Civ. App 75/2023

IN THE COURT OF APPEAL OF SIERRA LEONE

(CIVIL DIVISION)

BETWEEN

LAMIN TURAY - APPELLANT

AND

YAYAH TURAY - RESPONDENT

CORAM:

HON. MR. JUSTICE ABDULAI M. BANGURAH J.S.C (PRESIDING)

HON. MRS. JUSTICE JAMESINA E. L. KING J.A.

HON. MR. MICHAEL P. MAMI J.A.

Counsel:

F. M. M. Sillah Esq for the Appellant

Z. A. Kanu Esq. & M. A. Turay Esq. for the Respondent

JUDGMENT DELIVERED BY THE HON. MRS. JAMESINA E. L. KING ON 21st JULY 2026

Background

1. This matter relates to land at Mabap and Rochain in the Bombali District in the Northern Province of Sierra Leone, previously owned by Pa Bap Turay (Deceased Intestate).
2. The Appeal filed by the Respondent is on the following grounds:

i. That the Learned Trial Judge erred in law and misdirected himself by delivering a ruling/judgment dated the 11th day of October 2023 in total disregard and in contravention to an earlier ruling delivered by the Hon. Mr. Justice Unisa Kamara J dated 27th day of October 2022 sitting as a judge in the same matter and on the same subject.

PARTICULARS OF MISDIRECTION

The learned trial judge in his ruling dated 11th October, 2023 at pages 41 and 42 thereof ordered thus:

Page 41: That the Applicant (now Appellant) and by extension his elder brother Pa Brima Turay who testified against their brother (the Respondent herein) at the Local Court in respect of the estate of the late Pa Bap Turay at Manutha and Karefe, should not benefit and had in fact lost their beneficial interest in the property the moment they testified in the local court for the complainant, one John Fornah against the defendant herein who was the defendant in the matter at the local Court.

Page 42: The Learned trial Judge further ordered that said two (2) portions of land for which the Respondent was sued by John Fornah at Manutha and Karefe belong to the Turay Family with the exclusion of the Applicant (now Appellant), his elder brother Pa Brima Turay, their children and their Children's heirs and that the Respondent should effective immediately take possession of the management, control and affairs of the said 2 portions of land.

The Honourable Mr. Justice Unisa Kamara J on page 3 of his ruling dated 27th October 2022 ruled that after a careful reflection on what was said in the locus in quo, it is clear that both parties (the Appellant and Respondent) are related by consanguinity and belong to a common ancestral root. He further ordered that both the Applicant (Appellant) and Respondent (Respondent) are beneficiaries of the estate of the Late Pa Bap Turay and therefore are entitled to benefit

from the estate. He further stated that the Applicant (Appellant) and Respondent (Respondent) being descendant of a common ancestral root are therefore obliged to benefit from the proceeds of sale of the estate of the late Pa Bap Turay which is the res in discuss.

ii. The learned trial judge erred in law and misdirected himself in granting leave to the Respondent to take over the control, management and affairs of the 2 portions of land at Manutha and Karefe belonging to the Turay Family effective immediately of the delivery of the judgment when there was no evidence to show that the Respondent had the locus standi or authority to assume such responsibility under section 10(1), (2), (3) and 4 of the Customary Land Rights Act, 2022 particularly part iv thereof, which is instructive on Family Land Title on rights of entitlements, Management and administration of Family Land in the provinces.

PARTICULARS OF MISDIRECTION

The Learned trial Judge in Order 4 of his judgment at page 42 made the following order thus:

> Order 4. That the Respondent takes over the control, management and affairs of the said two (2) portions of land at Manutha and Karefe effective immediately of the delivery of this judgment."

iii. The learned trial judge erred in law in disregarding the provisions of section 10(1), (2), (3) and 4 of the Customary Land Rights Act, 2022 particularly part iv thereof, which is instructive on Family Land Title on rights of entitlements, Management and administration of Family Land.

iv. The Learned Trial judge erred in law by extinguishing the rights of the appellant and his elder brother's heirs and assigns from benefitting from the family land in sharp contrasts to the provisions of section 10 subsection 2 and 3 of the Customary Land Rights Act 2022.

v. The Learned Trial Judge erred in Law by placing reliance on a case law authority of Thomas v Thomas 1932 16LLR5 above a Statute Law the said Customary Land Rights Act 2022.

vi. That the decision is against the weight of the evidence adduced.

4. Reliefs claimed by the Appellant are:

1. That the Ruling/Judgment of the High Court delivered by the Honourable Mr. Justice Mohamed Bawoh J. be set aside and that the previous ruling of Honourable Mr. Justice Unisa Kamara J be restored.

2. That the clarified Judgment of the Local Court dated 12th November, 2022 be upheld by this Honourable court in addition to the ruling of Honourable Mr. Justice Unisa Kamara J.

Summary of Submissions of Counsel for the parties

Counsel for the Appellant

5. He relied on his written submissions and highlighted the doctrine of stare decisis which he submitted was disregarded by the Learned Trial Judge Hon Justice Bawoh as his decision contravened an earlier ruling delivered by the Hon. Justice Unisa Kamara dated 27th October 2022 sitting as a judge in the same matter and on the same subject. He pointed out that the earlier Ruling stated that both the Appellant and Respondent had rights to the said property while the latter judgment appealed against went contrary to that decision.
6. He relied on the Constitution of Sierra Leone Act No. 6 of 1991 that there is only one indivisible High Court of Justice in Sierra Leone, no matter where it sits, and its decisions ought to be treated with equality and have the same effect. He submitted that courts should be restrained from going against established practices and deviating from tested proven and established legal principles citing the case of Simon Shonhayi Denhere v Mutsa Denhere (nee Marange) and Attorney-General of Zimbabwe, Constitutional Application No. CCZ55/17.
7. He stated that the Learned trial judge failed to consider compelling statutory provisions namely the Customary Land Right Act No. 20 of 2022 section 10 thereof. This provision he submits is supported and or reinforced by the reasoning in one of the leading authorities in land law in Sierra

Leone, a text titled Land Tenure in Sierra Leone, The Law, Dualism and the Making of a Land Policy by Ade Renner-Thomas (of blessed memory) at page 146 – 148. He referred particularly to section 10 (3) of the Customary Land Rights Act on the management and administration of family land which should be done in a sustainable manner taking into consideration the rights and interests of the future generations of the family.

8. He submitted that the essence of section 10(3) of the said Act is defeated when the Hon. Justice Mohamed Bawoh ruled on page 42 that the Appellant, his elder brother, their children and their children's heirs should not benefit from the property and had in fact lost their beneficial interest in the property. He also referred to section 10(4) (a) (b) of the said Act that the person acting as family head ought not to act unilaterally and should be accountable to members of the family. On this point he concluded with section 11(1) of the said Act which makes it mandatory by the use of the word shall, that any land transaction for a family land shall meet the informed written consent of not less than 60% of male and female members. He maintained that the above statutory requirements were defeated when the Learned Judge Justice Bawoh gave the free hand to the Respondent to manage, administer and control the Turay Family land in the 4th Order of his said judgment.
9. Counsel maintained that as chronologically listed in section 170 of the Constitution of Sierra Leone, Act No. 6 of 1991 it becomes clear that case law has no place where statute law is unambiguously clear. He submitted that the Learned Judge erred by holding that the principle enunciated in *Thomas v Thomas* 1932 as to a family member testifying against his brother on a settled customary law position, meant that he has lost his right to benefit from property that belongs to the family including portions that the said judgment in which he testified does not cover. He therefore asked that the said judgment of 11th October 2023 be overturned.

Counsel for the Respondent

10. Counsel for the Respondent relied on his written synopsis. On stare decisis, he submits that it is not a valid legal issue for appeal as it has not been properly canvassed, and has been erroneously applied by Counsel for the Appellant. Assuming and without conceding, he submits that stare decisis is not absolute and entirely binding on a court of equal jurisdiction relying on the reasoning of the Hon. Justice Sengu Mohamed Koroma J (as he then was) in the case of *Catering International v Services (SL) Ltd.* Misc. App 302 of 2015.
11. He also stated that stare decisis can be challenged where it does not relate to a settled judgment, ruling and most importantly from a superior court. He also stated that in the instant case the two applications before the two judges of the High Court were of sharp and material difference in the prayers and arguments thereto and in those instances, the latter cannot be bound by the former where there is a prevalence of such material difference.
12. Counsel relied on *Vera Cruz No. 2* (1884) (9P.D. 96.98); that there is no statutory or common law obligation on the court to follow its own decision, and that there is nothing in the Constitution of Sierra Leone Act No. 6 of 1991 or any other enactment that compels a court of equal jurisdiction to follow the decision of an equal court where to do so will perpetrate injustice. He also relied on Brown v Board of Education Topeka 1954 347 U.S 438.
13. Counsel submitted that a party cannot act against his interest and benefit from it, as can be seen from the records of appeal at page 170 wherein Lamin Turay the Appellant herein testified against his family interest in the local court and yet seeks to benefit from the said property. He submitted that this was clearly against the content and spirit of section 10(1) of the Customary Land Rights Act No. 20 of 2022.
14. Responding to grounds 2, 3 and 4 of the notice of Appeal, Counsel submitted that they are not only repetitive but also vague and lack particulars as required in Rule 9(1) and (3) of the Court of Appeal Rules

1985. Relating to the Hon. Judge's orders for the Respondent to take over the control, management and affairs of the two portions of land at Manutha and Karefe belonging to the Turay Family, he submitted that section 10(1) of the Customary Land Rights Act does not take away the right and power of a family member to deal, manage or administer family property on behalf of other lawful beneficiaries and family members.

15. He further submitted that section 10 does not oust the provisions of the Administration of Estate Act Cap 45 and the Devolution of Estates Act of 2007; and on their strength, a family member as in the case of the Respondent is clothed with the competence, to take control and manage the properties at Mamutha and Karefe. Therefore, he submitted the Learned trial judge in appointing the Respondent had recourse to applicable law and the relevant case law authorities such as *Thomas v Thomas* 1932 LLR5 (Supreme Court Case) see page 402 of the Appeal records.

16. He further stated that he who comes to equity, must come with clean hands and he who seeks equity must do equity and relied on the case of *Dering v Earl of Winchelsea* 1787 1 Cox EQ CAS 318; and other related cases referred to in the written synopsis.

17. He submitted that the Appellant, Lamin Turay cannot come to equity with his hands dirty having regard to the fact that he has testified against the family interest and by page 137 of the records at paragraph 6 "*under Customary Law when the property of a family comes under attack the family members will come together to defend it. But wherein certain members of the affected family join forces with another family against their family interest in the property, they have lost both the moral and legal rights to claim that property, should any of their family member succeeds in defending the property* ". He submits that Yayah Turay the Respondent is not holding the property as the sole owner but rather dealing and managing it for and on behalf of the lawful beneficiaries of the Turay Family.

18. On the last ground of Appeal that the Learned Trial Judge erred in law by placing reliance on a case law authority above a statute law, Counsel

submits that this ground is unclear as the Learned Trial Judge was at no point placing reliance on case law over statute law. He concluded that from the totality of the evidence, the fact, the law and the legal arguments, the Appeal can best be described as frivolous and must fail and urged the Court to uphold the Judgment of the Learned Trial Judge as it is rooted in sufficient reasoning.

Analysis and Findings

Proceedings in the Local Court initiated by the Respondent

19. The Appellant and Respondents are the great grandchildren of the said Pa Bap Turay. During Pa Bap Turay's lifetime, he alienated a specific piece of land to Ya Musu his daughter for her absolute use; which Appellant claims was the subject matter of the Local Court Judgment in 2015. He further claims that during her lifetime, she worked on and cultivated that specific piece of land until her demise, devoid of the entire Turay family land at Mabap/Rochain area.
20. In 2015, the Respondent herein, contested title of that specific piece of land (occupied by Ya Musu's grandchildren) in the local court against one John Fornah (son of Ya Musu Turay). In the civil summons in the local court the action was between John Fornah as complainant and Yayah Turay, the Respondent herein as accused and it was for selling land that does not belong to him. Judgment was entered in favour of the Respondent herein by the Local court No. III, Makoth, Makarie Chiefdom Bombali District dated 11th March 2015.

Several legal proceedings in the High Court initiated by the Appellant

21. The Appellant on behalf of himself and others, initiated an action in the High Court on 25th February 2021 seeking to assert his rights as a beneficiary, challenging the Respondent's authority to act as Trustee of the said land, sought his removal and the appointment of new trustees and for an order for him to deliver an account and surrender to the Court a comprehensive list of sale, transactions or dealings and or proceeds of sale,

for a demarcation of the land and for an injunction restraining him from dealing with the land until he will have accounted to the beneficiaries of the said Estate.

22. The Appellant herein claims that following the judgment of the local court in 2015, the Respondent, his agents and or associates started disposing portions of the family land that do not form part of the land the judgment affected, to strangers without due consultations or approval from other interested parties. Attempts to get the intervention by the Customary Law Officer North to intervene was unsatisfactory and the appeal against the position of the Customary Law Officer to the Bombali District Appeal Court was subsequently terminated.

23. The Appellant filed an Originating Notice of Motion in the High Court in respect of the said Estate, seeking a demarcation of the disputed land that forms part of the Local Court Judgment of 2015. An order was made by the Hon Justice Unisa Kamara J instructing the Local Court Chairman to demarcate the land that forms part of the said local court judgment but it is alleged it was done without the presence of either the parties to the Judgment or any other interested party to the said land.

Respondent's response to claims by the Appellant

24. The Respondent in the affidavit in opposition filed on his behalf by Ibrahim Kargbo Esq sworn to on 19th July 2023 refutes the claims and allegations of the Appellant. In short, his answer is that the Appellant interest in the portion of land that formed part of the judgment of the said local court had been extinguished. Further, the Appellant and his brother during the hearing and determination of the matter at Makoth Local Court No. III Makari Chiefdom testified and claimed that the two portions of land in dispute situate lying and being at Malutha and Kerefe belonged to John Fornah and the Fornah Family.

25. In addition, the Respondent further reports that the Appellant made a complaint to the then Customary Law Officer that the Respondent was disposing of their family land. Counsel for the Respondent refers to the ruling of the Customary Law Officer, guided by Temne Customary Law that

the land of the Turay Family and the portions of the land which formed part of the Judgment of the Local Court were two separate and distinct parcels of land and that the Applicant and his elder brother Pa Brima Turay have lost the legal and moral right to have a share of the said land since both joined forces with the Fornah Family against the Respondent's family interest in the land in question.

26. Both the Appellant and his brother are also accused of meddling with the land that formed part of the judgment without the knowledge and consent of the Respondent. The deponent of the said affidavit in opposition further stated that during the demarcation exercise, it was discovered that the Appellant and his elder brother Pa Brima Turay had sold portions of the land that formed part of the judgment of the Makoth Local Court dated 11th March 2015 without the knowledge and consent of the Respondent. It states further that the portions of the land that formed part of the judgment of the local court were in Kerefe and Malutha and were the same that were demarcated by the said court as per the orders of the High Court of 27th October 2022.

Judgment of Hon Justice Unisa Kamara J.

27. On 27th October 2022 the High Court presided by Hon Justice Unisa Kamara J delivered a ruling in respect of the originating summons dated 25th February 2022 seen at pages 223 – 226 of the records. His Lordship Kamara noted that both parties are related by consanguinity and belong to a common ancestral roots and are entitled to benefit from the estate of the Late Pa Bap Turay. He also noted that it is not clear from the judgment of the local court whether both Malutha and Karefe are included in the judgment and not the entire land of the Turay Family. He consequently granted an injunction against both parties restraining them from dealing or interfering and working on the Turay family land until the local court has addressed the issue of what areas were affected in the judgment and the court gave directions to the Local Court in that regard.

28. Both parties according to the judgment were found to be descendants of the late Pa Turay and in his words are "obliged to benefit from the proceeds

of sale of the estate of the aforementioned Pa Bap Turay". It was on the premises that the Court granted an injunction against both parties herein until the local court has addressed the issue of what areas were affected in the judgment since they both have sufficient interest in the relief sought. Furthermore, Justice Unisa Kamara took the position not to interfere with the entire judgment of the local court relying on the decision in Nthah v Bennieh (2 WACA, Amponay v Teyi (2 WACA 193), to the effect that a decision of a Native Tribunal should not be reversed unless clearly shown to be wrong.

29. At page 229 of the records is a notice to attend a demarcation process fixed for Wednesday 25th January 2023 addressed to the Appellant herein. At page 230 and 231 of the records is an affidavit of the Appellant challenging the demarcation process and report in that it included land belonging to the Turay Family which had no bearing with the subject matter of demarcation. The Appellant claims that as a result of that demarcation exercise the Respondent has been selling the Turay Family property to the exclusion of the Appellant and other descendants of the Late Pa Bap Turay.

Further legal proceedings by the Appellant against the Respondent

30. On 9th February 2023 the Appellant applied to the High Court for the determination of certain questions and reliefs relating to the said land. The Respondent filed an affidavit in opposition to the application. Counsel for both parties were heard, and a ruling delivered in favour of the Respondent dated 11th October 2023. In particular, the Appellant is dissatisfied with that part of the decision more particularly stated in paragraphs 3, 4 and 5 of the High Court contained in the Ruling of Hon. Mr. Justice Mohamed Bawoh.

31. I will refer to those paragraphs of the said Ruling which states as follows:

"....3. That the said two (2) portions of land for which the Respondent was sued by John Fornah (at Manutha and Kerefe) as properly demarcated by the said Local Court in pursuance of the Court's Orders belong to the Turay Family with the exclusion of the Applicant, his elder brother Pa Brima Turay and their children and children's heirs.

4.That the Respondent herein takes over the control, management and affairs of the said two (2) portions of land at Manutha and Kerefe effective immediately of the delivery of this judgment.

5.That all of the rights which the said Applicant and his elder brother Pa Brima Turay had – had extinguished from the date(s) they both testified at the said local court..."

32. The Ruling of the High Court of 11th October 2023 giving the Respondent control and management of the 2 portions of land at Manutha and Kerefe to the exclusion of the Applicant now Appellant herein and his elder brother their children and children's heirs and extinguishing their rights is inconsistent to a certain extent with the earlier Ruling of the High Court of 27th October 2022. Whilst the 11th October 2023 Ruling excludes and punishes the Appellant and his elder brother because they testified in the local court against the Respondent, that of the 27th October 2022 is more inclusive recognizing the rights of both the Appellant and Respondent to benefit from the land including proceeds of its sale.
33. The demarcation ordered by the 2022 Ruling occurred and it was based on it that the 2023 Ruling identified specific areas in which it excluded the Appellant from. The Appellant complains that even though the 2015 local court judgment related to only a small area that Ya Musu's grandchildren had occupied and he alleged that in demarcating it pursuant to the Court order, vast portion of land belonging to the Estate were demarcated and sold by the Respondent without consultation and excluding the Appellants and others from benefitting from the proceeds.
34. Consequently, the 2023 Ruling targeting only two specific portions, was used to unlawfully secure and alienate larger portions of land belonging to the Deceased Estate and depriving the Appellants, his older brother, their children and grandchildren from enjoying their rights to the said land of the Deceased. Paragraph 5 of the said Ruling extinguishes the rights of the Appellant and brother who testified at the local court and enforced to apply to the entire land of the Deceased.

The Law

35. The Customary Land Rights Act, 2022 was enacted to provide for the protection of customary land rights, the elimination of discrimination under customary law and the management and administration of land subject to customary law and other related provisions. Within the context of the Act, unless the context otherwise requires certain words and phrases have been defined and I will refer to those that are germane to this case.

36. Family defined in the Act means a group of persons tracing descent from a common ancestor on the paternal or maternal side or person who have married into the family. Family land is defined as land vested in and owned by the family as a unit under customary law and administered by a family head.

37. Section 10 of the Act relied on by the Appellant reads as follows:

"10. (1) Title to family land in the provinces shall be vested in the family as a unit.

(2) Both male and female members of a land owning family shall be entitled to the same rights and privileges in respect of the family's land holding irrespective of their gender, domicile, marital or other status.

(3) Family land shall be managed and administered in a sustainable manner taking into consideration the rights and interests of the future generations of the family.

(4) Any person acting as head and on behalf of a land owning family shall

(a) not unilaterally make any decision relating to the land and particularly decisions relating to lease, assignment or grant of land.

(b)be accountable to both male and female members of the family for all actions taken in respect of the family's land holding.

37. I note that section 11 is also quite instructive which inter alia requires the head of a land owning family to obtain the written informed consent of at least 60% of the male and female adult members of the family before entering into any land transaction.

38. I also recall section 74 of the Courts Act No. 31 of 1965 on the application of customary law by the Courts which shall not be repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any Act applying in the Provinces.

39. Based on the facts of this case it is fair to conclude that the letter and spirit of the Customary Land Rights Act have been violated by the Respondent. This has stemmed partly from the Ruling of 11th October 2023, the demarcation the extent of which appears to have gone beyond the local court judgment of 2015 and the orders of the Court dated 27th October 2022. The Respondent having been given full management and control of the land by the Court Ruling of 2023 has in dealing with the land failed to adhere to the mandatory provisions in section 10 of the Customary Land Rights Act as set out above to the detriment of the Appellant and his family.

40. Assuming without conceding that the Appellant and older brother and their children are justifiably excluded because of their participation in the 2015 local court proceedings against the Respondent. This was for a small portion of the land and the actions excluding Appellant from benefitting from the entire estate was done in bad faith and contrary to protective provisions of the rights of all members of the family irrespective of their gender as provided in the Act. Therefore, the Respondent has not managed or administered the land in a sustainable way and to continue to allow him to do so will be to the detriment of not only the parties herein including himself but to other members of the family as well as future generations.

41. I wish to express this Court's disapproval of the several originating processes instituted by the Appellant in the High Court against the Respondent on the same land issue. Even though this may be due to desperation and frustration, it will seem to me that it may amount to an abuse of the processes of the

Court and must be discouraged. It has also led to confusion and inconsistent Rulings from Courts with the same jurisdiction.

42. The Appellant reliefs sought is to set aside the Ruling of the High Court dated 11th October 2023 and that the previous ruling of Hon. Mr. Justice Unisa Kamara be restored and the clarified Judgment of the Local Court dated 12th November 2022 be upheld. At page 227 of the Court of Appeal records is a letter from the Court Chairman addressed to the Hon. Justice Unisa Kamara J which was a report on its investigations into the matter of the estate of all that piece of land of the Turay Family situate lying and being at Rochain/Mabap in the Bombali District in the Northern Province of Sierra Leone. It is important to address the grievances of the Appellant by enforcing section 10 of the Customary Land Rights supra.

Conclusion

43. In view of the above, the appeal of the Appellants succeeds, the Judgment of the High Court dated 11th October 2023 is set aside and judgment is entered for the Appellant as follows:

1. The Ruling of the High Court delivered by the Honourable Mr. Justice Mohamed Bawoh J. is set aside and the previous ruling of Honourable Mr. Justice Unisa Kamara J is restored.
2. The clarified Judgment of the Local Court dated 12th November, 2022 is also upheld in addition to the ruling of Honourable Mr. Justice Unisa Kamara J.
3. The Respondent shall recognize the Applicant, other family members their heirs and successors in title as beneficiaries having proportionate interest in the Estate of the late Pa Bap Turay (Deceased Intestate).
4. The Respondent shall deliver an Account and surrender to the Respondent through the local court a comprehensive list of sale, transactions or dealings and or proceeds of sale of the Turay Family land.
5. The Appellant shall also deliver an account to the Family through the Local Court for whatever dealings he has had in respect of the Turay Land.

6. An injunction is granted against the Respondent herein whether by himself, his agent, heirs, associates and privies restraining them from dealing with, interfering and working on the Turay family land in any way whatsoever until he would have accounted, to the beneficiaries of the Estate of the said Late Pa Bap Turay (Deceased Intestate) through the local court.

7. Each party to bear their costs.

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Hon. Mrs. Justice Jamesina E. L. King J. A.

I agree .....

Hon. Mr. Justice Abdulai M. Bangurah J.S.C. (Presiding)

I agree .....

Hon Mr. Justice Michael P. Mami J. A.

COURT OF APPEAL
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DATE 21/7/26
REGISTRY