CC 52/2023 2023 S. N0. 8

In the High Court of Sierra Leone

(Land and Property Division)

Between:

Dr. Foday Sesay and Others - Plaintiffs/Applicants

And

Fatmata Kargbo and Others - Defendants/Respondents

Counsel:

Elvis Kargbo Esq. for the Plaintiffs/Applicants

M. S. Kargbo Esq. for the Defendants/Respondents

Ruling on an Application for a Determination of This Matter, Pursuant to Orders 16 and/or 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 Monday 31st July 2023.

1.1 Context

This is a ruling consequent on a judge's summons filed by Elvis Kargbo Esq. of Betts and Berewa Solicitors and dated 12th April 2023, on behalf of the Plaintiffs/Applicants (hereinafter referred to as the Applicants). The application is supported by the affidavit of Ms. Khadi Abdulai Nee Sesay of N0.36 Smythe Street,

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Freetown in the Western Area of the Republic of Sierra Leone. The principal thrust of the application is for a summary judgment and/or a determination of this case on a point of law, pursuant to Orders 16 and/or 17 of the High Court Rules 2007, Constitutional Instrument N0.8 of 2002 (hereinafter referred to as The HCR 2007). Nevertheless, M.S. Kargbo Esq. of Kargbo and Partners, filed an affidavit in opposition to the application on behalf of the Defendants/Respondents (hereinafter referred to as the Respondents). The opposing affidavit is sworn to by one Alimamy Kargbo of Foofoo Water, Newton, Western Rural District in the Western Area of the Republic of Sierra Leone. Meanwhile, between the 11th of May and 1st June 2023, Elvis Kargbo Esq and M.S. Kargbo Esq. individually addressed the Court on the contents of their supporting and opposing affidavits, bringing out all the salient and prominent facts that should enable the Court to judiciously determine the appropriateness or inappropriateness of the application.

1.2 The Submissions of Counsel for the Applicants

The Applicants' Counsel made the following submissions to convince the Court to grant the application:

1. That the Applicants own the fee simple absolute in possession of the realty referred to in the writ of summons and the statutory declaration attached to the application's supporting affidavit (see Exhibits DFS1 and DFS5).
2. The statutory declaration complies with the law and particularly section 9 of the Crown Lands Act of 1960.
3. That the Respondents do not have conveyance or title deed upon which they have based their counterclaim of the subject matter of this litigation. Therefore, the said counterclaim is fictitious.

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4. That the defence put forth by the Respondents in this matter is a sham and does not constitute a solid justification that should warrant the conduct of a full-blown trial. In essence, the defence on file is geared towards wasting the Court's time. Therefore, the Court should discountenance the facts deposed to in the affidavit in opposition. The cases of Jessy Omojuwu John (Applicant) **v.** Gregory-Pabs-Ganon and Another (Respondents) {CC. 400/ 17 2017}, Marie-Stops Sierra Leone (Appellant) **v.** Respondent) (CIV. APP 30/2010) are referenced.
5. That Paragraphs 1-7 of the defence are a mere narrative that is unsupported by any exhibited evidence. That is, there is no evidence attached to the affidavit that justifies any of the averments in the said paragraphs.

1.3 The Submissions of Counsel for the Respondents

The Respondents' counsel made the following submissions in justification of why this matter should proceed to trial:

1. The appropriateness of the application is quite questionable. The facts of the case point to the need to proceed to trial, should it be reasonably determined. Thus, Order 16 Rule 3 (1) of The HCR 2007 is categorically referenced. Consequent on this provision the defence and counterclaim, which is Exhibit DFS3, put forth very serious trial issues that cannot be determined without a trial. Paragraph 14/4/2 of the English Annual Practice 1999, is very instructive on this point.
2. The Applicants acknowledged in Paragraph 2 of Exhibit DFS4 that there are triable issues in the defence and counterclaim that the Court must resolve through a full-blown trial. And in civil procedure, it is acknowledged that

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parties stand or fall on the strength of their pleadings: Paragraph 26.7 of page 356 of Blackstone's Civil Practice 2008.

3. That the Respondents' defence has a real prospect of success: Aminata Conteh (Appellant) **v.** All Peoples Congress Party (Respondent) SC Civ. App A/2004.
4. That adverse possession is raised in the defence. The Respondents have been in possession of the realty for a period of over forty years. The Applicants' title deed was registered in 2019. The case of Seymour Wilson **v.** Musa Abess SC Civ. App N0.5/79 is very clear on a case of adverse possession.
5. That Exhibit DFS5 is worthless. See Paragraphs 4, 5 and 6 of Exhibit DFS1, which is the writ of summons, the Respondents claim that the realty was orally gifted to them. And Paragraph 6a and b of the application's supporting affidavit conflict with their particulars of claim in Paragraphs 6, 7 and 8. Thus, the particulars of claim concern one piece of land and the supporting affidavit talks about two pieces of land. This is a serious concern about the relevance of the application.
6. That Exhibit DSF 5, which is a statutory declaration was made in violation of section 3 (1) of Cap. 26 of the Laws of Sierra Leone 1960.

1.4 The Law

Sierra Leone's Superior Court of Judicature has continued to hand down quite a good number of decisions on decided cases that have no doubt shaped and guided the extent to which applications on disposal of cases on points of law are being made, as opposed to those on summary judgments. Whereas Order 16 of The HCR 2007, concerns summary judgment; Order 17 of same exclusively deals with

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disposal of cases on points of law. The application to be determined resonates with that of summary judgment and/or alternatively disposal of this case on a point of law (see 1.1). But based on the application's opposing affidavit, it is clear in the Respondents' Counsel's submissions that he chose to address the Court on Order 16 but neglected the Order 17 side of the application. Though both orders are different, they have a point of intersection that is clearly unfolded in this analysis. Nevertheless, the determination of the application is thus underscored by a clear connection 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 summarily adjudged or disposed of on points of law. The interconnectedness between these two areas of the law, are thus articulated in 1.5 and 1.6.

1.5 Declaration of Title to Property

This aspect of Sierra Leone's civil law is structured on the country's land tenure system. The law concerning ownership of realty in the provinces is different from that of ownership in the Western Area. So, it would be in contradistinction to the substantive law, should a writ of summons be issued by the Registry of the High Court of Justice in respect of any realty in any Chiefdom of any district of the Republic of Sierra Leone, concerning any dispute relative to a declaration of title to property {see Sections 18 and 21 of the Courts Act N0.31 of 1965}. However, questions relating to the determination of ownerships of realty in the Western Area, fall within the purview of the original exclusive jurisdiction of the High Court of Justice {as generically stated in Sections 132 of Act N0.6 of 1991 and pedantically

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articulated in sections 18 and 21 and the Third Schedule of the Courts 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 doctrines) is underpinned by two main considerations: vis-à-vis documentary and possessory titles.

1.5.1 Documentary Title.

Documentary title is by no means the only way (it is only one of the ways) by which the legal fee simple absolute 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

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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:

'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

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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).

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 above 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

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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 appropriate 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 that title deed.

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/she factually acquired good title from his/her predecessor in title.

4. In the circumstance where there is evidence that title to the same land vests in another person other than the claimant or his predecessor in title (vendor), declaration cannot be made on their behalf.

1.5.2 Possessory Title.

Another way by which Plaintiffs can establish their case for declaration of fee simple titles to land is through long term possession. According to the Court of Appeals decision in Swill **v.** Caramba-Coker (CA Civ. App. N0. 5/71), this long-term possession is deemed to span up to forty-five (45) years. Nonetheless, the test in that case, was taken to another level by the Supreme Court in Sorie Tarawallie **v.** Sorie Koroma

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(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 SL. SC Civ. App 1/75 are articulately indicative of instances in which judgments have been entered in favour of owners of possessory titles, in even circumstances where their contenders, were holders of registered conveyances. This position is also 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 claimant who relies on possessory title (either by himself or his predecessor in title), must prove more than just mere possession; he must go

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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 Limitation Act N0. 51 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 occurred 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.

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 limitations.

1.5.3 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

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property law is not unconnected with the acquisition 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'. However, 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 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 die 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

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done, they must proceed to take out vesting deeds in respect of such estates. However, 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.

1.6.1 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, who must establish their cases on balance of probabilities. But in situations where defendants counterclaimed ownerships, they assume the same legal burden as the claimants. In general, questions on declaration of titles to land in the Western Area hardly go beyond three factual 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 trespassing 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

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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 must be read 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 above provision.

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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 points of law can be done pursuant to applications made by either of the parties to the 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 a 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). 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 fact that they can save the courts, the barristers and the litigants, from going through the protracted trial 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.

1.6.2 Summary Judgment

Thus, it should be noted that the application to be determined is also not devoid of the considerations in Order 16, which concerns summary judgment. The authors of the English Supreme Court Annual Practice of 1999 (The White Book), upon which

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Sierra Leone's HCR 2007 is constructed, clearly articulated the legal significance of Order 16 applications, regarding 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 judgments), that I am obliged to replicate here, to address the concerns raised in the application about summary judgment:

> '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 constructed, 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.

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That is, the deponent of the facts to the affidavit must have been certain that there is indeed no defence to part of or their claims. This presupposes that it is a crucial condition precedent that the application's supporting affidavit, must have unequivocally serialised and verified the facts of the case, the cause of action, what is being claimed, and the conviction that there is no defence to the action, must as well be supported by the facts.

However, a court of competent jurisdiction, frowns at granting a summary judgment order, in every circumstance, wherein the affidavit evidence depicts, that there are contentious and triable issues, which can only be determined, pursuant to the conduct a full-blown trial. The criticality of an Order 16 application is that, should the court grant it, in an instance wherein it should not be granted; the defendant is automatically denied the opportunity of benefiting from the fruits of a fair trial, conducted by an independent and reasonable tribunal of facts. And this will be certainly interpreted as a violation of the constitutional principle, that justice should not only be done, but it must be seen done {see Sections 23 (1), (2) and (3) and 120 (6) of Act N0.6 of 1991}. The Hon. Justice V. A. D. Wright, J.S.C., in Aminata Conteh **v.** The All Peoples Congress (SC. Civ. App. 4/2004) commented obiter, on the criticality of summary judgment, in the following explicit statement:

> The object of the order is to ensure a speedy conclusion of the matters or cases where the plaintiff can establish clearly that the defendant has no defence or triable issues. This draconian power of the court in preventing the defendant from putting his case before the court must be used judiciously. A judge must be satisfied that there are no triable issues before exercising the

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discretion to grant… a summary judgment. The judge is also obliged to examine the defence in detail to ensure that there are no triable issues'.

Thus, the rationale for a critical examination of the defence is crucial to the granting of a summary judgment. This process entails the ability to discern defences that are sham, concocted and fanciful, from those that are factual, genuine and clothed with real prospects of success {see Swain **v.** 18 Hallman and Another (2001) All ER page 91}. The process further requires a clear sense of ratiocination and judicial discernment. Significantly, the granting of a summary judgment behooves a reasonable tribunal of facts, to thoroughly unpick and unpack the facts, relative to the substantive law and the procedural rules, underpinning the application. This has been the approach that has guided the courts in making orders of summary judgments.

1.7 The Analysis

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 any procedural nullity. Nonetheless, what is befitting to determine at this stage is whether the application resonates with the dictates of either Order 16 or 17 of The HCR 2007. This is simply because the application is framed on two limbs: The first is for the matter to be summarily determined. And in the alternative for it to be disposed of on a point of law. However, in dealing with the issues in the application, there is a pertinent jurisdictional concern that must first be addressed. That is, the realty of this litigation is in Newton. And the temporary geography of Sierra Leone shows that Newton is in the Western Area (Rural District), but the realty is depicted in the writ of summons, as situate lying and being at Off Waterloo-Masiaka

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Highway, Newton, Koya Rural District, Port Loko in the North-Western Region of the Republic of Sierra Leone.

If this Court were to go by that description of the realty, then it would have lacked the jurisdiction to preside over this matter. This is by virtue of the provisions in the Courts Act of 1965 cited in 1.5. Meanwhile, since Newton is in the Western Area Rural District of the Republic of Sierra Leone, the jurisdiction of the High Court of Justice to preside over this matter cannot be questioned by any other court of competent jurisdiction. Thus, the ownership of the realty which culminated in this action and the eventual filing of the application which is to be determined is claimed by the Applicants and counterclaimed by the Respondents. The writ of summons, defence and counter claim, reply to the defence and counter claim, and the application's supporting and opposing affidavits clearly depict that both the Applicants and Respondents have based their claims on long-term possession.

This presupposes that they have both relied on possessory as opposed to documentary title. Essentially, the analysis in 1.5 enunciates everything about the acquisition of realty in the Western Area. How does one acquire real property in the Western Area through long term possession? Again, 1.5.2 contains the position of the law on this. First, possessory title is as weighty in evidence as documentary title. Thus, the application that is to be determined is predicated on affidavit evidence. The Applicants' affidavit, which resonates with the dictates of Order 16 Rule 2(1) of The HCR 2007, contains eight paragraphs and five exhibits attached thereto. The Respondents' affidavit encompasses fifteen paragraphs, but it does not contain any attached exhibit. Rather, it indisputably references the exhibits attached to the Applicants' affidavit. Exhibits DFS1 and 5 are the writ of summons

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and the application's supporting affidavit. The statement and particulars of claim serialised how the ancestors of the Applicants came to acquire the realty and how they (the Applicants) came to take over from them.

Further, It is discernible in the respective paragraphs of the writ that the Applicants made efforts to protect and secure their interests in the realty in accordance with the law. They got the realty surveyed in their names and the Director of Surveys and Lands then signed their site plan, pursuant to section 128 of the Surveys Act Cap.128 of the Laws of Sierra Leone 1960. Further, they erected beacons and proceeded to register their prepared statutory declaration, together with the signed site plan attached thereto. Moreover, prior to this action, they constantly complained about trespass and encroachment of the realty to the Anti-Land Grabbing Division of the Sierra Leone Police at Ross Road in the East End of Freetown.

Exhibit DFS3 is the Respondents' defence and counter claim, which also accordingly serialised how the ancestors of the Respondents came to acquire the realty and how the Respondents got to acquire their interests through their ancestors. They also counter claimed that they have been in possession of and have enjoyed a quiet and undisturbed occupation of the realty for over forty years. Their Counsel, whilst addressing the Court banked on this point to raise the defence of adverse possession, which I will subsequently deal with in this analysis. However, it should be noted that, throughout the period of forty years for which the Respondents have allegedly been in occupation, they did not demarcate the realty; neither did they erect beacons, showing the portion they are claiming; nor did they obtain a site

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plan, signed by the Director of Surveys and Lands in tandem with section 128 of the Surveys Act of the Laws of Sierra Leone, 1960.

Also, they did not prepare a statutory declaration; neither did they think of the process of registration, found in Caps. 255 and 256 of the Laws of Sierra Leone, 1960. Further, there is nothing in evidence that when the Applicants surveyed the realty, the Respondents complained about any unlawful and direct and physical interference with the realty, which they claimed to have been in possession of for over forty years. The question that arises at this stage is how can a realty which is already being possessed be surveyed in the names of some other persons, without those in occupation raising any concerns. The next question is, did they lodge any report of trespass against the Applicants with the Anti-Land Grabbing Division of the Sierra Leone Police at Ross Road, in the East End of Freetown?

Nonetheless, the fact that the Applicants surveyed the land; got the Director of Surveys and Lands to sign their site plan, which they eventually registered, pursuant to the aforesaid statutory provisions, leads this analysis to an examination of the legality of the instance in which possessory titles can be transformed into documentary titles. This practice, regarding ownership of realty in the Western Area, has been sanctioned by the requisite provisions of the Statutory Declaration Act of 1835, which is applicable in Sierra Leone, by virtue of the reception clause: Section 74 of the Courts Act of 1965.

Thus, statutory declarations' recital clauses posit that declarants or their predecessors, have or had been in possession and control of the lands, as demarcated in their survey plans, attached to such declarations, as documentary proves of titles. Since statutory declarations are registrable instruments, their

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holders are bound to register them, pursuant to Section 15 of Cap. 256 of the Laws of Sierra Leone, 1960. Upon being registered, they become admissible in evidence for purposes of litigation, by virtue of Section 3 of the Evidence (Documentary) Act, Cap. 26 of the Laws of Sierra Leone 1960. The locus classicus of this legal position in our jurisdiction is Roberts **v.** Bright (1964-1966) ALR S.L 156. However, it should be noted, that the mere registration and admissibility in evidence of a statutory declaration does not presuppose the establishment of a valid title. In Fofanah **v.** Kamara (1964-66) ALR S.L 413 Livesey Luke Ag. J. as he then was, held that 'a statutory declaration is no proof of title'. To this, I will bring in the addendum that the facts in the registered instrument might have been concocted and hence misleading. Therefore, a statutory declaration might be as useless as any fictitious evidence, that a reasonable tribunal of facts may easily relegate to the doldrums.

So, a statutory declaration should only be considered as evidence of title (not as a document of title). Its relevance is coterminous to any other admissible evidence. However, the weight to be attached to it, is contingent on the decision of the Courts. This leads me to the next consideration, regarding reliance on possessory title, which is the long-term possession period of forty-five years, established in Swill **v.** Caramba-Coker (CA Civ. APP. 5/71) but taken to another level in Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004). Therefore, a claimant must now go beyond proving more than just mere long-term possession.

Evidentially, the Applicants have through the attached exhibit DFS5 to the application's supporting affidavit, proven long-term possession, but the Respondents have only raised long-term possession in their defence, without producing any evidence to that effect (see the affidavit in opposition). This takes

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the analysis to the next consideration. That is, a claimant must go further to establish a better title not only against the defendant, but against any other person. Again, as it stands, the Applicants' claim is based on evidence of title, but that of the Respondents is not predicated on any evidence of title. Also, no other person has come forth as an interested party, pursuant to Order 18 of The HCR 2007, to lay any claim to the realty; and there is no evidence before the Court that the realty belongs to another person. This fact is tied to the fourth consideration, rationalised in subsection (3) of section 5 of the Limitation Act N0. 51 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 occurred to him, or if it first accrued to some person through whom he claims to that person'.

Moreover, the Applicants who have produced evidence of title of their long-term possession, have since been taking necessary steps to prevent squatters and trespassers from having any access to the realty (see Paragraphs 13, 14 and 15 of Exhibit DFS1). Nevertheless, I will now examine the Respondents' case to determine the application, pursuant to Orders 16 and/or 17 of The HCR 2007. As established in Seymour Wilson **v.** Musa Abess (referenced above) defendants that counterclaimed ownerships assume the evidential burden of proving same. In effect, parties that counterclaimed (in actions of declarations of titles to realty) are bound to succeed on the strength of their case. They cannot rely on the weaknesses of their opponents' case for success. It is clear from the above analysis that the Respondents have not relied on any evidence of title to establish ownership.

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The Respondents, if at all, they had indeed been in possession and control of the realty for over forty years, should have invoked the provisions of the Statutory Declaration Act of 1835, to present a case of evidence of possession (as the Applicants have done). What is also important at this stage is whether the Respondents have specifically pleaded every ground of their defence of long-term possession. They have pleaded a long-term possession of over forty years, but they have not pleaded the particulars of adverse possession; neither have they referenced the specific period for which they have been in occupation.

To only say in the statement of defence that the Respondents have been in possession and control of the realty for over forty years is quite vague. In fact, Order 21 Rule 8 (2) of the HCR 2007, states that '… a defendant to an action for land shall plead specifically every ground of the defence on which he relies, and a plea that he is in possession of the land by himself, or his tenant is not sufficient'. Also, Rule 8 (1) of the same Order 21, deals with 'matters which shall be specifically pleaded' {see the side note to the Order}. This sub rule, inter alia, makes it mandatory (by virtue of the auxiliary verb: 'shall' therein), that 'A party shall in any pleading subsequent to a statement of claim plead specifically any matter for example performance, release, the expiry of any relevant period of limitation, fraud or any fact showing illegality - (a) which he alleges makes any claim to the opposite party not maintainable….'

Consonant with the above provision, one would ask whether the Respondents specifically pleaded the expiration of the relevant period of limitation to avail themselves of the defence of adverse possession? The answer is certainly no.

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The above analysis clearly points to sufficient grounds for this matter to be disposed of on a point of law. It is rather unfortunate that the Respondents' Counsel did not address the Court on this limb of the application but restricted his submissions to only Order 16 (the other limb of the application). Nonetheless, having critically analysed the facts and facts-in-issue in tandem with both the substantive and procedural laws, regarding disposal of cases on points of law; I will now proceed to deal with same, consonant with the law's position on summary judgment, enunciated in 1.6.2.

Meanwhile, the Respondents' Counsel in his submission, said it is clearly stated in the affidavit in opposition that his clients have a very good defence that has a clear prospect of success. So, the application should be dismissed; noting that the merit of the said defence can only be determined pursuant to the conduct of a full-blown trial. Does this submission, rationalise in the statement of defence and affidavit in opposition, really dovetail with the facts of this case, when the Respondents have not even produced anything to substantiate it; or furnish this Court with a simple evidence of title in justification of their counter claim of ownership, based on a long-term possession of over forty years? This Court is not convinced about the truthfulness of that statement because it is merely stated in the defence and deposed to in the application's opposing title. The position of this Court on the truthfulness and merit of Counsel's defence is justified by Ackner L J in Banque Deparis (SA) **v.** de NASA (1984) Llody's Rep, at page 23:

> 'It is also trite that the mere assertion in an affidavit of a given situation which is to be the basis on a defence does not, ipso facto, provide leave to defend; the Court must look at the whole situation and ask whether the defendant

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has satisfied the Court that there is a fair or reasonable possibility of the defendants' having a real or bona fide defence'.

However, Counsel for the Respondents relied on the Supreme Court's authority of Aminata Conteh **v.** The All Peoples Congress (supra.), delivered by the Hon. Mrs. Justice V.A.D Wright, J.S.C. The contention in that Aminata Conteh's case is simple and straightforward. Judgments had been given in the High Court and the Court of Appeal against the Appellant (in the Supreme Court). The Court of Appeal, in its determination of the appeal against the judgment in the High Court of Justice, focused on the merit of the case itself, but not on whether it was a case for leave to grant a summary judgment. Consequent on a clear ratiocination and analysis of the evidence, the Hon. Mrs. Justice Wright J.S.C, held that the evidence depicted the fact that there were indeed triable issues, that should have initially precluded the High Court of Justice from granting an Order of Summary Judgment, pursuant to Order 11 of the High Court Rules of 1960; and that the Court of Appeal erred in law and fact, when it subsequently dismissed the appeal; on the merits of the Respondent's case, without a conscientious consideration of the triable issues raised in the pleadings of the parties.

Thus, the Hon. Mrs. Justice Wright's decision in the foregoing case, has become the locus classicus in our jurisdiction, on applications for summary judgments, in circumstances when defendants are unjustly, unfairly and unreasonably disallowed to put forth their defences, when they should not be denied the constitutional right to be heard. Essentially, it was the said locus classicus that is the basis of the High Court's Commercial and Admiralty Division's decision in Taria Enterprises **v.** National Revenue Authority (supra.). This was a case that swirled around a contract, which

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both parties did not deny in their respective pleadings. What was in contention was whether there had been performance on the part of the Respondent.

The Applicant's Counsel (M. S. Bangura Esq.) argued that the action was not statute barred; and the evidence as exhibited was indicative of the fact that the Applicant fully complied with the contractual terms and conditions. Meanwhile, Counsel for the Respondent (Elvis Kargbo Esq.) contended that the terms and conditions of the contract were not complied with; and further submitted that the action was statute barred. Certainly, the summary of the facts and facts-in-issue of the foregoing case, depicts a contention about whether there was or was not a full compliance of the terms and conditions of the contract that established the legal relation between the Applicant and the Respondent. Thus, the Hon. Mr. Justice M. Sengu Koroma, J.A. (now J.S.C.), inter alia held that the defence put forth by the Respondent was not a sham and the Applicant's reply to the defence and counterclaim clearly negated the counterclaim in its entirety.

Characteristically, on this point, the Learned Justice ruled that that unequivocal contention necessitated the conduct of a full-blown trial. The Learned Justice, relying on the Aminata Conteh's case, quoted the Hon. Mrs. Justice V.A.D Wright, J.S.C, as follows:

> 'The position of the law has been well settled. As a general rule where a defendant shows by his affidavit that he has a reasonable ground for setting up a defence he ought to have leave to defend the claim 38 brought by him. The court must consider all the circumstances of the case including triable issues in deciding whether leave to defend ought to be granted'.

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Thus, the above Supreme Court decision was undoubtedly shaped by that in Jones **v.** Stones (1894) A.C 122, where it was held that, when there are questions of facts in dispute, summary judgment ought not to be given. Moreover, this position had been made clearer in the previous Court of Appeals' decision of Sheppard and C0. **v.** Wilkinson and Javis (1889) 6 TLR 13, which was as well referenced in the Aminata Conteh's case. In Sheppard's case it came out clearly that a defendant ought not to be shut down of defending unless it is clear indeed that he has no case in the action under discussion. Significantly, the effort of Sierra Leone's Supreme Court in developing the jurisprudence on summary judgment in tandem with the ideals of justice, has been quite laudable. And this effort has indubitably shaped the thought-processes of other Justices in Sierra Leone's Superior Court of Judicature. Meanwhile, the criteria that must be fulfilled for summary judgments to be granted have to be weighed against those which preclude courts of competent jurisdiction from granting them.

Thus, the criteria for and against the awards of summary judgments orders are stated in Order 16 of the HCR 2007 and clearly articulated in the other authorities and decided cases alluded to 1.6.2. One important point of note that has come out clearly in this ruling is the nexus between Orders 16 and 17 of the HCR 2007. The bridge between these two popular orders in Sierra Leone's adjectival law and legal practice is rooted in the fact that, applications can be made, given the peculiarity of the specific facts and facts-in-issues, pursuant to Order 16 and/or alternatively Order 17. This bridge is rationalised in the aspect of the rule that confirms that when defendants raise specific defences that are ill-conceived or unfounded in law, Order 16 applications can thus be made and granted {see C.E. Health plc **v.** Ceram Holding Co. (1988) 1 W.L.R 1219 at 1228 and Home Office **v.** Overseas Investment

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Insurance Co. Ltd. (1990) 1 W.L.R. 153-158}. Compare this with Order 17, which resonates with disposal of cases on points of law. Again, as the authors of the English Supreme Court Annual Practice (1999) indicated (see 1.6.2), Orders 16 and 17 are tied to the restrictive (not the unfettered) jurisdiction of the Court to invoke Order 21 Rule 17, which specifies and articulates, in clear and unambiguous terms, the circumstances, pursuant to which the Courts, can strike out pleadings. Sub Rule (1) of Rule 17 thus 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 on 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 and vexatious; (c) it may prejudice, embarrass or delay the fair trial of the action (d) it is otherwise an abuse of the process of the court'.

Guided by the foregoing rule and the fact that the pleadings in the statement of defence discloses no reasonable defence of possessory title; coupled with the facts that the pleadings in the same statement of defence, are in contravention of the provisions of Order 21 Rule 8(1) and (2), I hold that the application for the disposal of this matter on a point of law and/or alternatively for summary judgment to be entered for the Applicants is logically sound and legally relevant. What really pummels this Bench to arrive at this conclusion is the fact that the foregoing analysis of the evidence leads to how clearly the connect between Orders 16 and 17, concerning disposal on a point of law is tied to a summary judgment, relating to the formulation of a defence that is ill-conceived and/or unfounded in law, based

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on the peculiarity of the evidence of the instant case. I therefore finally hold as follows:

1. A declaration is hereby made that the Apllicants are the fee simple owners of the land and hereditaments therein situate, lying and being at Off Waterloo-Masiaka Highway Newton in the Western Area Rural District of the Republic of Sierra Leone, registered by way of a Joint Statutory Declaration dated the 22nd day of November 2022 and registered N0. 22/2022 at page 1 in Volume 72 of the Record Book of Statutory Declaration kept in the Office of the Administrator and Registrar-General.
2. Damages for trespass to be assessed.
3. A perpetual injunction restraining the Respondents by themselves, their servants, privies and workmen or howsoever called from entering or in any way interfering with the land and hereditaments therein of the land situate at Off Waterloo-Misiaka Highway, Newton in the West Area Rural District of the Republic of Sierra Leone.
4. Immediate possession of the said land and hereditaments therein.
5. The cost of this application is assessed at Ten Million Leones (Old currency) to be paid by the Respondents.

The Hon. Justice Dr. Abou B.M. Binneh-Kamara, J.

Justice of Sierra Leone's Superior Court of Judicature

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