SC.MISC APP. NO 06/2025

IN THE SUPREME COURT OF SIERA LEONE

(SUPREVISORY JURISIDICTION)

IN THE MATTER OF SECTIONS 21 AND 125 OF THE CONSTITUTION OF SIERRA LEONE 1991

AND

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME COURT RULES 1982

PART XVI, RULES 89-98 STATUTORY INSTRUMENT NO.1 OF 1982

IN THE MATTER OF ORDER 52 OF THE HIGH COURT RULES OF 2007

IN THE MATTER OF AN APPLICATION TO THE SUPREME COURT FOR AN ORDER OF CERTIORARI TO REMOVE THE ORDERS OF THE HIGH COURT DATED 24TH OF JULY 2025 AND THE 6TH DAY OF AUGUST 2025 IN THE MATTER ENTITLED MISC/APP 89/2024 NO 14 BETWEEN MARIAMA KABAY SILLA, MUSA BANKOLE SILLA, IBRAHIM NJIE SILLA SUING BY THEIR ATTORNEY ABDUL MALIK SILLA (PLAINTIFF) AND HAJA SARIEU DAVIES, KABAY SADIA FADIKA, AMINATA SILLLA, YUSUF DEEN, ABDUL RAHIM DAVIES (1ST RESPONDENTS) AND ABDULAI BOSS SILLA, MOHAMED FODAY SILLA, ABDUL MALKIK SILLA, HAROUN SILLA, MARIE FADIKA, CIBRIL FADIKA, TIGIDA FADIKA, MOHAMED FADIKA, KABAY SADIA FADIKA, ABDUL RAHIM DAVIES, EJATU RAHIM DAVIES, MARIAMA KABAY DAVIES, YUSUF DEEN, ADAMA DEEN, MOHAMED ABDUL RAHMAN, ALPHA ABDUL RAHMAN, NADEEN LEWALLY, FAISAL LEWALLY (2ND RESPONDENTS) FOR THE SAME TO BE QUASHED.

BETWEEN:

i. MARIAMA KABAY SILLA
ii. MUSA BANKOLE SILLA
iii. IBRAHIM NJIE SILLA — PLAINTIFFS

(SUING BY THEIR ATTORNEY

ABDUL MALIK SILLA

NO. 62D Sir SAMUEL LEWIS ROAD

ABERDEEN, FREETOWN)

AND

THE HIGH COURT OF SIERRA LEONE

PRESIDED OVER BY

i. HONOURABLE MRS JUSTICE HANNAH BOI BONNIE J

AND

ii. HONOURABLE MR JUSTICE ADRIAN FISHER J — 1st RESPONDENTS

AND

i. HAJA SARIEU DAVIES
ii. KABAYSADIA FADIKA
iii. AMINATA SILLLA, YUSUF DEEN,
iv. ABDUL RAHIM DAVIES — 2nd RESPONDENTS

AND

i. ABDULAI BOSS SILLA — 3rd RESPONDENTS
ii. MOHAMED FODAY SILLA
iii. ABDUL MALKIK SILLA
iv. HAROUN SILLA
v. MARIE FADIKA
vi. GIBRIL FADIKA
vii. TIGIDA FADIKA
viii. MOHAMED FADIKA
ix. KABAY SADIA FADIKA
x. ABDUL RAHIM DAVIES
xi. EJATU RAHIM DAVIES
xii. MARIAMA KABAY DAVIES
xiii. YUSUF DEEN
xiv. ADAMA DEEN
xv. MOHAMED ABDUL RAHMAN
xvi. ALPHA ABDUL RAHMAN,
xvii. NADEEN LEWALLY
xviii. FAISAL LEWALLY

Coram:

Hon. Justice G. Thompson JSC - Presiding

Hon. Justice A. S. Sesay JSC

Hon. Justice A. M. Bangurah JSC

Hon. Justice F.B. Alhadi JSC

Hon. Justice J.E.L. KING JA

Counsel: E. Pabs-Ganon and C. Patteh Bah for the Plaintiffs

E. Kargbo and S. Will for the 7th, 13th and 14th of the 3rd Respondents category

Ms H. Kargbo for the 1st, 2nd and 4th persons in the 2nd Respondent category

Judgment dated 15th day of June 2026.

G. Thompson JSC

JUDGMENT

Introduction, Background and Parties

1. The Plaintiffs and the Respondents are grandchildren and beneficiaries of the estate of Haja Kabay Sillah, also known as Haja Mariama Kabay Sillah, who died intestate. By virtue of a Trust Deed dated 14th May 2012, registered as No. 156/2012 at Page 149 in Volume 115 of the Record Books of Miscellaneous Instruments, the property situate, lying and being at No. 15 Parsonage Street, Kissy Village, Freetown (hereinafter referred to as "the Trust Property") was duly vested in the beneficiaries by the trustees named therein.

Institution of Proceedings

2. On 16th May 2024, the Plaintiffs instituted proceedings by way of Originating Summons seeking an order for the sale of the Trust Property. Personal service upon the Respondents having proved impossible, the High Court granted an order for substituted service, which was duly effected through the family's WhatsApp forum, with an affidavit of service filed accordingly.

3. On 31st October 2024, a Certificate of Non-Appearance was filed. The Originating Summons thereafter proceeded in the absence of the Respondents, and judgment was entered in favour of the Plaintiffs on 13th November 2024. The judgment provided, amongst other things, as follows:

   i. That the Trust Property at No. 15 Parsonage Street, Kissy Village, Freetown, held pursuant to the Trust Deed dated 14th May 2012 and

registered as No. 156/2012 at Page 149 in Volume 115 of the Record Books of Miscellaneous Instruments, be sold by private treaty at a price not below the reserve sum of USD 180,000.00; and

ii. That the net proceeds of sale, after deduction of all solicitors' fees and other incidental costs and expenses, be divided equally between the Plaintiffs and the 2nd Respondents.

4. On 15th November 2024, Five Star Food Industries Limited paid the sum of USD 210,000.00 to the solicitors acting for the Plaintiffs as the purchase price for the Trust Property.

5. On 20th November 2024, Betts and Berewa Solicitors filed a Memorandum of Appearance on behalf of the 11th Respondent.

6. On 21st November 2024, solicitors acting for the Plaintiffs filed a Notice of Motion seeking, amongst other things, an order that the proceeds from the sale of the Trust Property be paid into a United States Dollar account to be jointly managed by the solicitors and the Master and Registrar, after deduction of all solicitors' fees and other incidental costs and expenses, and further that Yusuf Deen be compelled to deliver vacant possession of the premises by handing over the keys to the solicitors for the Plaintiffs.

7. On the same date, solicitors acting for the 11th Respondent filed an application seeking, amongst other things, a stay of execution of the order of 13th November 2024 and an order setting aside the said judgment. The grounds advanced in support of that application included the substantial expenditure allegedly incurred by the 17th Respondent on the Trust Property, and the assertion that the 17th Respondent had communicated by electronic mail to all relevant parties that he was unwilling to sell his share of the Trust Property.

8. This application was opposed by solicitors acting for the Plaintiffs. In a ruling dated 26th February 2025, the learned judge dismissed the application to set aside the judgment of 13th November 2024 and directed that the court would proceed to determine the remaining outstanding applications. It is common ground between the parties that the only outstanding application before the court at that stage was the Plaintiffs' application of 21st November 2024 in respect of the proceeds of sale.

9. On 10th March 2025, solicitors acting for the 11th Respondent filed a further application on behalf of the 7th, 13th and 14th Respondents seeking, amongst other things, an order granting the 17th Respondent a right of first option to purchase the Trust Property. Solicitors for the Plaintiffs opposed this application on the grounds that, by her ruling of 26th February 2025, the learned judge had declined to set aside the order for sale; that the Trust Property had already been sold to a third-party purchaser; and that the Master and Registrar had executed a Deed of Conveyance in favour of Five Star Food Industries Limited on 7th March 2025.

10. The court delivered its ruling on 24th July 2025. The learned judge acknowledged that the order for sale had been granted by the court and that the sale had been duly conducted, with a Deed of Conveyance executed in favour of Five Star Food Industries Limited, who had paid US$ 210,000.00, being the full purchase price. The court observed that "the sale of trust property is a delicate matter that hinges on the principles of trust law, fiduciary duties, fairness and justice, involving a balancing of the interests of trustees, beneficiaries and third party purchasers."

11. The first and second orders made by the court read as follows:

i. "The earlier order for sale of the property at No. 15 Lower Parsonage Street, Kissy, Freetown, dated 13th November 2024, is hereby upheld and confirmed."

ii. "Yusuf Deen is granted a first option to purchase the property at the revised price of USD 230,000 (two hundred and thirty thousand United States Dollars): this option is to be exercised within 14 days from the date of this judgment, expiring on 11th August 2025."

12. On 5th August 2025, solicitors acting for the 11th, 13th and 14th Respondents made an ex parte application to the court, which came before Fisher J. The learned judge made an order to the effect that the 17th Respondent had complied with the terms of the order of 24th July 2025 in respect of the purchase of the Trust Property. The circumstances by which Fisher J became seised of this matter, and the question of whether the orders made were within the court's jurisdiction, are addressed below.

The Application for Certiorari

13. The Plaintiffs have applied to this court for an order for certiorari to quash the orders of the High Court dated 24th July 2025 and 6th August 2025. In particular the Plaintiffs contend that:

i. The High Cout had no jurisdiction or legal basis for making the said orders of court dated 24th July 2025 granting an option to purchase, the reason being that at the time the Learned Trial Judge granted the said orders of the 24th July 2025 there was a subsisting order for sale of the property situate at No.15 Lower Parsonage street, Kissy, Freetown.

ii. That the Learned Judge was functus of any matters related to a subsequent sale

iii. That the purported grant of an option to purchase at that stage of the proceedings was an abuse of discretion

iv. That the issue of the sale was res judicata

v. That the said order of the 24th July 2023 violates the purport and intention of section 21 of the 1991 Constitution of Sierra Leone.

14. The Plaintiffs further seek an order for certiorari to quash the order of the High Court dated 6th August 2025 on the following grounds:

i. All orders emanating from those proceedings were a nullity, the file not having been properly before the Learned Judge as it had neither been assigned to him as a vacation judge nor formally reassigned to him by the Chief Justice

ii. The High Court had no legal basis for making the orders dated 6th August 2025 in circumstances where it had by it's own order of 24th July 2025 upheld the completed sale, and where a substantive motion for the distribution of the proceeds of the sale already on the file and remained undetermined

iii. The order of the 6th August was per incuriam and

iv. The order of 6th August was a failure to exercise discretion.

15. The central question upon which this case turns is whether the Learned Judge was clothed with jurisdiction and authority to make the order of 24th July 2025 - and in particular, whether, having declined to set aside the judgment of 13th November 2024 ordering the sale of the Trust Property, the court retained any residual power to thereafter grant a right of first option to purchase to Yusuf Deen in respect of a property which the court itself had, by that same ruling, acknowledged had already been sold and conveyed to a third-party purchaser. Put simply: could the Learned judge lawfully revisit and qualify her own final order?

Submissions on behalf of the Plaintiffs

16. It is the primary contention of Counsel for the Plaintiffs that the Honourable Court was without jurisdiction to entertain the application filed on 10th March

2025, and that the filing of such application, in the circumstances prevailing at the time, constituted an abuse of the process of the Court.

17. Counsel further submits that the order made on 24th July 2025 amounted, in substance, to an impermissible variation of the Court's earlier orders of 13th November 2024 and 26th February 2025. It is submitted that, by the time the application of 10th March 2025 fell to be determined, the Court was no longer seized of any residual jurisdiction to vary, alter or supplement its own subsisting orders. Counsel contends that, upon the Court confirming and expressly upholding the order for sale of 13th November 2024 by its ruling of 26th February 2025, the Court thereby became *functus officio* in respect of the subject matter of those orders, and was consequently divested of any further power to make orders that would have the effect of disturbing or qualifying the completed sale of the Trust Property.

18. Counsel further draws attention to the procedural irregularity attending the proceedings of 5th August 2025. It is submitted that, having regard to the fact that all prior applications in this matter had been heard and determined *inter partes*, the application of 5th August 2025 was heard and determined *ex parte* before a Judge other than the Learned Judge who had been seised of, and who had adjudicated upon, all preceding applications in these proceedings. That state of affairs is, in the submission on behalf of the Plaintiffs a matter of serious procedural concern.

19. Counsel submits that this departure from established procedure was irregular and contrary to the interests of justice. Furthermore, it is submitted that the nature and subject matter of the application filed on 5th August 2025 was not of a character that could properly or competently be entertained by a vacation Judge - if indeed His Lordship Fisher J was sitting in that capacity at the material time. The Plaintiffs respectfully submit that the circumstances in which Fisher J became seised of this matter, and the basis upon which the application was

placed before him *ex parte*, call for proper scrutiny and explanation, and that the order made pursuant to those proceedings cannot stand.

20. In support of these submissions, Counsel relied on *Halsbury's Laws of England*, Volume 22, Paragraph 1665 at Page 795, which states , as a matter of general principle, that, save by way of appeal, no court, judge or master possesses the power to rehear, review, alter or vary any judgment or order after it has been duly entered or drawn up. He submits that this principle is directly applicable to the present proceedings and is determinative of the issue of the Court's jurisdiction to make the order of 24th July 2025.

21. The Plaintiffs have further relied upon the judgement of the Nigerian Court of Appeal in the case of Tractor & Equipment (Nig) Limited v Integrity Concepts Limited & Anor (2011) LPELR – 5034 (CA) in which the court held that "... where the lower court or Tribunal adjudicated in excess of its jurisdiction an aggrieved party will successfully seek an order of certiorari even though he has a right of appeal." Reliance has also been placed on OJ and JB Investments Limited v The High Court of Sierra Leone presided over by Roberts JSC and Sesay JA, Alberta Woode and Zac Dainkeh and the Attorney General and Minister of Justice (Unreported) Supreme Court Misc App 4/2015 which reiterated that where a court has failed to comply with procedural rules, the court must consider whether the violation is minor or technical in nature, whether the conduct of the defaulting party is deliberate and whether strict adherence to procedural rules would unjustly shut the door of justice against the applicant.

Submissions on behalf of the 7th 13th and 14th Respondents.

22. Learned Counsel for the Respondents relied on the affidavit and statement of case filed on their behalf. He reiterated that the judgment of 13th November 2024 was entered in default of appearance and was therefore liable to be set aside pursuant to Order 13 Rule 9 of the High Court Rules 2007, as well as analogous provisions in the White Book. He submitted that when the ruling of 26th February 2025 was delivered, the second limb of the order directed that the Court would

proceed to hear the subsequent applications then on file; at that juncture, the Court was unaware whether the property had been sold to Five Star Food Industries Limited. Counsel conceded, however, that as at 26th February 2025, there was only one outstanding application, namely that filed by the Plaintiffs on 21st November 2024. He further contended that the original order for sale dated 13th November 2024 was general in terms, merely directing that the property be sold, without specifying a purchaser - and that it was this general character of the order which prompted the Respondent's application of 10th March 2025, seeking to grant his clients a right of first option to purchase. He acknowledged that it was only upon the Plaintiffs' filing of their affidavit in opposition that the conveyance executed by the Master and Registrar in favour of Five Star Food Industries Limited was exhibited to the court.

23. Counsel averred that once the first option to purchase was accorded to his clients, they duly exercised it within the 14 days stipulated. He rejected the contention that his clients ought to have appealed the order of 13th November 2024, submitting instead that it was incumbent on the Plaintiffs to appeal the order of 24th July 2025.

24. Counsel further argued that the completed sale had not been drawn to the attention of the High Court because the Plaintiffs had failed to exhibit the draft conveyance to their affidavit in opposition before the court below. He submitted, additionally, that the present proceedings were not appropriate as this is not a matter for judicial review and that the proper course was for the plaintiffs to appeal the order of the 24th July 2025, to the Court of Appeal. He further contended that the purchasers were not bona fide purchases for value without notice as they had been tenants and were aware the property was not for sale.

25. The Respondents relied on the case of International Construction Company v Zakhem International Construction Misc. App 1 of 2014 [2014] SLSC 7 (15th December 2014).

26. Counsel for the 1st, 2nd and 4th persons of the 2nd Respondent category adopted the position of the plaintiffs, as though she had filed an affidavit, she had not filed a statement of case.

Deliberations

27. Both parties filed numerous documents in support of their respective cases. As noted above, however, the core issue is whether the High Court possessed jurisdiction to review and revisit its own final judgment of 13th November 2024 - which ordered the sale of the Trust Property - and, if it did not, what consequences flow from that finding in respect of the orders which subsequently emanated from both the Learned Trial judge and Fisher J. Before addressing the substantive questions in the order in which they are framed in the Plaintiffs' Originating Notice of Motion, this court must first dispose of the Respondents' contention that the Plaintiffs' proper remedy was an appeal rather than judicial review, as that argument goes directly to the question of whether this court has jurisdiction to entertain this matter at all.

Judicial Review or Appeal

28. Counsel for the Respondents contends that the Plaintiffs' proper remedy was an appeal against the order of 24th July 2025. This Court does not accept that submission. The issue raised is a classic jurisdictional error, which falls squarely within the supervisory jurisdiction of this Court. Judicial review is the appropriate remedy where a judge acts without jurisdiction, exceeds jurisdiction, fails to exercise jurisdiction, or makes an order that is legally impossible. An appeal, by contrast, lies where the judge possessed jurisdiction but erred in law or fact in its exercise. This distinction is fundamental. As the Supreme Court observed in *International Construction Company v Zakhem International Construction*, (a case relied on by the Respondents), certiorari lies where there is an error of law on the face of the record or where the decision is a nullity for want of jurisdiction. The central question in the present proceedings is precisely that: whether the Learned Judge retained any jurisdiction to make the later order at all. If she did

not - and this Court finds that she did not - the order is void ab initio. It is, in law, a nullity.

29. Accordingly, this Court holds that its supervisory jurisdiction under Section 125 of the Constitution of Sierra Leone, 1991, has been properly invoked. Judicial review is the correct and only available remedy in the circumstances.

30. Before turning to the question of functus officio, this court considers it necessary to define with precision the limits of the issue that falls for determination in these proceedings. The application before this court is not an appeal against the judgment of the High Court dated 13th November 2024, nor is it an appeal against the ruling of 26th February 2025 by which the Learned Judge declined to set that judgment aside. No appeal was brought against either decision. It follows that the validity of the substituted service, the procedural propriety of the default judgment, the merits of the order for sale, and the correctness of the refusal to set that judgment aside do not arise for determination in this application. Those matters are not before this court as live issues, and no part of this judgment should be read as deciding them. For the purposes of the present proceedings, the judgment of 13th November 2024 falls to be treated as final, subsisting and effective in law. The sole question is whether, that judgment having remained undisturbed and the sale thereby ordered having thereafter been carried into effect, the High Court retained any jurisdiction to revisit the sale, create fresh proprietary rights in respect of the Trust Property, or otherwise qualify the legal consequences of its own final order. In the judgment of this court, it did not. For the avoidance of doubt, any observation in this judgment touching upon the wider fairness, prudence or desirability of the earlier proceedings, beyond what is strictly necessary to decide the jurisdictional issue now before the court, is purely obiter and forms no part of the ratio decidendi of this case.

Did the Learned Judge have jurisdiction or was she functus officio?

31. Against that background, the effect of the ruling of 26th February 2025 is plain. By that ruling the learned Trial Judge declined to set aside the judgment of 13th November 2024. That refusal carried two significant and irreversible consequences. First, the original judgment remained in force with full legal effect, there being no appeal against it. Second, and this is the foundation of the present application, the learned judge became functus officio in respect of the substantive disposition which that judgment had already made. The doctrine is well settled: once a court has finally determined the rights of the parties in a matter, its jurisdiction over that matter is exhausted, save only for the correction of accidental slips or omissions, or for such purely administrative or consequential acts as are necessary to give effect to its decision. It follows that the learned judge had no residual authority thereafter to revisit, vary or qualify the legal consequences of the judgment of 13th November 2024. The order of 24th July 2025, insofar as it purported to create a fresh right in favour of Yusuf Deen in respect of property already ordered to be sold and thereafter sold pursuant to the court's own judgment, was therefore made outside the limits of the court's jurisdiction.

32. This court is likewise unable to accept the Respondents' submission that the order of 24th July 2025 could be justified by reference to Order 13 rule 9 of the High Court Rules 2007. That provision empowers the court, upon such terms as may be just, to set aside or vary a judgment entered in default. But that is not what occurred here. The Learned Judge did not set aside the judgment of 13th November 2024; nor did she vary it in any recognised sense. On the contrary, she expressly upheld and confirmed it before proceeding to make a further substantive order in respect of the same property. The purported grant of a right of first option did not correct, implement or give consequential effect to the original judgment. It introduced a new and inconsistent proprietary arrangement after the court had already exhausted its jurisdiction over the substantive matter.

Order 13 rule 9 therefore afforded no legal foundation for the course adopted by the learned judge, and the Respondents' reliance upon it must be rejected.

33. The Respondents further contend that, at the time the application of 10th March 2025 was made, the court was unaware that the Trust Property had already been sold. That contention cannot withstand scrutiny. The ruling of 26th February 2025 expressly stated that the court would proceed with the subsequent applications then remaining on the file. It is common ground that, at that stage, the only outstanding application was the Plaintiffs' application of 21st November 2024 seeking, inter alia, directions concerning the proceeds of sale, an application which necessarily proceeded upon the footing that the sale had already taken place. More fundamentally, in her ruling of 24th July 2025 the Learned Judge herself referred to the completed sale and to Five Star Food Industries Limited as the purchaser. In those circumstances, the suggestion that the court was unaware of the sale is not borne out by the record. The factual premise upon which the Respondents seek to justify the subsequent order is therefore unsustainable.

34. The question that then arises is whether the Learned Judge could lawfully grant a right of first option in respect of property which, by her own acknowledgment, had already been sold pursuant to the judgment of 13th November 2024 and thereafter conveyed to Five Star Food Industries Limited. In the judgment of this court, that question admits of only one answer. Once the judgment ordering the sale remained undisturbed, and once the sale had been carried into effect in accordance with that judgment, the Trust Property was no longer available to be made the subject of any fresh dispositive order of the court. The court had already exhausted its jurisdiction in relation to the sale, and the property had passed beyond the reach of any further adjudicative rearrangement of rights as between the parties before it. The purported grant of a right of first option was therefore not merely unnecessary; it was legally incapable of standing alongside the subsisting and already executed order for sale. It sought to create a new

proprietary entitlement in relation to property which was no longer within the court's dispositive control. For that reason alone, the order of 24th July 2025 was made without jurisdiction and cannot stand.

The Bona Fide Purchaser Doctrine Distinguished from the Court-Ordered Sale

35. We now turn to address the submission advanced on behalf of the Respondents to the effect that Five Star Food Industries Limited cannot claim the protection afforded to a *bona fide* purchaser for value without notice, on the basis that, as former tenants in occupation of the Trust Property, Five Star had actual or constructive notice that the property "was not for sale" so far as certain of the beneficiaries were concerned. The court does not accept this submission, and it is necessary to explain precisely why it fails - not merely as a matter of outcome, but as a matter of legal doctrine - so that the error in reasoning is not perpetuated.

36. The equitable doctrine of the *bona fide* purchaser for value without notice - described in the authorities as "equity's darling" - affords protection to a purchaser who takes a legal estate in property without notice of any prior equitable interest, thereby taking free of that interest. The doctrine developed as the principal mechanism by which purchasers are protected against the secret equitable interests of beneficiaries under express trusts where trustees have alienated trust property in breach of their fiduciary duties. The present case is however, fundamentally different in character, and the *bona fide* purchaser doctrine, properly understood, has no application to it. The sale of the Trust Property was not made by the trustees acting under the Trust Deed of 14th May 2012 in the exercise - or purported exercise - of their own fiduciary powers. It was made pursuant to an order of the High Court, executed by the Master and Registrar in the exercise of the court's own jurisdiction over the trust estate. Where a court of competent jurisdiction orders the sale of trust property and appoints its own officer to execute a conveyance in pursuance of that order, the transaction is not a disposition by trustees at all: it is a judicial act. The question of whether the purchaser had notice of the beneficiaries' interests is accordingly

beside the point, for the sale was not made in breach of trust. Notice is a material inquiry only where there is a breach of trust against which the purchaser needs to be protected. No such breach arises in the present case. Upon the execution of the court-ordered sale and the payment by Five Star of the full purchase price of US$210,000.00, the beneficial interests of all beneficiaries - including those who had expressed opposition to the sale - were overreached and attached instead to the fund of US$ 210,000.00 representing the proceeds. Any notice which Five Star may have had of a beneficiary's opposition to the sale, or of the fact that certain beneficiaries considered the property unavailable for sale, is therefore entirely without legal consequence. The beneficiaries' interests in the Trust Property itself were transmuted by operation of law into interests in the proceeds: their proper remedy lay against the fund, not against Five Star's title.

37. This court accordingly rejects the submission that Five Star's former status as tenant defeats its title or deprives it of the protection of the law. The submission conflates two fundamentally distinct doctrines: the *bona fide* purchaser doctrine applicable to unauthorised dispositions in breach of trust, and the overreaching mechanism applicable to dispositions made in accordance with the trust or by order of a court. To accept the Respondents' argument would be to hold that a court-ordered sale could be impeached by a purchaser's knowledge that certain beneficiaries disapproved of the sale - a proposition which, if correct, would render court-ordered sales of trust property practically unenforceable and would subvert the scheme for the lawful administration of trusts through litigation. That is not, and has never been, the law.

38. In this court's judgment the application by the Respondents dated 10th March 2025, was a fresh application to reopen a matter that had been finally determined and confirmed. For the avoidance of doubt, the order of 24th July 2025 was ultra vires because, at the time it was made, the Court no longer possessed jurisdiction over the subject matter of the sale. The sale of the Trust Property had already been completed pursuant to the Court's own final judgment of 13th November 2024, and the purchaser had paid the full purchase price, thereby acquiring an

equitable interest in the property. The execution of the Deed of Conveyance by the Master and Registrar confirmed that the sale had been carried to completion in compliance with the court order. Once the Court refused to set aside the judgment ordering the sale, it became functus officio and divested of any further authority to alter, quality, or interfere with the rights already vested in the purchaser. The purported grant of a right of first option to purchase was therefore made without jurisdiction, was inconsistent with the Court's own final orders and constituted an impermissible attempt to create new proprietary rights over property no longer within the Court's control. It follows that the order was ultra vires and void.

The Position of Five Star Food Industries Limited and the Status of the Conveyance

39. Before leaving this issue, the court is compelled to address a matter arising from the peculiar procedural posture of these proceedings – namely, the position of Five Star Food Industries Limited as the third-party purchaser of the Trust Property, and whether the state of registration of the Deed of Conveyance affects the rights already vested in that company. Five Star is not a party to the present proceedings. It has neither appeared nor been joined. That omission, while it does not affect the outcome of this application, is a matter of procedural significance, because orders of this court that touch upon the title, occupation of, or entitlement to the proceeds in respect of the Trust Property have the capacity – at least in principle – to affect Five Star's proprietary position. It is therefore necessary for this court to record its findings in relation to Five Star's title expressly and upon a principled basis, so as to place those findings beyond future doubt.

40. The evidence before this court establishes that on 15th November 2024, Five Star paid the full purchase price of US$ 210,000.00 to the solicitors acting for the Plaintiffs. A Deed of Conveyance was subsequently executed by the Master and Registrar on 7th March 2025 in favour of Five Star. It is common ground between

the parties - and was acknowledged by the Learned Trial Judge in her ruling of 24th July 2025 - that the sale was conducted pursuant to the court's own order and that Five Star were "reputable purchasers." The record before this court is thar the Deed of Conveyance has not been presented for registration. This court is satisfied, as a matter of law and principle, that the question of registration does not affect the analysis in these proceedings.

41. The position in equity is clear. It is a well-established principle, expressed by Jessel MR in *Lysaght v Edwards* (1876) 2 ChD 499 and recently reaffirmed by the United Kingdom Supreme Court in *Frenkel v LA Micro Group (UK) Ltd* [2024] UKSC 42, that the moment a valid and specifically enforceable contract for the sale of property is concluded, the vendor becomes a trustee for the purchaser of the estate sold and the beneficial interest passes to the purchaser at that point. Upon payment of the full purchase price, the vendor's obligations crystallise into those of a bare trustee: the vendor holds the legal estate solely for the benefit of the purchaser, pending execution and registration of the formal conveyance. Thus, once Five Star paid US$ 210,000.00 on 15th November 2024 pursuant to the court-ordered sale, Five Star acquired the entire equitable and beneficial interest in the Trust Property as of that date. The execution of the Deed of Conveyance by the Master and Registrar on 7th March 2025 was the formal completion of that transfer of legal title. Whether or not registration has been effected, the beneficial ownership of the Trust Property as between the parties to these proceedings has been vested in Five Star since November 2024. No subsequent judicial act - including the orders of 24th July 2025 and 6th August 2025, which this court has found to be void - could divest Five Star of that equitable interest, those orders being void *ab initio* and of no legal effect.

42. It follows that the Trust Property belongs to Five Star Food Industries Limited, and the orders of this court do not, and are not intended to, disturb that position. The sole question remaining for determination in the High Court is the distribution of the sale proceeds of USD$210,000.00, which are to be held by the Master and Registrar on trust for the beneficiaries in accordance with the terms

of the judgment of 13th November 2024. For the avoidance of all doubt: Five Star's title to the Trust Property is hereby confirmed, subject only to the completion of such registration formalities as may be required under the applicable written laws of Sierra Leone.

Was the case file properly transferred to Justice Fisher?

43. The second distinct issue concerns whether Justice Adrian Fisher had any lawful authority to hear the applications of 6th and 15th August 2025 and, if not, what is the status of the orders made pursuant to those hearings. Justice Fisher addressed this in paragraph 6 of his ruling dated 15th August 2025. He stated that the court file was unavailable at the commencement of proceedings and was only produced at the close of sitting from the chambers of Justice Bonnie. He further explained that the matter had been referred to him at Justice Bonnie's request, as she was unavailable to hear the application and had asked him to sit in her stead on the basis that the application did not appear to be contentious. It was on that basis that the orders of 6th August 2025 were granted.

44. The informal transfer of a court file to another judge on the basis that the assigned judge was unavailable raises a distinct and serious jurisdictional problem. Case allocation is an administrative function governed by the directions of the Chief Justice. An individual judge has no authority to unilaterally delegate or reassign a matter to a colleague. Judicial authority is personal in nature and cannot be transferred informally. Where a reassignment does not follow the proper administrative process, the receiving judge lacks jurisdiction to act, and any orders made by that judge are accordingly void.

45. Let me the sake of emphasis, repeat that an individual judge has no authority to unilaterally delegate or reassign a matter to a colleague. Litigation is, by its very nature, unpredictable and what presents as a routine application may swiftly disclose complex or genuinely contested issues of law and fact.

46. Where a judge is unable to hear a matter, the proper and only permissible course is for the file to be remitted to the Chief Justice, who alone holds the authority to reassign it. Where that process is not followed, the receiving judge lacks jurisdiction to act, and any orders made by that judge are accordingly void. It follows that the orders made by Justice Fisher on 6th August 2025 and 15th August 2025 were made without jurisdiction and are void for that reason alone, entirely independently of the grounds addressed above.

Did the order of 24th July 2025 breach section 21 of the Constitution of Sierra Leone 1991?

47. The court turns to a further and distinct ground advanced by the Plaintiffs - namely, that the impugned orders are inconsistent with the constitutional protections afforded to property rights under Section 21 of the Constitution of Sierra Leone, 1991. The Respondents response is that Section 21 is inapplicable on the basis that the property was not taken arbitrarily but pursuant to a court order. Section 21 of the Constitution provides as follows:

> *"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—*
>
> *(1)the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benefit or the public welfare of citizens of Sierra Leone; and*

(2) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having any interest in or right over the property; and

.....

(3) Nothing in this section shall be construed as affecting the making or operation of any law in so far as it provides for the taking of possession or acquisition of property— ... (e) in the execution of judgments or orders of courts."

48. Section 21 guarantees protection against the compulsory deprivation of property save in circumstances expressly permitted by law. The constitutional framework requires that any interference with proprietary rights be carried out in accordance with a valid law, serve a legitimate public interest, and provide for prompt and adequate compensation. These safeguards apply to all organs of the State, including the judiciary, where the exercise of judicial power results in the loss or compulsory transfer of property.

49. In the present case, the original judgment of 13th November 2024 ordered the sale of the trust property. That judgment was final in nature, and upon the court's subsequent refusal to set it aside, the learned judge became *functus officio*, having exhausted her jurisdiction over the substantive issues in dispute. The court was thereafter without authority to revisit, vary, or contradict the terms of that final judgment, save in the limited circumstances permitted under the slip rule.

50. By the time the impugned order of 24th July 2025 was made, the property had already been sold pursuant to the original judgment, and a conveyance had been prepared, executed though not registered in favour of the purchaser. The court accordingly lacked jurisdiction to grant a right of first option to purchase in favour of any other party.

51. A judicial act undertaken without jurisdiction cannot constitute a lawful deprivation of property "in accordance with law" within the meaning of Section 21. Where a court purports to interfere with property rights in excess of its lawful authority, such interference falls outside the constitutional framework and cannot be justified as a valid exercise of state power. The purported grant of a right of first refusal over property already alienated by court-ordered sale was therefore ultra vires and incapable of satisfying the constitutional requirements for a lawful deprivation of property.

52. The subsequent transfer of the court file to another judge, effected solely on the basis that the assigned judge was unavailable, was not carried out pursuant to any lawful administrative direction or established case allocation mechanism. As noted above, judicial authority is personal and cannot be informally delegated. The second judge accordingly lacked jurisdiction to entertain or confirm any further sale arising from the impugned proceedings, and any orders made in those circumstances are void for jurisdictional irregularity.

Was the order of the 6th August 2025 made *per incuriam*?

53. This court now turns to consider the Plaintiffs' contention that the order of 6th August 2025 was made per incuriam the literal meaning of which is "through lack of care." A decision is per incuriam where it is rendered in disregard of binding and material legal principles or statutory provisions that, had they been considered, would have compelled a different result. Ordinarily, a judgment made per incuriam is susceptible to challenge by way of appeal rather than judicial review. However, the present case is not an ordinary one. In making the order of 6th August 2025, Justice Fisher failed to have regard to matters that went directly to the existence - not merely the exercise - of his jurisdiction. Those matters were: the finality of the judgment of 13th November 2024; the fact that Justice Bonnie had already refused to set aside that judgment; the doctrine of *functus officio*; the prior sale and conveyance of the Trust Property to a third-party purchaser; and the unlawfulness of the informal transfer of the court file.

Each of these was not merely a relevant consideration but a jurisdictional precondition. The failure to consider and apply these principles renders the order of the 6th August 2025 per incuriam in the most fundamental sense, and reinforces this court's finding that the order is a nullity.

54. In light of the foregoing, this court finds that the impugned orders were made without jurisdiction and resulted in an interference with property rights that was not authorised by law. Such interference is inconsistent with the protections afforded under Section 21 of the Constitution. The orders of 24th July 2025, together with any subsequent orders purporting to confirm a further sale of the property, are accordingly null, void, and of no legal effect.

Affidavits Sworn by a Pupil Barrister

55. Before making the orders that follow, this court must record its concern regarding a procedural matter that arose in the court below. A number of affidavits filed on behalf of the Respondents were sworn to by a pupil barrister. Whilst those affidavits were not entertained by this court, they were accepted and relied upon in the High Court. That was improper. A pupil barrister has no rights of audience in the High Court, (save for interlocutory matters) the Court of Appeal, or the Supreme Court, and accordingly cannot and must not swear to any affidavit for use in those courts. Any application supported by such an affidavit ought to be treated as a nullity.

56. A pupil barrister is a person undergoing the mandatory period of training prescribed by the Legal Practitioners Act 2000 (as amended). During that period, a pupil has not yet fulfilled the requirements of Section 19 of the Act and is, by swearing affidavits for use in court proceedings, in clear breach of Section 20(5)(b)(i) and (ii). A pupil is not competent to discharge the responsibilities which the execution of such court processes entails. It is, in this court's view, a serious dereliction of duty for a pupil master to permit their pupil to swear affidavits or otherwise execute court processes on behalf of a client. Such

conduct not only places the client's interests at risk but undermines the integrity of the proceedings and brings the profession into disrepute. Any litigant whose matter has been supported by an affidavit sworn by a pupil barrister would, in this court's opinion, have good grounds to report the supervising pupil master to the Disciplinary Committee of the General Legal Council.

Orders

57. For the reasons set out in this judgment, this court makes the following orders:

i. The ruling of the Honourable Justice Hannah Bonnie dated 24th July 2025, and all orders emanating therefrom, are hereby quashed in their entirety. For the avoidance of doubt, the present order is confined to the impugned ruling of 24th July 2025 and does not reopen, qualify or cast doubt upon the legal effect of the judgment of the High Court dated 13th November 2024, or of the ruling dated 26th February 2025 refusing the application to set that judgment aside. Those earlier decisions remain undisturbed and effective in law. Any wider observations in this judgment concerning the earlier proceedings are purely obiter and shall not be taken as affecting the validity or operative effect of those decisions. The judgment of 13th November 2024 therefore stands as the final and subsisting order of the High Court and shall be given full effect according to its terms.

ii. The subsequent orders of the Honourable Justice Adrian Fisher dated 6th August 2025 and 15th August 2025 are hereby quashed for want of jurisdiction and are of no legal effect whatsoever.

iii. The proceeds of the sale of the Trust Property to Five Star Food Industries Limited in the sum of US$ 210,000.00 shall be paid to the Master and Registrar of the High Court, to be held and distributed amongst the beneficiaries in accordance with the terms of the judgment of 13th November 2024.

iv. Any proceeds received by or on behalf of any party arising from the second purported sale of the Trust Property shall be returned forthwith

to Mr Yusuf Deen, that purported sale being null, void and of no legal effect.

v. Costs are awarded to the Plaintiffs in the sum of NLe100,000.00 to be paid by the 7th, 13th and 14th Respondents jointly.

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Hon Justice Glenna Thompson - Presiding

I agree

.....

Hon. Justice A. S. Sesay JSC

I agree

.....

Hon. Justice A. M. Bangurah JSC

I agree

.....

Hon. Justice F.B. Alhadi JSC

I agree

.....

Hon. Justice J.E.L. KING JA

SC.MISC APP. NO 06/2025

IN THE SUPREME COURT OF SIERA LEONE

(SUPREVISORY JURISIDICTION)

IN THE MATTER OF SECTIONS 21 AND 125 OF THE CONSTITUTION OF SIERRA LEONE 1991

AND

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME COURT RULES 1982 PART XVI, RULES 89-98 STATUTORY INSTRUMENT NO.1 OF 1982

IN THE MATTER OF ORDER 52 OF THE HIGH COURT RULES OF 2007

IN THE MATTER OF AN APPLICATION TO THE SUPREME COURT FOR AN ORDER OF CERTIORARI TO REMOVE THE ORDERS OF THE HIGH COURT DATED 24TH OF JULY 2025 AND THE 6TH DAY OF AUGUST 2025 IN THE MATTER ENTITLED MISC/APP 89/2024 NO 14 BETWEEN MARIAMA KABAY SILLA, MUSA BANKOLE SILLA, IBRAHIM NJIE SILLA SUING BY THEIR ATTORNEY ABDUL MALIK SILLA (PLAINTIFF) AND HAJA SARIEU DAVIES, KABAY SADIA FADIKA, AMINATA SILLLA, YUSUF DEEN, ABDUL RAHIM DAVIES (1ST RESPONDENTS) AND ABDULAI BOSS SILLA, MOHAMED FODAY SILLA, ABDUL MALKIK SILLA, HAROUN SILLA, MARIE FADIKA, GIBRIL FADIKA, TIGIDA FADIKA, MOHAMED FADIKA, KABAY SADIA FADIKA, ABDUL RAHIM DAVIES, EJATU RAHIM DAVIES, MARIAMA KABAY DAVIES, YUSUF DEEN, ADAMA DEEN, MOHAMED ABDUL RAHMAN, ALPHA ABDUL RAHMAN, NADEEN LEWALLY, FAISAL LEWALLY (2ND RESPONDENTS) FOR THE SAME TO BE QUASHED.

BETWEEN:

i. MARIAMA KABAY SILLA
ii. MUSA BANKOLE SILLA
iii. IBRAHIM NJIE SILLA — PLAINTIFFS

(SUING BY THEIR ATTORNEY
ABDUL MALIK SILLA
NO. 62D Sir SAMUEL LEWIS ROAD
ABERDEEN, FREETOWN)

AND

THE HIGH COURT OF SIERRA LEONE
PRESIDED OVER BY

i. HONOURABLE MRS JUSTICE HANNAH BOI BONNIE J

AND

ii. HONOURABLE MR JUSTICE ADRIAN FISHER J — 1st RESPONDENTS

AND

i. HAJA SARIEU DAVIES
ii. KABAYSADIA FADIKA
iii. AMINATA SILLLA, YUSUF DEEN,

iv. ABDUL RAHIM DAVIES — 2nd RESPONDENTS

AND

i. ABDULAI BOSS SILLA — 3rd RESPONDENTS
ii. MOHAMED FODAY SILLA
iii. ABDUL MALKIK SILLA
iv. HAROUN SILLA
v. MARIE FADIKA
vi. GIBRIL FADIKA
vii. TIGIDA FADIKA
viii. MOHAMED FADIKA
ix. KABAY SADIA FADIKA
x. ABDUL RAHIM DAVIES
xi. EJATU RAHIM DAVIES
xii. MARIAMA KABAY DAVIES
xiii. YUSUF DEEN
xiv. ADAMA DEEN
xv. MOHAMED ABDUL RAHMAN
xvi. ALPHA ABDUL RAHMAN,
xvii. NADEEN LEWALLY
xviii. FAISAL LEWALLY

Coram:

Hon. Justice G. Thompson JSC - Presiding
Hon. Justice A. S. Sesay JSC
Hon. Justice A. M. Bangurah JSC
Hon. Justice F.B. Alhadi JSC
Hon. Justice J.E.L. KING JA

Counsel: E. Pabs-Ganon and C. Patteh Bah for the Plaintiffs
E. Kargbo and S. Will for the 7th, 13th and 14th of the 3rd Respondents category
Ms H. Kargbo for the 1st , 2nd and 4th persons in the 2nd Respondent category

Concurring Judgment

F. B. Alhadi JSC

1. I have read my learned colleague's judgment and I agree with it.

2. It is clear that counsel for the 13th Respondent had all the opportunity to immediately file for a stay of execution in the Court of Appeal, but he chose not to do so. Instead, he made an application to the judge for a variation of her judgment when he knew that she was functus. Counsel for the 13th Respondent, Mr. Elvis Kargbo is a very experienced advocate and he knew what he was doing. He not only made an application to the Trial Judge, Justice Bonnie to vary her judgment; he also did the same to another Judge, Justice Fisher, when he did not go through the administrative procedures of the court; and knowing that Justice Fisher had no jurisdiction to sit on the matter.

3. I concur with the Learned Judge that the Order for sale of the trust property to Five Star Food Industries Limited, should be executed in accordance with the terms of the judgment of 13th November 2024. There is sufficient evidence to show that the 13th Respondent had started meddling with the trust property to the disadvantage of the other beneficiaries. If this court were to decide otherwise, the beneficiaries would suffer miserably. It is therefore in a bid to protect the interest of the beneficiaries, that the terms of the judgment of 13th November 2024 ought to be executed.

4. However, this decision has been made based on the facts of this particular case. I say this because I want to digress from the points which have been discussed to an area, which I think judges of the High Court ought to pay heed to and be cautious about, especially where it involves the transfer of property rights. I want to address this issue also, because as a Supervising Judge of the High Court, I note that it is increasingly becoming a trend.

Judgment in Default of Appearance

5. The constitutional right to a fair hearing is guaranteed under section 23 of the Constitution of Sierra Leone, 1991. It provides that parties are entitled to a fair hearing within a reasonable time by an independent

and impartial court. Therefore, a default judgment entered without proper service, adequate opportunity to appear, or consideration of a plausible Defence may offend the substance of this constitutional protection.

6. Courts exist to resolve disputes after hearing both sides. A default judgment may be procedurally regular, but it is often not a determination of the true merits of the dispute between the parties. A default judgment for non-appearance is a legitimate procedural remedy, but courts should discourage its routine or mechanical use to obtain final reliefs, especially where litigants seek to proceed quickly to execution.

7. The reason is simple: litigation should ordinarily be determined on the merits, not by procedural default. A judgment entered because a defendant failed to enter an appearance may be unjust where there are doubts about service, illness, mistake, counsel's neglect, negotiation between parties, or whether the defendant would have a real and meritorious defence. They are especially dangerous where execution would cause irreversible harm.

8. Submissions were made by counsel for both sides about whether legitimate services were made or not. There were arguments around the use of the family whatsApp group forum, local newspaper and so on as substituted service. It is clear that this is a family of beneficiaries in dispute; hence other means of service could have been employed such as service via registered mail or other means of service out of the jurisdiction, since it is also clear that nearly all of the Respondents live out of the jurisdiction. There was no evidence of an application for leave to serve out of the jurisdiction via the court system. This added to some of the misunderstanding and confusion amongst the parties.

9. In Evans v Bartlam [1937] AC 473, Lord Atkin held that unless and until the court has pronounced a judgment upon the merits or by consent, it

has the discretion to revoke the expression of its coercive power by setting aside judgment in default, where it is shown that the decision will only result in injustice. The court has both the duty and the power to remedy it. It is evident that the trial judge, Justice Bonnie had the opportunity to set the judgment aside but decided against it. No reasons were given for the decision.

10. It is trite law, that a sucessful litigant must not be deprived of the fruits of their judgment, albeit a judgment entered administratively in dafault of appearance by a defendant. The High Court Rules of Sierra Leone, 2007 permits default judgment, but they also preserve judicial discretion to set aside or vary such judgments. That discretion should be exercised liberally where justice requires.

11. In Evans v Bartlam (supra), it was emphasised that the court has a wide discretion to set aside a default judgment, particularly where the defendant has a defence on the merits. This case remains a leading authority on the principle that default judgments should not be used oppressively.

12. Similarly here, the Courts have repeatedly held, that courts should lean towards hearing cases on the merits, rather than shutting out a party on technical grounds. This supports the view that default judgments should be a last procedural consequence, not a tactical weapon. Where litigants rush to obtain judgment immediately after the time for appearance expires, the process may appear unfair, especially where the parties are negotiating or where service is doubtful.

13. A default judgment is only safe if service was proper. If service is defective, the entire judgment may be void. In Skenconsult (Nig) Ltd v Ukey (1981) 1 SC 6, the Nigerian Supreme Court held that proper service of originating process is fundamental to jurisdiction. A judgment entered without proper service is a nullity. Likewise, in Madukolu v Nkemdilim (1962) 2 SC NLR341, the court stated that a court is

competent only where, among other things, the case is initiated by due process and upon fulfilment of conditions precedent.

14. Default procedure should not become a means of obtaining an advantage by ambush. It is imperative that there should be strict compliance with the rules before allowing default judgment or execution, and this is also why courts should generally stay execution once there is a bona fide application to set aside the default judgment. This may be necessary to prevent irreparable injustice or preserve the subject matter. Counsel for the 13th Respondent did not assist his client by making a prompt application to the Court of Appeal for a stay of execution when the trial judge refused the application for a stay. Instead, he went through an irregular and non-administrative route.

15. In the case of Regency Rolls Ltd v Carnall (2000) EWCA CIV 379, the court decided on the need for promptness and proper exercise of discretion in applications for setting aside of default judgment. It ruled that although defendants must act promptly, plaintiffs should also not use default procedures oppressively. It pointed out that execution can involve seizure of property, garnishee proceedings, sale of assets, eviction, or reputational damage; and if for any of these reasons, the default judgment is later set aside, the defendant could have suffered harm that could not be fully repaired.

16. Therefore, where an application to set aside a default judgment is pending, especially were it involves property rights, courts should be slow to permit execution unless the litigant shows a strong reason. In the case of Vaswani Trading Co v Savalakh & Co (1972) 12 SC 77, the Supreme Court of Nigeria held that a stay may be granted to preserve the subject matter and prevent an appeal or application from being rendered nugatory.

17. In the case of Vann v Awford (1986) WL 407661, after reviewing the merits of the case, the House of Lords laid down the following principles:

- the jurisdiction to set aside a judgment entered in default is not hedged by conditions, and the court should not lay down rigid rules on how the discretion should be exercised;
- the purpose behind the rules allowing default judgments to be set aside is to avoid injustice;
- the primary consideration in exercising the discretion is whether there is a defence on the merits;
- the court will take into account the defendant's explanation for allowing judgment to be entered in default.
- Where the defendant seeks to set aside judgment entered in default of his failing to appear at the trial, the court considers these different factors.

18. Also, in the case of Alpine Bulk Transport Co. Inc. v Saudi Eagle Shipping Co. Inc. (1986) EWCA Civ J0701-8, the Court of Appeal in delivering its judgment, held that the power to set aside a judgment obtained in default is given to the court (in our case Order 41, Rule 2 of the High Court Rules, 2007). The rule states that any judgment obtained where one party does not appear at the trial, may be set aside by the court upon such terms as it thinks fit. The said rules also empower the court or judge to impose conditions for setting aside a judgment if it thinks fit; this power which is entrusted to the discretion of the court or judge is unconditional.

19. In this regard, the courts have laid down certain rules to guide them in normal exercise of this discretion and one such rule is that where judgment is regularly obtained and a party wants to set this aside there must be an affidavit of merit or the applicant must produce to the court evidence that he has a prima facie defence as established in Evans v

Bartlam (supra). The primary considerations in exercising the discretion are whether the defendant's defence has merits to which the Court should pay heed as a matter of common sense.

20. In conclusion, the right to a fair hearing is not merely the right to file papers. It includes a meaningful opportunity to be heard before serious consequences are imposed. A default judgment followed by immediate execution may, in practical terms, punish a defendant before the court has examined whether the defendant was properly served or if there is a defence, where the claim is for a liquidated amount, whether the amount claimed is accurate and whether execution would be disproportionate and prejudicial to the defendant. This balanced approach protects both sides; it prevents defendants from abusing delay, but also prevents plaintiffs from using default procedure oppressively.

I agree.

Judgment dated 15th day of June 2026.
F. B. Alhadi JSC