CIV. APP. NO. 3/2025

IN THE SUPREME COURT OF SIERRA LEONE

(APPELLATE JURISDICTION)

BETWEEN:

TANIOS GEBRAN CHAGHOURY — Appellant

17 OLD RAILWAY LINE

THE MAZE

WILBERFORCE,

FREETOWN

AND

JAMAL KAMEL WANSA — Respondent

(SUING BY HIS ATTORNEY MUSTAPHA ABOU TARAFF)

30 MALAMA THOMAS STREET,

FREETOWN

Coram:

Hon. Justice G. Thompson JSC - Presiding

Hon. Justice A. S. Sesay JSC

Hon. Justice A. M. Bangurah JSC

Hon. Justice F.B. Alhadi JSC

Hon. Justice A.S. Allieu JA

Judgment dated 15th day of December 2025.

G. Thompson JSC

Introduction

1. The Appellant is the Lessee of the property located at 17 Old Railway Line, The Maze, Wilberforce, Freetown, and has occupied the premises since 1998. The Respondent is the Lessor. In 2023, the Parties entered into an agreement for the sale of the property to the Appellant for the sum of US$460,000. Throughout these proceedings, the Respondent has been represented by his brother acting under a Power of Attorney. A Sale Agreement was executed by both parties. However, two significant irregularities arose: first, although the Respondent signed the Agreement in Nigeria, where he resides, it was not notarized for use in Sierra Leone. Second, neither party registered this Agreement with the Office of the Administrator and Registrar General as required by the Registration of Instruments Act Cap 256 of the Laws of Sierra Leone 1960 (as amended by Section 2 of the Registration of Instruments (Amendment) Act of 1964). It appears that at the relevant time, neither Party had legal representation or sought the advice of lawyers.

2. Clause 1(a) of the Sale Agreement stipulates: "US$160,000 to be paid in the form of a banker's cheque via a bank in Lebanon in the name of Mr Abdulhalim Mahmoud Al Ghoul." On 7th February, the Respondent acknowledged receipt of a banker's cheque from Fenicia Bank S.A.L. Foch Branch, drawn in accordance with the Agreement and for the sum of US$160,000 as agreed. Subsequent payments were made in the amounts and manner stipulated in the aforementioned Sale Agreement, and receipts were duly issued.

3. According to the Respondent, the cheque drawn in the name of Mr Abdulhalim Mahmoud Al Ghoul was rejected by all banks to which it was presented. Mr Al Ghoul instructed his solicitor to write to the Respondent confirming the banks' refusal to honour the cheque. For the record, the Appellant's solicitors do not accept that the cheque was rejected by the banks.

4. By letter dated 23rd February 2023, solicitors acting for the Appellant forwarded a deed of conveyance to the Respondent and requested that he execute the Deed. In response, the Respondent instructed his solicitors to write to the Appellant stating that the Respondent cannot sign the conveyance for reasons which I shall come to later.

5. In the meantime, rent due to the Respondent from the Appellant for the period 1st February 2023 to 31st December 2023 and 1st January 2024 to 31st December 2024 went unpaid. It is against this background that the Respondent commenced proceedings in the High Court.

The High Court

6. By Originating Summons dated 25th April 2024, the Respondent commenced an action in the High Court seeking, inter alia, a declaration that the Sale Agreement between the parties dated 7th February 2023 was null and void. The Appellant's first ground of appeal, which I shall address in greater detail below, is that there are substantial areas of dispute between the parties and therefore the matter ought not to have been commenced by Originating Summons. This point was not raised in the High Court.

7. The Appellant however applied for the deponent of the Respondent's affidavit to be cross examined. This application was refused by the Learned Trial Judge. Before I go any further, I should say that there is no provision for cross examining a deponent in the High Court Rules 2007. Affidavits should contain all the necessary information a party would wish to rely on and that which is necessary for the credibility and reliability to be judged. Leave granted to cross examine a deponent is at the discretion of the judge. It is not the norm nor is it an entitlement. The application should only be granted if good reason is shown. This should not be simply a ploy to discredit the deponent.

8. The High Court ruled in favour of the Respondent and made the following orders: that the Sale Agreement dated 7th February 2023 is void and of no effect; secondly, that the Appellant (who was the

defendant in the court below) refund to the Respondent (who was the plaintiff below) the sum of US$300,000; thirdly, that the Appellant pay to the Respondent interest on that sum at the rate of 10% per annum, to be calculated from the date of payment; and fourthly, that the Respondent is entitled to deduct from the sum to be refunded such rent as is due for the period during which the Appellant occupied the property.

The Court of Appeal

9. Being dissatisfied with the decision of the High Court, the Appellant appealed to the Court of Appeal on a number of grounds which can be paraphrased as follows:

That the Learned Trial judge erred in law and fact by:

i. by finding that the Appellant did not pay USD$160,000 to the Respondent despite evidence to the contrary that payment was made by the prescribed method, the receipt of which was acknowledged.
ii. ordering the Appellant to pay rent for the period he occupied the property after the Sale Agreement was signed and fully performed.
iii. disregarding the supplemental affidavit of the Appellant dated the 31st day of May 2024.
iv. failing to give credence to the fact that the Appellant had requested a viewing of the locus in quo.
v. Failing to consider the notice of intention to cross examine the Deponent that is the Respondent.
vi. disregarding the fact that the banker's cheque through which the Appellant paid part of the consideration of USD$.160,000 was one that was specifically requested for by the Respondent in a sale agreement
vii. ordering that only USD$300,000 was to be paid to the Appellant with 10% interest by the Respondent and failing to consider the amount of monies that the Appellant had expended in structurally modifying the property.
viii. Failing to order the Respondent to refund the USD$160,000.

10. On the 11th February 2025, the Court of Appeal dismissed the Appeal. Further the court revoked the order of the High Court for the

Respondent to pay 10% interest on the sum to be refunded to the Appellant.

Appeal to Supreme Court

11. The Appellant being dissatisfied with the decision of the Court of Appeal, appealed to this court on the following grounds:
    a. Ground 1: That the High Court in the first instance, lacked by virtue of this Court's decision in the case of *Aiah Momoh v Sahr Nyandemor (SC.CIV/APP 6/2006)*, jurisdiction to have disposed of and determined this matter on the basis of the Originating Summons dated 25th April 2024 and supporting affidavit dated 25th April 2024 and in view of the several contentions, disputations and controverting depositions on factual matters contained in the Affidavit in Opposition dated 22nd May 2024 and supplemental affidavit dated 31st May 2024.
        i. That the Learned Justices of Appeal did not consider at all whether this action ought to have begun by Originating Summons even though it was a significant ground of appeal
        ii. That even though the Learned Justices opined on the affidavit evidence presented by both the Appellant and the Respondent as being the mode of adducing evidence in an Originating Summons action, they stopped short at addressing the issue of whether or not Originating Summons was the appropriate mode of commencement in the first instance.
        iii. That the Appellant in the High Court enumerated several substantial weighty, factual, contentions, controversies and disputations in his Affidavit in Opposition some of which were alluded to by the Learned Justices of Appeal, which ought to have been the basis to dismiss the action begun by the Respondent by way of Originating Summons dated 25th April 2024.
    b. Ground 2: That the Learned Justices of Appeal erred in law and in fact by holding that the Sale Agreement dated 7th February 2023 was void and of no effect by virtue of its non-registration pursuant to section 4 of the Registration of Instruments Act Cap 256 of the Laws of Sierra Leone 1960 (as amended) and relying on the decision of this Court in the case of Abdulai *Sesay v Emad Bahsoon (SC.CIV. App6/2005)* without considering all compelling

factual matters, contributory circumstances on the part of the Respondent and equitable considerations in this matter.

c. Ground 3: That the judgment of the Learned Justices of Appeal was made per incuriam

d. Ground 4: That the said decision of the Learned Justices of Appeal was/is against the weight of the evidence.

The Statements of Case

12. Both parties filed their respective Statements of Case. During oral submissions on behalf of the Appellant, Lead Counsel for the Appellant (who I note neither drafted the Grounds of Appeal nor the Statement of Case) was reminded on several occasions that his arguments must be confined to the matters set out in the Statement of Case. It is important to emphasize that the Statement of Case in the Supreme Court is not equivalent to a skeleton argument or, as it is more commonly termed in this jurisdiction, a synopsis. A skeleton argument or synopsis merely provides a framework for the appeal and outlines the legal arguments to be advanced. By contrast, a Statement of Case must contain the entirety of the party's case and must be based on the Grounds of Appeal. Any departure from the Statement of Case requires the leave of the court. The judges and the opposing party will have prepared their cases on the basis of the grounds of appeal and the Statement of Case as filed. To permit new arguments to be introduced without prior notice defeats the purpose of requiring a Statement of Case and renders wasted the time spent in preparation by both the court and the opposing party. This court does not countenance trial by ambush. The proper course would have been for the Appellant to seek leave to amend the Statement of Case and/or the Notice of Appeal pursuant to Rules 56 and 57 of the Supreme Court Rules. No such application was made.

13. That said, the Appellant's Statement of Case drafted by A.S Marah of Marah and Associates, is manifestly more extensive than the grounds of appeal identified in the Notice of Appeal. It contains arguments which could stand as separate grounds of appeal in their own right and which were indeed pleaded as distinct grounds before the Court of Appeal. For example, under the heading "SUBMISSIONS ON GROUND ONE," which begins at paragraph 1.7, there appear several sub-

headings addressing what are, in substance, independent issues. The first sub-heading, at paragraph 1.14, is entitled "The Court of Appeal's misappreciation of the effect of the banker's cheque." The second, commencing at paragraph 1.23, reads "The Court of Appeal's failure to construe the Appellant's request for cross-examination of the deponent of the Respondent's affidavit in support; visit of the locus in quo and assessment of damages as compelling grounds for a trial of the action." With respect to learned Counsel, these are distinct matters that ought to have been formulated as separate grounds of appeal. They do not raise 'jurisdictional' points and cannot properly be subsumed within Ground 1. It may be that Counsel elaborated upon them to illustrate the factual disputes between the parties in support of Ground 1. However, they were argued as though they were independent grounds of appeal, when in fact no such grounds had been formally filed.

14. This Court has on several occasions set out the proper procedure for filing appeals, most recently in *Henry Kargbo v Hawa Turay (Civ App 3/2020, unreported ruling dated 2 November 2022)* and *Voytovich and Another v Ansumana and Another* (Civ. App 2/2022, unreported ruling dated 21st October 2024). These procedural requirements are designed to ensure that matters are dealt with fairly, efficiently and transparently. They also ensure a level playing field for all parties, as the rules are universally applied regardless of the strength of a party's case. Fairness and consistency are fundamental objectives of these rules. Compliance with the rules eliminates the waste of time that would otherwise result from judges having to ascertain what relief the Appellant seeks and on what grounds.

15. Similarly, where the courts below make no findings or pronouncements on a particular matter, and that matter does not form the subject of any ground of appeal, it is not permissible to raise it at this appellate stage. Grounds of appeal must stem from the reasoning and conclusions (ratio decidendi) of the court below and it is from those grounds that the issues for determination on appeal are properly distilled. Where an issue does not flow from grounds of appeal which challenge specific findings made by the lower court, such

an issue is impermissible and ought not to be considered by this Court without in the most exceptional cases leave of the court. The exception of course being jurisdiction.

16. For the reasons stated above, this Court will limit its consideration to the grounds of appeal formally identified in the Notice of Appeal. It will be necessary, though regrettable, to examine the Statement of Case and oral submissions carefully to identify those arguments that properly arise from and support the grounds as pleaded.

Ground 1:

That the High Court in the first instance, lacked by virtue of this Court's decision in the case of Aiah Momoh v Sahr Nyandemor SC.CIV/APP 6/2006, jurisdiction to have disposed of and determined this matter on the basis of the Originating Summons

17. I note at the outset that this ground was not raised before either of the lower courts yet the Appellant now purports to challenge the jurisdiction of the High Court to hear and determine the matter. It is well established that questions of jurisdiction may be raised at any stage of proceedings, including for the first time on appeal, and must be considered by the court even of its own motion. The position is markedly different with respect to procedural irregularities. A party who participates in proceedings without objecting to a procedural irregularity generally waives the right to object thereafter and will not be permitted to raise the point on appeal without leave of the court. The threshold question, therefore, is whether this ground truly raises a question of jurisdiction or is merely a complaint of procedural irregularity.

18. The Appellant's contention is that there existed a number of substantial disputes of fact such that the proceedings ought properly to have been commenced by Writ of Summons. The Appellant submits that upon becoming aware of these factual disputes, the trial judge should have stayed the proceedings and ordered that the action proceed by way of Writ of Summons. Had this been done, the Appellant (the Defendant in the court below) would have been able to

file a Defence and, if so advised, a Counterclaim - a course not available under the Originating Summons procedure. In support of this submission, the Appellant relies on the case *of Aiah Momoh v Sahr Nyandemor* (SC.CIV/APP 6/2006) (hereinafter *"Nyandemor"*), wherein this Court held that the High Court's judgment was a nullity by reason of the matter having been commenced by Originating Summons rather than by Writ of Summons.

19. The Respondent argues that there were no substantial differences between the parties. The Respondent lists the following:
    a. There is no dispute about the payments made by Appellant to the Respondent and amount actually received by the Respondent
    b. The agreed price was US$460,000.00
    c. The Respondent received from the Appellant the sum of US$300,000/00
    d. There is the undisputed evidence that the bankers' cheque of the sum of US$160,000 to Mr Al Ghoul was not cashed.
    e. There is sufficient evidence before the court from the Appellant on the size of the land which was sold to him by the Respondent.

20. The Respondent further contends that *Nyandemor* was decided under the former High Court Rules which were in force prior to the enactment of the High Court Rules 2007. Under the current Rules, specifically Rule 5.4(1), proceedings may be commenced either by Originating Summons or by Writ of Summons, as the plaintiff considers appropriate. Rule 5.4(2)(b) further provides that where there is unlikely to be a substantial dispute of fact, proceedings may be commenced by Originating Summons. It is the Respondent's submission, therefore, that *Nyandemor* is no longer good law, as it was decided under the previous rules which did not contain the provisions now embodied in Rule 5(4) of the High Court Rules 2007.

21. In my view, given that *Nyandemor* was decided under the old Rules (the Annual Practice) and not under the current High Court Rules 2007, this Court is obliged to reconsider the position afresh. The present situation is analogous to that which arose in the English case of *Re Pritchard, Pritchard v Deacon* [1963] Ch 502. In that case, the majority

of the Court of Appeal held that where an action was commenced by originating summons (which was purely a creature of the Rules of the Supreme Court), and the summons was not issued in accordance with the only relevant rule, this constituted a fundamental failure to comply with the requirements of the relevant section of the Supreme Court of Judicature (Consolidation) Act 1925 relating to the issue of civil proceedings. Accordingly, the Court held that it had no power under Order 70, rule 1 of the Rules of the Supreme Court to cure proceedings which were a nullity. Lord Denning MR dissenting stated (at pp. 517-518):

"In my judgment this originating summons was not a nullity. I would remedy the error by removing the proceedings to the High Court here in London and allowing the widow's case to be heard. I would allow the appeal accordingly.

My brethren take a different view. They think the defect is fatal, and that the widow must be driven from the judgment seat without a hearing. I greatly regret that this should be so. Quite recently in Pontin v Wood [1962]1Q.B. 594, 609, CA Holroyd Pearce L.J. recalled the proud boast of Bowen L.J.: " 'It may be asserted without fear of contradiction that it is not possible in the yeat 1887 for an honest litigant in Her Majesty's Supreme Court to be defeated by a mere technicality, any slip, any mistaken step in his litigation"' The present case, and some others I have quoted, show that in this year, 1963, the assertion can no be made. We have not followed the handwriting of our predecessors. We have marred our copy-book with blots, and the more's the pity of it."

22. In the wake of Re: Pritchard, Order 2 , ruke 1(1) of the Rules of the Supreme Court was enacted in 1964, empowering judges to cure procedural irregularities in the interest of justice. The effect of this rule was considered by Lord Denning MR in Harkness v Bell's Asbestos and Engineering Ltd [1967] 2 QB729, where he stated (at p735):

"This new rule does away with the old distinction between nullities and irregularities. Every omission or mistake in practice or procedure is henceforward to be regarded as an irregularity which the court can and should rectify so long as it can do so without injustice. It can at last be asserted that 'it is not possible for an honest litigant in Her Majesty's Supreme Court to be defeated by any mere technicality, any slip, any mistaken step in his litigation.' This could not be said in 1963."

23. In *Nyandemor*, the Supreme Court overturned the decision of the High Court and the Court of Appeal in proceedings which, the Court held, should have been commenced by Writ of Summons rather than by Originating Summons. The Court reached this conclusion having found that the affidavits before it revealed a substantial dispute of fact. The Appellant had argued that the proper course for the trial judge was to direct that the matter proceeds by Writ of Summons. The learned trial judge, however, made the following order: *"It is considered that there is a dispute as to fact and that the best expeditious and economical disposal of the proceedings will accordingly best be secured by hearing the Summons partly on oral evidence with or without cross-examination of any of the deponents as the Court may direct."*

24. Counsel for the Appellant has relied on the words of Justice Bode Rhodes-Vivour delivering the unanimous judgement in which he stated as follows at pages 12 and 14:

"This is a case where the trial judge exercised his discretion which he did not have; to give orders that were clearly wrong. Indeed, this Court is always loath to interfere with the discretion of a judge, but here we are compelled to do so. This is so because the discretion was wrongly exercised and tainted with illegality and substantial irregularity. The procedure adopted by the learned trial judge after he found that there were disputes on facts in the affidavits departed from decided authorities and settled practice. The learned trial Judge ought to have struck out the Originating Summons. His Lordship did not do that. Instead, he exercised his discretion and gave orders unknown to contemporary practice."

"With the facts available due process was not followed, and such a situation where the case should be heard on Writ of Summons and pleadings but was not questions the jurisdiction of the trial Court to hear the case. Suppose for instance the rules provide that claims for Title to land, trespass shall be heard on a Writ of Summons and pleadings, but Plaintiff brings such claims by Petition and the Defendant does not object, and trial proceeded to conclusion. Clearly the judgment would be a nullity. This is substantive as opposed to procedural where for instance the defendant waived a flaw e.g. service of Originating process on him. Entered appearance filed a statement of defence. He cannot be heard to complain thereafter. The former example applies in this case. The directives of the trial judge were a fundamental error that renders the

judgment a nullity, notwithstanding that the Appellant/Defendant did not object at the trial Court."

25. Like the earlier English Rules of the Supreme Court, our own Rules then in use (Chapter 7 of the Laws of Sierra Leone 1960) did not contain any provision empowering the court to cure procedural irregularities. The High Court Rules 2007, by contrast, do make such provision. Rule 2 provides as follows: *"Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any steps taken in the proceedings or any document, judgment or order in therein."*

26. This Court has also consistently characterized minor and technical procedural defects as irregularities rather than nullities. The introduction of the High Court Rules 2007, with their express provision for curing procedural irregularities, reflects a policy that curable procedural defects ought not to be allowed to defeat substantive rights or occasion injustice to litigants. It follows that jurisdictional defects and procedural irregularities require different treatment by the court.

Jurisdiction v Irregularity

27. Jurisdiction denotes the court's power to hear a particular type of case and to bind the parties before it. The court must have the power to adjudicate over the subject matter (the type of dispute in question), must have power over the parties appearing before it and must be able to do so within its geographical authority or territorial jurisdiction. Where these elements are present, the court has jurisdiction irrespective of the originating process employed. In the present case, there is no suggestion that the High Court lacked jurisdiction over the subject matter, or power over the parties, or that it was acting outside its territorial limits.

28. Procedure, by contrast, denotes the method or means by which a case is brought before the court. The use of an incorrect originating process constitutes a procedural irregularity rather than a jurisdictional defect. I accept Counsel for the Appellant's submission that a true jurisdictional defect would render proceedings a nullity. However, if these proceedings were commenced by the wrong originating process, this would, for the reasons I have set out above, amount to an irregularity and not a nullity. Since the Appellant did not raise this objection in either of the lower courts but participated fully in the proceedings, he has waived the right to object and cannot now rely upon this ground of appeal. In the circumstances Ground 1 is dismissed in its entirety. Before considering the next ground, I should say that many of the arguments advanced under Ground 1 (which can be found in paragraph iv (a-i)) are in fact explanations of the differences between the parties and need no further deliberation by this court.

Ground 2:

The Learned Justices of Appeal erred in law and in fact by holding that the Sale Agreement was void and of no effect by virtue of its non-registration pursuant to section 4 of the Registration of Instruments Act Cap 256 of the Laws of Sierra Leone 1960 (as amended) and relying on the decision of this Court in the case of Abdulai *Sesay v Emad Bahsoon (SC CIV. App6/2005)* without considering all compelling factual matters, contributory circumstances on the part of the Respondent and equitable considerations in this matter.

29. The parties entered into a Sale Agreement dated 7th February 2023. The Respondent executed the agreement in Nigeria but did not do so in the presence of a Notary Public, which is a requirement for registration in Sierra Leone of instruments executed abroad. The Sale Agreement was thereafter sent to the Appellant. The Respondent's case is that the Appellant ought to have procured its registration and that, without registration within the time specified by the Registration of Instruments Act, Cap 256 of the Laws of Sierra Leone 1960, the agreement is void. In support of this contention, the Respondent relies upon *Abdulai Sesay v Emad Bahsoon (SC Civ. App 6/2005, 12th February 2010)*, (hereinafter 'Sesay v Bahsoon') wherein this Court held that any agreement which touches and concerns land and which is not registered in accordance with section 2 of the Registration of Instruments Act (as amended) is void.

30. Counsel for the Appellant advanced the following arguments: First, he submitted that the Sale Agreement was incapable of being registered because the Respondent had failed to execute it before a notary public at the time of signing in Nigeria. He acknowledged that a strict application of the law would result in the agreement being declared void for non-registration. However, he contended that this was a mere technicality which could have been cured by an application to register the agreement out of time. He went further, suggesting that the Respondent's application to the High Court was motivated by the mischievous intent of forestalling any such application by the holder of the document. Counsel submitted that the Court of Appeal should have examined this issue and arrived at an equitable decision. Invoking equitable principles, he argued that equity would not allow a statute to be used as an instrument of fraud. In support, he relied upon *Amuzu v Olikah* (1998-99 SC Ghana), a case with similar facts, which established that where a statute produces an inequitable result, the court has power to intervene. Counsel further drew the court's attention to evidence which, in his submission, ought to have been considered, specifically the Power of Attorney dated 26th July 2021, which was registered in 2023. He pointed out that this document was created to give effect to the Sale Agreement but was registered after the Sale Agreement itself. Finally, he submitted that notwithstanding the Sale Agreement having been declared void, the court should have applied the doctrine of part performance.

31. Prior to the institution of proceedings in the High Court, the Respondent had made instalment payments in accordance with the terms of the agreement. Clause 1(a) provided for the payment of the sum of US$160,000 in the manner previously described in paragraph 2 above. The dispute that gave rise to these proceedings arose when the Respondent contended that Mr Al Ghoul, to whom the banker's cheque had been made payable pursuant to the agreement, was unable to have the cheque honoured when presented for payment.

32. Under the terms of the agreement, the sum of US$160,000.00 was to be paid by banker's cheque through a bank in Lebanon, made payable in the name of Mr Abdulhalim Mahmood Al Ghoul. A banker's cheque for the stipulated amount was duly transmitted to Mr Al Ghoul. The cheque bore on its face the printed notation "TO BE CLEARED IN LEBANON ONLY." The Respondent contends that this sum of

US$160,000 has not been paid because Mr Al Ghoul made unsuccessful attempts to have the cheque honoured at banks in Lebanon. The remaining sum of US$300,000.00 was paid by the Appellant as agreed, and no dispute arises concerning that payment. The Appellant subsequently caused a deed of conveyance to be forwarded to the Respondent for signature.

33. By a letter dated 5th March 2024, a lawyer acting for Mr Al Ghoul wrote to the Respondent informing him that his client had made repeated attempts to cash the cheque but had been rejected by every bank. On the 14th March 2024, solicitors for the Respondent informed the Appellant's solicitors that the Respondent would not execute the deed of conveyance for two reasons. First, the document had already been signed by one Samiya El Canaan in Sierra Leone, purportedly as a witness to the Respondent's execution of the deed. Secondly, the banker's draft had been rejected by every bank to which Mr Al Ghoul had presented it for payment. The Respondent's solicitors therefore requested that the sum of US$160,000.00 be transferred to an account specified in their letter. On 4th April 2024, the Respondent's solicitors wrote a further letter seeking confirmation that the transfer had been made as requested. They also stated that they held the original cheque and had instructions to return it to the Appellant's solicitors. Having received no response, the Respondent's solicitors then wrote directly to the Appellant, reiterating that the cheque could not be cashed and that the sum remained unpaid. They indicated that the cheque was available for collection and requested the Appellant's bank details so that the US$300,000 already paid could be refunded, less US$28,750.00 owed to the Respondent as rent. By letter dated 16th April 2024, the Appellant responded that he had, in his view, discharged all his obligations under the contract and that the Respondent should likewise perform his obligations. Following this exchange of correspondence, the Respondent commenced proceedings in the High Court seeking, inter alia, a declaration that the Sale Agreement was null and void.

34. Before addressing this issue, it is necessary to briefly consider the relevant factual and commercial context, at least in relation to the issue of the uncashed cheque which is the source of this dispute. Courts do not operate in a vacuum, insulated from economic and commercial realities. It is a matter of public knowledge that Lebanon

has been experiencing a profound economic crisis which has had devastating effects on its banking sector. This is not a matter requiring expert testimony. Information about the Lebanese economic crisis is publicly available and comprehensible to any informed reader. I accordingly reject counsel's submission that expert evidence is necessary. The crisis has spawned numerous legal proceedings in the English courts, brought by depositors against Lebanese banks which have failed or refused to honour payment demands in foreign currency or for sums exceeding specified limits.

35. The public recognition of Lebanon's financial crisis was examined in *Manoukian v Societe Generale De Banque Au Liban SAL and Bank Audi SAL [2022] EWHC 669 (QB)*. In his judgment, Justice Picken cited the Spring 2021 Lebanon Economic Monitor, which ranked the crisis among the ten most severe global economic crises since the mid-1800s, resulting in liquidity problems throughout Lebanon's banking system. He noted that the Association of Lebanese Banks (ABL) developed a uniform framework for handling international transfers, which was formally published on 17th November 2019 (known as the 'ABL Circular'). Despite having no legally binding force, the ABL Circular was voluntarily implemented by banks sector-wide to maintain consistent and fair practices while protecting their dwindling foreign currency liquidity. Similarly, the crisis was also the subject of the case of *Bitar v Banque Libano-Francaise SAL* [2021] EWHC 2787 (QB)

36. The Respondent refers to a circular issued by the Association of Banks that purports to limit the amounts Banks can pay out. Counsel for the Appellant correctly pointed out that this circular has no binding legal force. This is the same circular referenced in English court proceedings. In *Khalifeh v Blom Bank SAL [2021] EWHC 3399 (QB)*, Justice Foxton determined that the restrictions implemented by banks lacked legislative authority, noting instead that banks had been influenced by informal regulatory pressure through circulars issued by the BdL or the Association of Banks. The court cited a ruling by the Judge of Summary Procedure in Zahle (Decision no 5 dated 13th January 2020, Mohammad Ismail Abdelrahman v Banque Credit Libanais SAL), in which the judge observed:

"The aforementioned circulars do not have any binding capacity towards the clients and it is not possible in any way to limit their right to carry out any banking operation that meets the accepted banking conditions within the laws and regulations ..."

37. Possibly in response to both English and Lebanese courts having found that the earlier circular issued by the Association of Banks lacked legal effect, and in an attempt to provide a legally enforceable framework, the Lebanese central bank, Banque du Liban ("BdL"), issued Basic Decision Number 13729 on 1st July 2025. This decision purports to restrict the ability of all banks operating in Lebanon to make payments from foreign currency accounts created prior to 17th November 2019, except in certain specified circumstances. Article 1 of the Decision provides in material part that: *"... all banks operating in Lebanon are requested to refrain from repaying, without BDL prior written approval, any amounts exceeding the ceilings specified in BDL regulatory texts, from the foreign-currency accounts constituted prior to 17th November 2019, whether held at the concerned bank or transferred thereto after that date."*

38. Under the Lebanese Commercial Code, specifically Articles 425 and 431, a cheque is legally recognised as a means of payment, provided that the creditor can collect it's full value in cash. Article 444 which the Respondent relied on states that *"remittance of a cheque for payment, accepted by a creditor, does not imply substitution. In consequence, the original claim remains, with all the guarantees attached thereto, until the said cheque has been paid."* In other words, payment by cheque is a conditional payment; if the payee accepts the cheque and the cheque is honoured on presentation, then the condition is satisfied.

39. Having set out the context, I now turn to the substantive issue of whether the Court of Appeal erred in holding that the Sale Agreement was void for non-registration within the meaning of the statute and interpretation given to it the Supreme Court. The Appellant's case, in essence, is that the court should prevent the Respondent from annulling the Sale Agreement because he has been paid in full, and that the Respondent's application to the High Court was an opportunistic attempt to exploit a technical defect - namely, the failure to register

the Agreement. The Appellant maintains that the essence of proprietary estoppel is "assurance, reliance and detriment" and that having paid almost half a million dollars he has now been told the agreement is invalid for failure to register it. He relies on the cases of *Central London Property Trust Ltd v High Trees House L t d [1947] K B 130, Margai v Margai(1973)SLR53, Ajayi v Total Nigeria Plc (2013) LPELR-20898(CA), Dillwyn v Llewelyn (1862) 4De G F & J 517.* The Appellant also relies on proprietary estoppel as a shield.

40. The Respondent's position, by contrast, is that the Agreement should be annulled because he was unable to cash the cheque for US$160,000 and the Appellant refused to use an alternative method of payment. He submits that the Agreement was for title to pass on payment in full of US$460,000. This has not been done. His case, in short, is that he has not received the purchase price in full - with US$160,000 still outstanding - so, it would be unreasonable for the Appellant to have any assurance that he has any proprietary interest in the property.

41. It is common ground before this Court that at the time of entering into the Sale Agreement, neither party had the benefit of legal advice. It may fairly be inferred, therefore, that neither party deliberately evaded the formalities relating to registration and that both acted in good faith, though in ignorance of the legal requirements. Until the commencement of proceedings in the High Court, neither the Respondent (who executed the Agreement but failed to have it notarized) nor the Appellant (who held the Agreement in Sierra Leone, where registration was required) had taken any step toward effecting registration.

42. Section 4 of Cap 256 states as follows: *"Every deed, contract or conveyance executed after the 1st of June 1964, shall be void so far as regards any land to be thereby affected, unless it is registered within the appropriate period of time limited for such registration under the provision to subsection (4)...."* The Appellant's complaint is that despite the fact that the statute is clear, given the circumstances - part payment and the non-notarisation of the document, the Court of Appeal should have at the very least allowed the agreement to be registered out of time. The Appellants argued that the Court of Appeal should have considered *"all compelling factual matters, contributory*

circumstances on the part of the respondent and equitable considerations."

43. Before addressing the proprietary estoppel issue, this court must emphasize that land sale agreements failing to comply with section 4 of Cap 256 are void. This legal principle was properly established in *Sesay v Bahsoon* and this court finds no basis to depart from that precedent. As Lord Justice Rimer observed in *Keay & Anor v Morris Homes (West Midlands) Ltd.* [2012] EWCA Civ. 900, *"its effect is merciless."* Lord Justice Rimer was commenting on section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (LPA), which renders void any agreement to acquire an interest in land that fails to meet the prescribed formalities - specifically, a signed written document incorporating all agreed terms in a single instrument (or in each document where contracts are exchanged).

Proprietary Estoppel

44. I begin with a fundamental principle: the Court cannot validate a contract that statute declares void, and the motive for invoking the statutory invalidity is immaterial. The Appellant invites the Court to apply equitable principles and give judgment in his favour. However, the law is well settled in this regard. Halsbury's Laws of England, 4th Edition, Volume 16 at paragraph 962 states that *"the doctrine of estoppel may not be invoked to render valid a transaction which the legislature has on grounds of general public policy enacted is to be invalid, or to give the court a jurisdiction which is denied to it by statute or to oust the court's statutory jurisdiction under an enactment which precludes the parties from contracting out of its provisions. Where a statute, enacted for the benefit of a section of the public, imposes a duty of a positive kind, the person charged with the performance of the duty cannot by estoppel be prevented from exercising his statutory powers."*

45. The principle is clear and unambiguous. Even if this Court were satisfied that some form of equitable relief might otherwise be desirable, it cannot grant relief that would render valid a transaction which statute has declared void, or which would undermine a statutory prohibition enacted on grounds of public policy. This principle was firmly

established in *Bradshaw v McMullan* [1920] 2 IR 412, where Lord Shaw of Dunfermline stated at page 425: "*I do not see my way to sanction the application of this specific plea of res judicata, or the more general plea of estoppel, to any transaction which is in plain defiance of the statutory injunction.*"

46. Similarly, in relation to section 2 of the LPA in *Cobbe v Yeoman's Row* [2008] 1 WLR 1752, Lord Scott stated: "*My present view ... is that proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void. The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of section 2 is, in my opinion, unacceptable. The assertion is no more than the statute provides. Equity can surely not contradict the statute.*" (Paragraph 29.) The authorities therefore establish that equitable doctrines cannot be employed to circumvent or override express statutory provisions enacted in the public interest.

47. It is an irony that on the facts of this case, had the banker's cheque been honoured, the question of defects in the Sale Agreement would never have arisen. It is undisputed that the Agreement was not notarized and consequently could not be registered. The question that arises is whether those failures are such that the Appellant was not required to take remedial action when informed of the problems with the cheque. It was his choice to make, but he must face the consequences of that choice. One foreseeable consequence is that the sale would not be completed and that litigation would ensue. Litigation always carries risks not all of which are foreseeable. In this case the Appellant did not foresee that as a result of the stance taken by him the issue of notarization and registration would become significant. The Respondent's letter dated 14th March 2024 proposed an alternative method of payment. The Appellant's response to the Respondent's solicitors was not constructive. Indeed, there was a conspicuous absence of any attempt to investigate what had transpired, particularly in circumstances where the Appellant, as the holder of an account in Lebanon, knew or ought to have known that the Lebanese banking system was experiencing a severe crisis. If, as

the Appellant claims, the Respondent secretly intended to withhold the uncashed cheque, this is undermined by the fact that the Respondent's Solicitors offered an alternative means of payment.

48. For the above reasons Ground 2 is dismissed.

Conclusion and Order

49. Having dismissed both Grounds 1 and 2, there is no reason for us to consider Grounds 3 and 4.

50. Before pronouncing the court's order, I must address a matter of serious concern. Two days prior to the scheduled delivery of this judgment, the Appellant and his Counsel, Augustine Marah, filed a motion that can correctly be described as deplorable. The motion appears to have been founded on false information and represents conduct that bears the hallmarks of an attempt at intimidation or coercion directed at the bench.

51. This matter will be referred to the appropriate regulatory authorities, and I shall therefore refrain from elaborating further at this time. However, it must be stated that any Counsel qualified and privileged to appear before this nation's highest court is expected to maintain the highest standards of professional conduct. This includes the fundamental obligations to refrain from relying upon falsehoods, to provide accurate information to the court and to adhere scrupulously to the Code of Conduct governing the legal profession at all times so as not to bring the profession into disrepute.

52. That said, the court makes the following orders:

i. The appeal is dismissed and the Judgment of the Court of Appeal is upheld.

ii. Costs - The Appellant had asked for US$100,000.00 in the event of a successful appeal. The Respondent asked for US$150,000.00 saying that they had done more work. This court awards costs in the sum of US$120,000.00 to be paid by the Appellant to the Respondent.

Hon. Justice G. Thompson JSC - Presiding

I agree

Hon. Justice A. S. Sesay JSC

I agree

Hon. Justice A. M. Bangurah JSC

I agree

Hon. Justice F.B. Alhadi JSC

I agree

Hon. Justice A.S. Allieu JA