of the said Section 9 to the facts of this case. Nevertheless, the first fact-in-issue which must be discerned, is whether the Respondents, based on the evidential significance of their affidavits, have relied on a documentary, possessory or a title born in the womb of succession and inheritance, in respect of the ownership of the realty in dispute. Exhibit CPAK5, depicts copies of the Respondents' title deeds (vesting deeds).

The recitals of their respective title deeds, show that they have relied on acquisition of the disputed realty by succession and inheritance. And they have not claimed to have inherited the realty by testate succession. So, the provisions of the Wills Act of 1837 and Act N0. 21 of 2007, regarding testate succession, do not apply to the facts-in- issue and facts relevant to the facts in issue herein. However, it is the law on intestate succession, pursuant to Cap. 45 and the same Act N0. 21 of 2007, that is applicable to this situation. Prima facie, whilst unpicking the contents of the Respondents' title deeds, I reckoned that they are born in the wombs of Letters of Administration, issued by the Probate Division of the High Court of Justice.

And the statutory procedure, rooted in Cap. 45 and Act N0.21 of 2007, pursuant to the issuance of such Letters of Administration by the High Court's Probate Division, were complied with. This does not however presuppose that the mere compliance with this procedure, confers ownerships to beneficiaries' of deceased intestates' estates, which ownerships are in contention. What is clear in the face of the affidavit evidence is that the realty which is being claimed by the Respondents is as well being claimed by the Applicants. So, the fact deposed to in the supplemental affidavit in opposition that the realty

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which the Applicants have claimed, is different from that of the Respondents, is in contravention of the fact in the original affidavit in opposition, that the Applicants have trespassed and wrongfully claimed the Respondents' realty.

The fact that the parties are claiming the same realty is evident in the site plans found in the vesting deeds of the Respondents and the statutory declaration of the Applicants. In fact, according to Exhibit CP2, 'The said land is located in Hastings Yams- Farm at Off Old Road separated by a stream between Hastings and Yams Farm that runs through to Rogbangba…' The Respondents' contention is that the realty in dispute is theirs. They have supported this claim with their vesting deeds issued by the High Court's Probate Division, which were subsequently registered in accordance with the rules, regarding registration of Instruments, found in Caps. 255 and 256 of the Laws of Sierra Leone, 1960. They have as well contended that the Applicants are now wrongfully laying claims to their property, after having allegedly trespassed on same.

And that the Respondents' Counsel had written a correspondence to the Applicants, warning them to vacate the realty being trespassed upon (see Exhibit CPAK 7). This correspondence was followed by a complaint, forwarded to the Special Task Force against Land-Grabbing (Ross Road Police Station, Eastern Division), for trespass and malicious damage of the Respondents' realty. Consequent on that complaint, investigations were done and the Task Force, sent a correspondence to the Ministry of Lands for an expert opinion about the ownership of the realty (see Exhibit CPAK8). The Ministry of Lands on 13th April 2021, eventually put together a forensic report, which was addressed to the Line Manager, Special Task Force against Land-Grabbing (Ross Road Police Station, Eastern Division).

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The content of the report is unequivocal; it unambiguously clarifies a simple fact that the realty in dispute does not belong to the Respondents (see Exhibit CP2 of the Supplemental Affidavit). Rather, according to the said exhibit, the realty is owned by the Armed Forces of the Republic of Sierra Leone. This is how the said correspondence framed the point that the realty is not owned by the Respondents:

> 'Based on the evidences (sic) provided by means of documentation and physical verification on the ground, it is clear that the land in contention is a State land and that the Government has allocated same to the Peace-Keeping Military Training Centre (P.M.T.C.)'.

Undeniably, should this analysis be confined to this bit of the facts, deposed to by the Respondents in their affidavit in opposition, it would certainly be logical and legal to conclude that the realty in dispute does not really belong to them, but are fictitiously claiming same, to defraud the State of that precious asset, which it has allocated to the Armed Forces. However, as the constitutional adage {see section 23 (3) of the Constitution of Sierra Leone, Act N0.6 of 199} goes, justice must not only be done, but it must be seen to be done, a clear deconstruction of the application's supporting and supplemental as well as the opposing and supplemental affidavits, depicts a plethora of facts- in-issue and other facts relevant to the facts in issue, which are no doubt, germane to the determination of the application on a point of law.

Before establishing that the land in dispute does not belong to the Respondents, the Ministry of Lands on the 22nd November 2019, had received a correspondence from the Respondents applying for a grant of a leasehold interest, in respect of the realty in dispute, for which they now claim to be the owners of the fee simple absolute in possession. The letter, addressed to the Minister of Lands, contains the following information in Paragraphs 2 and 3:

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> 'Since the said piece and parcel of land has been in our custody for a considerable period of time, and considering the facts that we are willing to develop it, it would be undesirable to lose the said piece and parcel of land in its entirety. Owing to this, we are therefore willing to proceed with developing the land as aforesaid'.
>
> 'We are further appealing with the Government through your Ministry *to give us authentic document (s) in a form of grant and to also do proper road networking on the entire property* (my emphasis in italics). We sincerely accept whatever outcome regarding the said negotiations in so far as it would be favourable to us'.

Thus, Section 3 of the Crown Lands (Amendment) Act N0.37 of 1961, which amended section 4 of the Crown Lands Act N0.19 of 1960, empowers the Minister of Lands to grant leasehold interests to persons whom he deems fit to acquire such interest, which is only equitable, until the freehold (legal) interest is subsequently granted, after due considerations of some other conditions. Meanwhile, it is the foregoing provision in Act N0.37 of 1961, pursuant to which the Respondents applied for a grant of the realty that is in dispute. Their communication to the Minister of Lands for a grant, raises a plethora of questions. First, why should the Respondents apply for the grant of a leasehold on the 22nd November 2019, concerning a realty for which their ancestors had been the fee simple owners since 1985?

Second, why should the Respondents apply for a grant of a leasehold on the 22nd November 2019, regarding a realty for which Letters of administration, had been taken on the 5th of February 2000? Third, why should the Respondents apply for the grant of a leasehold on the 22nd November 2019, in respect of a realty, which was subsequently passed down by a vetting deed to the Late Pa. Wusu Cole (aka Chief Pa. Alimamy Cole I) on the 21st December 2007?

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Fourth, why should the Respondents apply, for the grant of a leasehold on the 22nd November 2019, concerning a realty which eventually became the property of Chief Pa. Alimamy Kanu II and the other Respondents on the 25th June 2020, by virtue of their vesting deeds, taken out on the said date? The simple answers to the foregoing questions is that the realty in dispute was never the property of the Respondents at the material time, when their family claimed to have had the right to fee simple absolute in possession. This is simply because had the Respondents' family been the owner of the fee simply absolute in possession, they would not have subsequently applied for a somewhat lesser interest (leasehold) of that same property on the 22nd November 2019; that is thirty-four (34) years after their ancestors had claimed to be the fee simple owners.

This possibility was made factual by the aforementioned report from the Ministry of Lands, confirming that the realty in dispute, which was subsequently delineated in the survey plans L. S11051/20 L. S11O52/20 L.S 11053/20 L.S 11054/20, L.S 11055/20, L.S 11O56/20, L.S 111056, L.S 11050/20, L.S 11069/20, L. S11070/20, bearing the names of the Respondents, has never been theirs. However, it is amusing and bemusing to note, that at the time when the Ministry of Lands investigated the allegations of trespass and malicious damage against the Applicants, it was clear that the Respondents' already had a signed plan, but the same report (Exhibit CP2) cautioned that:

> 'Chief Pa. Alimamy could have laid claims to the land but after thorough investigation it could be determined that the portion under consideration/contention is a State owned land which vested interest is allocated to the PMTC by the Government of Sierra Leone. *The root title of Pa. Alimamy Kanu is not adequately placed as it is an original survey signed in 2020'* (my emphasis in italics).

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The report also stated that:

> '*… there are Government beacons on the ground that clearly depict/identify the said area as a State land'* (my emphasis in italics).

The questions that are to be posed at this stage are: even though, by virtue of Exhibit CP2, the Respondents have falsely claimed the property of the Government of Sierra Leone, why should their survey plans be signed in respect of a realty that had been allocated to the armed forces? Does the Director of Surveys and Lands keep proper records of the site plans that are signed and recorded in the Ministry's records books, pursuant to Section 15 of the Surveys Act Cap. 128 of the Laws of Sierra Leone, 1960? If it does, why is it that the Respondents, did produce a signed site plan claiming a State land as their bona fide private property? Thus, Counsel for the Respondents has relied on the provision of the said Section 15, that his clients' signed survey plans, attached to their registered vesting deeds, went through the requisite scrutiny and processes of the Ministry of Lands, before being registered in accordance with Caps. 255 and 256 of the Laws of Sierra Leone, 1960.

Do the Respondents' registered vesting deeds, really confer legal interest of the realty in dispute to them? This question warrants a forensic examination of the vesting deeds in their entirety. Indeed, their vesting deeds concern the very realty in dispute, which they have partitioned, to reflect their individual claims to ownerships. Further, the respective survey plans in the title deeds: L. S11051/20 L. S11O52/20 L.S 11053/20 L.S 11054/20, L.S 11055/20, L.S 11O56/20, L.S 111056, L.S 11050/20, L.S 11069/20, L. S11070/20, are condemned as invalid by the same Exhibit CP2, which further states:

> 'Being that it has been determined that the land is a State land vested interest is in the military, I strongly recommend for the Director of Surveys and lands to withdraw

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> the survey plans signed by the Ministry claiming ownership to the land should be expunged as he was deceived into signing the plans thereby warranting the withdrawal of his signature'.

Analytically, Exhibit CP2 was in fact put in evidence by the Respondents, in justification of the authenticity of their vesting deeds and the fact that they clearly contain genuinely signed site plans by the Director of Surveys and Lands on behalf of the Ministry of Lands; conferring individual fee simple ownerships to them. But a clear deconstruction of that exhibit for meanings has proved to be very counter-productive to the Respondents. In fact, the facts in the said exhibit are bolstered and made clearer in Exhibit JMF 8, which is a follow-up correspondence from the Ministry of Lands, signed by the Director-in-Charge of Private Plans and addressed to the Administrator and Registrar-General of the Republic of Sierra Leone. The correspondence is headlined: 'Request to Expunge L.S 11051/20, L. S. 11052/20, L. S. 11053/20, L. S. 11070/20 bearing the name (sic) Pa Alimamy Kanu II, Marie Kanu, James M. Kamara, Ahmed Amidu Bangura, Yayah M. Kamara, Bockarie Kanneh, Alusine Conteh, JMK Topnotch SL Ltd. (James Mohamed Kamara) and Alimamy Kanu respectively'. And the content thus reads:

> 'With respect to the above, I am kindly requesting your good office not to allow the conveyance processing of the above-named plans simply because they did not pass through the normal processing channels. I have expunged the above site plans in our global mapper because of wrong channel the surveyor took to process the plan. Having said so I will appreciate a lot if you adhere to my above request to stop surveyors not to follow wrong channels in the processing of their survey site plans'.

Thus, the facts depicted in both Exhibit CP2 and JMF 8 have further clearly shown that the State did not at any time, pursuant to Section 2 of the Crown Lands Act N0.19 of 1960, grant the Respondents' individual fee simple

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ownerships to the realty (as partitioned in their respective vesting deeds). Their registered vesting deeds simply claim a realty that is not theirs. So, such vesting deeds could not have conferred any title to them. This position of the law is clearly articulated above by the Hon. Justice Livesey Luke, C. J. in the locus classicus of Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) and the Hon. Justice Dr. Ade Renner-Thomas, C. J. in Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004). In fact, it is worthwhile to raise the question whether the test of possessory title established by the Supreme Court in the said cases, has bolstered the Respondents' case?

The test is simple: Possessory title is as weighty in evidence as documentary title. Claimants that rely on possessory titles must go beyond proving more than just mere long-term possessions. They must go further to establish better titles not only against Defendants, but against any other persons. They can do so by establishing that the titles of the true owners have been extinguished in their favour by the combined effect of adverse possession and the statute of limitation. In as much as the last aspect of the test does not apply to the instant case, because neither the issue of adverse possession nor the applicability of section 5 (3) of the Limitations Act 1961 is relevant here, all the other aspects of the test (according to the evidence) are neither fulfilled nor satisfied by the Respondents. Thus, the Respondents' claim to long term possession of the realty has not therefore been supported by the evidence.

This drives me to the case for the Applicants (who are the Defendants in the original action). Their contention in the instant application is for the Court to determine these questions: **(a)** whether or not the Respondents' survey plan attached to their title deeds in respect of the action CC398/20 K. N0. 82 i.e. Pa Alimamy Kamara II and Others **v.** Umaru Bah, Foday Mohamed Turay and

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Others **AND** 399/2020 i.e. James Mohamed Kamara and Others **v.** Umaru Bah and Others, comply with Section 9 of the Crown Lands Act N0.19 of 1960? (**b)** whether or not by virtue of a letter dated 2nd November 2020 the survey plans L. S11051/20 L. S11O52/20 L.S 11053/20 L.S 11054/20, L.S 11055/20, L.S 11O56/20, L.S 111056, L.S 11050/20, L.S 11069/20, L. S11070/20, bearing the names of the Plaintiffs herein passed through the normal processing channels, before being ascribed the foregoing L.S Numbers?

Analytically, to answer the first question, it would be logically and legally expedient, to put Section 9 of the Crown Lands Act N0. 19 of 1960 into context. The Section thus provides:

> 'No Crown land shall be granted in any manner whatsoever under this Ordinance until it has been surveyed and demarcated by a Government or licensed surveyor and the plan thereof has been approved and signed by the Director of Surveys and Lands or by an officer of his department acting on his behalf'.

The above provision is quite clear. Thus, the facts of this case depict that the Director of Surveys and Lands was tricked into signing the survey plans, found in the respective vesting deeds. This point is made clear in Exhibit CP2. It is against this backdrop that it is recommended in the said exhibit that the Respondents' survey plans should be expunged from the records of the Ministry of Lands. Meanwhile, the expurgation of such site plans from the records, found in the respective vesting deeds, presupposes a clear violation of Section 15 of the Surveys Act Cap. 128 of the Laws of Sierra Leone 1960, which requires the Ministry to keep records of such plans, in its record books. Therefore, on the basis of this incontrovertible fact, I will answer the first question as follows: The survey plans attached to their title deeds in respect of the action CC398/20 K. N0. 82 i.e. Pa Alimamy Kamara II and Others **v.** Umaru Bah, Foday Mohamed Turay and Others **AND** 399/2020 i.e. James Mohamed

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Kamara and Others **v.** Umaru Bah and Others, did not comply with Section 9 of the Crown Lands Act N0.19 of 1960.

This answer is inextricably linked to the fact that it is cognate with the determination of the second question. The facts that should form the basis of the answer to the second question are rooted in Exhibit JMF 8, which is a correspondence from the Ministry of Lands dated 2nd November 2020, addressed to the Administrator and Registrar-General, confirming the fact that the survey plans L. S11051/20 L. S11O52/20 L.S 11053/20 L.S 11054/20, L.S 11055/20, L.S 11056/20, L.S 111056, L.S 11050/20, L.S 11069/20, L. S11070/20, bearing the names of the Plaintiffs herein did not pass through the normal processing channels, before being ascribed the foregoing L.S Numbers. Exhibit JMF 8 also confirms the fact that the said site plans have been expunged from the global mapper of the Ministry of Lands, because the surveyor took the wrong channels in processing the plans.

Based on this fact, I will also answer the second question in the affirmative. Meanwhile, the Applicants' Counsel further requested the Court to make two specific orders, contingent on the affirmative answers to the foregoing questions, to wit:

1. That the writ of summons dated 20th November 2020 between Chief Pa Alimamy Kanu II and Others **v.** Umaru Bah and Others **AND** the Writ of Summons dated 20th November 2020 **Between** James Mohamed Kamara and Others **v.** Umaru Bah and Others be struck out with costs
2. That judgment be entered pursuant to the counterclaim filed for and on behalf of the Applicants.

Nonetheless, the question that arises at this stage is whether the facts, upon which the application is predicated, are sufficient to invoke the provisions in

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Order 21 Rule 17, concerning the striking out of pleadings and indorsements, in tandem with the dictates of Order 17. This provision is clearly referenced in the analysis, concerning disposal of cases on points of law in 1.7. Thus, Order 21 Rule 17 (1) reads:

> 'The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement on the ground that (a) it discloses no reasonable cause of action, or defence as the case may be; (b) it is scandalous, frivolous or vexatious; (c) it may prejudice, embarrass or delay the fair trial of the action; or (d) it is otherwise an abuse of process of the Court, and may order the action to be stayed or dismissed or Judgment to be entered accordingly, as the case may be'.

Essentially, the facts as depicted above clearly show no reasonable cause of action, because the Respondents are claiming a realty that is not theirs. Again, as shown above, they have neither genuinely relied on documentary nor possessory nor title acquired by succession and inheritance. So, the Respondents' pleadings (in the writ of summons) do not really disclose a reasonable and a fair cause of action. Thus, the said writ of summons does not have any legs to stand on. It crumbles in the face of the affidavits' evidence and exhibits, supporting and even those opposing the application for the determination of this matter on a point of law.

Therefore, it is hereby accordingly struck out. Concerning whether the second order should or should not be granted, the threshold of the law, regarding declaration of title to property, must as well be supported by the relevant affidavits' evidence and the exhibits attached thereto. The law as clearly articulated above by the Hon. Justice Livesey Luke, C. J. in Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) and the Hon. Justice Dr. Ade Renner-Thomas, C. J. in Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004), begins

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with the position that should the Applicants (in the instant case), counterclaim that the realty is theirs, they must as well establish their case of either documentary or possessory title.

Thus, the defence and counterclaim filed by the Applicants' Counsel, contain paragraphs claiming that the realty is theirs. But have the Applicants produced sufficient evidence in justification of this claim? Apart from the fact that they have claimed in their defence and counterclaims that the realty is theirs, they have gone further to depose to such facts in their supporting and supplemental affidavits. They have as well exhibited documents, claiming that the realty is theirs. Thus, I will now forensically unpick the contents of their claim, consonant with the available evidence, attached to their supporting and supplemental affidavits. First, they have not produced any conveyance in support of their claim. So, there is no need to enquire into whether the processes, culminating in the preparation and registration of a conveyance, were complied with.

Again, there is no need to enquire into the worthiness or worthlessness of any conveyance herein; as Cap. 256 does not deal with registration of title. It rather concerns registration of instruments, which conferral of title, depend on a number of considerations, including their worthiness, based on whether their citations establish, better titles than any other claimants. Therefore, the test for documentary title (that claimants relying on title deeds succeed on the strength of such deeds; that the mere production of conveyances in fee simple is no proof of a fee simple title, because such conveyances can even be worthless; that claimants must go further to prove that they factually acquired good titles from their predecessors in titles), does not apply to the instant case.

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I will now turn to the law on possessory title. Counsel for the Respondents, established in Paragraph 12 of the opposing affidavit, that the site plan which the Respondents, provided to the Eastern Division of the Task Force Against Land Grabbing was not signed by the Director of Surveys and Lands. Thus, an examination of that site plan clearly depicts that, it was indeed not signed. This renders that site plan valueless for purposes of litigation, because it does not meet the threshold of the provision in Section 15 of the Surveys Act Cap. 128 of the Laws of Sierra Leone, 1960. However, do the Applicants, predicate their claim of title to the realty on that site plan, which was produced to the Police when their alleged ownership was being investigated? The answer is no.

Exhibit JMF 5 is a copy of a registered statutory declaration in respect of the realty which ownership the Applicants have counterclaimed. The said statutory declaration contains a site plan herein signed by the Director of Surveys and Lands, pursuant to Section 15 of the Surveys Act Cap. 128 of the Laws of Sierra Leone, 1960. And it went through the requisite processes of registration, in accord with the provisions of Caps. 255 and 256 of the Laws of Sierra Leone, 1960. But this does not presuppose that the compliance with the processes of registration as dictated by the said statutes, automatically culminated in a clear and an undisputed ownership that the Courts can declare.

That statutory declaration can be worthless, should it citations not establish that the realty's predecessor- in- title, had a very good title to pass to the Applicants; bearing in mind that the Ministry of Lands had indicated in Exhibit CP2 that the realty is a State land that has already been assigned to the Armed Forces of the Republic of Sierra Leone for peacekeeping training purposes. For ease of reference, it is befitting that I set out the citations of the said statutory declaration, before proceeding to determine whether it meets the threshold

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for a declaration of title to property as enunciated by Hon. Justice Livesey Luke, C. J. in Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) and the Hon. Justice Dr. Ade Renner-Thomas, C. J. in Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004).

We DAVID DANIEL COLE, aged 60 years, UMARU BAH aged 54 years, FODAY MOHAMED TURAY, aged 54 years, MADAM OBENIE COLE, Former Headwoman, Hastings Village, aged 67 years, of Old-Freetown Waterloo Road, Yams Farm Freetown, in the Western Area of the Republic of Sierra Leone, do hereby jointly and severally solemnly declare and say as follows:

FIRSTLY, WE the said DAVID DANIEL, COLE UMARU BAH, FODAY MOHAMED TURAY jointly and severally for ourselves say as follows:

1. That we are ALL acquainted with all that piece or parcel of land situate lying and being at Old Freetown Waterloo Road, Yams Farm Freetown in the Western Area of the Republic of Sierra Leone, earlier known as Congo Village whose positions dimensions and boundaries are shown verged RED IN Survey Plan attached hereunto and which is intended to form part of this Instrument and as delineated in the Schedule herein.
2. That the said piece or parcel of land was inhibited by our Grand Parents MADAM MARIAMA CONGO, PA BOMPEH SESAY and PA JAMES TOKEH THOMAS, until the 1980s when it was inherited by our Parents, PA GUNDA SESAY, EMMANUEL PUAL SESAY and Others.
3. That during the tenure of our parents the said piece or parcel of land was temporarily occupied by the Sierra Leone Military after pleading with the Congo and Pow pow Village Authorities and the Land Owning Families for it to be used for their training exercises.
4. That the said piece or parcel of land was then later handed back to our Parents the Land Owning Families.

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5. That our parents have been in perpetual occupation of same, without any interference from any quarters, whilst using the land mostly for the cultivation of crops and other family purposes.
6. That our parents have been in occupation of the land but failed to do the needful of surveying the said piece or parcel of land until the last survivor of them, PA GUNDA SESAY, died in 1982 without executing a survey of the land.
7. That since we inherited the said piece or parcel of land we initiated and went through the process of survey of the land and a survey plan dated 3rd November 2020, was issued to us by the Ministry of Surveys and Lands.
8. That we have been regarded as the reputed Beneficial Owners of the said piece or parcel of land and have remained in full undisturbed and uninterrupted possession thereof throughout, enjoying the fruits and profits accrued therefrom.

   AND SECONDLY WE, the said MADAM OBENIE COLE and PA SORIE KORROH TURAY jointly and severally say for ourselves as follows:
9. That we know the first Declarant DAVID DANIEL COLE, UMARU BAH and FODAY MOHAMED TURAY and also we are well acquainted with all that piece or parcel of land and hereditaments situate lying and being at Off Old Freetown-Waterloo Road, known as Yams Farm, Freetown in the Western Area of the Republic of Sierra Leone earlier known as Congo Village and as described in the Schedule herein and as delineated in the survey Plan attached hereunto and thereon shown verged RED.
10. That the said piece or parcel of land and hereditaments were being inhabited, occupied and owned by MADAM MARIAMA CONGO, PA BOMPEH SESAY PA JAMES TOKAY THOMAS, Grand Parents of the First Declarant herein.
11. That the said piece or parcel of land and hereditaments were inherited from MADAM MARIAMA CONGO, PA BOMPEH SESAY and PA JAMES TOKAY THOMAS the parent of PA GUNDU SESAY, EMANUEL PUAL SESAY and Others, who passed on same to the said Declarants herein.
12. That since the First Declarants inherited, occupied and possessed the said piece of land and hereditaments they have been in full possession thereof enjoying the fruits and profits accrued therefrom.

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13. That to the best of our knowledge information and belief, since the First Declarants entered into possession of the said piece or parcel of land and hereditaments he has been regarded as the reputed Beneficial and Co-owner of the said property.

Thus, the above citations depict that the Applicants have simultaneously relied on possessory title and title by inheritance and succession. What is the threshold to be met for a court of competent jurisdiction to make an order for a declaration of title to property in circumstances, wherein claimants or counter claimers (in this case Applicants), predicate their case on possessory titles? The threshold was quintessentially established in the foregoing locus classicus in our jurisdiction as follows: possessory title is as weighty in evidence as documentary title; claimants and counter claimers relying on possessory titles must go beyond proving more than just mere long-term possessions; they must go further to establish better titles not only against the other side, but against any other person; they can do so by establishing that the title of the true owner has been extinguished in their favour by the combined effect of adverse possession and the statute of limitation. It should be noted that as indicated above, the last segment of the foregoing threshold is not applicable in this case, because the Respondents have never (on the basis of the evidence) been the owners of the realty; so there is no issue of the combined effect of adverse possession and the statute of limitation to be determined.

The first part of the citations in the aforementioned statutory declaration, establishes long-term possession of the realty by the Applicants, tracing their possession as far back as to the existence of their grand-parents, from whom their parents inherited the property, which eventually passed on to them at the demise of the last sibling of their parents. But according to the

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test, the mere establishment of long-term possession as established in Swill **v.** Caramba-Coker (CA Civ. App. N0.5/71) is insufficient for a declaration to be made in their favour. They must go further to prove a better title not only against the other side, but any other person. The question that arises here is whether they have done so? Thus, the evidence has shown that against the other side (Respondents), they are home and dry. But what about that bit relating to any other person?

Meanwhile, since the commencement of this action, no other person has made any application, pursuant to the relevant provision of Order 18 of The HCR 2007 to come in as an interested party. Nevertheless, the evidence shows (see Exhibit CP2) that the realty being claimed by the Applicants, is a State land that has been allocated to the Armed Forces of the Republic of Sierra Leone for training purposes. Contrariwise, the evidence also shows (see Exhibit JMF 5, with particular reference to Paragraphs 3 and 4 of the First Part of the Citations in the Statutory Declaration), that it was the Respondents' parents that put the military into a temporary possession of the realty for training purposes; and that the military had handed the realty to their family, which had since been laying claim to it.

These contradictory bits of facts, embedded in both pieces of the evidence, must be resolved to determine the ownership of the realty. The military is a juridical/juristic person, but it is not a party to this action. Why is this so? Is it that they are not aware about the proceedings? Are they still in occupation of the realty? Has their occupation being disturbed? Where is the actual evidence of the grant of that realty to the military? Does the mere allusion in Exhibit CP2 that the realty has been allocated to the military, sufficient to conclude that it owns the fee simple absolute in

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possession? However, if the evidence clearly shows that, that institution has a vested interest in the realty, nothing precludes the Court from protecting it.

But, the statutory declaration, contains a site plan which is signed by the Director of Surveys and Lands, confirming the vested interest of the Applicants, who proceeded to register same with the Office of the Administrator and Registrar-General as sanctioned by Caps. 255 and 256 of the Laws of Sierra Leone, 1960. And this statutory declaration debunked the bit in Exhibit CP2, relating to the allusion that the realty has been allocated to the military. Further, Section 15 of Cap. 128 of the Laws of Sierra Leone, 1960 (the Surveys Act) compels the Director of Surveys and Lands to keep records of surveys in their archives.

I am sure that the Ministry's records must have shown that the Applicants' site plan, concerns a realty which the State has allocated to the military. This would have prevented the Director of Surveys and Lands to desist from signing that site plan, embedded in the uncontested statutory declaration of the Applicants, should it establish that that same realty had been allocated to the military. But he never did; rather he went ahead to endorse it. Again, there is nothing in the evidence, confirming that the Director of Surveys and Lands has expurgated the Applicants' site plan from the records; as he expressly expunged those of the Respondents, and consequently, got a follow-up correspondence to that effect, to be sent to the Administrator and Registrar-General, confirming the expurgation and urging the later to negate the registration of the Respondents' vesting deeds. The fact that the Ministry of Lands vetted and signed the Applicants' site plans and went ahead to approve of it, leading to the preparation and

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registration of an uncontested title deed, claiming the subject matter of this litigation, which has not been claimed by any other person, have established a strong case of possession and ownership for the Applicants.

Pursuant to the foregoing analysis, I unreservedly hold as follows:

1. It is hereby declared that Applicants are the fee simple owners of all that piece or parcel of the realty delineated on their survey plan LS17721/20 dated the 3rd November 2020 attached to their title deed dated 9th December 2020 registered as N0. 393/20 in volume 66 at page 27 of the record book of statutory declaration kept in the Office of the Administrator and Registrar General, Walpole Street, Freetown.
2. Immediate possession of the said piece or parcel of land is hereby declared for the Applicants.
3. A perpetual injunction restraining the Respondents, their servants, agents, privies or howsoever called from trespassing, entering, remaining and/or interfering with the said piece or parcel of land, situate, lying and being at Off Old Freetown Waterloo Road, Hastings in the Western Rural District of the Republic of Sierra Leone.
4. That a cost of thirty million (Le 30, 000, 000: Old Currency) be paid by the Respondents to the Applicants' Counsel.

The Hon. Justice Dr. Abou B. M. Binneh-Kamara, J
Justice of the Superior Court of Judicature of the
Republic of Sierra Leone.

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