CC 16/19 2019 K. N0.4

In the High court of Sierra Leone

(Land and Property Division)

Between:-

Gibrilla Ameen kamara- Plaintiff/Applicant

51 Off Bai Bureh Road

Freetown

And

Alhassan kamara- 1st Defendant/Respondent

Mohamed Bangura- 2nd Defendant/Respondent

Abdulai Bangura- 3rd defendant/Respondent

51 Off Bai Bureh Road

Freetown

Counsels:

Amadu Koroma Esq. for the Plaintiff/Applicant

Abdulrahman kamara Esq. for the Defendants/Respondents

LANBUK.COM LANBUK SIERRA LEONE

Ruling on an Application for a Summary Judgment, Pursuant to Order 16 of the High Court Rules, 2007, Constitutional Instrument N0. 25 of 2007, Delivered by The Hon. Dr. Justice Abou B.M Binneh-kamara, on Tuesday, 6th October, 2020.

1.0 Introduction

This is a ruling on an application for a summary judgement, dated 12th March, 2019, filed by Amadu Koroma Esq. (hereinafter referred to as Counsel for the Applicant) and served on Abdulrahman Kamara Esq. (hereinafter referred to as Counsel for the Respondent) of Yoni Chambers. The application is bolstered by a thirty-five (35) paragraph affidavit, deponed to by Gibrilla Ameen Kamara, and dated 12th March, 2019; and a supplemental affidavit, sworn to and dated 14th June, 2019. The application is made, pursuant to Rules 1, 2 and 3 of Order 16 of the High Court Rules, 2007, Constitutional Instrument N0. 25 of 2007 (hereinafter referred as The HCR, 2007).

The application is pummeled by four (4) unequivocal orders, which Counsel for the Applicant, wants this Honourable Court to grant, because of the extent to which the facts that underpin the application, resonate with the legal compass of Order 16 of The HCR, 2007. Meanwhile, Counsel for the Respondent, on 10th June, 2019, filed in an affidavit,

LANBUK.COM LANBUK SIERRA LEONE

debunking the facts, deposed to in particularly the affidavit of 12th March, 2019. That affidavit is predicated on the supposition that it would be unfair, unjust and unreasonable to grant the application of 12th March, 2019. Moreover, that affidavit is deposed to by the 1st Respondent (Alhassan Kamara), who happens to be the biological brother of the Applicant (Gibrilla Ameen Kamara).

1.1 <u>The Application's Principal Purports</u>

For ease of reference, it is rationally and legally expedient to sequentially set out the three orders as prayed for on the face of the summons:

1. To strike out the defence and counter-claim of the Respondents on the grounds that they are a sham and that they do not disclose any triable issue (s).
2. To dismiss the defence and counter-claim of the Respondents, enter judgment on behalf of the Applicant, and grant the orders prayed for in the writ of summons, dated 15th January, 2019.
3. Any further or other order that this Honourable Court may deem fit and just.

LANBUK.COM LANBUK SIERRA LEONE

1.3 The Submissions of Counsel for the Applicant

Meanwhile, on 14th May, 2019, Counsel for the Applicant, addressed this Honourable Court on the contents of the application of 12th March, 2019. He justified his arguments with the following submissions:

1. There are eleven (11) pieces of Exhibits, which are thus tendered in support of the application. The Exhibits are marked GAK1-11. GAK1, 2 and 3 are copies of a certificate of registration, a receipt and a registered conveyance in the Applicant's name. Exhibits GAK 4, 5 and 6, are copies of a building plan and permit, receipts issued by the Applicant, in respect of the rents, which tenants have been paying to him, for the realty in dispute, and an agreement negotiated and made between the Applicant and the 2nd Defendant. Exhibits 7, 8 and 9, are copies of the utility bills in the name of the Applicant, notices to quit served on the 2nd and 3rd Respondents, and a separate notice to quit that was served on the 1st Respondent. Exhibits GAK 10 and 11, are copies of a private criminal summons, and a letter that was served on the Respondents, by the former Solicitor of the Applicant.
2. The entirety of both affidavits, depicts the extent to which a case for a summary judgment is succinctly made on behalf of the Applicant; as the facts deponed to therein have not been

LANBUK.COM LANBUK SIERRA LEONE

controverted with any evidence adduced by Counsel on the other side (see his affidavit in opposition of 10th June, 2019, to confirm this submission).

3. The Applicant bought a piece and parcel of land in 2002. Exhibit GAK2 (alluded to above) is the receipt, depicting part-payment in respect of the realty in dispute. The Applicant's former Solicitor, prepared a conveyance on his behalf; and it was executed by the Vendor on the day the final payment was made. The conveyance was accordingly registered in the Record Book of Conveyances (2011) kept in the Office of the Administrator and Registrar General. And the Applicant proceeded to obtain a residential building permit from the Ministry of Works, Housing and infrastructure. The building permit and plans, are thus exhibited and accordingly marked as indicated above.
4. After the Applicant had put up the structure, he rented part of it to the 2nd and 3rd Respondents. He then allowed the 1st Respondent, his biological brother, to occupy the other portion. Nevertheless, incessant confrontations and quarrels, between the 1st Respondent's family and that of the Applicant, the former and his family was notified to quite the property. It was against this backdrop that the 1st Respondent, challenged the ownership of the Applicant in the court below (the Magistrate's Court). But in actual

LANBUK.COM LANBUK SIERRA LEONE

fact, he does not have any evidence to prove that the property belongs to a third party (their other brother who lives in England) or their family.

1.4 The Submissions of Counsel for the Respondent

Nonetheless, in opposition to the application filed on behalf of the Applicant, dated 12th March, 2019, there is an affidavit (as indicated above), sworn to by the Respondent on 10th June, 2019, with three (3) Exhibits attached thereto. The Exhibits are marked AK1-3. Counsel thus proceeds and makes the following submissions:

1. Exhibit AK1 is a writ of summons dated 15th January, 2019. Exhibit AK2 contains a memorandum and a notice of appearance, dated 23rd January, 2019. Counsel relies on the entirety of the aforesaid affidavit; and emphasises the centrality of particularly paragraph 5 through 13, to the Respondents' case.
2. That the 1st Respondent is the biological brother of the Applicant. The 1st Respondent has been undisturbedly and uninterruptedly living in that property, since it was bought in 2002. And the 1st Respondent sought to challenge the Applicant's alleged ownership, when he fraudulently laid claims to it.
3. The property was bought by the 1st Respondent's twin brother (Alusine Kamara), who resides in England. In fact, Alusine Kamara

LANBUK.COM LANBUK SIERRA LEONE

and the 1st Respondent, are the elder brothers of the Applicant. The money that was used to purchase the property was sent by Alusine Kamara to the 1st Respondent, who is uneducated. The 1st Respondent, went with the Applicant to the Vendor's place to purchase the property. The Vendor is Ibrahim Bah, who is still alive. This is even confirmed in Paragraphs 8 and 9 of the affidavit in support of the application.

4. Counsel refers the Court to Exhibit AK3, which is the affidavit in opposition; and the contents of the defence and counter-claims, particularly paragraph 1 through 9.
5. The action should not be summarily determined, to the exclusion of a full blown trial, wherein evidence will be led and the counter-claims determined.

1. 5 <u>The Approach/Method that Guides the Determination of the Application</u>

Essentially, I shall first review the subsisting literature in case law and other pertinent legal authorities, alongside the requisite statutory provisions, to examine how the Courts, have been exercising their jurisdiction in making orders, relative to summary Judgements. Secondly, I shall juxtapose the arguments of both Counsels, to address their individual concerns; regarding why the order of a Summary Judgement, should or should not be granted. Thirdly, I will eventually determine

LANBUK.COM LANBUK SIERRA LEONE

whether in the context of this application, it is legally and rationally expedient, to grant or not to grant the orders, as prayed for on the face of the application of 12th March, 2019. However, before proceeding with any of the foregoing tasks, let me hasten to state that my reading of the papers, inter alia, depicts that the application, factually dovetails with the provisions of Sub rule (2) of Rule 1 of Order 16. And that the affidavit that strengthened the application is also undoubtedly resonates with the provisions of Sub rules (1) and (2) of Rule 4 of Order 16. Essentially, I must state at this juncture that there is no issue of procedural incongruity to grapple with (prior to) the determination of this application.

1.6 <u>An Analytical Exposition of the Subsisting Literature on Summary Judgements.</u>

Circumspectly, the authors of the Supreme Court Annual Practice of 1999 (The White Book), which contains a detailed analysis of The HCR, 2007, clearly articulated the legal significance of Summary Judgements in their analysis between pages 162 and 199. Their pontification in paragraph 14/1/2 in page 163 is so pertinent to the Court's jurisdiction in its determination of applications on Summary Judgements, that I feel obligated to replicate it here:

LANBUK.COM LANBUK SIERRA LEONE

> The scope of Order 14 *(Order 16 in The HCR, 2007, my emphasis in italics)* 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.

Thus, in tandem with the foregoing, my consideration to grant or not to grant the orders, will be entirely underscored by the provisions of Order 16 of The HCR, 2007; as opposed to any other consideration that may appear just, fair and reasonable to either of the parties to the application. Purposefully, the beauty of Order 16 is to enable the Applicant to expeditiously obtain a Judgement in a circumstance, wherein there is certainly and plainly no defense to negate their claim(s). Furthermore, Summary Judgement can still be entered in favour of the Applicant, even in circumstances, wherein the Defendant's defenses, are predicated on an ill-conceived point of law. The Court's decisions in the cases of **C. E Health PLC v Ceram Holding Co. (1988) 1 WLR 1219 at 1228; (1989) 1 ALL E.R 203, at 210, Home v Overseas Insurance Co. (1990)1 WLR 153-158,** are quite instructive on this realm of procedural justice. Significantly, my reading of Rule 1 through 3 of Order 16, depicts the following conditions precedent that should be met, for an order of a Summary Judgement to be entered in favour of the Applicant:

LANBUK.COM LANBUK SIERRA LEONE

1. The Defendant must have given a notice of intention to defend
2. The Statement of Claim must have been served on the Defendant
3. The affidavit in support of the application must comply with Rule 2 of Order 16.

Analytically, regarding the first conditionality, Exhibit AK2, confirms that the Respondents' Counsel, accordingly entered appearance to this action on their behalf. And this is accordingly seen in both the Memorandum of Appearance entered and the Notice of Appearance entered by Yoni Chambers on the 23rd January, 2019. Moreover, the facts deposed to in the affidavit in opposition, collectively points to the Respondents' willingness to defend this action. This inferential conclusion is factually strengthened by the Respondents' Defence and Counterclaim, dated 31st January, 2019, which was duly served on the Applicant's Counsel.

Thus, the notice of intention to defend this action, was even made known, when the Respondent, acknowledged service of the writ; and stated in the acknowledgement that he intended to contest the action. Further, having regard to the second criterion, Exhibit AK1, which is the Writ of Summons, commencing this action, incisively contains the Statement of the Applicant's Claims. This confirms the fact that the Statement of Claims has been accordingly served on the Respondents in this action; as there is an affidavit of service in the file. In fact, in this

LANBUK.COM LANBUK SIERRA LEONE

case, the Statement of Claims is indorsed with the Writ of Summons, dated 15th January, 2019. Thus, it is neither served with it, nor immediately after the service of it; though either of the foregoing latter situations, meets the threshold of the second criterion. Meanwhile, consonant with the final criterion, the affidavit in support of the application, indubitably acknowledges a statement of the deponent's belief that there is indeed no defense to his claim (see the pleadings in the affidavit that bolstered the application).

Procedurally, having established that the foregoing criteria have been accordingly complied with, a prima facie case can thus be made, for an order of Summary Judgement to be entered in favour of the Applicant. However, Sub rule (1) of Rule 3 of the same Order 16, imposes a clear evidential burden on the Respondent to prove to the Court that there is an issue or question in dispute, which ought to be tried, or there ought for some other reason to be a trial. Have the Respondents discharged this evidential burden? This intriguing question can be answered in the contexts of the evidential value of the documents attached to the affidavits; and the corresponding submissions that underpin the arguments of both Counsels.

LANBUK.COM LANBUK SIERRA LEONE

1.7 The Critical Context: Contextualizing Counsels' Arguments.

Analytically, the principal thrust of the contention in this matter, having regard to the affidavits (in support and in opposition), and the exhibits attached thereto, is about ownership of all that piece and parcel of land and premises situate, lying and being numbered for municipal purposes as 51a and 51, Off Kissy Bye Pass Road, Freetown, in the Western Area of the Republic of Sierra Leone, as delineated and described on Survey Plan L.S 1488/2001 dated 26th May, 2010, attached to a Conveyance, dated 14th June, 2011 and duly registered as N0. 756/2011 at page 118, in Volume 675, of the Record Books of Conveyances kept in the Office of the Administrator and Registrar General, Walpole Street, Freetown.

The Applicant has produced documentary evidence (see Exhibit GAK3), in justification of his Counsel's submission that the realty in question belongs to him. He has further produced a plethora of other documentary pieces of evidence in support of this claim. Thus, Paragraph 4 through 6 of the affidavit of 12th March, 2019, averred that the Applicant, was not only a successful businessman, but an activist whose operations were agriculturally-oriented in the World of Non-Governmental Organisations (NGOs). Exhibit GAK2 is a receipt, issued to the Applicant by the Vendor (Mr. Ibrahim Bah) as a part payment in

LANBUK.COM LANBUK SIERRA LEONE

respect of the land in question. Apart from the fact that the receipt is in the name of the Applicant, it is witnessed by Messrs. Fadika (an estate agent) and Sesay. Thus, Paragraph 9 averred that the said receipt was issued to the Applicant in the presence of the 1st Respondent. Again, Exhibit GAK3 (the Conveyance), was according to Paragraph 10, executed by the Vendor in the presence of the 1st Respondent and the aforementioned witnesses. Moreover, Exhibit GAK3, contains an attachment, which is a receipt of payment for the preparation and registration of the Conveyance. The said receipt was issued to the Applicant by Franklyn Kargbo and Co. (now Tanner Legal Advisory). Again, Exhibit GAK4 is the building permit in respect of the structures that are erected on the land in question.

And that permit was also issued in the name of the Applicant. Furthermore, the permit contains two receipts: the first is issued by the Ministry of Works, Housing and Infrastructure; and the second by the National Revenue Authority. And both receipts are in the name of the Applicant. Meanwhile, Exhibit GAK5, encompasses a number of receipts, issued to tenants by the Applicant, in respect of rents he had received from them. ExhibitGAK6, is a lease agreement made between the Applicant (as Landlord) and Mr. Mohamed Bangura; for the extension of the latter's apartment, for a consideration of 1.5 million Leones that was paid to the former on the 21st June, 2015. The lease agreement even

LANBUK.COM LANBUK SIERRA LEONE

encapsulates an essential attachment, indicating the expenditures, which Mr. Mohamed Bangura, expended in extending the apartment he occupied. And the Applicant accordingly indorsed such expenditures. Furthermore, Exhibit GAK7, subsumes a total of eight (8) utility bills (city rates) issued by the Freetown City Council in the name of the Applicant. Moreover, Exhibit GAK9, is a letter (a notice to quit), dated 31st January, 2018, issued by the Applicant to the 2nd and 3rd Respondents. The said exhibit also contains a notice to quit served on the 1st Respondent (as a tenant-at- will) by Counsel for the Applicant. Moreover, ExhibitGAK10, is a private criminal summons in respect of an allegation of 'Larceny of Document of Title to Land and Other Legal Documents, contrary to Section 7 of the Larceny Act, 1916'.

Alas! Since Exhibit GAK10, resonates with a very strong allegation that is quite germane to the 1st Respondent's case, I will therefore subsequently deal with it as the analysis unfolds. Exhibit GAK11, is a notice to quit served on another tenant (Tamba A. Bull) by lawyer Margaret A. L. kamara, on the Applicant's behalf. Essentially, the evidential value of the foregoing documents to the application of 12th March, 2019, has to be evaluated against that of the very affidavit evidence, adduced by the Respondents and the aversions in the Defence and Counterclaim in a bid to determine whether the application, should or should not be granted.

LANBUK.COM LANBUK SIERRA LEONE

However, as indicated above, three exhibits (writ of Summons, Appearance and Memorandum of Appearance and Defence and Counterclaim) were attached to the affidavit in opposition, filed on behalf of the Respondents. The affidavit in opposition of 10th June, 2019, practically replicated most of the facts, embedded in the Defence and Counterclaim. Nonetheless, it is clear from the affidavits evidence that the Respondents have not relied on any documentary evidence, but paragraph 1 through 9 of their Defence and Counterclaims, contain a plethora of allegations that worth a legally forensic examination, against the backdrop of the documentary evidence catalogued above.

First, Paragraph 1 is coterminous with the pieces of information espoused in Paragraphs 7 and 8 of the affidavit in opposition. Alas! Five allegations are discernible from the foregoing paragraphs and exhibits. First, the Respondents alleged that the property is not owned by the Applicant. Second, the property is owned by one Alusine Kamara (the twin brother of the 1st Respondent), who resides in London. Third, the predecessor in title of the property in question is Ibrahim Bah; and it was he who sold it to Alusine Kamara, through the Applicant and 1st Respondent. Fourth, the Applicant (sometime in 2007) obtained the original title deed from the 1st Respondent on the pretext that he was going to pay the city rates, but eventually converted it into his own, through the preparation of the conveyance, dated 11th June, 2011. Fifth,

LANBUK.COM LANBUK SIERRA LEONE

the foregoing allegation was confirmed by the predecessor in title in a matter, pending before Magistrate Court No.1 at Ross Road. Circumspectly, I will accordingly deal with the aforementioned allegations in bid to establish whether they are sufficient enough to warrant this Honourable Court to conclude that there are indeed triable issues that should pummel a full-blown trial of this matter. Concerning the first allegation, the Applicant has relied on Exhibit GAK3, which is the aforesaid conveyance. This could prima facie mean that he has a legal interest in the property, making him the holder of the fee simple absolute in possession.

However, this subsisting legal interest, can be controverted in the circumstance, wherein another person is laying claim to the same property, on the production of another conveyance, showing good root of title; or in an instance wherein another person relies on a good root of possessory title, justifying ownership of the property. Nonetheless, I will sequentially (albeit subsequently) address the issues of 'good root of title' and 'possessory title' aforementioned, in so far as they relate to the application of 12th March, 2019. However, in the instant case, the Respondents have neither relied on any documentary title; nor have they 'clearly' relied on any possessory title, to establish that there are triable issues, which can only be resolved via a full-blown trial.

LANBUK.COM LANBUK SIERRA LEONE

The adverb 'clearly' is aptly used in the preceding sentence, because Paragraph 11 of the affidavit of 10th June, 2019, makes allusion to the fact that the 1st Respondent has been in an 'uninterrupted and 'undisturbed' occupation of the property since 2002. Regarding the second allegation, there is nothing in evidence to establish that Alusine Kamara has any legal interest in the property. In fact, he is not a party to this action. And, pursuant to the provisions of The HCR 2007, he has not indicated any willingness to be made a party to this action. Neither has he come forth to challenge the title deed of the Applicant (Exhibit GAK3). Nor has he shown any interest in this matter. These factual circumstances, would beg a number of intriguing questions:

Why has Alusine Kamara not indicated any willingness to challenge the title deed of the Applicant, if at all it was he who bought the property? Why has he not even invoked the relevant provisions of The HCR, 2007, to be made a party to this action? Why hasn't he shown any interest in this matter? The second issue that is cognate with the second allegation is the determination of whether the 1st Respondent has any interest (legal or equitable) in a property that is allegedly owned by his twin brother (Alusine Kamara), when he is alive. Assuming without conceding that Alusine Kamara owns the property; that does not in any way justify the allegation that the 1st Respondent has any interest in the property,

LANBUK.COM LANBUK SIERRA LEONE

when Alusine is alive; and depending on the circumstances, even after death.

Again, there is no evidence validating the third allegation. In fact, there is nothing to prove that the predecessor in title sold the property to Alusine Kamara, through the Applicant and 1st Respondent. But there is documentary evidence to establish that the predecessor in title issued a receipt of a part payment of four (4) million Leones to the Applicant in respect of the sale of the land in question. And there is documentary evidence, establishing that the said receipt, which takes the form of an agreement was signed by the predecessor in title, the Applicant and the aforementioned witnesses (Messrs. Fadika and Sesay). In fact, there is nothing in the face of that receipt, confirming the presence of the 1st Respondent.

Alas! A forensic deconstruction of the contents of the receipt (Exhibit GAK2), unequivocally depicts the veracity of the foregoing findings, germane to the third allegation. The fourth allegation relates to the purported title deed of Alusine Kamara, which was allegedly skillfully stolen from the 1st Respondent by the Applicant on the pretext that he was going to pay the city rates for the property in question. It would be very weird for any sane person to believe the truthfulness of this allegation; given the fact that Alusine Kamara has neither shown any

LANBUK.COM LANBUK SIERRA LEONE

interest in this matter; nor has he sought to challenge the authenticity of the subsisting title deed of the Applicant. Again, given the fact that the receipt of the initial payment for the property (Exhibit GAK2) is not in the name of Alusine Kamara, it would be quite outlandish or strange to believe that there has been a registered conveyance in the name of the said person, which was eventually converted into that of the Applicant. If at all that is the case, it is presumed that that conveyance should have been registered in the Office of the Administrator and Registrar General, pursuant to the requisite provisions of Caps. 255 and 256 of the Laws of Sierra Leone, 1960.

And the officers of that office would have been of immense help to the 1st Respondent to locate Alusine Kamara's allegedly stolen conveyance, if at all it has had any existence. In fact, it should be noted that no rightminded lawyer, let alone the highly credible Barristers of Tanner Legal Advisory, would condescend so low, by indulging in a form of professional impropriety; that is as criminal as fraudulently converting a subsisting title deed from the name of one person into another, when there is evidence (Exhibit GAK 3 and its attachments), establishing that the Applicant's conveyance was directly made from that of the processor in title, that sold the property.

LANBUK.COM LANBUK SIERRA LEONE

It is therefore unfair, unjust, unreasonable and even absurd; for Counsel for the Respondents, to make such a scandalous, scurrilous and vexatious allegation is his pleadings that is quite prominent in what he dubbed as Defence and Counterclaim. The submission that the fifth allegation was confirmed by the predecessor in title of the subject of this litigation, in a pending matter before Magistrate Court No.1 at Ross Road; is neither here nor there.

First, it was the predecessor in title that signed the receipt (in the name of the Applicant) of the initial payment for the realty in question (see Exhibit GAK2). Second, there is nothing before this Honourable Court, confirming the allegation that he did testify in the Magistrate's Court, that the conveyance (see Exhibit GAK3), which the Applicant has relied on as the owner of the fee simple absolute in possession, was forged. But there is evidence to establish that it was the same predecessor in title that executed the said Exhibit GAK3 as vendor; on behalf of the Applicant, as purchaser (see Exhibit GAK 2 and 3).

Third, the seriousness of the allegation, should have warranted the Respondents' Counsel, to have exhibited the records of the court below, in his affidavit in opposition, depicting that testimony as it was adduced in the Magistrate's Court. Hence, there is nothing to justify that serious allegation. Third, the same seriousness of the allegation should flag up

LANBUK.COM LANBUK SIERRA LEONE

the issue of why the Police (at Kissy and the Criminal Investigations Department), after having investigated the alleged criminality, surrounding the allegations of stealing of a conveyance and forgery on the part of the Applicant, refused to charge him to court (see Paragraphs 26, 27 and 28 of the affidavit of 12th March, 2019).

The peculiarity of the circumstances that would culminate in the refusal of the Police to charge or not to charge any suspect to court is not unconnected with the unavailability or lack of the apposite and sufficient evidence to prosecute. Even though a criminal action can either be brought to our courts by a warrant or a summons, the seriousness of the allegation, would again necessitate police prosecution, should they have the requisite evidence. Fourth, in the context of the foregoing analysis, the allegation in itself, does not amount to any credible defence that should warrant a full blown trial.

Nevertheless, in as much as the issue of the alleged larceny of a title deed, contrary to Section 7 of the Larceny Act, 1916, is unsubstantiated, it is only germane to the 1st Respondent's case; it does not have anything to do with the 2nd and 3rd Respondents, who are also contesting this action. Meanwhile, according to Exhibit GAK5, the 2nd and 3rd Respondents, were put into occupation by the Applicant; and they have been paying rents to him. Exhibit GAK 6, depicts the extension

LANBUK.COM LANBUK SIERRA LEONE

agreement, which the 2nd Defendant entered into with the Applicant. And the submission by Counsel for the Applicant, that the 2nd and 3rd Respondents, pleaded for time in the eviction action in the court below, which the Applicant instituted, pursuant to Cap 49 of the Laws of Sierra Leone, 1960, was not controverted by Counsel on the other side. And it would appear that the facts deposed to in Paragraphs 21 and 22 of the affidavit of 12th March, 2019, which are not unconnected with the above issue, are clearly rationalised in Exhibits GAK8 and 9.

However, the issues of 'good root of title' and 'possessory title', which appear to be the principal thrust of the facts, deposed to in Paragraph 11 of the affidavit in opposition, cannot be left to fester unaddressed in this analysis. Thus, case law has clarified how they both can be proven in any court of competent jurisdiction in Sierra Leone. Thus, in the context of the landmark decision in **Swill v Caramba-Coker (Civ. App. N0. 5/71)**, to establish a case for a good root of possessory title, the threshold of forty-five (45) years uninterrupted possession and occupation must be met. So the question that is to be determined is whether the 1st Respondent has been in a quiet and undisturbed possession of the realty in question for up to 45 years.

Nevertheless, there are a number of questions to be raised at this stage; in a bid to determine whether there are issues or questions in dispute,

LANBUK.COM LANBUK SIERRA LEONE

which ought to be tried; or whether there ought for some other reason (s), to be a trial. This is the central thematic construct of the provision of Sub rule (1) of Rule 3 of Order 16 (referenced above), which is germane to the determination of this application. The answers to the following questions, will certainly guide this Honourable Court, to discern the concerns, raised in Sub rule (1) of Rule 3 of Order 16, in tandem with the facts in issue relevant to this application:

1. 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 the registered instrument (in this case the registered conveyance referenced above)?
2. Does Cap. 256, pursuant to which ExhibitGAK3 is registered, deal with registration of title?
3. Does reliance on possessory title constitute a defense to an action, in a circumstance, wherein the other side relies on a registered instrument (a conveyance)?

Meanwhile, I will proceed by answering the first question in the negative; and simultaneously provide the requisite succour for this position, with a notable quotation from Livesey Luke, C. J., in the celebrated case of **Seymour Wilson v Musa Abbess (Civ. App. 5/79)**:

LANBUK.COM LANBUK SIERRA LEONE

> Registration of an instrument under the Act *(Cap. 256, my emphasis in italics)* 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)*.

Moreover, I will also answer the second question in the negative. Thus, the short title to Cap.256 (as amended) reads 'An ordinance to Amend and Consolidate the Law Relating to the Registration of Instruments'. So, it is indisputable that the purports of the statute is about 'registration of instruments' and not 'registration of title'. Unarguably, there is no provision in its thirty-one (31) sections and three (3) schedules that deals with registration of title. Livesey Luke C.J., further 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 between pages **74** and **81** of his analysis. The following are the segment of his analysis, which can be quickly and elliptically put into context in a bid to determine the application:

LANBUK.COM LANBUK SIERRA LEONE

convinced that proceeding with a full blown trial will amount to unnecessary waste of time for the courts and the partied; and the pecuniary resources of the litigants.

However, contextually, it is the responsibility of this Honourable Court to determine whether the mere reliance on a 'possessory title' constitutes a defense to an action, in a circumstance, wherein the other side relies on a registered instrument (in this case a registered conveyance). Essentially, the Courts decisions in **Cole v Cummings (N0. 2) (1964-66) ALR S/L Series page 164, Mansaray v Williams (1968-69) ALR S/L Series page 326, John and Macauley v Stafford and Others S. L Sup. Court Civ. Appeal 1/75**, are very much indicative of the circumstances in which Judgements have been entered in favour of owners of possessory titles, in even instances wherein their contenders, were holders of registered conveyances. This position is also satisfactorily bolstered by Livesey Luke C. J., in Seymour Wilson v Musa Abbess (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. So there are possibly hundreds of pre-1964 unregistered conveyances... It

LANBUK.COM LANBUK SIERRA LEONE

would mean that any person taking a conveyance to 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 against the true owner holding an unregistered pre-1964 conveyance. The legislature would not have intended such absurd consequences.

However, the most significant question that should be posed at this stage is whether the issue of the 1st Respondent's alleged possessory title meets the threshold, established in **Swill v Caramba-Coker (Civ. App. N0. 5/71)**? Thus, there is absolutely nothing of evidential value before this Honourable Court that should warrant any affirmative answer to the foregoing question. The uninterrupted and undisturbed occupation and possession of the 1st Respondent since 2002 (alluded to in Paragraph 11 of the affidavit of 10th June, 2019), is by far below the threshold of forty-five (45), established in the foregoing case.

Therefore, the so-called possessory title defence raised by Counsel for the Respondent is nothing, but a sham; and does not hold well in the light of the facts of this case. The Applicant's reliance on Exhibit GAK3, which is the aforesaid conveyance, as the holder of the fee simple absolute in possession, has not been significantly evidentially challenged by all three Respondents, by either producing competitive registrable

LANBUK.COM LANBUK SIERRA LEONE

instruments (title deeds); or showing a good root of possessory title, justifying their ownership of the property. Furthermore, there is nothing to confirm that the Respondents, have produced any shred, scintilla or iota of evidence, in justification of their assertion that they have meritoriously good defence in this matter. Hence, they have not been able to discharge the evidential burden, imposed by the provisions of Sub rule (1) of Rule 3 of Order 16 of The HCR, 2007.

I will therefore order as follows:

1. The Defence and Counterclaim of the Respondents are hereby struck out on the ground that they are a sham and that they do not disclose any triable issue (s).
2. The Applicant is hereby declared the holder of the fee simple absolute in possession of all that piece and parcel of land and premises situate, lying and being numbered for municipal purposes as 51a and 51, Off Kissy Bye Pass Road, Freetown, in the Western Area of the Republic of Sierra Leone, delineated and described on Survey Plan L.S 1488/2001 dated 26th May, 2010, attached to a Conveyance, dated 14th June, 2011 and duly registered as N0. 756/2011 at page 118, in Volume 675, of the Record Books of Conveyances kept in the Office of the Administrator and Registrar General, Walpole Street, Freetown.

LANBUK.COM LANBUK SIERRA LEONE

3. The Applicant is hereby granted recovery of vacant possession of the realty mentioned in order two (2) above from the Respondents in this action.

4. The 2nd and 3rd Respondents are hereby ordered to pay their outstanding rents for the period spanning between June, 2018 and October, 2020.

5. A cost of Five Million (Le 5, 1000, 000) shall be paid by each of the Respondents to the Applicant.

6/10/2020

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

Justice of the Superior Court of Judicature of Sierra Leone.

LANBUK.COM LANBUK SIERRA LEONE