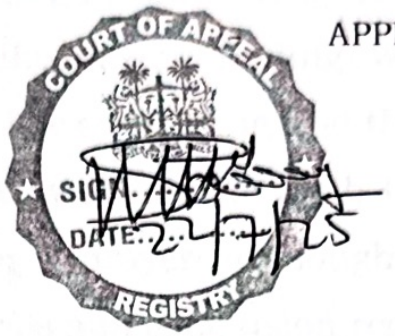
CIV. APP 30/2023

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

MOHAMED LUKULAY APPELLANT
67C KENNETH DRIVE
CALABA TOWN
FREETOWN



AND

REGINA BONDU LUKULAY - RESPONDENT
72 OFF GRAFTON-REGENT ROAD
REGENT VILLAGE
FREETOWN

CORAM:

HON. JUSTICE MOMOH-JAH STEVENS - JA (PRESIDING)
HON. JUSTICE M. P. MAMI - JA
HON. JUSTICE A. R. MANSARAY - J

SOLICITORS

J. J. CAMPBELL ESQ. for the APPELLANT
HON. TAMBA KELLIE ESQ for the RESPONDENT

RULING DELIVERED ON THE 22ND DAY OF JULY 2025

HON. JUSTICE ABDUL RAHMAN MANSARAY J. (DISENTING OPINION)

The Background

1. I have had the privilege of reading the draft opinion of my noble and learned brother, the Hon Mr. Momoh-Jah Stevens. Although I greatly respect and esteem my distinguished colleague, I must respectfully disagree with him on a significant legal finding. While I subscribed to the analysis of facts and the law concluding that the Respondent made no contribution to the property at 67C Kenneth Drive, and the lower court was wrong in granting a prayer not sought, I am in complete disagreement with his analysis and conclusion regarding the property at 72 off Grafton-Regent Road.

The Contributions

2. Unlike the cited authorities relied upon by my noble and learned brother, Gissing v Gissing and Pettitt v Pettitt, where the wife in the former and the husband in the latter were considered by the House of Lords to have not contributed, the wife in the present case made a substantial contribution to the construction of 72 Off Grafton-Regent Road property. It is evident from the evidence presented that the monies the wife claimed were her contributions initially started as a loan to the husband to purchase building materials. These monies are $1,000 and NLE 45,000.00.

3. At a later date, the respondent, the wife, requested payment of these monies, but the appellant, her husband, categorically and in no uncertain terms told her that those were her contributions to the construction of their home. Thereafter, she never requested. This is not the proper way contributions were deemed to have been made by the referred authorities. Nonetheless, the contributions meet the two-pronged tests of common intention and detrimental reliance, as extensively discussed and opined in the Gissing and Pettitt cases.

Common Intention and Detrimental Reliance

4. The common intention between the parties is this. The respondent provided USD$1,000 and NLe45,000 to the appellant, who used the same to buy the much-needed building materials for the construction project of 72 Off Grafton-Regent Road, and he in turn informed the respondent that those monies were her contributions. What more does the court want to see from the conduct of the parties to determine that there is a common intention between the parties? The detrimental reliance is this. The respondent's purpose for buying foreign currency was to save, as the local currency, the Leone, depreciated in relation to the dollar.

5. The respondent gave her Leones to the appellant to purchase dollars, but the appellant converted them to buy building materials with the promise to repay when his rent allowance was due. The appellant presented no evidence that he had repaid the loan, nor did he controvert that he did not inform the respondent that the money was her contribution. Additionally, on another occasion, when the appellant sought to purchase building materials, he approached the respondent, who withdrew funds from her local savings "Osusu" and assisted the appellant in making the purchase.

The Authorities

6. These are two occasions where the respondent suffered detriment in reliance on the expectation that she would share or have a beneficial interest in the property. Lord Diplock in Gissing v Gissing agreed that in deciding the arguments and judgments of the matter of this nature, the question was previously directed to "whether or not an agreement between the parties as to their respective interest can be established on the available evidence." He proceeded to determine the role that agreement should play. He said: "Any claim to a beneficial interest in

land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based upon the proposition that the person in whom the legal estate is vested holds it as trustee upon trust to give effect to the interest of the claimant as cestui que trust."

7. Lord Diplock then referred to "resulting, implied or constructive trust" as the trust intended in the cestui que trust which the court infers in the absence of a trust declaration by the trustee to the cestui que trust reduced in writing as provided under the English statute -section 53(1) of the Laws of Property Act, 1965. Interestingly, he went further to show how a resulting, implied or constructive trust is created, which is the centrepiece of this appeal. He stated: "A resulting, implied or constructive trust ... is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."

The Property at Deep Eye Water

8. Regarding the respondent's failure to controvert the evidence that she had her property developed at Deep Eye Water, I agree with my noble and learned friend, the Hon. S. O. Taylor, the trial judge, that he held the correct opinion. The appellant presented documentary evidence of a survey plan, which had no bearing on the respondent, nor did the appellant offer any explanation connecting the plan to the respondent or showing its nexus. The final point I wish to raise in my dissent is the issue of not raising the marital property question at the time of

initiating the divorce action. The respondent gave no reason, but the court can infer her reason for not doing so at the time by deduction. When she initiated the divorce proceedings, she ceased sharing the same flat or apartment with the appellant and relocated to the ground floor of the property at 67C Kenneth Drive. She continued to live there for two years until the decree nisi was pronounced in February 2022.

9. It was in June 2022 that the Absolute was granted. By a letter dated August 8, 2022, the appellant issued a notice to quit to the respondent, thereby triggering the issue of determining the matrimonial property. So, it can be safely deduced that the respondent moved to the ground floor, and the appellant continued to live on the top floor of the same property amicably. The matrimonial property had been practically partitioned between the parties. When that belief is displaced or disturbed by the issuance of the notice to quit, the respondent is warranted to seek the court's sanction for their informal partition. In other words, for her to receive her share of the matrimonial property. She was content with the informal share of the ground floor, but she had been kicked out. There is no law known to this jurisdiction preventing her, after the granting of the decree absolute, from initiating action to determine the matrimonial property.

10. Consequently, I will dismiss the appeal solely on ground two of the Notice of Appeal dated the 29th of March 2023.

HONOURABLE MR. JUSTICE
ABDUL RAHMAN MANSARAY J.