C.C 215/2019 2019 K. N0.31

In the High Court of Sierra Leone

(Land and Property Division)

Between:

Bassam Koussa - Plaintiff/Respondent

N0. 79 Wilkinson Road

Freetown

And

Allie Basma - Defendant/Applicant

Wilberforce Street

Freetown

Counsel:

S. M. Sesay Esq. for the Defendant/Applicant

C. Sawyer Esq., J. A. Ansumana Esq., Y. M. Kamara

Esq., S. P. Kamara Esq. and A. Showers Esq. for the

Plaintiff/Respondent

Ruling on an Application for a Disposal of the Matter between Bassam Koussa v. Allie Basma on a Point of Law, Delivered by The Hon. Justice Dr. Abou B.M. Binneh-Kamara J. on Wednesday, 16th November 2022.

1.1 Background and Context.

This is the ruling, based on an application for a disposal of the matter between Bassam Koussa **v.** Allie Basma on a point of law. The application was made by S. M. Sesay Esq. (hereinafter referred to as Counsel for the Applicant) of Sahid Sesay and Partners, pursuant to Order 17 of The High Court Rules 2007, Constitutional Instrument N0.8 of 2007 (hereinafter referred to as The HCR 2007). The application (made by a notice of motion) is supported by the twelve paragraphs affidavit of Allie Ibrahim Basma, sworn to and dated the 20th of May 2022 and that of Sahid Mohamed Sesay, sworn to and dated 20th May 2022, together with the exhibits attached thereto.

Contrariwise, on the 18th of October 2022, Christian Sawyer (hereinafter referred to as Counsel for the Respondent), filed a sixteen paragraph affidavit in response to the facts, deponed to in the affidavits, supporting the application. On Thursday, the 21st of July 2022, Counsel for the Applicant moved this Honourable Court on the contents of the application, but subsequently completed his submissions on 28th of July 2022. On the 20th of October 2022, Counsel for the Respondent, addressed the Court on the contents of his opposing affidavit, whilst drawing the Court's attention to the significance of every contravening fact in the supporting affidavit. Nevertheless, having depicted the context of the application, I will now proceed to examine the submissions of both Counsel, to lay the foundation for the determination of the application.

1.2 The Submissions of Counsel for the Applicant.

The Applicant Counsel made the following submissions to persuade the Court to grant the application:

1. The issues which this Honourable Court must determine are based on the questions of whether the Applicant is the fee simple owner and person entitled to all that piece or parcel of land and building thereon the same known as N0.4 Off Hill Cot Road, Hill Station, Freetown, in the Western Area of the Republic of Sierra Leone, having regard to a conveyance, executed to the Applicant and dated 1st of August 2013, and registered as N0. 1470/2013 at page 143 in Volume 712 of the Record Book of Conveyances, kept in the Office of the Administrator and Registrar-General, Roxy Building, Walpole Street, Freetown; whether the Applicant acquired a good root of title from his predecessors-in-title in respect of the said realty with building thereon, having regard to conveyances dated as far back as 1992; and whether in the light of the foregoing facts, the Respondent can be said to be the owner of the fee simple absolute in possession of the subject matter of this litigation.
2. That should this Honourable Court determine the foregoing issues in favour of the Applicant, then it behooves it to declare that the Applicant is the fee simple owner and person entitled to the aforementioned realty; and should it make that declaration, then it behooves it to also make an order of perpetual injunction, restraining the Respondent from entering and or remaining on the said land or any portion thereof, from interfering with and/or trespassing on the Applicant's use and enjoyment of the said land or

any portion thereof and casting any competing title to the said land or any portion thereof; following such orders, the damages due to the Applicant for the losses he has incurred, by reason of the Respondent's activities, should be assessed and awarded to the Applicant.

3. The pleadings do not warrant a trial having regard to the documents of title relied on by the parties. Exhibits A1-3 depict that the Respondent does not refer to any document of title, but he relies on a survey plan for the reliefs sought, pursuant to the writ of summons. Exhibit B1-3 is the Applicant's counterclaim. The Applicant referenced a conveyance, which the Minister of Lands (on behalf of the Government of Sierra Leone) executed to his predecessor-in-title (Hassan Karim Conteh). Thus, the conveyance to the Applicant is exhibited as C1-4 in Allie Ibrahim Basma's affidavit; and that from the Government of Sierra Leone to the said Hassan Karim Conteh, is marked as Exhibit SMS1-4 in Sahid Mohamed Sesay's affidavit.
4. Since 1992 when the conveyance of Hassan Karim Sesay was executed, certain contractual relationships and legal developments had unfolded. First, the Applicant's conveyance was executed in 2013. Second, the spouse of Hassan Karim Conteh (Mrs. Josephine Conteh) took out Letters of Administration in respect of her husband's estate after his tragic death. And the subject matter of this litigation was a constituent part of the said estate.
5. The Applicant, prior to this action, has shown that his predecessors-in- title had been in an unchallenged and undisturbed possession and occupation of the land for a period of over twenty-seven years. This fact is accordingly pleaded in Paragraph two of the defence exhibited in the Applicant's affidavit {see Seymour Wilson **v.** Musa Abess: SC Civ. App. N0. 5/79}. The Applicant's

title dates from the colonial era when State lands were described as Crown lands.

1.3 The Submissions of Counsel for the Respondent.

The Respondent Counsel made the following submissions to dissuade the Court from granting the application:

1. That the affidavit in opposition sworn to by Christian Sawyer Esq. is relied on in contravention of the facts deponed to in the supporting affidavits. The opposing affidavit serialised the relevant facts and facts-in-issue in sixteen paragraphs, with eight exhibits attached thereto; marked Exhibit CS1-8. The significance of paragraphs 2 to 14 are emphasised.
2. That a litigant should not be made to suffer as a result of the negligence, mistake or error of his solicitor or erstwhile solicitor. Thus, once a litigant has retained the services of a solicitor, the solicitor is obliged to exercise due diligence in the exercise of his functions. Paragraphs 7 and 3 of Exhibit CS8, established that the erstwhile solicitor, did not show/exercise the requisite diligence in the execution of his professional functions.
3. The Applicant's predecessor-in-title bought the land from the Government of Sierra Leone. The Respondent also bought the land from the Government of Sierra Leone. Thus, the land which the Applicant claims shares common boundaries with that of the Respondent. Paragraphs 12 and 13 are very clear on this point.
4. That this matter cannot be disposed of on a point of law at this stage because the facts upon which the Applicant has relied, are vehemently disputed and this Honourable Court must make an order for the matter to proceed to trial.

5. The English Supreme Court Annual Practice 1999, Paragraph 14/2/5 page 201 is very much instructive on the position of the law on disposal of cases on points of law. The following authorities are also cited: Betty Mansaray and Others **v.** Mary Kamara Williams and Another (Mis App. N0.4 of 2017) [2018} SLCA 1277 (10th June 2018), The Secretary Department of Horticulture, Chanigarh and Another **v.** Rahu Raj {India Supreme Court Civ. App. N0. 6142 of 2008} and Shiv Kumar Pandey's case (Special Appeal Defective N0. 417 of 2021.

1.4 <u>The Reply to the Submissions of Counsel to the Respondent.</u>

In reply to the foregoing submissions, Counsel for the Applicant makes the following submissions:

1. The most persuading authority (in our jurisdiction) on matters of solicitors' negligence or inadvertence is Gatti **v.** Shoosmith C. A (1993) 3 All E. R page 916.
2. That Exhibit CS6, is a conveyance that is in the name of the Respondent, which is said to have been executed by the Government of Sierra Leone in 1996; noting that the affidavit of Sahid Mohamed Sesay confirmed that since 1992, the subject matter of this litigation, had been conveyed to Hassan Karim Conteh (now deceased intestate).
3. That Exhibit CS6 might have come up as an afterthought. Exhibit A1-3 is the defence and counterclaim filed by J.O.P. Manley-Spain (the Applicant's erstwhile solicitor). There was a reply to that counterclaim filed by V.S. Nabie Esq. (the Respondent's erstwhile solicitor). There was an application for an interim injunction, which was awarded to the Respondent. The writ was

issued in 2019 and the application for an injunction was made on the 20th of June 2021. The order was drawn up on the 16th of June 2021. How is this possible? Should this Honourable Court believe the facts deponed to in the Respondent's affidavit, if he has the tendency to do such?

1.5 Analytical Exposition I: The Substantive Law on Declaration of Title to Realty in the Western Area.

It is discernible in the procedural frameworks of this action (statement of claims, defence and counterclaims and the reply thereto) that its principal thrust swirls around declaration of title to property (realty). This area of Sierra Leone's civil law is compounded by the fact that the country's land tenure system is underpinned by a somewhat complex binary, relative to land ownership in the Western Area and the Provinces. In the Provinces, questions relating to ownership of land, are determined by the Local Courts, pursuant to the customary law of the very chiefdom in which a particular reality is located {see Sections 18 and 21 of the Courts Act N0. 31 of 1965 and the cases of Caulker **v.** Kangama (S.C. Civ. App. 2/74), Marie Kargbo (As the Administrator of the Estate of Pa Murray (Moray Kargbo) **v.** Saio Turay, The Paramount Chief of Nongowa Chiefdom (Kenema District), The Presiding Magistrate (Kenema) and Ahmed Younes (C.A Civ. App. 2006)}.

Nevertheless, in the Western Area, questions relative to the determination of ownership of a realty, falls within the purview of the original exclusive jurisdiction of the High Court of Justice (even though Section 132 of the Constitution of Sierra Leone Act N0.6 of 1991, generically deals with such jurisdiction of the High Court of Justice, it is the Third Schedule of the Courts Act N0.32 of 1965 that clearly articulates this point). In general, questions on declaration of titles to land 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 on to the other; and where two separate and distinct pieces of land (that are not adjacent at all), but one of the parties is relying on his/her title deed to claim the other. Thus, regarding the foregoing permutations, the parties to the dispute, are procedurally bound to file their respective pleadings and the Court is bound to give the appropriate directions, pursuant to Order 28, concerning how such matters are to be proceeded with.

However, evidentially, in actions for declaration of fee simple titles to land, the legal burden of proof, regarding ownerships is on the Plaintiffs to establish their cases on a balance of probabilities. But in situations wherein Defendants counterclaimed ownerships, they assume the same legal burden as the Plaintiffs {see Seymour Wilson **v.** Musa Abess: SC Civ. App. N0. 5/79}. This points to a rudimentary rule in the law of evidence that he who asserts must prove. The jurisprudence of land ownership in the Western Area (as it has evolved with the subsisting knowledge on statutes and decided cases) is underpinned by two main considerations vis-à-vis documentary and possessory titles.

5.1.1 <u>Documentary Title.</u>

Indeed, documentary title is by no means the only way (it is only one of the ways) by which the legal fee simple absolute interest 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 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'.

Essentially, 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. Mr. 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 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 compelling 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) 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 the 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, my emphasis in italics)* 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 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 fundamental and important difference between registration of instruments and registration of title. Cap 256 does not provide for, nor does it pretend to contemplate, the registration of title. 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 valence for purposes of the analytical component of this ruling:

1. A Plaintiff that relies on any title deed will succeed on an action for a declaration of title to property on the strength of his 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 Plaintiff must go further to prove that he factually acquired good title from his predecessor in title.

4. In the circumstance where there is evidence that title to the same land vests in another person other than the Plaintiff or his predecessor in title (vendor), declaration cannot be done on his behalf.

1.5.2 **Possessory Title**.

The other way by which Plaintiffs can establish 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. 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 S. L. Sup. Court Civ. Appeal 1/75 are incisively 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 (SC Civ. App. N0. 5/79):

> '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 (SC Civ. App. 7/2004), as an addendum to this issue of possessory title, stated that a Plaintiff 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 Statute of 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'.

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

1. Possessory title is as weighty in evidence as documentary title.
2. Plaintiffs 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.

1.6 Analytical Exposition II: The Adjectival Law on Disposal of Cases on Points of Law.

Thus, it should be noted that without even proceeding to trial, 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 a title to property on a point 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 subject only to any possible appeal the entire cause or matter or any claim or issue in the cause of the matter'.

Thus, the authors of the English Supreme Court Annual Practice 1999, extensively unpicked the criteria that shall be met for courts of competent jurisdictions to grant such orders; and the significance of such orders (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 valent is that the foregoing provision has to be read and interpreted in tandem with particularly Orders 16 (dealing with summary judgment) and 21 Rule 17 (relative to the striking out of pleadings by courts of competent jurisdiction).

Circumspectly, 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, the provision 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 a appoint of law, can be done pursuant to an application made by either of the parties to a litigation, or by the Court on its own volition. Analytically, the foregoing interpretation of the provisions in Order 17, dovetails with that of the Hon. Mr. Justice Fynn, JA. in Betty Mansaray and Others **v.** Mary Kamara Williams and Another (Mis App. N0.4 of 2017) [2018} SLCA 1277 (10thJune 2018), referenced by the Respondent's Counsel. 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}. Thus, 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, if 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. However, the question that is to be posed at this stage, is whether the application meets the threshold for this action to be disposed of on a point of law.

1.7 <u>Critical Context: Unpicking the Application's Merits (If any) and the Responses thereto.</u>

Meanwhile, the contents in 1.2, 1.3 and 1.4, clearly depict the arguments and counterarguments for and against the application. At this stage, it is the responsibility of this Honourable Court to determine whether the application is conspicuously supported by law. In doing so, I will systematically unpick both Counsel's submissions and examine them in the context of the applicable substantive and adjectival laws, to determine whether the application is of any merit in the light of the available evidence before this Honourable Court.

The main issues which this Honourable Court must determine are based on the questions of:

1. Whether the Applicant is the fee simple owner and person entitled to all that piece or parcel of land and building thereon the same known as N0.4 Off Hill Cot Road, Hill Station, Freetown, in the Western Area of the Republic of Sierra Leone, having regard to a conveyance, executed to the Applicant and dated 1st of August 2013, and registered as N0. 1470/2013 at page 143 in Volume 712 of the Record Book of Conveyances, kept in the Office of the Administrator and Registrar-General, Roxy Building, Walpole Street, Freetown?
2. Whether the Applicant acquired a good root of title from his predecessors-in-title in respect of the said realty with building thereon, having regard to conveyances dated as far back as 1992?
3. Whether the Respondent can be said to be the owner of the fee simple absolute in possession of the subject matter of this litigation?

Tellingly, the pleadings in the Applicant's defence and counterclaim (see Exhibit A1-3), inter alia depicts that he is laying claim to the subject matter of this litigation. Meanwhile, on the authority of Seymour Wilson **v.** Musa Abbes (SC Civ. App. N0.

5/79), in instances wherein Defendants to actions counterclaimed ownership of land, it behooves them to prove same. Has the Applicant produced sufficient evidence in justification of his counterclaim for this Honourable Court to declare that he is the person entitled to the fee simple absolute in possession? Thus, the affidavit of Alie Ibrahim Basma and Sahid Mohamed Sesay contain a plethora of facts, regarding how the Applicant came to claim ownership of the realty in question. It is embedded in the undisputed facts in both affidavits that the Applicant produced a sufficient and valuable consideration for the realty; a conveyance was executed to him; and the conveyance was prepared and accordingly registered in the 2013 record book of conveyances kept in the Office of the Administrator and Registrar-General. Again, it should be established that none of the above facts is contradicted in the opposing affidavit. Thus, the position of the adjectival law, regarding affidavit evidence is that uncontested facts deposed to in affidavits, are relevant and admissible; and would be crucial to the determination of every point of law that is cognate with such facts.

This position of the law finds souccour in the Supreme Court decision of Sierra Leone Enterprises Ltd. **v.** The Attorney-General and Minister of Justice (1st Defendant) and The Minister of Lands, Housing and the Environment (2nd Defendant) SC 4/2005. The second question is whether the Applicant acquired a good root of title from his predecessors-in-title in respect of the said realty with building thereon, having regard to conveyances dated as far back as 1992?

Further, it should be noted (from the other facts in the same affidavits), that the land in question was a State Land leased to Hassan Karim Conteh for a valuable consideration, whose subsisting equitable interest was undisputedly transformed

into a legal freehold interest, pursuant to a conveyance executed to him, before his tragic death; and that registered conveyance became evidence of his title of the land. In fact, Hassan Karim Conteh constructed a dwelling structure on the land before he died. Thus, it is evidentially relevant to allude to paragraphs 5, 6, 7 and 8 of the affidavit of Sahid Mohamed Sesay at this stage. Meanwhile, for purposes of clarity and to fairly visualise Counsel for the Applicant's submissions, I will sequentially present the said paragraphs as they are in the said affidavit:

> That after his death his lawful wife and relic Mrs. Josephine Conteh took out Letters of Administration of the Estate of her deceased husband died intestate. A true copy of the said Letters of Administration are produced and shown to marked Exhibit SMS1-5.
>
> That the said Josephine Conteh Administratrix of the estate of her deceased husband Hassan Conteh executed a Power of Attorney to a Mr. Abu Bakarr Nylander then of N0. 33 Regent Road Freetown as her Lawful Attorney with power to the said Mr. Abu Bakarr Nylander to enter into contracts in respect of the said land. A true copy of the said Power of Attorney is now produced and shown to me and marked Exhibit SMS6 1-2.
>
> That subsequent to the said Power of Attorney the land was the subject matter of Lease between the said Attorney and one Fawaz Ayoub. The said Lease was for a term of ten 910) years. The said Lease was registered in the Office of the Administrator and Registrar-General- Freetown. A true copy of the said Lease is now produced and shown to me and marked Exhibit SMS7 1-5.
>
> Subsequent to that Lease the said land was subsequently purchased. The same was conveyed to the purchaser for valuable consideration and a conveyance was executed to him. A true copy of the said conveyance is now produced and shown to me and marked Exhibit SMS 8(1-5).

Thus, the question that arises at this stage is whether the mere production of a conveyance, presupposes that the Applicant is the owner of the fee simple absolute

in possession of the realty? Analytically, on the authority of Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004), claimants seeking declarations of titles to realties in the Western Area, are obliged to trace their titles, to some grant by the Crown or the State. This point of law articulated by the Hon. Justice Dr. Ade Renner-Thomas C. J. had hitherto been much clearly enunciated by the Hon. Mr. Justice Livesey Luke C. J. in the earlier locus classicus of Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) that, the mere production of a conveyance in fee simple is not proof of a fee simple title.

This is simply because the conveyance may be worthless (one would add the words fraudulent, concocted and criminal). This Honourable Court's decision in Mrs. Kainda Wray (Suing as Administratrix of the Estate of Abal Cole (Deceased) **v.** Sierra Blocks Concrete Sierra Leone Limited and The Attorney General and Minister of Justice (C.C 93/13 2013 C. N0. 13) is very instructive on this point. Circumspectly, the other point that should now be considered is whether there is evidence that the title to the same land vests in the Respondent or some other person. This is the basis of the third question of whether the Respondent can be said to be the owner of the fee simple absolute in possession of the subject matter of this litigation? This question takes this analysis to Paragraphs 7, 8 and 9 of the affidavit of Alie Ibrahim Basma:

> 'That the Plaintiff has not brought before this court any document of title to any portion of my said land. His writ of summons did not disclose that. Here is merely relying on a survey plan in respect of land situate in Freetown. That survey plan had never been put before this Honourable Court'.

> ‘That the Plaintiff filed a reply to my defence, and counterclaim filed by my Solicitors then. A true copy of the said reply to my defence and counterclaim is now produced and shown to me and marked Exhibit D1-2…’
>
> That it can be seen from the said reply to my counterclaim that the Plaintiff could not set up any competing title to the title I have over the said land. The said land was State Land and was subsequently sold to my predecessor- in- title as far back as to 2013 was never expunged nor disputed but for these present proceedings.

Essentially, the long and short of the foregoing paragraphs is that neither the writ of summons, commencing the action nor the reply to the Applicant’s defence and counterclaim, alludes to any competing title deed to that of the Applicant’s. Further, in the application for an interim and interlocutory injunctions, made by the Respondent (though the interim injunction was granted), no reference was made to any competing title deed. In fact, no allusion was also made to any competing title deed in the contempt proceedings, which the Respondent had begun against the Applicant.

What appears quite amusing and bemusing to this Honourable Court is that Christian Sawyer’s opposing affidavit to the application contains a bizarre Exhibit CS8, which is a purported notice of motion, supported by a somewhat suspicious document, describing itself as an affidavit in support of the purported motion. Thus, an examination of the purported motion, rationalised in Exhibit CS8, depicts a plethora of anomalies. First, it was never filed and was therefore not a motion before this Honourable Court. So, it was not moved and could not have been moved. Secondly, the so-called motion is undated. This raises a serious suspicion of whether it was in fact allegedly prepared in August 2022, when the High Court of Justice was on vacation. Thirdly, that so-called motion was drafted (as an

application), after the notices of change of solicitor and appointment of solicitor were filed on 14th June 2022, pursuant to Order 59 Rules 1 and 2 of The HCR 2007. Fourthly, the so-called motion is unsigned and does not contain the date in which its purported supporting affidavit was sworn to.

This leads to a thorough evaluation of even the so-called affidavit, which in strict sense, cannot be dubbed as such. It is undated, unsigned and unfiled; and could therefore not have been relied upon. Pedantically, the circumstances, culminating in the preparation of both the so-called motion and affidavit (Exhibit CS 8), attached to the very affidavit, opposing the application, are sufficient to convince this Honourable Court, that such suspicious and unattested documents, should be struck-off the records. In fact, the contents in that so-called motion and its purported affidavit, were produced after the application for the disposal of this matter on a point of law had been made (see the Applicant's notice of motion, dated on the 20th of May 2022).

Further, all the amendments, which that worthless motion had sought, could be reasonably seen as direct responses to all the very lacunae which the motion of 20th May 2022, had exposed in the Respondent's. Interestingly, Paragraphs 6 and 7 of that purported motion's so-called affidavit state the following facts:

> 'That I verily believe that the amendments being sought are very vital to the Plaintiff case because his erstwhile solicitor failed to take cognizance of the fact that the Plaintiff has a title deed in respect of the subject matter of this action and also failed to identify the property for which he seeks possession and injunction'.
>
> 'That it is my humble belief that the Plaintiff should not suffer because of the wrongdoing of his erstwhile solicitor …'

The foregoing paragraphs mildly presented the facts that the Respondent has a competing title deed, which was never produced throughout the interlocutory proceedings, leading to the application for the disposal of this matter on a point of law. And it was not even produced up to when the said application was moved on the 21st of July 2022. The mere production of a title deed that is neither referenced in the writ of summons' statement and particulars of claims; nor alluded to in the various interlocutory applications, made on behalf of the Respondent; and the fact that such a title deed is not either alluded to in the Applicant's defence and counterclaim; or the Respondent's reply to the defence and counterclaim, raises suspicion about the authenticity of such a title deed.

Why should the erstwhile Counsel for the Respondent (V. S. Nabie Esq.) fail to make such a crucial document to his case, available to this Honourable Court, in the very writ of summons, commencing this action? Why did he also fail to exhibit it in the numerous interlocutory applications that he subsequently made? Did his failure to produce it amount to refusal to do so or inadvertence? Thus, Counsel for the Respondent in addressing the Court on the contents of his opposing affidavit, stated that:

> '… a litigant must not be made to suffer as a result of the negligence, mistake or error of his solicitor or erstwhile solicitor. When once a solicitor has been retained by a litigant, he must ensure that the litigant's work is carried out with due diligence.

Moreover, in justification of the above submission, Counsel referenced the cases of The Secretary Department of Horticulture, Chanigarh and Another **v.** Rahu Raj {India Supreme Court Civ. App. N0. 6142 of 2008} and Shiv Kumar Pandey's case (Special Appeal Defective N0. 417 of 2021). Meanwhile, both cases indeed deal

with instances in which the Superior Court of Judicature of India, had ruled that litigants must not be made to suffer as a result of the carelessness (negligence), mistakes or errors of their solicitors. This is a just, fair and reasonable position, which every credible tribunal of facts, will definitely consider. However, in the instant case, the surrounding circumstances that culminated in the non-production of the Respondent's title deed, are by far different from the circumstances that led to the decisions in the aforementioned cases. Thus, in this case, the issue of the Respondent's title deed and the need for amendments to the writ of summons, were brought to the fore by a purported motion, supported by a so-called affidavit, which were only drawn up and exhibited in the application's opposing affidavit, after the application had been made on the 20th of May 2022, and moved on the 21st of July 2022.

This situation was like closing the stable after the horse had bolted. Based on the peculiarity of the facts of this case, this Honourable Court, cannot be persuaded by the foregoing persuasive precedents of India's Superior Court of Judicature; and would thus hold that that purported notice of motion, together with its so-called affidavit, is hereby accordingly expunged from the Court's records. Further, the English Court of Appeal decision in Gatti **v.** Shoosmith (1939) 3 All ER page 916, alluded to by Counsel for the Applicant regarding a solicitor's negligence), concerns a solicitor's negligence, about the amendments of pleadings in the English Court of Appeal. Even though it is of persuasive authority in our jurisdiction, it cannot be relied upon by this Honourable Court in the determination of this application. Nevertheless, to sustain the legal debate, assuming without conceding, that the Respondent's title deed is in evidence, is it sufficient to negate the Applicant's claim

of ownership of the fee simple absolute in possession? Christian Sawyer's opposing affidavit states in Paragraphs 12 and 13 as follows:

> 'That I am very doubtful that the land claimed by the Defendant/Applicant is one and the same as the one claimed by the Plaintiff/Applicant, and it is only when this matter goes to trial, and a locus is made that such doubt will be clarified…'
>
> 'That further to Paragraph 12, I have been informed by the Plaintiff/Respondent and verily believe that the land claimed by the Defendant/Applicant is adjacent to the Plaintiff/Respondent's piece or parcel of land and hereditaments, all the more the reason why this matter cannot be ideally concluded on points of law.

In tandem with the above paragraphs, the deponent (the Respondent's solicitor) told the Court that the Applicant's predecessor-in-title and his own client (the Respondent) bought the land from the Government of Sierra Leone. Counsel further noted that the realties are different, but they do share common boundaries, adding that there is an encroachment and an overlap on the Respondent's land. Thus, the aforementioned paragraphs and submissions, are somewhat conflicting. In one breath, Counsel is saying that the Respondent's land is different from that of the Applicant. And in the other breath, Counsel is alleging that both parties bought from the Government and that they both share common boundaries; and there is an encroachment.

The facts are so confusing that one is baffled about which one to believe. However, if both parties are claiming the same land, it is clear from the evidence that the Applicant's predecessors-in-title had been in occupation and possession, even before the Respondent's conveyance was executed. The Applicant bought the land with a dwelling structure on it. The period for which the Applicant and his predecessors-in-title had been in occupation and possession is over three decades.

This clearly extinguishes any other claim to title of the realty by virtue of the combined effects of adverse possession and the Statute of Limitation {see Section 5 (3) of the Limitation Act N0.51 of 1961}.

Again, assuming without conceding, that the lands are different, there is no evidence supporting that; neither has there been any re-surveying of the land; nor is there a professional report to say that the lands are separate and distinctively different. Based on the above analysis, I hereby make the following orders:

1. It is ordered that the Applicant is the fee simple owner and person entitled to possession of all that piece or parcel of land with building thereon the same situate and known as N0.4 Off Hill Cot Road, Hill Station, Freetown, in the Western Area of the Republic of Sierra Leone.
2. A perpetual injunction is hereby ordered, restraining the Respondent from entering and or remaining on the said land or any portion thereof from interfering with the Applicant's use and enjoyment of the said land or any portion thereof from casting any competing title to the said land or any portion thereof.
3. Damages to be assessed
4. A cost of Le 20, 000, 000 (twenty million leones: old currency) shall be paid by the Respondent to the Applicant's Counsel.

I so order.

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

Justice of Sierra Leone's Superior
Court of Judicature