C. C 93/13 2013 C. N0. 13

In the High Court of Sierra Leone

(Land and Property Division)

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BETWEEN:

Mrs. Kainda Wray - Plaintiff

Suing as an Administratrix of

The Estate of Abal Cole (Deceased)

AND

Sierra Blocks Concrete Products - 1st Defendant

Sierra Leone Limited

35 Light Foot - Boston Street

Freetown

AND

The Attorney General and Minister - 2nd Defendant

Of Justice

Lamina Sankoh Street

Freetown

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Counsel:

Jessie M. Jengo Esq. for the Plaintiff

Yada H. Williams Esq. for the 1st Defendant

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Abigail Suwu-Kaindoh Esq. for the 2nd Defendant

1.0 Judgment on an Action Commenced by a Writ of Summons, dated 12th March, 2013, for Declaration of Title to Property, Revocation of a Deed of Conveyance, Recovery of Possession and Damages for Trespass, Injunction and Cost, Delivered by The Hon. Dr. Justice Abou B. M. Binneh-Kamara, on Monday, 10th January, 2022.

1.1 Introduction: Summary of the Interlocutory Proceedings.

This is a judgement regarding a writ of summons, dated 12th March, 2013, originally issued against the 1st Defendant herein, by Taylor and Associates of N0.3 Waterloo Street, Freetown, pursuant to Rules 1 and 2 of Order 5 of The High Court Rules 2007, Constitutional Instrument N0. 8 of 2007 (hereinafter referred to as The HCR, 2007), in respect of the aforementioned orders, embedded in the writ's prayers. Procedurally, the Solicitors of Margaretta Chambers (Shears-Moses and Co.) accordingly entered an appearance[1], on behalf of the 1st Defendant on 2nd May, 2013. So, no judgement in default of appearance[2], was entered against the 1st Defendant. Subsequently, the said law firm filed a statement of defence (without counterclaim) on the 20th May, 2013. Thus, neither was a summary judgement entered[3]; nor was the action disposed of on a point of law[4].

[1] See Order 12 of The HCR, 2007.
[2] See Rule 1 of Order 13, ibid.
[3] See Order 16, ibid.
[4] See Order 17, ibid.

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Meanwhile, by judge's summons, dated 18th June, 2013, Taylor and Associates, applied for directions[5] to proceed with the action forthwith. The Hon. Justice A. D. konoyima (now deceased) accordingly ordered the directions on 29th October, 2013. Moreover, though Taylor and Associates complied with the directions on the 17th June, 2014, Shears-Moses and Co. did not. Therefore, on 9th July 2015, an ex parte notice of motion was filed for the summons for directions, dated 29th October, 2013, to be restored. The Court thus lent credence to the application and on 7th December, 2015, Taylor and Associates filed, another notice of motion, requesting the Court to strike out the defence, filed on the 20th of May, 2013 by Shears-Moses and Co.; and for judgment to be accordingly entered, on behalf of the Plaintiff[6].

Meanwhile, on the 17th February, 2016, The Hon. Justice A. D. Konoyima, granted the orders as prayed in the writ of summons (as replicated on the face of the notice of motion, dated 7th December, 2015). Again, on 4th March, 2016, Taylor and Associates, filed a notice of motion, requesting leave of the Court to issue a writ of possession. This time it was The Hon. Justice M. D. Kamara that granted the order for leave to issue a writ of possession on 14th July, 2016. However, on the 29th July, 2016, the Solicitors of Chidera Chambers (Fornah-Sesay, Cummings, Showers and Co.), filed notices of appointment and change of solicitors[7]; replacing Shears-Moses and Co.

On the same day, the said solicitors filed a notice of motion, requesting the Court to grant an interim stay of execution of the judgement of 17th February 2016, setting aside of the said judgment and all subsequent proceedings, restoration of

[5] See Sub rules (1), (2) and (3) of Order 28, ibid.
[6] That application was made pursuant to Rule 2 (5) of Order 28, ibid.
[7] The said papers were filed, pursuant to the provisions of Sub rules 1 and 2 of Rule 1 of Order 59.

the Defendant's defence of 20th May 2013 and consolidation of the action intituled CC: 79/2016 2016 S. N0.8 between Sierra Blocks Concrete Products Company Limited **v**. Kainday Wray, with the other action intituled CC: 93/13, 2013 C N0. 13 between Kainda Wray, suing as Administratrix of the Estate of Abal Cole **v.** Sierra Blocks Concrete Company Limited. Essentially, The Hon. Justice M. D. Kamara, on 30th November, 2016, made an order, consolidating the aforementioned matters, restoring the defence dated 20th May, 2013, awarding a cost, assessed at Ten Million Leones (Le 10, 0000, 000) against the Defendant, and simultaneously compelling the Defendant to comply with the Court's direction, dated 29th October 2013, within ten (10) days of that order.

Nonetheless, the failure of Fornah-Sesay, Cummings, Showers and Co. to fully comply with the foregoing order within the stipulated time, motivated Taylor and Associates to file another notice of motion, dated 18th April 2017. Moreover, pursuant to the foregoing motion, on 5th May 2017, The Hon. Justice M. D. Kamara, struck out the defence of 20th May 2013, which had been restored, consonant with the Court's order, dated 30th November 2016; and simultaneously entered judgement on behalf of the Plaintiff in respect of the orders as prayed in the writ of summons (reproduced on the face of the motion of 18th April, 2017).

However, on the 23rd May, 2017, Fornah-Sesay, Cummings, Showers and Co., complied with the order of 30th November 2016; and also filed a defence and counterclaim, which had been replied to by Taylor and Associates on the 2nd March, 2017. Meanwhile, on the 13th June 2017, the same Solicitors, filed a notice of motion for an interim stay of execution of the order of 5th May, 2017 and for

same to be set aside on the ground that the Defendant had a very good defence on the merit.

Rather, circumspectly, Taylor and Associates, on 9th May 2017, filed a notice of motion for leave to issue a writ of possession and the Court granted the application on the 19th May 2017 and made an order of cost (assessed at) Two Million Five Hundred Thousand Leones (Le 2, 500, 000) to be borne by the Defendant. Again, the same Solicitors, on 25th May, 2017, filed an ex parte notice of motion for a writ of assistance to be issued to the Inspector-General of Police to carry out the execution. The Hon. Justice M. D. Kamara, granted the order on the 9th June, 2017. This order eventually expired and was renewed by the same Judge[8], on 30th May, 2018, following the filing of a notice of motion, dated 24th May, 2018.

Furthermore, by notice of motion, dated 26th July, 2018, a state counsel (A. M. Conteh Esq.), pursuant to subsections (1) and (2) of section 13 of the State Proceedings Act N0. 14 of 2000 and paragraph (b) of sub rule (2) of rule 6 of Order 18 of The HCR, 2007, requested that the Attorney-General and Minister of Justice be made a party to this action. Thus, the Hon. Justice Manuela J. A Harding, on 26th July 2018, granted the application. Nonetheless, on the 24th September, 2018 the Solicitors of Yada Williams and Associates, filed notices of appointment and change of solicitors[9]; replacing Fornah-Sesay, Cummings, Showers and Co.

Thus, the same solicitors, pursuant to a Judge's Summons, dated the 1st October, 2018, applied for the restoration of the summons for directions of 18th June 2013; leave to amend the statement of defence of 1st February 2017, reflecting the

[8] Pursuant to Sub rule (2) of Rule 7 of Order 47, ibid.
[9] The said papers were filed, pursuant to the provisions of Sub rules 1 and 2 of Rule 1 of Order 59.

contents as underlined in the proposed amended statement of defence and counterclaim; and for the Plaintiff to be as well granted leave to amend their reply to their defence and counterclaim, should the orders prayed for in that summons be granted. The Hon. Justice M. D. Kamara, on 13th November 2018, granted the orders. Hence, the solicitors, representing both parties, accordingly complied with the foregoing orders as prayed. Pursuant to the summons for direction of 18th June 2013, the lists of documents that the parties sought to rely on (including witnesses' statements) were exchanged; the exhibits were conscientiously marked and the action was thus set down for trial.

Meanwhile, on the 18th May 2020, B. Jones Esq. of Yada Williams and Associates, filed a notice of motion for an interim injunction, restraining the Plaintiff whether by herself, her servants, agents, privies, or howsoever called, from selling, leasing or otherwise disposing of any portion or portions of the said piece or parcel of land the subject matter of this action and/or from entering upon, trespassing or remaining on the said land, pending the determination of the application. And The Hon. Dr. Justice A. Binneh-Kamara, thus granted the application, which was in fact made at the end of the trial. Having summarised the protracted interlocutory proceedings that spanned for almost a decade, I will now proceed to examine the claims of the respective parties to this action.

1.2 <u>The Procedural Frameworks: The Writ and Its Contents, The Amended Defence and Counterclaim, The Reply to the Amended Defence and Counterclaim, The Intervener's (2nd Defendant's) Defence and Counterclaim, and The Reply to the Intervener's Defence and Counterclaim.</u>

The writ of summons claims specific reliefs against the 1st Defendant, including a declaration that the Plaintiff is the person entitled to the fee simple and immediate possession of all that piece and parcel of land situate and lying and being at Peninsular Road, near Ogoo Farm, Freetown by virtue of an Indenture dated 31st December, 1953 registered as N0. 83 at Page 88 in Volume 172 of the Record Book of Conveyances, kept in the Office of the Administrator and Registrar General in Freetown; recovery of possession of same, damages for trespass, an injunction to restrain the Defendants whether by themselves or their servants/agents, privies or howsoever called from trespassing upon or remaining on the Plaintiff's land, costs and any further or other relief (s) that this Honourable Court may deem fit and just.

Meanwhile, in the particulars of claim, the Plaintiff averred that he is the administrator of the estate of Abal Cole (Deceased) by virtue of Letters of Administration dated 10th June 2004 granted by the High Court in its probate jurisdiction. That the Plaintiff is and was at all material times entitled to possession of all that piece and parcel of land situate, lying and being at Peninsular Road, Ogoo Farm, Freetown in the Western Area of the Republic of Sierra Leone by virtue of an Indenture dated 31st December 1953, registered as N0.83 at Page 88 in Volume 172 of the Record Book of Conveyances, verged Red occupied by the 1st Defendant.

That the 1st Defendant has trespassed on the Plaintiff's land and has constructed structures therein and is lying claim to same. That the Plaintiff has repeatedly warned the 1st Defendant to cease its acts of trespass but to no avail. That the 1st Defendant continues to trespass on the Plaintiff's land and has thereby deprived

the Plaintiff of her legal right to fully possess the land. That the 1st Defendant has continued to lay claims to the Plaintiff's property and has even constructed a brick manufacturing factory on the land. Meanwhile, it is against this backdrop that the Plaintiff thus issued the foregoing writ of summons, claiming the aforementioned reliefs.

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Contrariwise, the 1st Defendant thus filed an amended defence and counterclaim, justifying its occupation of the land. Significantly, I will first set out the amended defence and then proceed to present the contents of the counterclaim for ease of reference. Moreover, whilst denying paragraphs 1, 2 and 3 in their entirety, the 1st Defendant averred that it is the rightful person entitled to possession of all that piece and parcel of land and hereditaments situate lying and being at Off Peninsular Road, Angola Town, Adunkia, Freetown in the Western Area of the Republic of Sierra Leone, more particularly described in Cadastral Plan N0. LOA 1079 dated 12th January, 2007, attached to the Lease Agreement dated 24th April 2007, registered as N0. 61/2007 in Volume 100 Page 34 in the Record Book of Leases, kept in the Office of the Administrator and Registrar General in Freetown.

Further, the 1st Defendant categorically denied paragraphs 4 and 5 and averred that it has never trespassed on any land belonging to the Plaintiff and the Plaintiff does not have any title or right to any of the portion (s) of land occupied by the 1st Defendant. To paragraph 6, it averred that it owns a brick making factory on the said piece of land and that its occupation and activities on the land are legal. Moreover, concerning its counterclaim, the 1st Defendant repeated paragraphs 1 to 6 of its defence and averred that all that piece and parcel of land it occupies measuring 79. 2226 acres and delineated on survey plan N0.LOA 1079 dated 12th

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January 2007 is the property of the Government of Sierra Leone, represented in these proceedings by the 2nd Defendant. It further averred that it was legally put on the land by the Government of Sierra Leone, acting through the Ministry of Lands and that it has always been in peaceful and undisturbed possession of the land since 2007, even fencing a portion where they are currently carrying out their business activity. That the Plaintiff and his privies or agents started trespassing and laying false claims to the land and hereditaments, the subject-matter of this action in or about the year 2013.

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That the Plaintiff and his privies or agents by virtue of acts of trespass has caused serious financial loss and damage to the 1st Defendant, adversely disrupting its business. That the Plaintiff will continue the act of trespass, unless restraint by this Honourable Court. The 1st Defendant also averred that the deed of conveyance dated the 31st December 1953 and registered as N0. 83 at Page 88 in Volume 172 of the Record Book of Conveyances, which the Plaintiff is relying on as his title deed in respect of the land occupied by the 1st Defendant is a forgery and that same was fraudulently and criminally obtained. Thus, the particulars of fraud/forgery, are serialized and accordingly unpicked in 5.1.2.

The 1stDefendant also averred that it carried out work and activities on the land in exercise of its right as the holder of the leasehold interest. It also averred that it has been in possession of the land since 2007. Further, that the Plaintiff, his agents, servants and/or privies, have been using violence and intimidation tactics against the 1st Defendant and have inter alia destroyed its buildings, materials, fence and make-shift structures on the land.

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Wherefore, the 1st Defendant's counterclaims against the Plaintiff are in respect of the following: a declaration that it is legally entitled to occupy and stay in all those premises situate, lying and being at Off Peninsular Road, Angola Town, Adonkia, Freetown in the Western Area of the Republic of Sierra Leone and measuring 79.2226 acres and more particularly described in Cadastral Plan N0. 1079 dated 12th January 2007, by virtue of the Lease Agreement dated the 24th April 2007, registered as N0. 61/2007 in Volume 100 at Page 34 in the Record Book of Leases, revocation of the Deed of Conveyance dated 31st December 1953 and registered as N0. 83 at Page 88 in Volume 172 of the Record Book of Conveyances, damages for trespass, an injunction to restrain the Plaintiff whether by himself, his servants, agents, privies or whosoever otherwise called from entering, remaining on or working in any manner whatsoever on the land or any part thereof, costs and any further or other reliefs that this Honourable Court deems necessary.

Nevertheless, in its statement of defence and counterclaim, the 2nd Defendant, does not deny paragraph 1 of the Plaintiff's particulars of claim, but denied paragraphs 2 to 6 of same and simultaneously averred that the Deceased (Abal Cole), whose Estate is represented by the Plaintiff, at all material times to this action laid wrongful claims to all that piece and parcel of Land, situate, lying and being at Peninsular Road, near Ogoo Farm, Freetown in the Western Area of the Republic of Sierra Leone, which is a State land and that the heirs and agents of the said deceased have continued this wrongful/unlawful act of claiming ownership of the land in the name of the Estate of the deceased.

Moreover, the 2nd Defendant, save as hereinbefore admitted, denied each and every allegation complained of in the Plaintiff's statement of claim as if same were set out traversed seriatim. Meanwhile, regarding the counterclaim, the 2nd Defendant repeated paragraphs 1 to 3 of his defence and averred that the 1st Defendant is and was at all material times a subsidiary company of the National Security and Social Insurance Trust (NASSIT), which is a Government Agency and the Lessee of the Government of Sierra Leone of the land (the Res in this action) via the Lease Agreement dated 24th April, 2007. That the 2nd Defendant is and at all material times to this Action, the Principal Legal Adviser of the Government of Sierra Leone. That the Plaintiff is the Administratrix of the Estate of Abal Cole (deceased) who was at all material times to this Action an unlawful occupant laying wrongful claims to all that piece and parcel of the aforementioned State land.

That by a Lease Agreement dated 24th April 2007, the 1st Defendant was officially registered as Lessee of the Government of Sierra Leone for all that piece and parcel of land, which is in its possession. That the said land was previously part of the forest reserves and a grant was never made to the Plaintiff. The 1st Defendant was validly put in possession of same via its parent organisation NASSIT, a Government Parastatal, which was authorised to take possession of the land by the Government of Sierra Leone. That the Plaintiff is currently depriving the Government of Sierra Leone of its rightful property in issue, which is leased to the 1st Defendant that lawfully ought to have had unencumbered possession of it.

That upon earlier proceedings of this Action, when the 2nd Defendant had not yet been added as a necessary party, the Plaintiff obtained a court order dated 5th

May 2017, against the 1st Defendant and on the 24th July 2018, upon purportedly levying execution of the said order on the land in dispute, the Plaintiff demolished and vandalized portions of the 1st Defendant's properties/business and investments. That unless restrained by this Honourable Court, the Plaintiff intends to continue with the unlawful possession and occupation of the State land and also laying wrongful claims to same.

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Wherefore, the 2nd Defendant's counterclaims against the Plaintiff is in respect of the following: a declaration that the Government of Sierra Leone is entitled to absolute ownership, possession and control of the land; a declaration that the Plaintiff has unlawfully occupied and laid wrongful claims of ownership to the land; recovery of possession of the land from the Plaintiff; perpetual injunction, restraining the Plaintiff whether by herself, her servants, privies, relations, heirs, administrators, employees, principal and/or agents, from entering upon, occupying or interfering with the land; damages for unlawful possession and occupation of the land.

However, the replies to the foregoing counterclaims are two folds. The first concerns the 1st Defendant and the second is chimed with the 2nd Defendant. The first, which contains six paragraphs is presented thus: the Plaintiff denied paragraph 7 of the 1st Defendant counterclaim and would put it to strict proof thereof. To paragraph 8, the Plaintiff stated that the property claimed is her private property and has never been the property of the 1st Defendant's Lessor. Paragraph 9 is accordingly denied. Meetings have been held with operatives of the Ministry of Lands by members of the Plaintiff's family to get the 1st Defendant to vacate the property and there have also been so many physical confrontations

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on the land. The Plaintiff further denied the averment in paragraph 10, and stated that her claim has been established since the 1st Defendant entered the property and the other beneficiaries and she have been refused access to the property. She denied Paragraphs 11 and 12 and thus sought to put the 1st Defendant to strict proof thereof. So, the Plaintiff denied each and every allegation of the 1st Defendant's counterclaim as if the same were traversed seriatim.

Furthermore, the second, which contains nine paragraphs is catalogued as follows: the Plaintiff also denied paragraph 1 of the 2nd Defendant's counterclaim and sought to put him to strict proof thereof, but could not admit or deny paragraphs 2 and 3 of same. She denied the allegation in paragraph 4 that she is an unlawful occupant laying wrongful claim to the land. She further denied paragraphs 5 and 6 and also sought to put the 2nd Defendant to strict proof thereof. The Plaintiff denied paragraph 6 and put the 2nd Defendant to strict proof thereof, but indicated that the 1st Defendant was informed about the execution and was allowed to remove their property from the land, before it was handed over to the Plaintiff.

She could not admit to paragraph 7 and thus stated that it is in fact the 2nd Defendant who has deprived her of the use and enjoyment of the land and has constructed a factory thereon, which has been operational since 2007. She also denied paragraph 6 and simultaneously put the 2nd Defendant to strict proof and stated that during the execution the 1st Defendant was allowed to remove their belongings from the land. To paragraph 8 the Plaintiff responded that within five (5) hours after the execution, the 2nd Defendant forcefully re-took possession and immediately deployed police officers on the site. She further denied paragraph 9

and put the 2nd Defendant to strict proof thereof. Finally, the Plaintiff denied each and every allegation of the 2nd Defendant as if the same were traversed seriatim.

1.3 The Evidence: Documentary and Oral Testimonies.

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The Plaintiff and Defendants have relied on documentary and oral testimonies, to establish their case.

1.3.1 The Evidence in Respect of the Plaintiff's Case.

The Plaintiff thus relied on twenty-one (21) documentary and two (2) testimonial pieces of evidence to prove her case. Her documentary evidence is discernible in the following contents:

1. Deed of Conveyance dated 31st December, 1953, registered as N0. 83/53 at page 88 in Volume 172 in the Record Book of Conveyances.
2. Letters of Administration dated 26th May, 2015.
3. Order of Court dated 1st October, 2015.
4. Letter dated 8th May 2006 from the Permanent Secretary Ministry of Lands to the Local Unit Commander, Goderich.
5. Letter dated 19th August 2015.
6. Order of Court dated 17th February, 2016.
7. Order of Court dated 5th May, 2017.
8. Order of Court dated 19th May, 2017.
9. Writ of Possession dated 24th May, 2017.
10. Order of Court dated 9th June, 2017.
11. Writ of Assistance dated 12th June, 2017.
12. Report on re-survey from the Ministry of Lands dated 19th October, 2017.
13. Letters dated 1st December, 2017 and 11th December, 2017.

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14. Survey Plan with L.S 6329/12 signed by the Director of Surveys and Lands dated 30th December, 2012.
15. Survey Plan dated 14th September, 2012 numbered LS 5024/12.
16. Order of Court dated 26th July, 2017.
17. Letter dated 18th May, 2018.
18. Order of Court dated 30th May, 2018.
19. Writ of Possession dated 31st May, 2018.
20. Order of Court dated 26th July, 2018.
21. Order of Court dated 13th November, 2018.

Meanwhile, regarding the oral evidence, it is the testimonies of Kainda Wray (PW1) and that of Mohamed Gasim Cole (PW2) that were initially submitted as witnesses' statements, but eventually elicited on oath as prosecution's witnesses. The testimonies of the said witnesses as they were elicited under evidence-in-chief, cross-examination and re-examination are carefully presented herein.

1.3.2 Testimony of Mrs. Kainda Wray (PW1) Elicited on the 25th June, 2019.

I live at N0.27 Off Adunkia, Goderich, Freetown. I am a businesswoman. I do know the 1st Defendant (Sierra Blocks Concrete Products Ltd.). I now say I do not know the 1st Defendant. I do know the 2nd Defendant (The Attorney-General and Minister of Justice). I do know property at Peninsular Road, Ogoo Farm. The property belonged to Abal Cole, who is my father. I took out Letters of Administration to administer the estates of Abal Cole. I got my Solicitors to prepare my statement on the 3rd day of May, 2018. I signed the statement on the same day (Produced and tendered and marked PWS1). I can identify the Letters of Administration, if seen (Produced for identification and marked Z1-4). I can as well

identify my father's conveyance, if seen (Produced for identification and marked Y).

1.3.3 Cross Examination of PW1.

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I am 61 years old. I am very sure that I am 61 years old. Abal Cole is my father. I can recall he died in 1977. I was not a member of the human race as at 31st December 1953, when the property was conveyed to my father. There is a property on the land, which I said belonged to my father. I did not know whether it was the Government of Sierra Leone that put Sierra Blocks Concrete Products Ltd. (the 1st Defendant) into occupation, but I have now found out how they got into occupation. The 1st Defendant was put into possession by a lease agreement, but I do not know the person that leased the property to them. It was my brother Mr. Brima Cole, that first took out Letters of Administration.

The said Brima Cole is dead. I do know Pastor David Chambers, but I do not know how connected he is to my father's land. I obtained a default Judgement in this matter; and it was executed against the 1st Defendant. My brother (Brima Cole) was not alive when the default judgement was executed against the 1st Defendant. The said judgement was executed at my instance. I was present at the site, when the execution was done. I brought in a caterpillar to do the execution. My Late brother Brima Cole did not sell any portion of that land. I also did not personally sell any portion of that land. I am presently not in possession of my own portion of that land. My Late brother was also not in possession of his before he died. And even Abal Cole was not in possession of any portion of that land before he died.

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1.3.4 Re-Examination of PW1.

I did take out Letters of Administration in respect of the property. I cannot remember when I took out the Letters of Administration. I was Kainda Cole, but I became Kainda Wray when I got married. I became Kainda Wray in 1964, when I got married. I studied up to Class Seven (7). I have never been in possession of the land, but I took out Letters of Administration, when my brother died.

1.4 Testimony of Mohamed Gasim Cole (PW2) Elicited on the 25th September, 2019.

I live at N0. 27 Passionage Street, Kissy, Freetown. I am a businessman. I do know the Administratrix in this matter. And I do know property at Angola Town. I was only ten (10) years old, when I was being taken to that property, during the weekends. The owner of the property is Abal Cole, who is my grandfather. I can produce evidence to this court that Abal Cole is my grandfather. I can as well produce evidence to establish that Abal Cole is the owner of the property (Exhibit A38-43 Produced and identified). I do know the 1st Defendant. I came to know the company in 2003, when the then Minister of Lands, Alfred Bobson Sesay, wrote to the Cole family (which was then headed by my father Brima Cole), inviting it to a meeting at the Ministry of Lands.

A cross-section of the family went to the Ministry to respond to the Minister's call sometime in 2003. The then Ambassador to Ghana, Alie Bangura, the then Minister of Labour, Mr. Alpha Timbo and the then Director of Surveys and Lands, Mr. Jones, were present during the meeting. Mr. Alie Bangura informed the meeting that he had come with investors from Ghana to invest on the property of

the Cole family. The Minister Bobson Sesay said they wanted up to forty (40) acres of the property for their project. My father (Brima Cole) told the Minister to write to the Cole family, demanding the acreage of land they wanted for purposes of their investment. The meeting was then brought to an end. The following week, my father called and gave me another information about the letter from the Ministry of Lands.

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We held another meeting with the foregoing persons in the Ministry of Lands. When asked, under which condition the investors wanted to acquire the property, Minister Bobson Sesay said in my presence, that they as Government would protect the Cole family's interest. He furthered that the investment will not only be beneficial to the Cole family, but to the people of Sierra Leone, as well. He advised that we could go and demarcate the property; and any other arrangements would be done later. A date was set for the demarcation to be done. My father represented the family during the arrangements. My father eventually took out Letters of Administration in respect of the property (The said Letters of Administration are then identified as they are in evidence: Exhibit A72-131). Later, I received an information from our caretaker (Kabba), upon which I acted. We went to where the land was being surveyed.

When asked, the surveyors said to me, that they had come from the Ministry of Lands. My father got me to stop the surveyors. I stopped them and the team returned to the Ministry. It was Julius Saffa that headed the team. The following week, I received another information from Kabba, upon which I acted. When we got to the land, we met two trucks of OSD personnel there, protecting the surveyors, who had come to survey the land. Alie Bangura and Alpha Timbo were

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present. We (Yusuf and I) stopped the surveyors. The head of the survey team got Alie Bangura to know that we were the ones that stopped the initial attempt to survey the property.

2 We were then arrested by the OSD personnel. We were taken to the OSD Headquarters at Pademba Road and subsequently detained and sent to the Police Headquarters. We were later taken to the CID, before being charged to court. Prior to that, we had been detained for up to three days; and we were charged, pursuant to offences in the Public Order Act N0.46 of 1965. We were put on bail and subsequently discharged for want of prosecution. In 2013, my father consulted lawyer Leonard Taylor, to initiate this action; as the land was taken from the family without any compensation. The PW1 then took out Letters of Administration in respect of the property (see Exhibit A44 - 71).

Consequently, we received a call from State House. We went there. The Chairman for the Western Area Rural (Alhassan Cole), the Chairman of the Board of NASSIT and Professor Strasser-King, were all present at the meeting (Exhibit A164-171 is thus identified). We had another meeting in the Office of the Attorney-General and Minister of Justice. The General Manager from the Sierra Blocks Concrete Products Limited was present. We had three meetings and we agreed to sell the portions they occupied for a consideration of Ten Thousand United State Dollars (US10, 000) per town. NASSIT did not pay for the land as promised. We then went ahead and executed our default judgement. On the 28th June, 2019, my Solicitor elicited my witness statement (Exhibit PWS2 identified).

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1.4.1 Cross Examination of PW2.

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I was born on 12th December, 1975. Abal Cole was my grandfather. I did not know him. I am now 44 years old. I am a businessman. I deal in buying and selling of personalty; I do not deal in realty. Abal Cole died when I was only 2 years old. I became familiar with the land in question at the age of 10 years. I am aware that the 1st Defendant has many structures on that land. I am aware that the land was given to them by the Government of Sierra Leone. The 1st Defendant started working on the land in 2004. I am not aware that the Government has given the land to the 1st Defendant. The family was dissatisfied with that unilateral decision of the Government. We had many family meetings in connection with that land. My family and I discussed that Government has given the land to NASSIT.

It was the former President, Ahmed Tejan Kabbah (now deceased), that did the turning of the sod prior to the commencement of the erection of NASSIT's structures. And that occasion was indeed a public show. I have never seen any subsisting lease agreement between the Government of Sierra Leone and any other entity in respect of that land. My lawyer did not tell me about any lease agreement in respect of that land. I do not know how the 1st Defendant came into occupation of that land. My family never took the Government to court to reclaim the land. Exhibit B13- B22 is a lease agreement from the Government to the 1st Defendant. I am only seeing the said document for the very first time. I stopped the surveyors when they went to do their work on the land. The surveyors were from the Ministry of Lands. They are Government surveyors.

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I do not know about any connecting link between Pastor David Chambers and the land. But prior to the conduct of the Presidential and Parliamentary Elections of 2018, he was in some of the meetings, we held in the Office of the Attorney-General and Minister of Justice, concerning the land. He attended those meetings on the basis of a report that came from the Ministry of Lands. He also attended the meetings, we had at State House in connection with the land. I cannot recall that David Chambers attended those meetings with facilitators. My family obtained a default judgement in this matter. I was at the site when the execution was done. There were bailiffs and police officers at the scene. The bulldozer that was used in the exercise did not belong to the International Construction Company (ICC). I do not know the owner of that bulldozer.

It was the PW1 that made the arrangements for the bulldozer. My family received two invitation letters for meetings at the Lands Ministry. I can still not locate those letters. I do not know how the said letters disappeared. The Lands Ministry wrote the letters to the family for negotiation in relation to the land. The land was not vacant when the former President Kabbah, went to do the turning of the sod. I do not know whether it was in 2004 that three structures, were demolished on that land. I am not aware of structures being destroyed on that land by the Government. I was arrested only once in connection with that land. I am not aware about a report which concluded that the title deed, which is used by the family to claim the land is a forged one.

I do not know that my family's title deed is a forged one. The negotiation meetings were held before March, 2018. Exhibit B27-36 is the police handwriting report. I am only seeing it for the first time. Our lawyers did not bring it to our

attention. This report came only 8 months after the meetings with the Attorney-General. I am expecting compensation for the land from the Government of Sierra Leone, even though our title deed is said to be false by the Sierra Leone Police. Exhibit A164- 171 is the report that is sent to State House by the Ministry of Lands. I am aware that the said document makes it clear that my family's document in respect of the land cannot be found in the Ministry's Record Books. I do not know that survey plans are registered and kept at the Ministry.

1.4.2 Re-Examination of PW2.

Exhibit A164-171 stated that our document cannot be found in the Ministry's records, but it is still widely recognised by the Ministry. Two concrete and five corrugated zinc structures were demolished on the land.

2.1 The Evidence in Respect of the 1st Defendant's Case.

The 1st Defendant also relied on documentary and oral testimonies to establish its case as a corporate entity that has the requisite juridical status to sue and be sued in its own corporate name. The 1st Defendant thus relied on twelve (12) documentary and three (3) testimonial pieces of evidence to prove his case; his documentary evidence is clearly discernible in the following contents:

1. Writ of summons dated 12th March, 2013.
2. Amended Statement of Defence and Counterclaim dated the 16th November, 2018.
3. Lease Agreement dated 24th April 2007, between the Government of Sierra Leone and the 1st Defendant.
4. Letter to the Head of the Scientific Support Unit of the Criminal Investigations Department (CID) dated 14th September, 2018.

5. Forensic Report Lab. N0. QD 12/2018.
6. Conveyance dated 19th February, 1953 in Volume 172 at page 85 of the Record Book of Conveyances.
7. Conveyance dated 31st December, 1952 in Volume 172 at page 86 of the Record Book of Conveyances.
8. Conveyance dated 31st December, 1952 in Volume 172 at page 87 of the Record Book of Conveyances.
9. Conveyance dated 31st December, 1953 in Volume 172 at page 88 of the Record Book of Conveyances.
10. Conveyance dated 31st February, 1953 in Volume 172 at page 90 of the Record Book of Conveyances.
11. Conveyance dated 31st January, 1953 in Volume 172 at page 91 of the Record Book of Conveyances.
12. Receipts of payments of annual rent to the Government of Sierra Leone.

Meanwhile, regarding the oral evidence, it is the testimonies of Simeon Nelson (DW1), Joseph Abu Bakarr Sanoh (DW2) and Shuaib Hamid that were initially submitted as witnesses' statements, but eventually elicited on oath as the 1st Defendant's witnesses. The testimonies of the said witnesses as they were elicited under evidence-in-chief, cross-examination and re-examination, are carefully presented herein.

2.2.1 The Testimony of Simeon Nelson (DW1) Elicited on the 29th October, 2019.

I am Simeon Nelson. I live at N0.5 Nylender Street, Aberdeen, Freetown. I am the General Manager of Sierra Blocks Ltd. I am aware that Sierra Blocks is the 1st Defendant is this matter. I started working with Sierra Blocks on the 19th

September, 2016. I am aware of the dispute between Sierra Blocks and the Plaintiff's family. The dispute is about the land which the Government of Sierra Leone had put on lease to Sierra Blocks Limited that was grabbed by the Cole Family. I am very conversant with the issues relative to that land. Exhibit B13- 22 is the Lease Agreement between the Government of Sierra Leone and Sierra Blocks Limited. That agreement subsists for up to 99 years; it is dated 24th April, 2007.

The 1st Defendant has invested so much on that land. It has built a brick making factory on the land. That factory worth up to Seven (7) Million US Dollars at the time of the initial investment. The factory is also being utilized by the Regimanuel Gray Limited doing quarry activities. There is an automated machine in the factory that can produce over 6, 300 blocks within 8 hours. The machine can as well produce 20,000 pavement blocks within 8 hours. There are some other machines in the property, including compressions, generators, lab equipment etc. The 1st Defendant started having problems with the Plaintiff, when the deadly Ebola virus disease first hit Sierra Leone.

I went to the land and discovered some persons therein. They alleged that they bought the land from Pastor David Chambers and family. The pieces of land they said they had bought are parts and parcels of the land that the Government had put on lease to the 1st Defendant. I had met Pastor David Chambers and members of the Cole family on the said land. I had an encounter with them, when the Strategic Policy Unit of State House ordered that the Ministry of Lands should re-survey the land. I am aware that my company commissioned a handwriting

expert to examine the documents of the Plaintiff in connection with the land. Exhibit B22-36 is a report of the Sierra Leone Police expert.

I attended meetings held at State House and the Attorney General's Office, between the 1st Defendant, the Cole family and the Plaintiff. I attended those meetings with a Board Member (Aminata Koroma). NASSIT was represented in some of the meetings. NASSIT is the majority shareholder of Sierra Blocks; it holds 60% of its shares. Sierra Blocks never agreed to pay the Cole family for the land in question. NASSIT contributed to the 7 million U.S Dollars investment on the land. I made a statement to my lawyer on the 15th day of January, 2019 (Exhibit DWS1 is identified). The factory seized to function on the 24th day of July, 2018.

The Cole family attacked the factory. They produced a default judgement and got bailiffs, police officers and thugs to take over the property. It was when the Police left that the thugs took over. The Cole family came with a bulldozer and hammers to the scene. The company's structures were ruined; the building was broken into and unroofed. The plant and equipment were also damaged. The destruction that was really done to the property worth over 2 million U.S Dollars.

2.2.2 <u>Cross Examination of DW1.</u>

I work for Sierra Blocks Limited as a General Manager. Indeed, some meetings were held at State House. A survey was to be done later. That clearly came out of the meeting we had. A report of the re-survey was done. A copy of that report was given to me. It is the Ministry of Lands' responsibility to deal with all land issues in Sierra Leone. The report forms part of Exhibit A164- 171. I am not too sure that this report had been made available to me, before the title deeds of the

Cole family, were investigated by the CID. After the meeting at State House, we went to the Attorney-General's Office.

We were there as a result of one of the recommendations in the report. The said meetings were held before the conduct of the 2018 Elections. I came to have knowledge of the report, when the meetings were held at the former Attorney General's Office. I have read the report. The witness was then asked to read the penultimate and ultimate paragraphs of the report aloud for the court to hear. It was the Government of Sierra Leone that put the property on lease to the 1st Defendant. Our lessor is the Government of Sierra Leone. I am not aware of any correspondence from the Government, stating that the land given to our company, included that of the Cole family. Exhibit A1-35 is dated 8/5/2016. Exhibit A164-171 emanated from our landlords.

The report says the processes, leading to the construction of the lease agreement, were not adequately followed. The Shareholders of Sierra Blocks believed that the Ministry of Lands should come forth to explain the content of the report; especially the portion relative to the conclusion. The reason for this is that there are other people, claiming the same piece of land, including the Cole family and Pastor David Chambers. And this point was discussed in the meetings we had with the former Attorney-General. And the said dignitary was even part of the company's meeting. I do not have the minutes of that meeting. The report is clothed with a concluding paragraph. The shareholders were not O.K with the report.

They needed an explanation from the Ministry of Lands and that was why the then Attorney-General was approached. We have since then not been directly

approached by the Ministry of Lands for an explanation. The shareholders wanted an explanation to be made to them in respect of Exhibit A164-171. They wanted explanation in respect of certain paragraphs in the documents. For example, the paragraph that says that the Cole's family plan, was not found on the Master Sheet of the Ministry, but officials in the Lands Ministry, were still recognizing it. In the conclusion of ExhibitA164-171, the landlords said that the processes, leading to the eventual lease of the land to NASSIT was not properly followed. We wanted an explanation because we were not sure about the authenticity of the Cole family's documents.

2.2.3 Re-Examination of DW1.

I do not know the processes that were not followed in the eventual construction of the lease agreement. The Ministry did not do the required clarifications in Exhibits A164- 171. Since we could not get the Ministry to do the clarification, we consulted the handwriting expert. Exhibit B27-36 is what came out of the work of the handwriting expert, we commissioned.

2.3.1 Testimony of Joseph Abu Bakarr Sanoh (DW2) Elicited on the 19th November, 2019

I live at N0.16 Mafani Drive, Rokel Village, Freetown. I am a police officer and a document examiner, working at the Scientific Support Unit of the Criminal Investigations Department (CID), CID Headquarters, Freetown. My duties include, verification of documents for authentication. I am also a trained document handling investigator on the proper way of handling documents to maintain the integrity of their contents. I underwent training at the Forensic Institute of Law Enforcement, Management and Administration in Accra, Ghana. I also studied

Police Science and specialized as a forensic document examiner, forensic ballistic expert and scientific report writing.

I also acquired training from the CID of China on the basic identification of documents and their characters and forensic evidence. I also did a training at the American Embassy of latent features of writings (handwritings and signatures) and how to identify their peculiarities. And I hold a Bachelor's Degree in Information Systems. I am qualified to be a handwriting expert. And I have held the position of a handwriting expert in the aforementioned institution for over ten years. I did a forensic work on a document touching and concerning this matter. The said work resulted in the production of Exhibit B27-36, which is a report that is before this court. The document (report) is dated 17th December, 2018. Exhibits B37-B72 were the specimens submitted for my forensic analysis.

I also forensically examined Exhibit B55-60. The parties to the documents are Adda Leigh (as Vendor) and Abal Cole (as purchaser). I looked at the specimen submitted (the form). The form showed that the document really warrants a thorough examination. I went to the Roxy Building to see the Volume 172 pages of the Record Book of Conveyances of 1953. The examined documents are marked Exhibit B37- B72. I took copies of the said documents from the Registrar-General's Office. The copies given to me are coloured photocopies. Exhibit B55-60, which is found in Page 88 Volume 172 of the Record Book of Conveyances is cello taped and part of it damaged.

It has burnt marks, showing exposure of a temperature higher than that of a room. And the marks are concentrated in one area and not the whole document. And the document is amongst other documents bounded together. There are 76

conveyances in that volume. Exhibit B55- 60 is attached to Volume 172, using a transparent cello tape. All the other documents in that volume are attached to it via a sticker, binding them together. There are no burnt marks on the other documents.

2

From my observation, I can state that the document bearing those peculiar marks, unlike the others, did not get the coloration due to the ageing process. Thus, it was opposed to a temperature that is equal to or greater than boiling water temperature. I did a comparative analysis of the features of Exhibit B55-60, which is on page 88 Vol. 172 of the Record Book of Conveyances and Pages 85, 86, 87, 90 and 91. I compared the handwriting that appears to be that of a staff at the Administrator and Registrar-General's Office on Exhibit B55-60, with those mentioned above. I also looked at the signature, allegedly representing the Deputy Registrar-General and that of Licensed Surveyor etc. Exhibit B37-B 72, are all in the same Volume 172 of the Record Book of Conveyances of 1953.

All the documents were registered within the same period. My findings on the analysis of the said Exhibits are:

1. Dissimilar identifying characteristic features do exist on the handwriting, allegedly representing a staff at the Registrar-General's Office, the Page number and volume on Exhibit B37-42; B43-48; B49-54, B61-66 and B62-72, when compared with Exhibit B55-60. That is an indication that they were executed by different persons.
2. Dissimilar identifying characteristic features do exist on the signatures, allegedly representing the Deputy Registrar-General on Exhibit B37-42;

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B43-48, B49-54, B61-66 B67-72, when compared with Exhibit B55-60. This is also an indication that they were executed by different persons.

3. Dissimilar identifying characteristic features do exist on the handwriting allegedly representing Abdulai Conteh on Exhibits B43-48 and B49 - 54, when compared with Exhibit B55-60. This is an indication that they were not executed by the same person.

2

I have spent 19 years in the Police Force. And I have been examining conveyances for over 10 years. I have never seen a conveyance of this nature. I prepared the comparison chart, dealing with the examination of handwritings (see Exhibit 91). There are two (20 categories, described as known and unknown. They are signatures extracted from the specimens marked B37-B72. On the known, the signatures are accepted as genuine. A clear distinction between the known and unknown is what is called line quality. There is consistency in the line quality of the known, taking into consideration, connecting strokes between the letters. For example, what is marked as 1 in the unknown, has just 1 line with hesitation, when the unknown is looked at the line is fluent to form a loop and a lapped ending.

In number 2 on the unknown, there are garlanded strokes, whereas in the known we have archanded strokes. In number 3, the bottom part of the S on the unknown though it has a reversal stroke, the base is more prominent as compared to the S on the known signatures. In number 4, the bottom part of the B on the unknown is closed and well rounded. Whereas the B on the known specimen has an opening at the bottom. In number 5, the C in the word Conteh, has only a sloop at the top and the bottom part of the C is joined to the O,

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whereas in the known specimen, the C has two loops; the top and the bottom. Thus, it stands alone. In number 6, the bottom part of the E on the unknown, goes with the base line. Thus, the connection it forms with the H is very shallow. In the known of number 6, the base of E lives the baseline at an angle greater than the E on the unknown, this forms an extensive connection from the base line.

In number 7 of the unknown, the front stroke of the B is convex and has some hesitation; whereas number 7 of the known is concave and fluent. Number 8 of the unknown is the reverse. It has a concave connecting stroke, whereas on the known it is convex. In number 9 of the unknown, it is difficult to read any character, because it is like a connecting; whereas number 9 of the known has a character that looks like O and it is independent of the letters before it. They have no connections. Regarding the date 31 /xii/1952 under unknown, whether they bear any similarities to the characters under known, generally they are of the same form, but do not have similar identifying characteristics. They were thus written by different persons. In number 3 of the unknown, the top part of it is smaller than the bottom.

And has a base in line with the baseline. The reverse of this is seen on the unknown specimen. Also, the top part is bigger than the bottom part. In fact, the bottom stroke, crosses the baseline line with a blunt ending. The '9' in the 1952, forms a parallel line in respect of the unknown. The top loop of the '9' is over. Whereas on the unknown the '1' and the '9' are not parallel; and the top loop is rounded. The specimens under the unknown are taken from Exhibit B 55-60. And the specimens under known are taken from Exhibit B37-54 and Exhibit B61-72. I also viewed all the documents in Volume 172. Page 88 is attached to the said

volume with a transparent cello tape. I do not see any other document of the remaining 74 that is attached by way of a cello tape.

The pages in the whole of Volume 172 are not as damaged as Page 88. Paper ages with time, but it is impossible for a paper that is placed between others to have such a damage, than the one before or after it. And a piece of paper that is exposed to a room's temperature (depending on the use), will contain a damage, commencing from the outside and not the inside. Thus, page 88 presents an unfamiliar case. Whilst in the said volume it did not contain any damage; it stands alone with its peculiar characteristics. The papers in Exhibit B92-98 are plastered with cello tape all over. The cello tapes that were used to attach Exhibit B92- 98 in Volume 172 and those plastered all over Exhibit B92-98, based on my analysis and examination are not 66 years old, because the sticky material it is still fresh.

2.3.2 <u>Cross Examination of DW2</u>

I am a police officer. I reduced my findings into Exhibit B27- 36. Six (6) different specimens of conveyances were given to me by the law firm Yaada Williams and Associates. The said conveyances were not the only material I studied for my analysis. I referenced the entire Volume 172 in my report. I went beyond the six (6) elements. There had not been any report to the police, regarding the document. Adda Leigh conveyed to Abal Cole (see Exhibit B55- 60). I did not cross-check whether Adda Leigh was the actual person that conveyed. I spoke about one Abdulai Conteh in my report.

I did not meet Abdulai Conteh in person. The said documents were terms of references; as they bear similar characters and other areas were looked into outside those six (6) conveyances. I did not know about any report from the

Lands' Ministry, before I did my investigations. I am aware that Exhibits B37-72 are registered conveyances.

2.3.3 Re-Examination of DW2.

None.

2.4.1 The Testimony of Shuaib Hamid DW3 (SOK) Elicited on the 2nd December, 2019

I live at N0.12 Fort Street, Off Mountain Cut, Freetown. I am a registration officer at the Office of the Administrator and Registrar-General. My duties include: Registration of Legal Instruments and to tender them, when called upon, by the courts to do so. I am here in respect of a subpoena, dated 22/11/2019. I do have Volume 172 of the Record Book of Conveyances, which is produced and marked Exhibit B92-98. I am also in possession of the duplicated copies of the said exhibit (see Exhibit B55-60). The parties to Exhibit B92- 98 are Adda Leigh and Abal Cole; it was the former that conveyed to the latter. The conveyance is found in Volume 172 at Page 88. The document is dated 31/12/1953. Page 88 is attached by way of a cello tape to Volume 172. There are 75 conveyances in the said volume. No other conveyance in Volume 172 is attached by way of a cello tape.

2.4.2 Cross Examination of DW3.

Conveyances can only be put in the records' books when they have gone through the requisite registration processes. The said Volume 172 is not given to any person, who does not work at the Administrator and Registrar- General's Office. Volume 172 Page 88 happens to be the conveyance of Abal Cole.

2.4.3 Re-Examination of DW3.

The volumes are accessible to persons, who do not work at the Office of the Administrator and Registrar General. Conveyances can only be in the volume, when they have been through the requisite registration processes. The said Volume172 has been duly registered.

2

2.4.4 <u>Cross Examination of DW3 on Behalf of the 2nd Defendant.</u>

I am Shuaib Hamid. I was born on the 6th December, 1980. I am 39 years old. I have worked for 7 years at the Office of the Administrator and Registrar- General. Exhibit B55 is dated 31st December, 1953. I was not in the office when Exhibit B55 was compiled. I first cross-checked how the conveyance is prepared to find out if is dated. We normally check for the names of the parties. We check the plan and the schedule of the conveyance, to see that the LS Numbers on both sides are correct. We also check about the correctness of the dates of the plan and schedule. We also check to establish whether the acreage on the plan and that on the schedule are the same. We also check whether the name or names on the plan and the conveyance are the same.

We also check whether the conveyance is accordingly witnessed. It is after we have been through these stages that we approve of a conveyance's payment slip, for such payment to be made into a bank account. We then go ahead and process the document; give it a page number, a volume number and a registration number. It is after these stages, that the document is eventually sent to the Administrator and Registrar General for signing. I can't tell whether Exhibit B55, went through the foregoing registration process. I have encountered situations, wherein conveyances are forged. Lawyers and people from the public do check for such situations, when they arise. We go into the archives, bring out the

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conveyances and get them to go through. If forged, complaints are made to the Administrator and Registrar-General for action.

2.4.5 <u>Re-Examination of DW3 on Behalf of the 2nd Defendant.</u>

2

None.

3.1 <u>The Evidence in Respect of the 2nd Defendant's Case.</u>

Unlike the 1st Defendant that called factual witnesses to testify on its behalf; the 2nd Defendant did not do so, but rather relied on the testimonies of DW1's witnesses and five (5) documentary evidence. The pleadings and other documents, relied upon by the 2nd Defendant are:

1. Writ of Summons dated 12th March, 2013
2. Defence and Counterclaim dated 28th September, 2013
3. Reply and Defence to Counter- Claim dated 2nd October, 2018
4. Lease Agreement between the Government of Sierra Leone and the 1st Defendant dated 24th April 2007
5. Receipt of Rent Payment for Leasehold

Nonetheless, having presented evidence exchanged between the parties and those elicited during the trial, I will now proceed to examine the applicable law, in tandem with the reliefs prayed for by the respective parties (Plaintiff: claims and Defendants: counterclaims).

4.1 <u>Analytical Exposition: Sierra Leone's Legal Regimes (Laws) on Declaration of Title to Realty in the Western Area.</u>

Analytically, it is discernible in 1.2 above (i.e., from the procedural frameworks) that the principal thrust of this action, whirls around declaration of title to

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property (realty). This area of Sierra Leone's civil law is compounded by the fact that the country's land tenure system is underpinned by a somewhat complex binary, relative to land ownership in the Western Area and the Provinces. Unlike the Provinces, where questions relating to ownership of land, are determined by the Local Courts[10], pursuant to the customary law of the very chiefdom in which a particular reality is located; 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[11]. In general, questions on declaration of title to land, 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 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 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[12], concerning how such matters are to be tried. In essence, this is what is exactly presented in 1.1 (summary of the interlocutory proceedings) and 1.2 (the procedural frameworks).

[10] See Sections 18 and 21 of the Courts Act N0.31 of 1965. See also the cases of Caulker **v.** Kangama (S.C Civ. App. 2/74 Judgement delivered on 18th June, 1975 Unreported; Marie Kargbo (As Administrator of the Estate of Pa Murray (Moray) Kargbo (Deceased) Intestate **v.** Saio Turay, The Paramount Chief of Nongowa Chiefdom (Kenema District), The Presiding Magistrate (Kenema) and Ahmed Younes (Civ. App. 14/2006).

[11] Even though Section 132 of the Constitution of Sierra Leone, Act N0.6 of 1991, deals with the original exclusive jurisdiction of the High Court of Justice, it is the Third Schedule of the Courts Act N0.31 of 1965 that clearly articulates this point.

[12] See Order 28 of The HCR, 2007.

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Moreover, without even proceeding to trial, 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 a point 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''.

In circumspect, a clear deconstruction of the foregoing provision for meanings depicts that first, it is entirely directory (not mandatory). This is by virtue of the semantic value of the auxiliary verb 'may' in the provision. Second, the disposal of any matter on a point of law can be done, pursuant to an application, made by either of the parties to a litigation; 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. However, the 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[13].

[13] See Sub rules (3) and (4) of Rule 1 of Order 17 of The HCR, 2007.

Moreover, it is important to note that (in this action) neither did the litigants make any application in tandem with the foregoing provision; nor did this Honourable Court on its own volition, dispose of this matter on any point of law; or construct the documents, which the parties have relied on, consonant with the foregoing rule. Nonetheless, evidentially, in actions for declarations of fee simple titles to land, the legal burden of proof, regarding ownerships is on the Plaintiffs (Claimants) to establish their cases on balance of probabilities. But in situations where the Defendants counterclaim ownerships, they assume the same legal burden as the Plaintiffs. Thus, it is a rudimentary rule in the law of evidence that he who asserts must prove. The jurisprudence of land ownership in the Western Area (as it has evolved with the subsisting literature and decided cases) is underpinned by two main considerations vis-à-vis documentary and possessory titles.

4.2 <u>Documentary Title.</u>

Indeed, 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. Dr. Justice 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:

''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 the 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 and Musa Abess (SC Civ. App. N0. 5/79):**

> ''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 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 fundamental and important difference between registration of instruments and registration of title. Cap 256 does not provide for, nor does it pretend to contemplate, the registration of title. 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 judgment:

1. A Plaintiff that relies on any title deed will succeed on an action for a declaration of title to property on the strength of his 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 Plaintiff 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 Plaintiff or his predecessor in title (vendor), declaration cannot be done on his behalf.

4.3 <u>Possessory Title</u>.

The other way by which Plaintiffs 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. 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 incisively 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**[14]**:**

[14] Op. cit: 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. Dr. Justice Ade Renner-Thomas C. J. in **Sorie Tarawallie v. Sorie Koroma**[15]**,** 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 occurred to him, or if it first accrued to some person through whom he claims to that person''.

[15] Op. cit.

Significantly, 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 judgment:

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

5.1 Critical Context: Unpicking the Aforementioned Evidence and Applying it to the Country's Subsisting Legal Regimes (Laws) on Declaration of Title to Realty in the Western Area, to Determine Who the True Owner of the Realty is.

Let me hasten to state that even though this matter purls around declaration of fee simple title to property, it really does not fall within the three factual situations of land cases that are mostly decided by the High Court of Justice[16]. Again, a deconstruction of the evidence (in its totality)[17], depicts that neither the Plaintiff, nor the 1st Defendant has expressly relied on possessory title. Further, the 2nd Defendant (the State) that was subsequently made a party to this action, pursuant to an order of the Hon. Justice Manuela J. A. Harding J., on 26th July 2018, does not have to rely on possessory title; as depicted above to establish its

[16] See analysis in 3.2 above.
[17] See analysis between 1.3 and 3.1 above.

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case. So, the foregoing analysis on possessory title in 4.3, would have a very little bearing on this bit of my judgment.

Nonetheless, it is the component found in 4.2 concerning the analysis on documentary title, that is quite catalytic to the determination of this matter. The aforementioned testimonial and documentary evidence, adduced on behalf of the respective parties to this action, are indubitably indicative of the fact that they have all relied on documentary title. Thus, I am catalytically obliged to unpick the very documents, which each party has relied on; to determine and declare, who the true owner of the property (realty) is. In doing so, I will start with the case for the Plaintiff.

5.1.1 <u>Unpicking the Plaintiff's Case.</u>

The original Plaintiff in this action was Brima Cole (now deceased). He instituted the action as Administrator of the Estate of Abal Cole (now deceased). On the death of Brima Cole, Mrs. Kainda Wray (the deceased's younger sister), by an Order of this Honourable Court, became the Plaintiff. Her legal capacity to replace her deceased brother, is rooted in the contents of the Letters of Administration, issued in her name, by the Probate Division of the High Court of Justice (see ExhibitA44-71), mandating her to now administer the estate of Abal Cole (see analyses in 1.3.1 and 1.3.2 above).

Meanwhile, it is clearly detectible in the procedural frameworks of 1.2, that the Plaintiff is inter alia claiming the fee simple absolute interest in possession to the realty (subject matter) of this action; and has relied on a title deed, which is undoubtedly registered with the Office of Sierra Leone's Administrator and

Registrar-General, pursuant to the apposite provisions of Caps. 255 and 256 of the Laws of Sierra Leone, 1960. The Plaintiff's registered title deed is accordingly dated 31st December, 1953 and it is registered as N0. 83 at Page 88 in Volume 172 of the Record Book of Conveyances, kept in the Administrator and Registrar-General's Office at Walpole Street, Freetown (see Exhibit A38-43).

Thus, the said exhibit was even identified by Mohamed Gasim Cole (PW2) as evidence that the realty in question, belonged to his late grandfather, Abal Cole. This is the title deed on which the Plaintiff has predicated her claims. Does the mere production of a registrable and registered title deed (conveyance in this context) presuppose that the Plaintiff has established a case for a declaration of title to property? Meanwhile, in tandem with the aforementioned authorities and analysis on documentary evidence, regarding declaration of title to property, I will answer the question in the negative; with an addendum that it is the strength of the foregoing conveyance; as opposed to any other competing and subsisting title deed, relative to the realty, which is being claimed, that should convince this Honourable Court, to determine whether or not it is the Plaintiff that owns the realty.

So, the outcome of this matter's determination first depends on the strength of the Plaintiff's foregoing title deed. The strength of a title deed, on the basis of the above authorities, is however predicated on certain peculiar considerations. First, the Plaintiff must prove a very good root of title. That is, she must establish that her father's predecessor in title, had an incontestable title that was subsequently, passed on to her father. In this case, this could have been done, by either a deed of gift or a conveyance or a will. But in actual fact, the Plaintiff's father (Abal

Cole), came to acquire the realty from Adda Leigh; who on the face of Exhibit B92-98, sold it as vendor to Abal Cole, the purchaser (see PW3's testimony).

However, whilst deconstructing the recital clause, embedded in Exhibit A38- 43 (the Plaintiff's conveyance), I reckoned that it does not say anything, about how Adda Leigh, came to acquire the realty in question. The recital thus states:

> ''ADDA LEIGH the vendor is seised in fee simple or otherwise entitled to the land and hereditament hereinafter described and intended to be hereby granted''.

Thus, it is difficult, if not impossible, to establish how the Plaintiff's father's predecessor in title came to acquire the very realty that he eventual sold. The second consideration that hinges on strength of title is that the Plaintiff must lead evidence to establish a clear trace or history of her title, rooted in a grant by the Crown (as was the case before independence) or the State (as it is the case since independence)[18]. So, the question that is to be asked at this stage, is whether the Plaintiff, indeed traced her title to some grant from the Crown (and not the State, because her title deed was executed, before Sierra Leone became an independent sovereign State, in the World's Community of Nations).

Certainly, there is nothing in the documentary and testimonial pieces of evidence, indicative of the fact that the Plaintiff's title came from a Crown's grant. This is incisively not depicted in neither Exhibit A38-43 nor Exhibit B92-98. The third factor that the court will consider in the assessment of the strength of a title deed is how worthwhile it is. This consideration is inextricably linked to Chief Justice Livesey-Luke's pontification in **Seymour Wilson v. Musa Abess (SC Civ.**

[18] see Seymour Wilson **v.** Musa Abess, supra and Sorie Tarawallie **v.** Sorie Koroma, supra

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App. N0. 5/79), that the mere production of a conveyance in fee simple is not prove of a fee simple title; the document (conveyance) may be worthless.

Meanwhile, the significance of this third consideration to this matter, resonates with the fact that both Defendants led evidence in condemnation of the authenticity of the Plaintiff's conveyance (Exhibit A38-43) and counterclaimed that it should be revoked, on the basis of their averments of fraud and forgery (see procedural frameworks in 1.2). Nevertheless, I will subsequently deal with the issue of whether, the Plaintiff's conveyance is worthwhile or worthless, in tandem with the averments of fraud and forgery; as the analysis in this Judgment, unfolds.

Moreover, the final factor which the court considers in the determination of the strength of a title deed is whether there is no other person that claims the same realty to which the Plaintiff is laying claim. Thus, notwithstanding this, the Plaintiff must establish a better title of ownership; than any other subsisting and competing title (possessory or documentary). Meanwhile, this fourth factor is also crucial to this matter, because there are two distinctively different competing claims, which have been raised by both Defendants, in respect of the realty in question. The first, is the averment that the 1st Defendant is in possession of the realty, pursuant to a subsisting leasehold interest, that spans for up to 99 years (see Exhibit B13 -22).

And the second, is the averment that the realty belongs to the State of Sierra Leone, pursuant to section 31 of the State Lands Act N0.19 of 1960. Again, I will subsequently deal with this fourth issue, as the analysis unfolds. However, I will now proceed to sequentially deal with the Defendants' averments of

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fraud/forgery and their respective claims of right to possession (1st Defendant) and ownership (2nd Defendant), consonant with the third and fourth factors, that the court takes into consideration in the determination of the strength of a Plaintiff's title to property. The 1st Defendant averred that the Plaintiff's conveyance is a fraudulent and forged document that is interpolated (as a registered title deed) into Volume 172 of the Record Book of Conveyances.

This is indeed a very strong averment that poses a very serious legal and evidential burden on the 1st Defendant to prove. Thus, the fulcrum of this litigation is civil, but the seriousness of this averment, is imputing criminality (forgery) not only on the State's functionaries attached to the Office of the Administrator and Registrar-General; but also, on the vendor (Adda Leigh: deceased) and purchaser (Abal Cole: deceased) and their descendants, including the Plaintiff and even the Solicitor (Conveyancer: deceased) that prepared that document. And forgery is an offence, contrary to section 1 of the Forgery Act, 1913. The principal thrust of the foregoing statute is geared towards the prevention of fraud and the preservation of the authenticity of documents.

Forgery is thus defined by section 1 of the said statute 'as the making of a false document in order that it may be used as genuine'. Essentially, the foregoing statutory definition is neatly anchored by the common law, which regards forgery as 'the false making of an instrument, purporting to be that which it is not'. This common law position, which was clearly enunciated in **R v Winsdor (1865) 10 Cox C.C 118, 123**., has been subsequently explored in a plethora of decided cases, including the cases of **Didier Coudrat v. Commissioners of Her Majesty's Revenue**

and Customs, English Court of Appeal (Civil Division) and Frederick J.K. Zaabwe v. Orient Bank and Five Others SCCA N0. 4/2006.

Circumspectly, section 2 of the statute further criminalizes the forgery of other testamentary documents, deeds, bonds and banknotes, which if done with intent to defraud, attract a maximum punishment of life imprisonment. The section also criminalizes forgery of valuable securities, documents of title to land etc. Thus, if done with intent to defraud, an offence attracting a maximum penalty of 14 years imprisonment is committed. Further, the standard (threshold) of proof which the 1st Defendant, thus imposes on itself by making such a strong averment (forgery) in its counterclaim, is embedded in the criminal not the civil law. Therefore, I dub that averment an allegation, which cannot be established on a balance of probabilities, but on proof beyond reasonable doubt; as established by Lords Sankey, Hewart, Tomlin, Atkin and Wright in the locus classicus of **Woolmington v. DPP (1936) 25 UKHL 1 AC CR APP R 72.**

Analytically, the essence of invoking this higher threshold (embedded in the criminal law) in a civil litigation, whirls around the cardinal constitutional principle of presumption of innocence[19] and the fact that an allegation of criminality has been raised by both Defendants against the Plaintiff and whosoever might have allegedly involved in such alleged criminality. Thus, concerning this allegation, the question that should be asked (at this stage) is whether the 1st Defendant has been able to establish a case of fraud/forgery, to impugn the legality and validity of the Plaintiff's conveyance, to render it negligible and worthless?

[19] See Section 23 (4) of Act N0. 6 of 1991.

Certainly, proof of criminality here, does not presuppose the conduct of a trial, since no person stands charged, for any criminal offence against the State, but it is geared towards scrutinizing the contents of the Plaintiff's conveyance, to establish its credibility and simultaneously prove that it is authentically fit to be genuinely dubbed a conveyance; or to render it negligible, illegal, void and unfit to be factually dubbed as such; and in the process exculpating the reputations of the persons (whose names are mentioned above) and their descendants and the alleged conveyancer and staff of the Office of the Administrator and Registrar General, from an alleged institutionalized criminality; or clearly implicating them, since such alleged uncouth activity can never be unconnected with the nefarious operations of a joint criminal enterprise.

Nonetheless, the 1st Defendant has specifically pleaded fraud/forgery and has proceeded to itemize the particulars of fraud as required by sub rule (1) of rule 8 of Order 21 of The HCR, 2007. The particulars of fraud, are factored into Exhibit B7-12 (in the portion relative to counterclaim) as follows:

- That the Deed of Conveyance dated the 31st December, 1953 and registered as No. 83 at page 88 in Vol. 172 of the Record Book of Conveyances kept in the Office of the Administrator and Registrar-General is a recent fabrication.
- That the said conveyance was recently inserted into the volume that it is currently found.
- That the signatures and stamps of the said conveyance are significantly different from other conveyances, registered around that period found in that same volume.

- That the said conveyance was attached to Vol. 172 by use of a cello tape unlike all the other 77 conveyances found in the said volume.

Circumspectly, one would now inquire about whether the 1st Defendant, has adduced sufficient evidence, upon which this court can reasonably conclude that indeed the Plaintiff's conveyance is genuine and worthwhile; and should therefore be given the consideration it deserves or worthless and forged; and should therefore be relegated to the doldrums of criminality and illegality; and hence of no value in the determination of title to property in our jurisdiction. Essentially, whilst unpicking particularly the testimonial evidence, I reckoned that the testimony of Joseph Abu Bakarr Sanoh (DW2), concerns the foregoing particulars of fraud.

The said witness' testimony (see 2.3.1), touches and concerns a plethora of issues, consonant with his competence (as an expert witness). His testimonial evidence also encapsulates a detailed information about the nature and scope of his investigations. It further encompasses the description of the Plaintiff's conveyance and his observation of that conveyance (in comparison with other conveyances, found between Pages 85 and 91 in Volume 172 of the Record Book of Conveyances of 1953). That testimony again stretches to his findings and the conclusions, culminating in such findings. Significantly, it is legally and evidentially expedient and crucial to replicate the witness' final conclusion herein, for purposes of clarity and ease of reference. That conclusion is found between pages 48 and 50 of the court's records and it thus reads:

> ''I reviewed all the documents in Volume 172. Page 88 is attached to the volume with a transparent cello tape. I do not see any other document of

the remaining 74 conveyances attached by way of a cello tape. Of the pages in Volume 172, Page 88 is more damaged than all the other pages. Paper ages with time, but it is impossible for a page that is placed between others to have such a damage that the one before or after it does not have. And paper exposed at room temperature, depending on the use, damage starts from outside and not from the inside. Thus, page 88 presents an unfamiliar case. And I can say it did not get the damage, whilst in the volume. It stands alone with its peculiar characteristics. The papers in Exhibit B92-98 are all plastered with cello tape all over. *The cello tapes that were used to attach Exhibit B92-98 in Volume 172 and those plastered all over Exhibit B92-98, based on my analysis and examination, are not 66 years old, because the sticky material in them is still fresh''* (my emphasis in italics).

Meanwhile, the veracity of the foregoing testimony-in-chief of PW2 (the formal witness, who is a forensic document examiner, attached to the Criminal Investigations Department), was tested under a rigorous cross-examination by Counsel for the Plaintiff (J.M. Jingo Esq.). Even though that cross-examination has helped the court to unravel some other pertinent issues, that are cognate with the reasonable, fair and just determination of this matter; they do not in any way, depict any contradistinction, contrived to discredit DW2's testimony. Analytically, DW2's findings and conclusions, were further bolstered in the most crucial part of DW3's (Shuaib Hamid's) testimony in relation to the Plaintiff's conveyance as follows:

''I am here in respect of a subpoena, dated 22/11/2019. I do have Volume 172 of the Record Book of Conveyances. I am also in possession of the

duplicated copies of Exhibit B92-98. The parties to Exhibit B92- 98 are Adda Leigh and Abal Cole; it was the former that conveyed to the latter. The conveyance is found in Volume 172 at Page 88. The document is dated 31/12/1953. Page 88 is attached by way of a cello tape to Volume 172. There are 75 conveyances in the said volume. No other conveyance in Volume 172 is attached by way of a cello tape''.

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However, J.M Jingo Esq., in manifestation of his professionalism, chose not to call any other formal (not factual) expert witness, to challenge and discredit the veracity of such a strong and indicting testimony of DW2, imputing fraud/forgery on the Plaintiff's conveyance and simultaneously implicating, particularly the staff attached to the Office of the Administrator and Registrar-General, to a joint criminal enterprise; because there is no way such alleged criminality, could and would have been facilitated, without the collusion and/or complicity of such staff. Meanwhile, the only essential piece of evidence, available in this court, regarding the credibility or non-credibility, legality or illegality and validity or invalidity of the Plaintiff's conveyance is that of DW2; as corroborated by DW3.

Meanwhile, in the absence of any other evidence, in contravention of the foregoing testimony, and the fact that it has come from a certified forensic expert of the Sierra Leone Police, coupled with its depth, accuracy and consistency; I dub that highly admissible and relevant testimony, a coruscating and a scintillatingly convincing account, sufficient to influence and even compel any reasonable tribunal of facts, to attach the greatest of weights to it, in the determination of the legality or illegality of the Plaintiff's conveyance. However, the other issue which J.M Jingo Esq. has strongly hammered home is the need for the court to

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take the contents of Exhibits A134-135 and A164-171 with the greatest seriousness that they deserve.

The implicature of this submission is that this Honourable Court is obliged to attach serious weights to the said Exhibits, because they are quite central to the determination of this matter. However, it should be noted that the weight that is to be attached to either or both exhibits, depends or depend on their authenticity and centrality to the contention, which this Honourable Court is bound to resolve. Thus, Exhibit A134-135, was not born in the womb of the contention of this matter. So, I will not go into its contents. Nonetheless, ExhibitA164-171, is made prominent in the testimony of PW2 and its contents are a clear reflection of the findings of the Ministry of Lands on the contention of the ownership of the land in question and the occupation of the land by the 1st Defendant.

However, I must state here that declaration of title to land in the Western Area, is a reflection of the original jurisdiction of the High Court of Justice;[20] to the exclusion of any functional legal and political entity in Sierra Leone. Therefore, the Ministry of Lands, has no business, to determine ownership/title to land anywhere in Freetown. That is why when there is a contention about ownership in respect of any portion of land in the Western Area, it is the original exclusive jurisdiction of the High Court of Justice that is invoked[21]. However, the Ministry of Lands, has always been called upon, by the courts or litigants, to help with the requisite evidence, when it comes to the determination of title to realty.

[20] See analysis in 3.2 above.
[21] See Subsection (1) of Section 132 of the Constitution of Sierra Leone, Act N0.6 of 1991, Subsection (2) of Section 7 and Section 18 of the Courts Act, N0.31 of 1965; and The Third Schedule of Same,

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Meanwhile, the circumstances that culminated in the production of Exhibit A164-171 are not as important as its contents.

So, I will not delve deep into such circumstances. The business of the court is to deal with the issues that are brought to it for determination. Exhibit A164-171 contains a number of issues and facts-in-issue, which I am obliged to convincingly unpick herein in tandem with the aforementioned documentary and testimonial evidence of the Plaintiff and Defendants. The said Exhibit is a report, dated 19th October 2017, signed by one Abraham Cooper on behalf of the Director of Surveys and Lands, addressed to NASSIT's Director-General, but other State dignitaries, including the Permanent Secretary and Minister of Lands and the Senior Director, Strategic and Policy Unit, State House, are copied in that report. The Plaintiff's family, the Chambers family and the 1st Defendant, are as well copied in that report.

Surprisingly, the then Attorney-General and Minister of Justice, who doubled as the Principal Legal Advisor to Cabinet and the Government of Sierra Leone, was not copied in that report. Thus, the reason for this is not known. The heading of the said report thus reads:

> ''Report on Re-survey, Re-demarcation and Investigation of Ownership of Contentious Land being Occupied by Sierra Concrete Products Ltd at Angola Town Peninsular Road''

The foregoing clearly indicates that the realty in question is in contention and it had been occupied by the 1st Defendant, but there is nothing in that heading that shows how the 1st Defendant, came to be in possession (occupation) of the realty.

This issue is clarified in the background of the report, which raises some other issues that worth a serious inquiry. The report's background reads:

> ''Following reports from the Management of NASSIT about massive encroachment on land leased to the institution by Government currently occupied by one of its subsidiary companies - The Sierra Concrete Products Limited (SCPL) at Angola Town, Peninsular Road, the Strategy and Policy Unit in State House, convened a meeting of all parties concerned. During the meeting, *two land owning families (Cole Family and Chambers Family represented by Mr. Alhassan Cole and Pastor David Chambers)* challenged NASSIT and produced documents claiming ownership of the same parcel of land'' (my emphasis in italics).
>
> ''A subsequent meeting was convened by SPU precipitated by the heightened tension between NASSIT and *the land-owning families*. The Ministry was then requested by SPU to resurvey, re-demarcate the land in contention and report the outcome of the investigation accordingly... After the demarcation and fixing of beacons on the parcel of land in question, *the ream requested that the two (2) land owning families* to submit their respective master plans with a view to ascertain their authenticity, right to the property, and if the documents plot in the actual positions as claimed'' (my emphasis in italics).

Thus, it is clear from the first paragraph (as referenced above) that the 1st Defendant, came to occupy the contentious realty, pursuant to a lease agreement which it entered into with the Government of Sierra Leone (see Exhibit B13-22 and the testimonies of PW1 and DW1). Indeed, the realty's ownership is in

contention, because the evidence before this court, has incisively established, that the Plaintiff and the 2nd Defendant, are claiming the fee simple absolute in possession; while the 1st Defendant is only claiming an equitable interest in same, empowering it to be in possession of the said realty, for a period of 99 years. The other issue, which I think is quite unimportant and negligible in this matter, is the reference to Pastor David Chambers, who is not a party to this action.

This is confirmed by the names of the parties to this action (inscribed in the amended writ of summons) and the testimonies of PW1 and PW2, under cross-examinations. This is what PW1 had to say on this point:

> ''The said Brima Cole is dead. I do know Pastor David Chambers, but I do not know how connected he is to my father's land.''

And this is how PW2 bolstered this evidence:

> ''I do not know about any connecting link between Pastor David Chambers and the land. But prior to the conduct of the Presidential and Parliamentary Elections of 2018, he was in some of the meetings, we held in the Office of the Attorney-General and Minister of Justice, concerning the land. He attended those meetings on the basis of a report that came from the Ministry of Lands. He also attended the meetings, we had at State House in connection with the land. I cannot recall that David Chambers attended those meetings with facilitators''.

Furthermore, to buttress and stress the point, which I made above, the said report refers, to the Cole and Chambers families, as 'land owning families', in three sentences of its background, referenced above. These sentences are thus

unfounded, misleading and baseless; it is not the business of the Ministry of Lands to determine, who owns any piece or parcel of land, that is in contention in the Western Area. In fact, the said background content is very much contradictory, because if the ownership of a title to land is in contention, the actual owner can only be known, when the High Court of Justice, determines that; and not when the Ministry of Lands dubs any person (who might be a land grabber) the owner of that realty.

Meanwhile, in tandem with this same point, what really also appears, quite bizarre to this Honourable Court, is why should a matter, which is being heard in a court of competent jurisdiction (The High Court of Justice), be made a subject of deliberation by State House? This action commenced on 12th March, 2013, and the meetings, which were subsequently held at State House and in the Office of the Attorney-General and Minister of Justice, took place in 2017. Thus, even PW2 and DW1 corroborated this fact as embedded in the background content of the foregoing report. Those meetings could clearly be seen as an attempt to oust the jurisdiction of the High Court of Justice. This attempt is seen in the fact that State House instructed the Lands Ministry to re-survey and do a report about the status of the realty, after litigation had been on-going for almost four years. I am sure that such instructions (directions) should not have come from State House. They should have come from this Honourable Court, which is clothed with the appropriate jurisdiction to do so.

However, Exhibit A164-171 says in one of its pages (supposedly page 3) that:

> ''The document in respect of Abal Cole family could not be found in the Ministry's record books but their master plan is widely recognised by

officials of the Ministry in the signing of several parcels of land within their perimeter as a sub-divisional plan.''

Thus, the above sentence, shows that the Lands Ministry has no record of the document of the Cole family. Why is this so? How is this possible, if at all, when the so-called site plan referenced in Exhibit A164-171 was allegedly signed in 1956, the then Director of Surveys and Lands, complied with Section 15 of the Surveys Act Cap. 128 of the Laws of Sierra Leone, 1960? Thus, the said provision reads:

> A licensed surveyor who shall prepare any plan to be used in connection with any instrument which is required to be registered under the provisions of the registration of Instruments Ordinance may if he so desires send two copies of the plan signed by himself to the Director of Surveys and Lands for his counter-signature, together with such information as may be required by the Director of Surveys and Lands. *The Director of Surveys and Lands shall return one copy of the plan, and shall if he is satisfied that there is no defect on the face of the plan, return the other copy duly counter-signed by the licensed surveyor* (my emphasis italics).

Essentially, a clear compliance with this section, would have made it certain, for the then Director of Surveys and Lands to have kept record of the Cole family's document, which is non-extent. This further raises the issue of whether PW2 told the truth, when he said the Ministry of Lands had written to the Cole family, requesting it to make some acres of the subject matter of this litigation, available to the Government of Sierra Leone for developmental purposes (see 1.4). The said letter was neither produced for identification, nor was it tendered in

evidence. Certainly, either could not have been done, because the ministry hasn't no records of the Cole family's document in its archives. So, why does the ministry refer to the Cole family as 'land owning family', when it in fact has no record of the contents of its document?

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How did this family come to own that very vast realty in the Western Area? Was it given to it by the Crown or the State? Or was it legally speaking, acquired from Adda Leigh, through a 'genuine' contract of sale, when the very validity and legality of the conveyance of that transaction, has been evidentially challenged and impugned? If it has no record of the Cole family's document, on what basis, did it sign their site plan in 1956, though their conveyance was said to have been registered in 1953? On what basis has the ministry accorded recognition to the site plan of the Cole family, when it has no record of it? Why should the Cole family's plan, which is not on record, be the basis for the signing of several parcels of land within their perimeter as a sub-divisional plan? Is it possible to put something on nothing and expect it to stay there? Does according recognition to a document, that is not on record and using it as a blueprint or offshoot of other documents, relative to land, the right thing to do by the Lands Ministry? What is the legal basis for this convoluted decision of the ministry? Has this decision not caused more land problems, than it has helped solve in the Western Area? Is the Ministry of Lands, part of the chronic, endemic and seemingly uncontrollable land quagmires in the Western Area?

Circumspectly, the right answers to these questions, do not only impugn the accuracy of Exhibit A164-171, but further question whether the Cole family is the actual owner of the realty, which is the subject matter of this litigation. Thus, the

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weight that this Honourable Court, attaches to ExhibitA164-171 is quite minimal. The document's minimal significance is in fact compounded by a plethora of other bizarrely convoluted issues, which J.M. Jingo Esq. has strongly clung onto, that I will address as this Judgment unfolds. Also, my critical and conscientious perusal and observation of the Plaintiff's conveyance, dovetailed with DW2's testimony that the signatures and stamps on it, are significantly different from the other conveyances[22], registered around that period, found in that same volume.

Therefore, on the third issue, regarding the circumstances, pursuant to which the court will determine whether a conveyance is endow with the apposite strength (as a documentary evidence) for it to sway the court, to consider it as one that sufficiently establishes a good title to a realty, I will hold that Exhibit B92-98 (i.e., A38-43: the Plaintiff's conveyance) is fraudulent, forged/fabricated and hence illegal. Finally, on the fourth consideration, regarding the worthiness of the Plaintiff's conveyance in the determination of title to property, I do not think there is any need to go into it, because I have already established that the Cole family's conveyance lacks validity and legality; because it is a forged and fraudulent title deed and therefore, sufficiently valueless, worthless, criminal and improper to be called a conveyance.

Meanwhile, if the fraudulent and forged conveyance of the Plaintiff's father, cannot comfort her with any legs to stand on, can she rely on possessory title, to

[22] See Conveyance dated 31st December, 1952 in Volume 172 at page 86 of the Records Book of Conveyances; Conveyance dated 31st December, 1952 in Volume 172 at page 87 of the Records Book of Conveyances; Conveyance dated 31st December, 1953 in Volume 172 at page 88 of the Records Book of Conveyances; Conveyance dated 31st February, 1953 in Volume 172 at page 90 of the Records Book of Conveyances; Conveyance dated 31st January, 1953 in Volume 172 at page 91 of the Records Book of Conveyances.

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claim ownership of the realty in question? Thus, the background content of Exhibit A164-171 again purports to ascribe or confer possessory status of the realty to the Plaintiff's family as follows:

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> ''They further alleged that prior to the eventual possession of the land by NASSIT, *properties (structures) belonging to these purported land-owning families were demolished by NASSIT*'' (my emphasis in italics).

Moreover, PW1 apparently corroborated this point, when she first said under cross examination that:

> ''*There is a property on the land which I said belonged to my father*'' (my emphasis in italics).

But she again told the court under the same cross-examination that:

> My Late brother Brima Cole did not sell any portion of that land. I also did not personally sell any portion of that land. I am presently not in possession of my own portion of that land. *My Late brother was also not in possession of his before he died. And even Abal Cole was not in possession of any portion of that land before he died* (my emphasis in italics).

Thus, there are clear contradictions in the foregoing evidence. First, Exhibit A164-171 says NASSIT demolished structures, belonging to the land-owning families on the land, but PW1 clearly contradicted this. How is it possible for one's late father to have property on a piece of land, when he was simultaneously not in possession of it before he died? Again, neither Abal Cole, nor PW1's late brother (Brima Cole), nor PW1 herself, has been in possession of any portion of that land. So, how did the Cole family come to have property on the land, when even Abal

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Cole hadn't been in possession of any portion of that land, before he died? Further, PW2 also contradicted PW1's testimony that Abal Cole was not in possession of any portion of that land before he died. This contradiction is conspicuous in this bit of PW2's testimony:

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> ''I live at N0. 27 Passionage Street, Kissy, Freetown. I am a businessman. I do know the Administratrix in this matter. And I do know property at Angola Town. *I was only ten (10) years old*, *when I was being taken to that property*, *during the weekends* (my emphasis in italics). The owner of the property is Abal Cole, who is my grandfather. I can produce evidence to this court that Abal Cole is my grandfather. I can as well produce evidence to establish that Abal Cole is the owner of the property''.

Thus, was it really possible for PW2 to have been taken to the land, during the weekends at age ten, when even his grandfather (let alone his father) was not in possession of any portion of that land, before he died? Thus, it stands to reason, or even stranger than fiction, that the daughter (Plaintiff: PW1) that took out Letters of Administration, on the one hand, said on oath that neither her father, nor her brother (both deceased), and not even herself had been in possession of the realty, but Exhibit A164-171 and the testimony of PW2 (who is only a grandson), on the other hand, are saying something entirely different. Indeed, both sets of statements are diametrically opposed to each other.

So, which one should this Honourable Court rely on, when both cannot be right? Therefore, either the first is wrong and the second is right; or the first is right and the second is wrong? Therefore, the contradictions inherent in the above pieces of evidence, would warrant this Honourable Court, not to attach any weight to

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them, concerning the Plaintiff's tacit reliance on possessory title, through ExhibitA164-171 and the testimony of PW2. Further, PW2 said in evidence that the then Minister of Lands, Dr. Alfred Bobson Sesay (now deceased) wrote a letter to the Cole family, demanding the acreage of land the Government of Sierra Leone wanted for their investment; for an agreed compensation.

Thus, it has already been established that a copy of that correspondence was neither produced for identification; nor was it tendered in evidence. Again, neither the acreage of land which was to be given to the Government for their investment; nor the agreed compensation, was made known in PW2's testimony. Further, the evidence that the Land was taken from the Cole family by the Government of Sierra Leone, for an agreed compensation; was neither corroborated by PW1 (the Plaintiff); nor was it supported by any other evidence, before this Honourable Court.

Nevertheless, why should the Government of Sierra Leone agree to pay compensation to the Cole family for a piece of land for which the Lands Ministry has no record and then reneged on that promise, but the Cole family in its wisdom, chose not to bring an action against the Government of Sierra Leone to re-claim the land, after it was taken from them? Neither is there any available evidence that the said family complained of the alleged undue advantage, which the Government of Sierra Leone, took of the situation, because it had state power? Nor did it write any correspondences to the Government, requesting it to keep to its promise of compensating the Cole family for the land? Moreover, DW1 denied PW2's testimony that NASSIT later agreed to pay ten thousand U.S Dollars

to the Cole family in respect of each town of the portion of land that its subsidiary company (the 1st Defendant) now occupies.

Thus, the words of PW2 are in contravention of those of DW1 on this issue. So, which one should this Honourable Court uphold, when both cannot be right? Either that of PW2 is right and that of DW1 is wrong; or both are wrong. So, to be candid, there is no need for this Honourable Court to base any bit of its decision on this highly disputable and doubtful piece of evidence; which each side to this dispute has contradicted. Further, when PW2 went on the land and stopped the surveyors of the Government of Sierra Leone from conducting the surveys, which they were instructed to do; he was arrested and charged (pursuant to some offences in the Public Order Act N0.46 of 1965), though he was subsequently discharged for want of prosecution (pursuant to section 94 of the Criminal Procedure Act, N0.32 of 1965). Thus, the numerous contradictions, inherent in PW2's testimony, would again shield this Honourable Court, from being convinced that the subject matter of this litigation, was indeed taken from the Cole family without compensation.

Thus, in as much as proof of possessory title is as weighty as proof of documentary title, regarding the determination of title to property in the Western Area by the High Court of Justice, there is nothing in evidence to suggest that the Plaintiff has even proven more than long term possession; neither has she gone further to establish a better title not only against either of the Defendants, but against any other person, to establish that the title of the true owner has been extinguished in her favour, by the combined effect of adverse possession and the Statute of Limitation, referenced above. Meanwhile, the inability of the Plaintiff to

convincingly establish, through documentary or possessory claims, that the realty in question, belongs to the Cole family, shields this Honourable Court, at this stage, from inquiring into her claims, relating to recovery of possession, damages for trespass, perpetual injunction and cost.

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5.1.2 <u>Unpicking the 1st Defendant's Case</u>.

I will now proceed to examine the case for the 1st Defendant, which is built on the architectures of its amended statement of defence and counterclaim to the Plaintiff's writ of summons (see 1.2). In summary, the 1st Defendant's case is in respect of a declaration of a right of possession, revocation of the Plaintiff's conveyance, damages for trespass, injunction, any further or other relief and cost. Meanwhile, regarding the issue of a right to possession of the realty in question for up to 99 years, the 1st Defendant has produced a Lease Agreement, entered into by the Government of Sierra Leone and the 1st Defendant, which is a subsidiary corporate entity of NASSIT (a state institution).

The said agreement is dated 24th April, 2007 and is registered as N0. 61/2007 in Volume 100 at Page 34 of the Record Book of Leases, kept in the Office of the Administrator and Registrar-General. This Lease Agreement, which was already in evidence, was subsequently identified and marked Exhibit B13-22. Unlike the Plaintiff's conveyance, that has been challenged and thus established to be fraudulent and forged, no averment of fraud and forgery, has been raised against Exhibit B13-22. Does this presuppose that the validity and legality of the said Exhibit has not been challenged? Thus, PW1 alluded to Exhibit 13-22 as follows:

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''I did not know whether it was the Government of Sierra Leone that put Sierra Blocks Concrete Products Ltd. (the 1st Defendant) into occupation, but I have now found out how they got into occupation. The 1st Defendant was put into possession by a lease agreement, but I do not know the person that leased the property to them''.

This bit of PW1's testimony strikes a chord with that of PW2:

''I do know the 1st Defendant. I came to know it (the company) in 2003, when the then Minister of Lands, Alfred Bobson Sesay, wrote to the Cole family (which was then headed by my father Brima Cole), inviting it to a meeting at the Ministry of Lands. A cross-section of the family went to the Ministry to respond to the Minister's call sometime in 2003. The Ambassador to Ghana, Alie Bangura, the Minister of Labour, Mr. Alpha Timbo and the then Director of Surveys and Lands, Mr. Jones, were present during the meeting''.

Meanwhile, the fact (not the law) about how the 1st Defendant got into the Lease Agreement with the Government of Sierra Leone is made quite clear by DW1:

''I am Simeon Nelson. I live at N0.5 Nylender Street, Aberdeen, Freetown. I am the General Manager of Sierra Blocks Ltd. I am aware that Sierra Blocks is the 1st Defendant is this matter. I started working with Sierra Blocks on the 19th September, 2016. I am aware of the dispute between Sierra Blocks and the Plaintiff's family. The dispute is about the land, which the Government of Sierra Leone had put on lease to Sierra Blocks Ltd. that was grabbed by the Cole Family. I am very conversant with the issues relative to that land. *Exhibit B13- 22 is the Lease Agreement between the Government of Sierra Leone and*

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Sierra Blocks Ltd. That agreement subsists for up to 99 years; it is dated 24th April, 2007. The 1st Defendant has invested so much on that land (my emphasis in italics). It has built a brick-making factory on the land. That factory worth up to Seven (7) Million US Dollars at the time of the initial investment''.

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Thus, the connecting link of the foregoing testimonial pieces of evidence, strengthens the 1st Defendant case, that it got to occupy the realty, pursuant to ExhibitB13-22. The question that arises at this stage is, why should the Government of Sierra Leone, put the realty, which the 1st Defendant now occupies, on a lease that spans for up to 99 years, when there is a contention that, that realty is a private property? This contention is bolstered by the fact that ExhibitA164-171, which is a communication from the Ministry of Lands, states that the said property's ownership, has since been in contention; as it is being claimed by the Cole and Chambers families. This same exhibit also alleges in its conclusion that:

> ''Notably, it has been established according to the investigation that the process that led to the eventual lease of the land to NASSIT was not adequately followed. This situation has apparently made it difficult for the lease holder (NASSIT) to enjoy a sustained peace.''

Meanwhile, it should be noted that the state was not a party to this action, when it commenced. The action was initially brough against the 1st Defendant, a subsidiary company of NASSIT. When the state (2nd Defendant) became a party, it counterclaimed that the subject matter of this litigation is a state land. This counterclaim is also replicated in the amended defence and counterclaim of the 1st Defendant. In justification of their averments, that the realty in question,

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belongs to the state of Sierra Leone, both Defendants have relied on Section 31 of the State Lands Act N0.19 of 1960. The said section thus reads:

> ''In any action, suit or proceedings against any person for or in respect of any alleged unlawful, use of, or trespass upon any Crown land, the proof that the occupation or use in question was authorised shall lie on the Defendant, and in every such action, suit or proceedings and in every action by or against the Government in which title to land shall be in issue the averment that any land is Crown land shall be sufficient without proof of any such fact, unless the defendant proves the contrary''.

Thus, in tandem with this provision, there is evidence that both Defendants have averred that the realty in question, belongs to the Crown (the state). More importantly, the section further reliefs the Defendants from proving that the realty, does belong to the state. Most importantly, the section compels the other side, to prove the contrary. That is, to establish that the realty does not belong to the state, but it rather belongs to them. Analytically, there is absolutely no evidence on the Court's records that the Plaintiff has proven that the realty, belongs to the Cole family. Nonetheless, I will now examine the claim in the conclusion to Exhibit A164-171, that the process that led to the eventual lease of the land to NASSIT was not adequately followed; and that this situation has apparently made it difficult for the lease holder (NASSIT) to enjoy a sustained peace.

First, I must say this bit of Exhibit A164-171 is erroneous. The Government of Sierra Leone has not put the realty on lease to NASSIT; rather it is on direct lease to the 1st Defendant (see the contents of ExhibitB13-22). Second, ExhibitA164-171

has neither highlighted nor articulated the processes that were not adequately followed, when the lease agreement was done. The implicature of that vague statement is that because the process that led to the eventual lease of the land was not adequately followed, the legality of the very lease is questionable. This has necessitated the need to examine the legal processes, culminating in the credibility of a lease that is being sanctioned by a court of competent jurisdiction as valid and legal.

This examination is done (assuming the realty in question, at this stage, belongs to the state), in the context of how does the state put a realty on lease to either a natural or a juristic (juridical) person. Analytically, section 3 of the Crown Lands (Amendment Act) N0. 37 of 1961 is instructive on this. The section says:

> ''Section 4 of the principal Ordinance is hereby repealed and replaced by the following new section 4. The minister may make grants of Crown Lands in such and subject to such conditions as may be required and may deem proper''.

So, the Minister of Lands is the appropriate state dignitary that the foregoing provision mandated in the context of this matter, to put state lands on lease. The procedure of how this is done is simple. First, the State, through the minister, agrees with the natural or juristic person, to put a state's land on lease to the latter for an agreed consideration (in respect of a specific period) within which it is expected that the latter will possess an undisputable subsisting equitable interest, culminating in what is known as quiet and undisturbed enjoyment in property law. The contents of the agreement are produced to the Office of the Attorney-General and Minister of Justice, alongside the requisite information

about the land and its location, through the Office of the Director of Lands and Surveys, for the preparation of the formal lease agreement.

After having been formally documented by the Law Officers' Department, consonant with the appropriate legal format for registration, the face of the document, which is to be registered, pursuant to Caps. 255 and 256, must clearly contain the names of the parties, the location of the land, the date of the commencement of the lease, the terms and conditions of the agreement, the date of its expiration, annual rent to be paid etc. And before it is accordingly registered, the registration officers, in the Registrar-General's Office, must ensure that the exactitudes of its contents, are unquestionable and the evidence of the requisite National Revenue Authority (NRA) Tax Clearance Certificate, must have been affixed to the document.

Thus, my legal forensic examination of the contents of the lease, depicts that the foregoing procedures and processes were strictly complied with. The processes, leading to the preparation, documentation and registration of ExhibitB13-22, are quite unquestionable and unambiguous. Therefore, to say such processes, were not properly followed (as it is pontificated in ExhibitA164-171) is as presumptuous as it is preposterous; and enhance unacceptable.

Significantly, in the absence of any evidence from the Plaintiff, contradicting the 1st Defendant's case, regarding the validity and authenticity of Exhibit B13-22, I will conclude that the lease agreement, pursuant to which the 1st Defendant, came to be in possession of the realty in question is genuine, valid and legal. In fact, the mere averment (which has not been convincingly evidentially challenged) that the realty in question, belongs to the State (the Crown), speaks

volumes of the 1st Defendant's claim to be in possession of it, for the term of years certain, inscribed on the face of ExhibitB13-22[23]. The next issue raised by the 1st Defendant is the revocation of the Plaintiff's title deed. Thus, the facts and facts-in-issue, regarding this order as prayed, have been systematically handled in the analysis of the Plaintiff's case, alongside the country's appropriate legal regimes on forgery and fraud.

Nevertheless, the other issue, which must now be examined, is the claim of damages for trespass on the realty, whilst the 1st Defendant's lease subsists. Trespass to land, which is actionable per se (without any proof of damage), concerns any form of direct harm or physical interference into someone else's realty. Invariably, proof of actual or physical damage to the land is irrelevant, because the actual harm, lies in the fact that someone else's land has been intentionally and unjustifiably interfered with. So, it is not the trespass that must be intended; it is the act that constitutes the trespass that must actually be intended. Essentially, trespass to land protects someone else's right to property. That right does not necessarily have to be legal; it can be equitable, as in the case of a lessee; that holds a temporary ownership to a realty.

Thus, physical interference can take different forms, including crossing a boundary on to land, remaining on land, going beyond what is permitted, while on someone else's land, putting or placing objects in someone else's land[24] etc. Thus, it cannot be legally contended, that immediately a lessee takes exclusive possession[25] of and is in quiet and undisputable enjoyment of a realty, every other

[23] Section 31 of the State Lands Act N0.19 of 1960, op. cit.
[24] Kirsty Horsey and Erika Rackley, Tort Law (5th Edition, Oxford University Press) 521-522.
[25] Clore **v** Theatrical Properties Ltd (1936) All ER 483; Rigby LJ in Daly **v** Edwardes (1900) 83 LT 548 at p.551, upheld (1901) 85 LT 650.

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person that steeps their feet in any portion of that realty (by operation of law), becomes trespasser ab initio. This paraphernalia of a lease is quite peculiar to its subsistence; and thus protects 'the temporary ownership', which the lease agreement confers on the lessee.

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Purposefully, there are a number of exceptions to this general rule. However, the evidence in its totality does not point to any fact or fact-in-issue that is cognate with any of the notable exceptions, created by statute or the common law. So, there is absolutely no need to put any of such exceptions into perspective in this judgement. However, what is really important is to establish, whether the 1st Defendant has actually adduced sufficient evidence in tandem with the averment of trespass on the part of the Plaintiff; and whether there is any bit of the evidence, which the Plaintiff can rely on to disapprove the 1st Defendant's averment of trespass. The witness' statement of DW1 contains facts-in-issue in paragraphs 4-8 that dovetailed with the averment of trespass:

1. That the 1st Defendant has made investments on the said property and has on it a blook-making factory and a quarry site.
2. That following a scale down of its operations during the Ebola period, trespassers claiming to be members/agents of the Cole family invaded the 1st Defendant's property.
3. These people demolished the fence that was being constructed by the 1st Defendant and started construction activities on the remaining portion of the property.

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4. Due to the frequent invasion and trespass by the Plaintiff and persons claiming through the Estate of Abal Cole, the 1st Defendant has been unable to construct a fence around the property leased from the Government.

2 Meanwhile, these bits of DW1's witness statement, are not unrelated with his oral testimony:

> ''I am aware of the dispute between Sierra Blocks and the Plaintiff's family. The dispute is about the land, which the Government of Sierra Leone had put on lease to Sierra Blocks Ltd. that was grabbed by the Cole Family. I am very conversant with the issues relative to that land''
>
> ''Sierra Blocks started having problems with the Plaintiff, when the deadly Ebola virus disease first hit Sierra Leone. I went on to the land and discovered that some people said they had bought the land from Pastor Chambers and the Cole family. The pieces of land they said they had bought are parts and parcel of the land that the Government had put on lease to Sierra Blocks. I had met Pastor David Chambers and members of the Cole family on the land.''

Moreover, under cross-examination, the following evidence was elicited from DW1:

> ''The Cole family attacked the factory. They produced a default judgment and got bailiffs, police officers and thugs to take over the property. It was when the police left that the thugs took over. The Cole family came with a bulldozer and hammers to the scene. The factory's structures were ruined; the building was broken into and unroofed. The plants and equipment were

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also damaged. The destruction that was done to the property worth over 2 million U.S dollars.

Nonetheless, the question that should now be posed is whether there is any evidence on records, negating the foregoing overwhelming evidence on trespass adduced by the 1st Defendant? Thus, whilst exploring the evidence, relating to the Plaintiff's case, I have not been able to locate any bit of it that is in contradistinction to the case for trespass, which the 1st Defendant has established. Finally, the two other orders as prayed, are perpetual injunction and cost. These orders have always been prayed for, when issues of declaration of title to realty, are brought before courts of competent jurisdiction. And such discretionary orders, are mostly made in instances, wherein the courts are certain that those praying for them, are the actual parties, on whose favours the declarations, should be made.

5.1.3 <u>Unpicking the 2nd Defendant's Case.</u>

I shall now turn to the case of the 2nd Defendant, which is based on the statement of defence and counterclaim to the Plaintiff's writ of summons (see 1.2), filed on behalf of the Government of Sierra Leone. In a nutshell, the 2nd Defendant's case is in respect of a declaration of a right to fee simple absolute in possession on behalf of the State, a declaration that the Plaintiff has unlawfully occupied and laid wrongful claim to the subject matter of this litigation, recovery of possession, perpetual injunction, damages for unlawful possession and cost. Meanwhile, regarding the first order as prayed, the 2nd Defendant has also relied on Section 31 of the State Lands Act N0. 19 of 1960, referenced in 5.1.2 above. Thus, paragraph 6 of the 2nd Defendant's counterclaim avers that the said land was previously part

of the forest reserves and that a grant was never made to the Plaintiff. The 1st Defendant was put in possession of same via its parent organisation, NASSIT, which was authorized to take possession of the State land by the Government of Sierra Leone.

Thus, the legal significance of Section 31 of the State Lands Act N0.19 of 1960, has already been examined in 5.1.2. Certainly, the Plaintiff has not adduced any evidence in contravention of the averment that the realty belongs to the State. For purposes of reiteration, according to Section 31 of the foregoing authority, the mere averment that the realty gelongs to the State is sufficient for the State to claim its ownership, unless the other side proves otherwise. However, there is nothing in evidence to establish that the Plaintiff has proven otherwise. Further, there is as well nothing in evidence, depicting that a grant of the realty was made to the Cole family or the Plaintiff by the Crown or the State. Again, the Plaintiff has nowhere in the available evidence, established that the realty was not previously part of the State's Forest reserves.

Therefore, the 2nd Defendant's reliance on Exhibit B13-22 and the testimony of DW1, regarding the lease agreement, between the Government of Sierra Leone and the 1st Defendant; and that it was the former that put the latter into possession, are facts-in-issue, which this Honourable Court, has given the greatest of weights. Again, the 2nd Defendant has relied on Section 15 of the Surveys Act Cap. 128 of the Laws of Sierra Leone, 1960, to emphasize the fact-in-issue that because the survey plan of the Plaintiff is not in the records of the Ministry of Lands; it is therefore invalid. Thus, even the testimony of PW2 touches on this

fact-in-issue, which the Plaintiff has not contravened in the available evidence, before this Honourable Court (see page 25 of the court's records):

> ''I am expecting compensation for the land from the Government of Sierra Leone even though our title deed is said to be false by the Sierra Leone Police. Exhibit A164-171 is the report that was sent to State House from the Ministry of Lands. *I am aware that the said document, makes it clear that my father's documents in respect of the land cannot be found in the Ministry's records book''* (my emphasis in italics)

The next issue, which the 2nd Defendant has relied on, concerns the forgery of the Plaintiff's purported conveyance, the uncontroverted and compellable testimony of DW2 and the police report, embedded in Exhibit B27-36. Thus, I have made it quite clear in 5.1.1 that indeed because DW2's testimony has not been evidentially challenged, this Honourable Court has therefore attached a serious weight to it, in arriving at its conclusion on the authenticity of the Plaintiff's conveyance. Invariably, the courts in the adversarial/common law jurisdiction, has never allowed litigants to use the courts as conduit pipes for forgery and fraud. And the administration of justice has never allowed such litigants to benefit from their fraudulent, dishonest and/or criminal enterprises.

The legal principle is *exturpi causa oritur non actio*. The cases of **Mason v. Wilson (SC. Civ. App. 2/87: Judgment Delivered on 14th July, 1995), Madam Meminotu Ibrahim v. Dr. Lasisi Osunde and Others (2009) LPELR- 1411 (SC) and Elder S.A. Soyinka v. Dr. Olaiya Oni and Others (2011) LPELR- 4096 (CA) and Hado Nigeria Limited v. Niger Delta Development Commission (C A/PH/461/2012.** However, J.M. Jingo Esq., raises a point about whether it is evidentially right for the 2nd

Defendant's Counsel (Abigail Suwu-Kaindoh Esq.) to cross-examine DW3, who happens to be a formal witness of the 1st Defendant. Counsel's evidential concern is based on the fact that the 2nd Defendant has also considered that witness as its own. Therefore, it cannot in turn cross-examine him. Whilst this argument appears logical, J.M. Jingo Esq., has not referenced any authority (evidential or procedural) in support of his legal assertion.

Again, I have not been able to locate any legal authority (compellable or persuasive) in the adversarial justice system that says that a witness of one defendant cannot be cross-examined by co- defendant, should he or she wishes to do so. In fact, the bit of evidence that is elicited from DW3 (as a formal witness) is of little corroborative effect to some of the facts-in-issue. And this Honourable Court's assessment of that evidence is that its probative value outweighs its prejudicial effect. Nonetheless, the 1st Defendant's case for trespass on which the 2nd Defendant has relied has already been dealt with in 5.1.2.

And the issue of whether the Plaintiff has or has not succeeded in establishing a case for declaration of title has also been handled in 5.1.1. Catalytically, on the basis of the foregoing analysis, I make the following orders:

1. It is hereby declared that the State of Sierra Leone is entitled to the fee simple absolute in possession and is the juridical person entitled to the control of all that piece and parcel of land situate, lying and being at Peninsular Road, Angola Town, Adunkia, Freetown in the Western Area of the Republic of Sierra Leone and measuring 79.2226 acres.
2. It is hereby further declared that the 1st Defendant is legally entitled to occupy and stay in all those premises situate lying and being at Off

Peninsular Road, Angola Town, Adonkia, Freetown in the Western Area of the Republic of Sierra Leone and measuring 79.2226 acres more particularly described in Cadastral Plan N0. LOA 10 79 dated 12th January 2007 by virtue of Lease Agreement dated 24th April 2007 registered as N0. 61/2007 in Volume 100 at Page 34 of the Record Book of Leases kept in the Office of the Administration and Registrar-General in Freetown.

3. It is hereby also declared that the Plaintiff herein has unlawfully occupied and laid wrongful claims of ownership to the aforementioned State land.
4. It is again declared that the Plaintiff's purported Deed of Conveyance dated 31st December, 1953 and registered as N0. 83 at page 88 in Volume 172 of the Record Book of Conveyances, kept in the Office of the Administrator and Registrar-General in Freetown, is hereby revoked and shall be accordingly and immediately expunged from the said Record Book of Conveyances.
5. It is also hereby ordered that an immediate and robust criminal investigation be launched by the Criminal Investigation Department to investigate the circumstances, culminating in the interpolation of the forged and fraudulent and purported Deed of Conveyance of the Plaintiff into Page 88 of Volume 172 of the Record Book of Conveyances of 1953; and charge the culprits with the apposite criminal offences.
6. It is further ordered that an injunction restraining the Plaintiff whether by himself his servants, agents, privies or howsoever otherwise called from entering, remaining on or working on in any manner whatsoever dealing in the 2nd Defendant's said piece or parcel of land or any part thereof, which is in the possession of the 1st Defendant.

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7. It is also ordered that damages of five hundred million (Le500,000, 000) for trespass shall be paid to the 1st Defendant.
8. It is finally ordered that a cost of one billion leones (Le 1, 000, 000, 000) shall be paid to both Defendants.

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

Justice of Sierra Leone's Superior Court of Judicature.

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