CC 78/2022 2022 M. N0. 7
In the High Court of Sierra Leone
(Land and Property Division)

Between:

Sheka Mansaray - Plaintiff

12 Malama Thomas Street

Freetown

And

Augustine L. Bangura - 1st Defendant

Issa Sesay - 2nd Defendant

Pa Abu Sesay - 3rd Defendant

Sheka Sunday- 4th Defendant

Mohammed Jalloh- 5th Defendant

All of Sorie Town

Back of PWD

Off Pademba Road

Freetown

Counsel:

A. B. Bangura Esq. for the Plaintiff/Applicant

J. N. Cuffie Esq. and S. Turay Esq. for the Defendants/Respondents

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Ruling on an Application for a Summary Judgment and/or Alternatively for a Final Determination of this Matter on a Point of Law, Pursuant to Order(s) 16 and/or 17 of the High Court Rules 2007, Constitutional Instrument N0.8 of 2007, Delivered by the Hon, Justice Dr. Abou B. M. Binneh-Kamara, J. on Friday, 31st March, 2023.

1.1 Context

This is a ruling on A. B. Bangura's application (hereinafter referred to as the Applicant's Counsel) of ABB and Co. Chambers of 93 Fort Street, Freetown, made pursuant to a judge's summons, dated 6th April 2022, supported by a sixteen (16) paragraph affidavit; sworn to on the same date. The principal thrust of the application is for a summary judgment, and/or alternatively, a final determination of this matter on a point of law; pursuant to Order (s) 16 and/or 17 of the High Court Rules 2007, Constitutional Instrument N0.8 of 2007 (hereinafter referred to as The HCR, 2007). Contrariwise, on 23rd April 2022, J. N. Cuffie Esq., (hereinafter referred to as the Respondents' Counsel) deposed to and filed an eleven (11) paragraph affidavit, negating the facts in the application's supporting affidavit. On 7th June 2022, the Applicant's Counsel started addressing the Court on the application and eventually completed his submissions on 16th June 2022. Meanwhile, on 23rd June 2022, Counsel for the Respondents began addressing the Court on the salient facts in his opposing affidavit and concluded on 21st July 2022.

1.2 The Application

It is befitting for purposes of a thorough sequential analysis and ease of reference that the salient issues of the elaborate contents of the Judge's summons be accordingly replicated herein as follows:

1. That the statement of defence dated 18th March 2022 filed on behalf of the Respondents be struck out; pursuant to Order 21 Rule 17 of The HCR 2007, on the ground that it discloses no reasonable defence to the action.
2. In the alternative, that Paragraph 1 of the statement of defence filed in this action be struck out for non-compliance with the requirement as provided by Order 21 Rule 8 of The HCR 2007.

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3. That consequently, final judgment be entered for the Applicant against the Respondents, upon the terms as prayed in the action's statement of claim or as the Court may deem fit and just, pursuant to Order 16 Rules 1 and 3 (1) of The HCR 2007.
4. Further and/or in the alternative, pursuant to Order 17 Rules 1 and 2 of The HCR 2007, an order be made for the action to be adjudged on a point of law, in consideration of the following questions:
    a. Whether according to the pleadings herein it can be said that the land in dispute was State land, and if so, whether the Respondents' predecessor in title had title to pass to them?
    b. Whether ipso facto, the Deed of Conveyance dated 1st February 2008 executed by the State in favour of the Applicant is valid and effectual to pass and did pass to the Applicant all the estate, right, title, interest, claim and demand, which the State had in the property conveyed to the Applicant, that is the subject matter of this action?
    c. Whether having vested the fee simple estate in the disputed property to the Applicant by a Deed of Conveyance dated 1st February 2008, the State acting by and through the Ministry of Lands, had any remaining interest in the said land at the material time to pass on to the Respondents, when they purportedly applied for a grant of a State lease, and same was allegedly granted by a purported offer letter dated 24th December 2020.
    d. Whether the Applicant is legally entitled to the land in dispute, on the basis that he is first in time (i.e. the doctrine of priority); having regard to the fact that title in the same piece of land, now in dispute, is vested in the same vendor or common predecessor in title of the parties.
    e. Whether the defence of limitation raised by the Respondents in their defence applies to recovery of possession envisaged in the Limitation Act N0. 51 of 1961, as opposed to declaration of title in the instant case.

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f. That should the questions raised in Paragraph 4 (a) - (e) supra, are answered in the affirmative, that the Respondents' defence be dismissed and the application be granted or judgment entered in favour of the Applicant herein against the Respondents for the reliefs on the statement of claims.

1.3 The Submissions of the Applicant's Counsel

Counsel for the Applicant made the following submissions to convince the Court to grant the application:

1. It is a settled principle in civil procedure that a statement of defence must unambiguously answer the claims in the claimant's pleadings. In the instant case, the pleadings in the Respondents' defence, dated 18th March 2022, do not specifically answer the Applicant's claims. Thus, the statement of defence contravenes Sierra Leone's procedural law on civil litigation; hence the provision of Order 21 Rule 17 of the HCR 2007 should be invoked. This provision reflects the Court's jurisdiction, to strike out pleadings, in circumstances wherein, such pleadings are framed in contravention of the rules.
2. The defence oscillates around paper title on the one hand and adverse possession on the other hand. The Respondents cannot prevaricate the two defences, but must specify disjointedly which of the defences they would wish to rely on.
3. The defence violates Order 21 Rule 8 (1) of the HCR 2007. This provision concerns the defence of limitation; and sets the parameters that in circumstances wherein the defence of limitation is raised, the defendant must state the period of the expiration in the defence, but the Respondents have not done this. The Respondents have in a vacuum set up the defence of limitation, without providing the requisite particulars as to adverse possession and the expiration of the limitation period.
4. The conditions precedent; embedded in Order 16 of The HCR 2007, regarding summary judgment, have been accordingly complied with.

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Alternatively, the pleadings showed that this matter is cognate with the precedents on the disposal of cases on points of law, consonant with the dictates of Order 17 Rule 1 of The HCR 2007.

5. The five questions posed in 1.2 are important for the determination of this matter on a point of law. Exhibit A1-3 show that the realty belongs to the Applicant that first acquired leasehold and eventually freehold from the Government of Sierra Leone.
6. The Respondents came to claim the realty (see Paragraph 3 of Exhibit E), long after the Applicant had been in possession of both the leasehold and freehold interests of the realty. In fact, the Respondents are only claiming a tiny portion in respect of that which the Applicant had already acquired freehold.

1.4 *The Submissions of the Respondents' Counsel*

Counsel for the Respondents made the following submissions to convince the Court not to grant the application:

1. In opposing the application, there is an affidavit of Julius Nye Cuffie Barrister and Solicitor of the High Court of Sierra Leone, of 24 John Street, Freetown in the Western Area of the Republic of Sierra Leone, sworn to on 25th April 2022. The said affidavit contains seven (7) exhibits, marked JNC1-7.
2. The application is prematurely made pursuant to Order 16 Rules 3 and 4 of The HCR 2007. The conditions precedent for the making of an Order 16 application has not been met, therefore the application should be struck out. The Applicant's papers have not shown that this matter is not underscored by any triable issues; because there are facts in disputes and summary judgments should not be given in instances wherein there are facts in dispute. The contention herein is about ownership of title to a realty being claimed by both parties. This contention can only be resolved through the conduct of a full-blown trial.
3. The disposal of this matter on a point of law is untenable. There is no way a court of competent jurisdiction can determine the questions

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raised herein, should the conduct of a full-blown trial be circumvented. Order 17 Rule 1 is referenced. The application should be discountenanced in favour of a trial. The affidavit in opposition is filed in compliance with Order 16 Rules 3 and 4 of The HCR 2007.

4. The realty is reserved for purely community purposes and no other name can be ascribed to it other than a community land.
5. The importance of the doctrine of adverse possession and the statutory provisions, relative to the limitation period, should not be downplayed in the determination of matters, relating to declarations of titles to property. The celebrated case of Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79), underscores this legal truism.
6. There is the issue of public interest in this matter; that is why it should proceed to trial. The case of Aminata Conteh **v.** All Peoples Congress (SC Civ. App. 4/2004) is referenced. Exhibit JNC3 points to the fact that there are triable issues herein with a very clear prospect of success. The 1st Respondent is the current Ward Councillor, the 2nd Respondent is the ward Committee Chairman and the 3rd Respondent is the Limba Tribal Head of the Sumaila Town Community. They have been the custodians of the Sumaila Town Community for over two decades.
7. The Community applied for a State lease of the realty in dispute on 30th April 2011 and the Government of Sierra Leone, through the Ministry of Lands, granted a leasehold to the Community on 24th December 2020 (see Exhibit JNC 4b).

1.5 ***The Law***

Sierra Leone's Superior Court of Judicature has continued to hand down quite a good number of decisions on decided cases that have no doubt shaped and guided the extent to which applications on disposal of cases on points of law are being made, as opposed to those on summary judgments. Whereas Order 16 of The HCR 2007, concerns summary judgment; Order 17 of same exclusively deals with disposal of cases on points of law.

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The application to be determined resonates with that of summary judgment and/or alternatively disposal of this case on a point of law (see 1.2). The determination of the application is thus underscored by a clear connect between two aspects of the applicable law in our jurisdiction. The first dovetails with the substantive law on declaration of title to property in the Western Area of Sierra Leone. And the second is cognate with the adjectival law, regarding the circumstances, pursuant to which cases can be summarily adjudged or disposed of on points of law. The interconnectedness between these two areas of the law, are thus articulated in 1.6 and 1.7.

1.6 ***Declaration of Title to Property***

This aspect of Sierra Leone's civil law is structured on the country's land tenure system. The law concerning ownership of realty in the Provinces is different from that of ownership in the Western Area. So, it would be in contradistinction to the substantive law, should a writ of summons be issued by the Registry of the High Court of Justice in respect of any realty in any Chiefdom of any district of the Republic of Sierra Leone, concerning any dispute relative to a declaration of title to property {see Sections 18 and 21 of the Courts Act N0.31 of 1965}. However, questions relating to the determination of ownerships of realty in the Western Area, fall within the purview of the original exclusive jurisdiction of the High Court of Justice {as generically stated in in both Sections 132 of Act N0.6 of 1991 and pedantically articulated the Third Schedule of the Courts Act N0.31 of 1965}. The jurisprudence of land ownership in the Western Area (as it has evolved with decided cases and the subsisting legal doctrines) is underpinned by two main considerations; vis-à-vis documentary and possessory titles.

1.6.1 ***Documentary Title.***

Documentary title is by no means the only way (it is only one of the ways) by which the legal fee simple absolute in possession can be established in our jurisdiction. The question which must be addressed at this stage is what must claimants to actions that rely on documentary titles establish to

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convince a court of competent jurisdiction, to declare that they are the owners of the estates of fee simple absolute in possessions? This question was incisively unraveled by the Hon. Justice Dr. Ade Renner-Thomas C. J. in the locus classicus of Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004) in the following words:

> 'In the Western Area of Sierra Leone which used to be a crown colony before combining with the protectorate to become the unitary State of Sierra Leone at independence in 1961... the absolute or paramount title to all land was originally vested on the Crown in the same way as in England, the largest estate a person deriving title from the Crown can hold being the fee simple. After independence, such absolute title was deemed vested in the State as successor in title to the Crown. According to the State Lands Act N0.19 of 1960, all grants of such title made by the Crown and later the State was said to be made in fee simple as seen in section 2 of the State Lands Act aforesaid. Thus, a declaration of title in favour of a Plaintiff without more is shorthand for saying that the Plaintiff is seized of the said piece or parcel of land in fee simple'.

Significantly, what is clearly discernible from the above analysis, is that claimants seeking for declaration of titles to property in the Western Area, are obliged to trace their titles, to some grant by the Crown or the State. This point of law had hitherto been enunciated by the Hon. Justice Livesey Luke C. J. in the other locus classicus of Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) in the following words:

> 'But in a case for a declaration of title the Plaintiff must succeed by the strength of his title. He must prove a valid title to the land. So, if he claims a fee simple title, he must prove it to entitle him to a declaration of title. The mere production of a conveyance in fee simple is not proof of a fee simple title. The document may be worthless. As a general rule, the Plaintiff must go further and prove that his predecessor in title, had title to pass to him. And of course, if there is

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evidence that the title to the same land vest in some person other than the vendor or the Plaintiff, the Plaintiff would have failed to discharge the burden upon him'.

Meanwhile, the foregoing compellable point on declaration of title to property, was also echoed by The Hon. Justice Bash-Taqi in Rugiatu Mansary **v.** Isatu Bangura (Civ. APP. 49/2006: Unreported) in the following laconic statement:

> 'The law is settled that when the issue is as to who has a better right to possess a particular piece of land the law will ascribe possession to the person who proved {sic} a better title'.

However, does the mere registration of an instrument, pursuant to section 4 of Cap. 256 of the Laws of Sierra Leone, 1960 (As Amended), ipso facto, confer title to that holder of a registered instrument? Does Cap.256 in fact deal with registration of title? Thus, I will answer the first of these two questions in the negative; and simultaneously provide succour for this position with another notable quotation from Livesey Luke, C.J. in Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79):

> 'Registration of an instrument under the Act (Cap. 256) does not confer title on the purchaser, lessee or mortgagee etc., nor does it render the title of the purchaser indefeasible. What confers title (if at all) in such a situation is the instrument itself and not the registration thereof. So, *the fact that a conveyance is registered does not ipso facto mean that the purchaser thereby has a good title to the land conveyed. In fact, the conveyance may convey no title at all'* (my emphasis in italics).

Thus, it logically and legally follows from the foregoing that the said statute, does not deal with registration of title. This is clearly seen in its long title, which reads 'An Ordinance to Amend and Consolidate the Law Relating to the Registration of Instruments'. The principal thrust of the statute thus concerns 'registration of instrument' and 'not registration of title'. And there

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is no provision in all its thirty-one (31) sections and three (3) schedules, that speaks about 'registration of title'. Thus, Livesey Luke C.J., in the aforementioned locus classicus, espoused the fundamental distinction between 'registration of instrument' and 'registration of title' by reference to the position in England and with a clearly articulated thought experiment (rationalised in his analysis between pages 74 and 81):

> '… it should be made abundantly clear that there is a fundamental and important difference between registration of instruments and registration of titles. Cap 256 does not provide for, nor does it pretend to contemplate, the registration of titles. It states quite clearly in the long title that it was passed to provide for the registration of instruments' (see page 76).
>
> '… the mere registration of an instrument does not confer title to the land effected on the purchaser etc. Unless the vendor had title to pass or had authority to execute on behalf of the true owner…' (page 78)

Essentially, the following salient points must be singled out (from the above analysis) with the apposite prominence and valence, for purposes of the analytical component of this ruling:

1. A claimant that relies on any title deed will succeed on an action for a declaration of title to property on the strength of that title deed.
2. The mere production of a conveyance (title deed) in fee simple is no proof of a fee simple title, because such a conveyance can even be worthless.
3. The claimant must go further to prove that he/she factually acquired good title from his/her predecessor in title.
4. In the circumstance where there is evidence that title to the same land vests in another person other than the claimant or his predecessor in title (vendor), declaration cannot be done on his/her behalf.

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1.6.2 ***Possessory Title***.

Another way by which Plaintiffs can stablish their case for declaration of fee simple titles to land is through long term possession. Meanwhile, in Swill **v.** Caramba-Coker (CA Civ. App. N0. 5/71), this long-term possession is deemed to span for up to forty-five (45) years. Nevertheless, the test in the aforementioned case, was taken to another level by the Supreme Court in Sorie Tarawallie **v.** Sorie Koroma, referenced above. Thus, I will deal with the level to which the test has been taken as this analysis unfolds. However, the most immediate question that can be posed at this stage is whether proof of possessory (as opposed to documentary) titles, can be sufficient to establish good titles, for declaration of fee simple titles to property.

Thus, the Courts' decisions in Cole **v.** Cummings (N0.2) (1964-66) ALR S/L Series p. 164, Mansaray **v.** Williams (1968-1969) ALR S/L Series p. 326, John and Macauley **v.** Stafford and Others SL. Sup. Court Civ. Appeal 1/75, are articulately indicative of instances in which judgments have been entered in favour of owners of possessory titles, in even circumstances where their contenders, were holders of registered conveyances. This position is also satisfactorily bolstered by Livesey Luke C. J. in Seymour Wilson **v.** Musa Abbes, referenced above (see page 79):

> 'I think it is necessary to point out that until 1964, registration of instruments was not compulsory in Sierra Leone. It was the Registration of Instruments (Amendment) Act, 1964 that made registration of instruments compulsory in Sierra Leone. So, there are possibly hundreds of pre - 1964 unregistered conveyances … it would mean that any person taking a conveyance of a piece of land after 1964 from a person having no title to the land and duly registering the conveyance would automatically have title to the land as against the true owner holding an unregistered pre-1964 conveyance. The legislature would not have intended such absurd consequences'.

Furthermore, the Hon. Justice Dr. Ade Renner-Thomas C. J. in Sorie Tarawallie **v.** Sorie Koroma (referenced above), as an addendum to this issue

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of possessory title, stated that a claimant who relies on possessory title (either by himself or his predecessor in title), must prove more than just mere possession; he must go further to establish a better title not only against the defendant, but against any other person. This can be done by proving that the title of the true owner has been extinguished in his favour by the combined effect of adverse possession and the statute of limitation. This legal position is strengthened by subsection (3) of section 5 of the Limitation Act N0. 51 of 1961, which thus provides:

> 'No action shall be brought by any other person to recover any land, after the expiration of twelve (12) years from the date on which the right of action occurred to him, or if it first accrued to some person through whom he claims to that person'.

Essentially, the following salient points must be singled out (from the above analysis) with the appropriate prominence and valence, for purposes of the analytical component of this ruling:

1. Possessory title is as weighty in evidence as documentary title.
2. Claimants that rely on possessory titles must go beyond proving more than just mere long-term possessions.
3. They must go further to establish a better title not only against the Defendant, but against any other person.
4. They can do so by establishing that the title of the true owner has been extinguished in their favour by the combined effect of adverse possession and the statute of limitation.

Meanwhile, it has since been common in our jurisdiction, for possessory title to be transformed into documentary title. This practice, regarding ownership of realty in the Western Area, has been sanctioned by the requisite provisions of the Statutory Declaration Act of 1835, which is applicable in Sierra Leone, by virtue of the reception clause: Section 74 of the Courts Act of 1965. Thus, statutory declarations' recital clauses posit that declarants or their predecessors, have or had been in possession and control of the lands, as demarcated in their survey plans, attached to such declarations, as

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documentary proves of titles. Since statutory declarations are registrable instruments, their holders are bound to register them, pursuant to Section 15 of Cap. 256 of the Laws of Sierra Leone, 1960.

Upon being registered, they become admissible in evidence for purposes of litigation, by virtue of Section 3 of the Evidence (Documentary) Act, Cap. 26 of the Laws of Sierra Leone 1960. The locus classicus of this legal position in our jurisdiction is Roberts **v.** Bright (1964-1966) ALR S.L 156. However, it should be noted, that the mere registration and admissibility in evidence of a statutory declaration does not presuppose the establishment of a valid title. In Fofanah **v.** Kamara (1964-66) ALR S.L 413 Livesey Luke Ag. J. as he then was, held that 'a statutory declaration is no prove of title'. To this, I will bring in the addendum that the facts in the registered instrument, might have been concocted and hence misleading. Therefore, a statutory declaration might be as useless as any fictitious evidence, that a reasonable tribunal of facts, can easily relegate to the doldrums. So, a statutory declaration should only be considered as evidence of title (not as a document of title). Its relevance is coterminous to any other admissible evidence (oral or documentary). Thus, the weight to be attached to it, is contingent on the decision of the Courts.

1.6.3 ***Title by Succession and Inheritance***

A third category of the law that is as well cognate with declaration of title to property is embedded in the law of succession and inheritance. This aspect of property law, is not unconnected with the acquisitions of property by documentary and possessory titles. The acquisition of title by inheritance resonates with the rules of testate and intestate successions. The law on succession and inheritance is also inextricably linked with a plethora of rules in the law of equity and trusts. The Wills Act of 1837 (which is applicable in our jurisdiction by virtue of section 74 of the Courts Act of 1965) is very instrumental in the determination of cases, concerning 'testate succession'.

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Nevertheless, the position of the law on 'intestate succession' is principally within the purview of the Devolution of Estates Act N0.21 of 2007 and the Administration of Estates Ordinance, Cap. 45 of the Laws of Sierra Leone, 1960. The beauty and novelty in our jurisdiction of Act N0.21 of 2007 (which amended specific portions of Cap. 45) is that it concerns testate and intestate successions. Thus, originally, Cap. 45 of the Laws of Sierra Leone 1960, was not applicable to intestate successions, regarding the estates of Muslims. The estates of Muslims who died intestate, were statutorily administered under Cap. 96 (The Mohammedan Marriage Ordinance) of the Laws of Sierra Leone, 1960. Nonetheless, the estates of Muslims, who died intestate can now be administered, pursuant to the provisions of Act N0.21 of 2007.

Section 38 of same accordingly amended Section 9(1) of the Mohammedan Marriage Ordinance, Cap. 96. However, what is more important for this analysis is that, both Cap. 45 and Act N0.21 of 2007 are germane to the determination of cases of intestate succession. Analytically, the law concerning intestate succession in both statutes is this: When deceased persons did not will their estates to any beneficiaries, their spouses are bound to take out Letters of Administration in the Probate Registry of the High Court of Justice. This done, they must proceed to take out vesting deeds in respect of such estates. Nonetheless, in circumstances wherein Letters of Administration have not been taken, the estates vest in the Administrator and Registrar-General, until that statutory procedure is fulfilled. Thus, in such circumstances, persons meddling with such estates are dubbed interlopers, because the estates have not yet been vested in the beneficiaries.

1.7.1 ***Disposal of Cases on Points of Law***

This aspect of the ruling concerns issues relating to evidence and procedure, which is broadly considered as the principles of adjectival law. Evidentially, in actions for declarations of fee simple titles to land, the legal burden of proof, regarding ownerships is on the claimants, who must establish their cases on balance of probabilities. But in situations where defendants

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counterclaimed ownerships, they assume the same legal burden as the claimants. In general, questions on declaration of titles to land in the Western Area hardly go beyond three factual situations, which the High Court of Justice, has mostly been grappling with. Such questions often concern situations, where the same piece or parcel of land is claimed by both parties.

Where there are two separate pieces or parcels of land adjacent to each other and there are indications of encroachment and trespass unto the other. And where two separate and distinct pieces or parcels of land (that are not adjacent at all), but one of the parties is relying on his/her own title deed to claim the other. Thus, regarding all the foregoing permutations, the parties to the disputes, are procedurally obliged to file their respective pleadings and the Court is bound to give appropriate directions, pursuant to Order 28 of the HCR 2007, before even the appropriate notices of motions are filed, setting such matters down for trials. Nonetheless, without even proceeding to trials, Order 17 Rule 1 (1) of The HCR 2007, directs Judges of the High Court of Justice, to dispose of any case (including that which concerns a declaration of title to property) on points of law. The sub-rule thus reads:

> 'The court may on the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the court that–(a) the question is suitable for determination without a full trial of the action; and (b) the determination will finally determine the matter subject only to any possible appeal, the entire cause or matter or any claim or issue in the entire cause or matter'.

Thus, the authors of the English Supreme Court Annual Practice 1999, extensively unpacked the criteria that shall be met for courts of competent jurisdictions to grant such orders; and the significance of Order 17 (in the civil litigation process) in their quite pedantic analysis found between paragraphs 14A/1 and 14A/2 of Pages 199 to 202. Essentially, a point which the said authors made quite prominent is that the foregoing provision

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has to be read and interpreted in tandem with particularly Orders 16 (dealing with summary judgment) and 21 Rule 17 (concerning the striking out of pleadings by courts of competent jurisdiction). Thus, an analysis of the above provision, consequent on the analytical exposition in the English Supreme Court Annual Practice 1999, depicts the following salient points about the aforementioned provision.

First, it is entirely directory and (not mandatory). This is by virtue of the semantic value of the auxiliary verb 'may' as used in the very sentence preceding Paragraph (a) of Sub-rule (1). Second, the disposal of any matter on appoints of law can be done pursuant to applications made by either of the parties to the litigations, or by the Court on its own volition. Third, in circumstances where the Court is bound to deal with the construction of any document, it can at any stage of the proceedings do so, where it is inter alia satisfied, that such task can be done, without any need for a trial. Analytically, the foregoing interpretation of the provisions in Order 17, strikes a chord with that of the Hon. Mr. Justice Fynn, J.A. in Betty Mansaray and Others **v.** Mary Kamara Williams and Another (Misc App. N0. 4 of 2017) {2018) SLCA 1277 (10th June 2018).

Meanwhile, in circumstances wherein the Court is bound to deal with the construction of any document, it can at any stage of the proceedings do so, where it is inter alia satisfied, that such task can be done, without any need for a trial. Nonetheless, this Honourable Court is mandated not to determine such a question, unless the parties have had an opportunity of being heard on that question; or consented to an order or judgment on the determination {see Sub-rules (3) and (4) of Rule 1 of Order 17 of The HCR, 2007}. The significance of Order 17 applications is seen in the basic facts that they can save the courts, the barristers and the litigants, from going through the protracted trial processes that are quite expensive and time consuming. Essentially, should the facts of a case depict that it can be disposed of on a point of law, it would be therefore legally and rationally expedient for it not to proceed to trial.

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1.7.2 ***Summary Judgment***

Thus, it should be noted that the application to be determined is also not devoid of the considerations in Order 16, which concerns summary judgment. The authors of the English Supreme Court Annual Practice of 1999 (The White Book), upon which Sierra Leone's HCR 2007 is constructed, clearly articulated the legal significance of Order 16 applications, regarding summary judgments, between pages 162 and 199. The authors' pontification in Paragraph 14/1/2 found in page 163 is so pertinent to the Court's jurisdiction (in its determination of applications on summary judgments), that I am obliged to replicate here, to address the concerns raised in the application about summary judgment:

> 'The scope of Order 14 (*Order 16 of The HCR 2007*) proceedings is determined by the rules and the Court has no wider powers than those conferred by the rules nor any other statutory power to act outside and beyond the rules or any residual or inherent jurisdiction where it is just to do so' (my emphasis in italics)**.**

Thus, the importance of Order 16 is justified in circumstances wherein there are certainly or rather plainly, no available defences to negate the statement of claims. Further, applications for summary judgments are as well rationalised in circumstances, wherein the defences to specific claims are constructed on an ill-conceived or unfounded points of law. The Courts' decisions in C.E. Health plc **v.** Ceram Holding Co. (1988) 1 W.L.R 1219 at 1228 and Home Office **v.** Overseas Investment Insurance Co. Ltd. (1990) 1 W.L.R. 153-158, are quite instructive on this realm of procedural justice. Rules 1, 2 and 3, which are the structural architecture upon which Order 16 applications are constructed, depict the following conditions precedent to enter an order for summary judgment: -the defendant must have filed a notice of intention to defend; the statement of claim must have been served on the defendant and the affidavit supporting the application must have complied with Rule 2 (1) of Order 16.

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That is, the deponent of the facts to the affidavit must have been certain that there is indeed no defence to part of or all of his/her claims. This presupposes that it is a crucial condition precedent that the application's supporting affidavit, must have unequivocally serialised and verified the facts of the case, the cause of action, what is being claimed, and the conviction that there is no defence to the action, must as well be supported by the facts. However, a court of competent jurisdiction, frowns at granting a summary judgment order, in every circumstance, wherein the affidavit evidence depicts, that there are contentious and triable issues, which can only be determined, pursuant to the conduct a full-blown trial.

The criticality of an Order 16 application is that, should the court grant it, in an instance wherein it should not be granted; the defendant is automatically denied the opportunity of benefiting from the fruits of a fair trial, conducted by an independent and reasonable tribunal of facts. And this will be certainly interpreted as a violation of the constitutional principle, that justice should not only be done, but it must be seen done {see Sections 23 (1), (2) and (3) and 120 (6) of Act N0.6 of 1991}. The Hon. Justice V. A. D. Wright, J.S.C., in Aminata Conteh **v.** The All Peoples Congress (SC. Civ. App. 4/2004) commented obiter, on the criticality of summary judgment, in the following explicit statement:

> The object of the order is to ensure a speedy conclusion of the matters or cases where the plaintiff can establish clearly that the defendant has no defence or triable issues. This draconian power of the court in preventing the defendant from putting his case before the court must be used judiciously. A judge must be satisfied that there are no triable issues before exercising the discretion to grant… a summary judgment. The judge is also obliged to examine the defence in detail to ensure that there are no triable issues.

Thus, the rationale for a critical examination of the defence is crucial to the granting of a summary judgment order. This process entails the ability to discern defences that are sham, concocted and fanciful, from those that are factual, genuine and clothed with real prospects of success {see Swain **v.**

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Hallman and Another (2001) All ER page 91}. The process further requires a clear sense of ratiocination and judicial discernment. Significantly, the granting of a summary judgment, behoves a reasonable tribunal of facts, to thoroughly unpick and unpack the facts, relative to the substantive law and the procedural rules, underpinning the application. This has been the approach that has guided the courts in making orders of summary judgments.

1.8 ***The Analysis: Triangulating and Relating the Applicable Laws to the Facts***

In this triangulated analysis, I will first unpack the case for the Applicant (who is the Plaintiff in the original action), before proceeding to unpick the Respondents' (the Defendants in the original action) case, in the context of the application. Thus, an examination of the papers filed, does not expose any procedural incongruence that would have warranted the Court to strike out the application on the ground of any procedural nullity. Nonetheless, what is befitting to determine at this stage, is whether the application, resonates with the dictates of either Order16 or 17 of The HCR, 2007. This is simply because, the Respondents' Counsel's submission that the question of law upon which the application is built, cannot be determined, without the conduct of a full-brown trial, is the principal reason upon which the negation of the application is constructed.

The application is framed on two limbs: The first is for the matter to be determined on a summary judgment. And in the alternative for it to be disposed of on a question of law. I will rather commence the analysis, leading to the determination of the application with that which swirls around Order 17; concerning discontinuity of matters on points of law. This approach clearly necessitates the need to put the facts of this case in a clear perspective. Thus, ownership of the realty which is contended was a State land. The Applicant before 2008 did not claim possession and ownership of it. As the evidence stands, the Applicant applied for a leasehold in 2008. Indeed, the leasehold was granted and after due considerations by the Ministry of Lands, freehold was eventually actualised.

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Thus, a Deed of Conveyance, dated 1st February 2008, was characteristically executed on behalf of the Government of Sierra Leone, transferring ownership of all that piece or parcel of land situate, lying and being at Off Pademba Road, Back of PWD Quarter, Freetown. And that a deed of conveyance, acknowledging the transfer of ownership from the Government of Sierra Leone to the Applicant was prepared and registered as N0. 232/2008 at page 35 in Volume 638 of the Record Book of Conveyances, kept in the Office of the Administrator and Registrar-General at Walpole Street, Freetown. The records of the foregoing legal processes: The application, offer letter and Deed of Conveyance, are exhibited and marked A1-3.

Further, the Ministry of Lands also issued a building (dwelling house) permit (see Exhibit B1-2) for the construction of a structure. Significantly, Paragraph 5 of the application's supporting affidavit, states that the Applicant has always been in possession and quiet occupation of the realty, since the Government of Sierra Leone transferred ownership to him. And that he had since been taking necessary steps to prevent squatters and trespassers from having any access to the realty. Meanwhile, Paragraph 6 of the same affidavit states that it was in 2021 that the Respondents, aided by some hoodlums, trespassed on the realty and alleged that they had had a leasehold interest from the Ministry of Lands in respect of same. This is the Applicant's case.

Nevertheless, the Respondents' case is built on the following facts. The Respondents are community stakeholders and custodians of the realty, which they say belongs to the Sumaila Town Community. They said have been in control and possession of the realty for over 60 years, which ownership is now in dispute. Thus, on 30th June 2011, an application for a leasehold (for the construction of a school, hospital and community centre) was addressed to the Ministry of Lands, for and on behalf of the Sumaila Town Community. Thus, on the 24th December 2020, in response to that application, the Ministry of Lands offered the realty on lease to the said

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community, which by virtue of that correspondence, now claims a leasehold interest in the realty in dispute.

Further, the Acting Director of Surveys and Lands, on 12th November 2020, signed a survey plan, in the name of the Sumaila Town Community, delineating the realty numbered LOA 15349 measuring 0.1172 acre (see Exhibit JNC 4a, b &c). In fact, in 2013, the Respondents on the one hand and Mr. Taiwo Cullen and Mr. John Kainde Cullen on the other hand, were embroiled in a conflict, regarding the ownership of the realty. And Mr. Ibrahim Dumbuya sent a correspondence of protest, on behalf of the Sumaila Town Community, to the Ministry of Lands (see Exhibit JNC 5). The Ministry of Lands thus conducted investigations into the contents of the correspondence, serialising the issues, culminating in the protestations; and subsequently produced a report, detailing the outcomes of the investigations (see Exhibit JNC 6).

The report thus concludes that:

> 'Based on the physical condition on the ground, Mr. James T. Cullen is to resurvey according to his site plan… and Mr. John K. Cullen also to take possession of LOA 8534 and not the area shown to me within their site plan and the balance land to be used by the community'.

Thus, it is clear from the above that the underlying fact that permeates the case for the Applicant and Respondents, is that both parties have come to claim possession and ownership of the realty in dispute from the same predecessor in title (The Government of Sierra Leone through the Ministry of Lands). Against this backdrop, the fundamental issue that must be distilled from the foregoing facts, underpinning the contention herein, is whether the processes culminating in the various interests of the respective parties, were appropriately gone through in accordance with the requisite applicable statutory provisions in our jurisdiction. Significantly, the Crown (now State) Lands Act N0.19 of 1960 (hereinafter referred to as Act N0. 19 of 1960) and the Crown (now State) Lands (Amendment) Act N0. 37 of 1961 (hereinafter referred to as Act N0.37 of 1961) are sacrosanct on the legal processes,

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pursuant to which the State can grant any interest in realty to any person, a creature in being or juridical. By Section 1 of Act N0. 19 of 1960, a grant includes fee simple absolute in possession, leasehold and licences. Thus, the procedure for a grant is simple:

Section 3 of Act N0.37 of 1961, which amended Section 4 of Act N0.19 of 1960, empowers the Minister of Lands to grant leasehold interests to persons whom he deems fit to acquire such interest, which is only equitable, until the freehold (legal) interests are subsequently granted, after due considerations of some other conditions stipulated in Act N0. 19 of 1960 (As Amended). Thus, when freehold is granted, it means the State no longer has any remaining interest to pass to any other person in respect of which the right to fee simple absolute in possession has been acquired. So, the State is thus left with nothing, concerning any realty for which the reversionary interest now vests in the owner of the fee simple absolute in possession (i.e. the person who now holds the freehold). Characteristically, the freehold interest is itself confirmed, when some other elaborate processes are gone through. First, Section 9 of Act N0. 19 of 1960 (As Amended) must have been complied with. The section provides that:

> 'No Crown (State) land shall be granted in any manner whatsoever under this Ordinance until it has been surveyed and demarcated by a Government or licensed surveyor and the plan thereof has been approved and signed by the Director of Surveys and Lands or by an officer of his department acting on his behalf'.

Secondly, Section 15 of the Surveys Act Cap. 128 of the Laws of Sierra Leone 1960, requires the Ministry of Lands to keep records of the survey plans, which have been duly signed by licensed surveyors and the Director of Surveys and Lands in its record books. The essence of this statutory compulsion is for the Ministry of Lands to exercise due diligence in granting State lands; and to be simultaneously mindful and conscientious not to duplicate the grants of realties that might already been granted to some other persons. This means that should the Ministry of Lands, adopt this approach, as a matter of strictissima juris, most of the matters that are

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normally brought to the High Court of Justice for determination of titles to property, would not have darkened the doors of the Superior Court of Judicature. Thirdly, the grantor (The Government of Sierra Leone through the Ministry of Lands) must execute a conveyance transferring possession and ownership of the grant to the grantee. Fourthly, the conveyance must have been prepared and signed by a law officer in the service of the Government of Sierra Leone, attached to the Law Officers Department, in the Office of the Attorney and Minister of Justice.

Fifthly, the grantee (who now owns the fee simple absolute in possession) must proceed to register the signed conveyance (by the Minister of Lands in the presence of another State operative), in the Office of the Administrator and Registrar-General, pursuant to the provisions in Caps. 255 and 256 of the Laws of Sierra Leone, 1960. Furthermore, the conveyance must be recorded in the record book of conveyances of the year in which it is registered with the appropriate serial number. Thus, when these processes are gone through, then the conveyance transferring ownership can be evidentially relied on for purposes of litigation, concerning declaration of title to property. Meanwhile, the application for the disposal of this case on a point of law is built on a number of questions, which I should now answer, consonant with the facts and facts-in- issue (evidence) and the law (substantive and adjectival).

The first question is whether according to the pleadings herein it can be said that the land in dispute was State land and if so whether the Respondents' predecessor in title had title to pass to them?

The facts embedded in both affidavits, presenting the case of both parties to this litigation, are serialised in 1.8. The Applicant is claiming ownership of the realty and the Respondents are as well claiming the same realty (for and on behalf of the Sumaila Town Community), from the same predecessor- in -title (the State). The first part to the question is whether the State had fee simple absolute in possession and therefore the reversionary right to possession and ownership, even if any other interest might have been born out of it, before the Applicant and Respondents, came to claim ownership of

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it. The position of the law on this issue is short, sharp, firm and unambiguous. And it is clearly articulated by the Hon. Justice Dr. Ade Renner-Thomas in Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004) as follows:

> 'In the Western Area of Sierra Leone which used to be a crown colony before combining with the protectorate to become the unitary State of Sierra Leone at independence in 1961… the absolute or paramount title to all land was originally vested on the Crown in the same way as in England, the largest estate a person deriving title from the Crown can hold being the fee simple. After independence, such absolute title was deemed vested in the State as successor in title to the Crown…'

Thus, there is absolutely nothing in evidence, depicting that the realty is a private property. Even if such piece of evidence is before the court, the party relying on it must establish that the original predecessor-in-title, acquired ownership from the Crown (if that party is claiming from a person who had acquired it before independence), or from the State (if he/she is claiming from a person that acquired it after independence). So, it cannot be, as it is not contended, that the realty in dispute then belonged to the state. This conclusion on the first limb of the question now leads to the second limb (i.e. whether the State had any title to pass to the Respondents. Thus, the answer to the second limb of the question, should also be distilled from the facts and law as catalogued above.

Crucially, at the material time, when the Respondents, came to aver that the State has granted them a lease of the realty in dispute, it was indeed practically and legally impossible for the latter to pass any interest to the former {freehold, leasehold or any form of licences, created by Section 2 of Act N0.19 of 1960 (As Amended)}. This is simple because, the State had already granted, the fee simple absolute in possession, to the Applicant as far back as 2008. Thus, when the grant was made, the reversionary right to ownership was permanently transferred to the Applicant. The State was therefore left with nothing, to pass to the Respondents. The clear applicable

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legal principle that manifests itself in this circumstance is 'nemo dat none quad habet' (you cannot give that which is not yours).

The second question is whether ipso facto, the Deed of Conveyance dated 1st February 2008 executed by the State in favour of the Applicant is valid and effectual to pass and did pass to the Applicant all the estate, right, title, interest, claim and demand, which the State had in the property conveyed to the Respondent, which is the subject matter of this action?

Thus, it should be noted that the Respondents according to the evidence, have not contended the ownership of the Applicant. They have not directly negated the documentary title to the realty which the Applicant has claimed. In fact, they could not have done so, because they have relied on a defence, which has the tendency to negate the validity of the Applicant's title deed, should that defence hold good in the instant case. Nonetheless, the fact that the Respondents, have not directly challenged the Applicant's title deed, does not presuppose that this tribunal of facts, cannot probe into whether the Applicant has acquired the realty, pursuant to the requisite statutory processes. First, the Applicant applied for a lease of the realty from his predecessor-in-title (the State). Second, the leasehold was transformed into freehold.

Third, the State got a lawyer (L. M. Farmer Esq.) attached to the Law Officers' Department, in the Office of the Attorney-General and Minister of Justice, to prepare a conveyance. Fourth, the conveyance was signed by the then Minister of Lands (Dr. Alfred Bobson Sesay) in the presence of another Civil Servant (Alfred M. Simbo), attached to the Ministry of Lands. Fifth, the conveyance was registered in Volume 636 at page 35 of the Records Book of Conveyances of 2008. Lastly, the said conveyance, whose authenticity has not been challenged, has been accordingly exhibited. Again, the fact that the Applicant has produced a conveyance in respect of the realty in dispute does not mean that the Court can now proceed to declare that he owns the property.

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A claimant that relies on any title deed, according to the Hon. Justice Livesey-Luke C. J. in Seymour Wilson **v.** Musa Abess (referenced above) and the Hon. Justice Dr. Ade Renner-Thomas C. J. in Sorie Tarawallie **v.** Sorie Koroma (referenced above), will succeed in an action for a declaration of title to property, after having successfully established: the strength of his/her title deed; the mere production of a conveyance (title deed) in fee simple is no proof of a fee simple title, because such a conveyance can even be worthless; the claimant must go further to prove that he/she acquired good title from his predecessor in title; in the circumstance where there is evidence that title to the same land vests in another person other than the claimant or his predecessor in title (vendor), declaration cannot be done on his/her behalf. Characteristically, it is clear from the foregoing evidence, that the Applicant's case meets the threshold established, in the aforementioned locus classicus, for a declaration of title to property. In the light of the above analysis, I therefore hold that the Deed of Conveyance, dated 1st February 2008 executed by the State in favour of the Applicant is valid and effectual to pass and did pass to the Applicant all the estate, right, title, interest, claim and demand, which the state had in the property. This is Court's answer to the second question.

The third question is whether having vested the fee simple estate in the disputed property to the Applicant by Deed of Conveyance dated 1st February 2008, the State acting by and through the Ministry of Lands had any remaining interest in the said land at the material time to pass on to the Respondents, when they purportedly applied for a grant of a State lease and same was allegedly granted by a purported offer letter dated 24th December 2020?

This question (just as the first and second) has two limbs. The first limb is clearly handled in the answer to the very first question. For purposes of reiteration, I hold that after having vested the fee simple estate to the Applicant by deed of conveyance, dated 1st February 2008, the State had nothing to pass to anyone, concerning that realty. The second limb, chimed with the timeliness of the application which was made for the grant of a

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lease of a realty, which the Ministry of Lands had already conveyed. In fact, it is as preposterous as it is presumptuous; or even outrageous for the Ministry of Lands to have gone ahead to process the Respondents' application for the grant of a lease in respect of a realty, which it had already granted in fee simple to another person; let alone to mention the signing of the Respondents' survey plan in respect of same. This is one of the reasons why the Superior Court of Judicature is inundated with a plethora of cases, regarding declaration of titles to property, which the Ministry of Lands, should have been preventing, if at all it has been exercising the apposite diligence in keeping proper records of the survey plans it has been signing in accordance with Section 15 of Cap. 128 of the Laws of Sierra Leone 1960.

When proper records of site plans, emanating from the Ministry are kept, and due diligence exercised in scrutinising and vetting subsequent applications for grants, it would be practically impossible for the Ministry to indulge in granting even leases and licenses, in respects of plots for which there are already subsisting fee simple absolute interests. To the second limb of the question, I say at the material time when the Respondents applied for a lease of the realty, the State had no justification in law to process it; neither should it have approved of; nor responded to the request to grant the lease, which has turned out to have no validity and legally, because the State could not have given what it did not have at the time the subsequent grant to the Respondents was made.

The fourth question is whether the Applicant is legally entitled to the land in dispute on the basis that he is first in time (doctrine of priority) having regard to the fact that title in the same piece of land now in dispute is vested in the same vendor or common predecessor in title of the parties?

To this question, in consideration of the answers to the foregoing questions, I hold that the Applicant is indeed legally entitled to the realty, consequent on the doctrine of priority, having regard to the fact that the Applicants and Respondents are claiming from the same predecessor-in-title.

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The fifth question is whether the defence of limitation raised by the Respondents in their defence applies to recovery of possession envisaged in the Limitation Act N0. 51 of 1961 as opposed to declaration of title in the instant case?

A fortiori, the acquisition of title to realty from the State was almost incontestable, when it came to actions concerning declarations of titles to realty. When once the processes of acquisition have been gone through, pursuant to the apposite provisions of Act N0.19 of 1960 (As Amended), it was almost certainly the case that other persons could hardly come forth to claim titles to realty as delineated in survey plans, attached to conveyances that had been registered. This was principally the trend, preceding the enactment of Act N0.51 of 1961, which now legitimises the doctrine of 'adverse possession', tied to what is now widely known as the statute of limitation. However, because land holding is now a serious socio-economic concern in the Western Area, the nefarious activity of 'squatting' on State lands, which are eventually claimed, after the statutory period of limitation, is now a common place.

This practice has now made it quite challenging, for holders of fee simple absolute in possession, when they get into dispute, relating to ownerships of land, with those relying on adverse possessions. So, the question of ownership in the instant case, has to be looked through the lenses of documentary title, which the Applicant has already established; against the backdrop of the doctrine of adverse possession; which is the defence upon which the Respondents have constructed their case. Nevertheless, the application's fifth question, concerns the Respondents' defence in Paragraph 1 of their statement of defence (see Exhibit JNC 3). This is what the said paragraph contains:

> 'The Defendants deny Paragraph 1 of the Plaintiff's particulars of claim and would put the Plaintiff to strict proof thereof. The Defendants avers {sic} that the said land had been the property of the Sumaila Town Community in possession and control {sic} for more than 60 years and same had been reserved for the construction of a

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Community Centre, a Community School and a Community Health Centre. The Defendants thus pleads {sic} provisions of the Limitation Act of 1971 {sic} in so far as the Plaintiff is statute barred to institute this action'.

The first limb of the foregoing paragraph, denies Paragraph 1 of the Applicant's statement of claim (see Exhibit JNC1), which prays for an order of declaration of title to the subject matter of this litigation. The paragraph further puts the Applicant to a strict proof of that claim. The question that arises at this stage is whether the Applicant has succeeded in establishing a clear case for a declaration that he holds the fee simple absolute in possession? The evidence as depicted above, and the analysis of that evidence, in tandem with the applicable law, accordingly justified the Applicant's claim in Paragraph 1 of the statement of claim. Nevertheless, the second limb of Paragraph 1 of the Respondents' statement of defence, swirls around long-term possession. Analytically, possessory title is unconnected with the doctrine of adverse possession and the defence of limitation. The law on possessory title is well settled in both Seymour Wilson **v.** Musa Abess (referenced above) and Sorie Tarawallie **v.** Sorie Koroma (referenced above).

Meanwhile, the Supreme Court's decisions on the foregoing cases, underscore the importance of the criteria to be met to establish a case of possessory title. As established in 1.6.2, a claimant that relies on possessory title, must go beyond proving more than just mere long-term possession; he/she must go further to establish a better title not only against a defendant, but any other person; he/she must as well establish that the title of the true owner has been extinguished in his/her favour by the combined effect of adverse possession and the defence of limitation. In fact, it is important to note that possessory title is as weighty in evidence as documentary title. Thus, there are a plethora of decided cases in our jurisdiction in which the Courts have made orders of declaration of titles to property in favour of claimants that relied on possessory, as opposed to even documentary titles. The authorities cited in the same 1.6.2 are very instructive on this point.

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However, in establishing a case of possessory title, the following questions, must guide and guard the inquiry: Has long term possession been claimed and proven? Has a better title been proven against the Applicant or any other person? Has the title of the true owner been extinguished by the combined effect of adverse possession and the defence of limitation? Further, given the facts and law as pleaded in Paragraph 1 of the statement of defence, the following questions should as well be asked in the context of the first limb of the Applicant's Counsel's application (i.e. the disposal of this matter on a point of law): Does adverse possession necessitate an analysis of the law on possessory title, to determine whether that defence is applicable or inapplicable to the instant case? Have the Respondents fused their defence with a counterclaim that they own the fee simple absolute in possession? What is the law's position when adverse possession is pleaded, without any plea of the very particulars on which that defence is built? Again, what is the law's position when a defendant pleads adverse possession, without counterclaiming a declaration of title to realty?

Significantly, the above questions are sequentially answered as the analysis unfolds. Thus, the Respondents raised a long-term possession of over 60 years in their defence, but have not counterclaimed declaration of title. Should it be presumed that if the Respondents satisfy the threshold of possessory title, they could and would not be dispossessed; hence the realty would be declared theirs? This question cannot be answered in the positive, because Section 16 of Act N0.51 of 1961, makes it clear that it is the title of the original owners that are repudiated by adverse possessions. This status quo does not presuppose that the Courts are then obliged or bound to make declarations in favour of those already in possessions that have not counterclaimed declarations to titles.

However, as established in Seymour Wilson **v.** Musa Abess (referenced above), in situations wherein defendants counterclaimed ownerships, they assume the evidential burden of proving same. In effect, parties that counterclaimed (in actions of declarations of titles to realty) are bound to succeed on the strength of their cases. They cannot rely on the weaknesses

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of their opponents' cases for successes. Again, the said Section 16 does not compel the Court to presume ownership in favour of those that rely on the defence of adverse possession. The next question to be answered in the light of the available evidence is whether the Respondents have proven a better title against the Applicant or any other person in the instant case? The answer to this question is no. The Applicant has indeed legally and evidentially shown a better title against the Respondents and any other person that might have claimed the realty. In fact, the Respondents have not contended the Applicant's title deed, which has backed his claim to the fee simple absolute in possession. Of course, they could and would not have done that a fortiori, because they have relied on adverse possession and the defence of limitation. The leads to the question: Whether the title of the true owner has been extinguished by the combined effect of adverse possession and the defence of limitation? This is the most important question to be answered in this ruling. As established above, the true owner of the realty is the Applicant. But has his ownership been extinguished by the doctrine of adverse possession and the defence of limitation? Again, it should be noted that the same second limb of Paragraph 1 of the statement of defence, pleads that:

> '…The Defendants avers {sic} that the said land had been the property of the Sumaila Town Community in possession and control {sic} for more than 60 years and same had been reserved for the construction of a Community Centre, a Community School and a Community Health Centre…'

Certainly, the intended use to which the realty is yet to be put is neither the epicentre of the defence; nor is it sufficient to convince any reasonable tribunal of facts that the Sumaila Town Community's averment of long-term possession really holds good in the instant case, without any other plea of how that Community came to possess the realty. What is important at this stage is whether the Respondents have specifically pleaded every ground of their defence of long-term possession. They have pleaded a long-term possession of over 60 years. Nonetheless, they have not pleaded the

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particulars of adverse possession; neither have they referenced the specific period for which they have been in occupation; nor have they pleaded when the Applicant was actually disposed, and thereby putting a bar to his ownership.

To only say in the statement of defence that the Respondents have been in possession and control of the realty for over 60 years is quite vague. In fact, Order 21 Rule 8 (2) of the HCR 2007, states that '... a defendant to an action for land shall plead specifically every ground of the defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient'. Also, Rule 8 (1) of the same Order 21, deals with 'matters which shall be specifically pleaded' {see the side note to the Order}. This sub rule, inter alia, makes it mandatory (by virtue of the auxiliary verb: 'shall' therein), that 'A party shall in any pleading subsequent to a statement of claim plead specifically any matter for example performance, release, the expiry of any relevant period of limitation, fraud or any fact showing illegality - (a) which he alleges makes any claim to the opposite party not maintainable...' Furthermore, the Respondents have tied their plea of long-term possession to 'provisions of the Limitations Act of 1971'. In fact, there is no law in Sierra Leone's statute books known as the Limitation Act of 1971.

So, I do not know how the Respondents' defence of long-term possession, dovetails with a non-existing 1971 statute, dealing with issues of adverse possession in our jurisdiction. Again, they have not even cited the very provisions of the statute in which they have predicated their defence of adverse possession. A fortiori, this fatal ambiguity is sufficient to discard and even strike out Paragraph 1 in the statement of defence, pursuant to Order 21 Rule 17 (1) (a) of the HCR 2007. Nonetheless, as a credible tribunal of facts, meant to uphold the ideals of justice, it is but fair and reasonable, for the Court to first locate the defence of the combined effect of adverse possession and the statute of limitation in the appropriate legislation (being relied on), before proceeding to examine whether it is a genuine defence that

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is applicable or inapplicable to the instant case, in relation to whether this matter can be disposed of on a point of law.

Thus, the Bench is aware about the Limitation Act N0.51 of 1961, dubbed the 'Statute of Limitation'. This law contains a number of provisions that are cognate with the facts and facts-in-issue, embedded in the supporting and opposing affidavits. Thus, to be able to fairly determine, whether adverse possession is sufficient to negate the Applicant's title in the instant case, the relevant provisions in Act N0.51 of 1961, should be juxtaposed with those of Act N0. 19 of1960 (As Amended). Section 1(1) of Act N0.19 of 1960, which is the interpretation section of that statute, makes it clear that all lands in the Western Area was vested in the Crown (and after independence the State). This means that the realty which the Respondents say they have been in possession of and control for over 60 years was part of the piece and parcel of land that vested in the State at independence. The question that is to be asked now, which has directly emanated from the failure of the Respondents to specifically plead that fact in their statement of defence is: When did they come to occupy (squat) on the realty, which then belonged to the State?

Historically, Sierra Leone became an independent sovereign State in the World's Community of Nations on 27th April 1961. So, 62 years have gone by since the country attained that status, giving it the juridical right to sue in intra and international law; and a capacity to conduct its external and internal relations. Thus, assuming without conceding that, the Respondents' community came to occupy the realty over 60 years ago, it means the Respondents' predecessors got into occupation less than two years after independence. Let us assume that it was in the same 1961, that their predecessors got to inhibit the land; it means that they have occupied it for up 62 years. The next question that arises is: When was the State's ownership extinguished by virtue of Section 5 1(1) of Act N0.19 of 1960? Again, assuming without conceding that the squatting began after 27th April 1961, it means that the State's ownership had been barred by the doctrine of adverse possession after 27th April 1991 (i.e. the 30 years' period that is stated in the said Section of Act N0. 19 of 1961).

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Further, assuming without conceding that the State could not have recovered possession of the realty after 27th April 1991, and therefore could not have transferred ownership to the Applicant in 2008, why then did the Respondents apply to the State (through the Ministry of Lands), for the grant of a leasehold; which is accompanied by a State Approval (from the Ministry of Lands), conferring a leasehold interest to the Respondents; and the Director of Surveys and Lands, even went further to produce a signed survey plan of the realty, in the name of the Sumaila Town Community? The answer to this question is simply be that the Respondents had little or no trust in their defence of the combined effect of adverse possession and the provisions in Act N0. 51 of 1961. Had they really believed in that defence, they would not have applied to the State, for a leasehold of the realty which, assuming without conceding, that they had taken possession of and control after 27th April 1961. The mere reliance of adverse possession of 60 years, should have precluded them from coming back to the State for a leasehold interest. By applying for a leasehold, they negated their own defence, which they subsequently, but vaguely raised in their statement of defence.

In fact, the application for a lease and its subsequent approval from the Ministry of Lands with an offer letter signed in the name of the Sumaila Town Community was of no relevance after the State had conveyed the realty to the Applicant. The Respondents, if at all, they had indeed been in possession and control of the realty for over 60 years, they should have invoked the provisions of the Statutory Declaration Act of 1835, to strengthen their claim of adverse possession, which might have negated the ownership of the State and the eventual transfer of the fee simple absolute in possession to the Applicant in 2008. But as noted in 1.6.2, a statutory declaration is no proof of title to a realty; it is only a documentary evidence, which is relevant and admissible, in establishing a claim of title to a realty {see Section 3 of the Evidence (Documentary) Act, Cap. 26 of the Laws of Sierra Leone 1960, Section 15 of the Registration of Instruments Act, Cap. 256 of the Laws of Sierra Leone 1960; and the cases of Roberts **v.** Bright (referenced above) and Fofanah **v.** Kamara ((referenced) see 1.6.2}.

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The invocation of the foregoing process of acquisition in the context of the aforementioned statutory provisions and case law, would have provided a solid defence of adverse possession as opposed to requesting the State to grant leasehold of a realty, which according to the Respondents' averment in Paragraph 1 of their statement of defence, had been theirs for over 60 years. To reiterate the point of the irrelevance of the application of a lease to the Ministry of Lands (in the context of the adverse possession raised in the instant case), a reasonable creature in being would ask: Why then did they apply to the State for that which the State, according to the Respondents, had lost?

Nevertheless, by the 1st day of February 2008, the Applicant had completed the requisite statutory processes, culminating in the acquisition of his right to fee simple absolute in possession. Further, the Applicant after having acquired freehold interest in the realty, took possession of it; he also acquired a building (dwelling house) permit, from the Ministry of Lands (see Exhibit B1-2), for the construction of a structure. Moreover, the Applicant has always been in possession and quite occupation of the realty, since 2008, when the Government of Sierra Leone transferred ownership to him. And that he had since been taking necessary steps to prevent squatters and trespassers from having any access to the realty (see Paragraph 5 of the application's supporting affidavit).

Meanwhile, Paragraph 6 of the same affidavit states that it was in 2021 that the Respondents, aided by some hoodlums, trespassed on the realty and alleged that they had had a leasehold interest from the Ministry of Lands in respect of same. Again, assuming without conceding that, the Respondents had been in possession of the realty for over 60 years, the said Paragraph 6 in the Applicant's affidavit, would negate the Respondents' long-term possession, taking into consideration the combined effect of adverse possession and Section 5 (3) of the Limitation Act N0.51 of 1961, to be exercised in the Applicant's favour. The period 2008-2021 definitely covers the 12 years' period of adverse possession contemplated in the said

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provision. And the period for the claim of adverse possession in Section 5 (3) is different from that in Section 5 (1) of the same statute.

The Applicant can as well clearly rely on the doctrine of adverse possession to bolster his claim to ownership of his fee simple absolute in possession of the realty. This is just an inference which is borne in the womb of the evidence. Contrariwise, since the Applicant has not pleaded adverse possession, there is in fact no need for this Bench to rely on it in arriving at its conclusion of this case. In fact, by 2013, when the Respondents had a dispute with Mr. James Taiwo Cullen and Mr. John Kainde Cullen, who are not parties to this action and who in fact never shown any interest to come in as interested parties, pursuant to Order 18 of the HCR 2007, the Applicant had already completed documentations, confirming his fee simple absolute in possession. He had also confirmed his ownership, even before the Ministry of Lands, put out its report (see Exhibit JNC 5), concerning its investigations and findings, regarding the status quo of the realty.

Having critically analysed the facts and facts-in- issue in tandem with both the substantive and procedural laws, regarding disposal of actions on points of law; I will now proceed to deal with same, consonant with the law's positon on summary judgment, enunciated in 1.7.2. Meanwhile, the Respondents' Counsel in his submission, referenced Paragraph 10 of the affidavit in opposition, and emphasised the point that the application for a summary judgment is pre-mature, on the basis of their defence of adverse possession and the defence of limitation; noting that the merit of the said defence in the instant case can only be determined, pursuant to the conduct of a full-blown trial. Counsel also noted the importance that the public attaches to this case.

Let we first lay the legal position bare, concerning the public's interests on cases being adjudged by courts of competent jurisdictions. The point is this: Courts of competent jurisdictions are not bound by the whims and caprices and/or deprecations of the public. Courts of competent jurisdictions, are not courts of public opinions, where the gullible, hypocritical and even the unfair segments of the public, frame and skew their narratives, reflecting

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their mono-focal lenses in justifications of their prejudices and idiosyncrasies' on issues of national and international concerns; against the aspirations of the fair, just and reasonable members of the public on such issues. Courts of competent jurisdictions, are not subject to the directive and control mechanisms and possible machinations of other functional institutions or persons holding any positions. Rather, they are subject to the Constitution of Sierra Leone, Act N0.6 of 1991 and any other law, sanctioned by the Constitution, which is the country's supreme law {see Section 120 (3) of Act N0.6 of 1991)}.

I will now examine the merit of Counsel's submission, resonating with Paragraph 10 of the application's opposing affidavit. Is the application for a summary judgment premature; and of no merit in the instant case; and hence irrelevant? Counsel for the Respondents relied on the Supreme Court's authority of Aminata Conteh **v.** The All Peoples Congress (supra.), handed down on the 27th October 2005 by the Hon. Mrs. Justice V.A.D Wright, J.S.C and the High Court of Justice's Commercial and Admiralty Division's Judgment, in Taria Enterprises **v.** National Revenue Authority (Case N0: FTCC 120/15), delivered by the Hon. Mr. Justice Sengu M. Koroma, J. A (as he then was) on 18th July 2016, to bolster his perceptively staunch position on this point.

The facts in the Aminata Conteh's case is simple and straightforward. Judgments had been given in the High Court and the Court of Appeal against the Appellant (in the Supreme Court). The Court of Appeal, in its determination of the appeal, against the judgment in the High Court of Justice, focused on the merit of the case itself, but not on whether it was a case for leave to grant a summary judgment. Consequent on a clear ratiocination and analysis of the evidence, the Hon. Mrs. Justice Wright J.S.C, held that the evidence depicted the fact that there were indeed triable issues, that should have initially precluded the High Court of Justice from granting an Order of Summary Judgment, pursuant to Order 11 of the High Court Rules of 1960; and that the Court of Appeal erred in law and fact, when it subsequently dismissed the appeal; on the merits of the

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Respondent's case, without a conscientious consideration of the triable issues raised in the pleadings of the parties.

Thus, the Hon. Mrs. Justice Wright's decision in the foregoing case, has become the locus classicus in our jurisdiction, on applications for summary judgments, in circumstances when defendants are unjustly, unfairly and unreasonably disallowed to put forth their defences, when they should not be denied the constitutional right to be heard. Essentially, it was the said locus classicus that is the basis of the High Court's Commercial and Admiralty Division's decision in Taria Enterprises **v.** National Revenue Authority (supra.). This was a case that swirls around a contract, which both parties did not deny in their respective pleadings. What was in contention was whether there had been performance on the part of the Respondent. The Applicant's Counsel (M. S. Bangura Esq.) argued that the action was not statute barred; and the evidence as exhibited were indicative of the fact that the Applicant, fully complied with the contractual terms and conditions. Meanwhile, Counsel for the Respondent (Elvis Kargbo Esq.) contended that the terms and conditions of the contract were not complied with; and further submitted that the action was statute barred.

Certainly, the summary of the facts and facts-in-issue of the foregoing case, depicts a contention about whether there was or was not a full compliance of the terms and conditions of the contract that established the legal relation between the Applicant and the Respondent. Thus, the Hon. Mr. Justice M. Sengu Koroma, J.A. (now J.S.C.), inter alia held that the defence put forth by the Respondent was not a sham and the Applicant's reply to the defence and counterclaim clearly negated the counterclaim in its entirety. Characteristically, on this point, the Learned Justice ruled that, that unequivocal contention necessitated the conduct of a full-blown trial. The Learned Justice, relying on the Aminata Conteh's case, quoted the Hon. Mrs. Justice V.A.D Wright, J.S.C, as follows:

> 'The position of the law has been well settled. As a general rule where a defendant shows by his affidavit that he has a reasonable ground for setting up a defence he ought to have leave to defend the claim

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brought by him. The court has to take into account all the circumstances of the case including triable issues in deciding whether leave to defend ought to be granted'.

Thus, the above Supreme Court decision was undoubtedly shaped by that in Jones **v.** Stones (1894) A.C 122, where it was held that, when there are questions of facts in dispute, summary summary judgment ought not to be given. Moreover, this position had been made clearer in the previous Court of Appeals' decision of Sheppard and C0. **v.** Wilkinson and Javis (1889) 6 TLR 13, which was as well referenced in the Aminata Conteh's case. In the Sheppard's case it came out clearly that a defendant ought not to be shut down of defending unless it is clear indeed that he has no case in the action under discussion. Significantly, the effort of Sierra Leone's Supreme Court in developing the jurisprudence on summary judgment in tandem with the ideals of justice, has been quite laudable. And this effort has indubitably shaped the thought-processes of other Justices in Sierra Leone's Superior Court of Judicature.

Meanwhile, the criteria that must be fulfilled for summary judgments to be granted have to be weighed against those which preclude courts of competent jurisdiction from granting them. Thus, the criteria for and against the awards of summary judgments orders are stated in Order 16 of the HCR 2007 and clearly articulated in the other authorities and decided cases alluded to in 1.7.2 and 1.8. One important point of note that has come out clearly in this ruling is the nexus between Orders 16 and 17 of the HCR 2007. The bridge between these two popular orders in Sierra Leone's adjectival law and legal practice is rooted in the fact that, applications can be made, given the peculiarity of the specific facts and facts-in-issues, pursuant to Order 16 and/or alternatively Order 17.

This bridge is rationalised in the aspect of the rule that confirms that when defendants raise specific defences that are ill-conceived or unfounded in law, Order 16 applications can thus be made and granted {see C.E. Health plc **v.** Ceram Holding Co. (1988) 1 W.L.R 1219 at 1228 and Home Office **v.** Overseas Investment Insurance Co. Ltd. (1990) 1 W.L.R. 153-158}. Compare

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this with Order 17, which resonates with disposal of cases on points of law. Again, as the authors of the English Supreme Court Annual Practice (1999) indicated (see 1.7.2), Orders 16 and 17 are tied to the restrictive (not the unfettered) jurisdiction of the Court to invoke Order 21 Rule 17, which specifies and articulates, in clear and unambiguous terms, the circumstances, pursuant to which the Courts, can strike out pleadings. Sub Rule (1) of Rule 17 thus reads:

> The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading on the indorsement, on the ground that:
>
> (a) it discloses no reasonable cause of action or defence, as the case may be;
>
> (b) it is scandalous, frivolous and vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the action
>
> (d) it is otherwise an abuse of the process of the court.

Guided by the foregoing rule and the fact that the pleading in Paragraph 1 of the statement of defence discloses no reasonable defence in the context of the inapplicability of the combined effect of adverse possession and the statute of limitation as clearly shown above; coupled with the facts that the pleadings in the same statement of defence, are in contravention of the provisions of Order 21 Rule 8(1) and (2), I hold that the application for the disposal of this matter on a point of law and/or alternatively for summary judgment to be entered for the Applicant is logical sound and legally relevant. What really pummels this Bench to arrive at this conclusion is the fact that the foregoing analysis of the evidence leads to how clearly the connect between Orders 16 and 17, concerning disposal on a point of law is tied to a summary judgment, relating to the formulation of a defence that is ill-conceived and/or unfounded in law, based on the peculiarity of the evidence of the instant case.

I therefore finally hold as follows:

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1. A declaration is hereby made that the Applicant is the fee simple owner and person entitled to possession of all that piece or parcel of land and hereditaments situate lying and being at Off Pademba Road, Back of PWD Quarter, Freetown delineated on survey plan dated 4th April 2005 attached to a Deed of Conveyance executed by the Government of Sierra Leone in favour of the Applicant dated the 1st February, 2008 and registered as N0. 232/2008 at page 35 in Volume 638 of the Record Book of Conveyances Kept in the Office of the Administrator and Registrar-General at Walpole Street, Freetown.

2. Damages for trespass assessed at Le 60, 000,000 (sixty million Leones: old currency) to be paid to the Applicant.

3. A perpetual injunction is further granted restraining the Respondents whether by themselves, their agents, privies, servants or howsoever called from trespassing on or in any other way from interfering with the Applicant's right, interest, or estate in the said piece or parcel of land and hereditaments situate lying and being at Off Pademba Road, Back of PWD Quarter, Freetown, delineated on survey plan dated 4th April 2005 attached to a Deed of Conveyance dated 1st February 2008 and registered as N0.232/2008 at page 35 in Volume 638 of the Record Book of Conveyances Kept in the Office of the Administrator and Registrar-General at Walpole Street, Freetown.

4. The cost of this application assessed at Le 10, 000, 000 (ten million Leones: old currency) to be paid to the Applicant.

I so order.

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

Justice of Sierra Leone's Superior Court of Judicature

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