

IN THE HIGH COURT OF SIERRA LEONE

Plaintiff: FAWZY F. AYOUB - Plaintiff

Defendant: COLONEL G. S. T. MANNI - Defendant

Thursday, 15th February 2018

for the Hon Mr Justice A.B. Holloway JA

Time called

Plaintiff absent; J. v. T. Manni - Spain Mr. further Plaintiff present.
Defendant absentJUDGEMENT

The action herein commenced by the issue of a generally indorsed Writ of summons on the 6th May, 2002 for and on behalf of FAWZY F. AYOUB, the Plaintiff herein, whose claim against COLONEL G. S. T. MANNI, the Defendant herein is for a Declaration that the property situate lying and being at Off Spur Road, Wilberforce Freetown in the Western Area of Sierra Leone is the property of the Plaintiff herein; Damages for trespass; Recovery of Possession of that portion of the said property presently occupied by the Defendant herein; A Perpetual Injunction restraining the Defendant whether by himself, his servants or agents or howsoever called from entering on and remaining on the said property or from disposing of the same by sale, gift, lease, exchange or barter or any other form of disposition thereof; Interest and any further or other relief.

Further to the issue of the Writ of Summons aforesaid, the Plaintiff delivered and filed a statement of claim, on the 9th day of November, 2002, particulars of which are that the Plaintiff is the fee simple owner of and entitled to possession of a plot place or parcel of land situate and being at Off Spur Road, Wilberforce, Freetown aforesaid enclosing an area of 0.6041 acre, the same

delineated on Survey Plan numbered LS 182/02 dated 28th February 2002; that the said property was fenced off by the Plaintiff's predecessor in title; that when the Plaintiff returned to Sierra Leone from exile after the military coup d'état of May, 1997, he found out that the piece or parcel of land aforesaid had been occupied by the Defendant who was erecting a structure thereon; that by a letter dated the 4th April, 2002, the Plaintiff's Solicitor wrote to the Defendant demanding that he vacates the said property, the said Defendant who ignored the said letter and has continued to remain on the said property and continued to erect the structure thereon; that the Defendant threatens to repeat the above acts of trespasses unless restrained by this Honourable Court; that by reason of the foregoing the Plaintiff has been deprived of the use of his piece or parcel of land aforesaid and has been prevented from developing the same.

The statement and particulars of claim aforesaid were served on the Defendant herein, who had an Appearance entered and a Defence delivered and filed for and on his behalf on the 27th November, 2002 and which, pursuant to an order of this Court dated 28th October 2015, the Defendant was granted leave to have the same amended and who subsequently had an amended Defence and Counterclaim delivered and filed on the 27th November, 2015, for and on his behalf, the particulars of which are that he denies that the Plaintiff is the fee simple owner of and entitled to possession of all that piece or parcel of land situate lying and being at Off Spur Road, Wilberforce, Freetown aforesaid and more particularly, the piece or parcel of land enclosing an area of 0.3024 acre, the same delineated on the Survey Plan numbered LOA 2531A dated 30th August, 2013; that the Defendant denies that the property aforesaid enclosing an area of 0.6041 acre, the same delineated on Survey Plan numbered LS 182/02 dated 28th February 2002 was fenced off by the Plaintiff's predecessor in title; that the Defendant denies that when the Plaintiff returned from exile after the military coup d'état of May 1997 he found out that the property enclosing an area of 0.6041 acre delineated on the Survey Plan numbered LS 182/02 aforesaid had been occupied by the Defendant and that he was erecting a structure thereon and aver that the Plaintiff had never been in occupation of or in possession of the said property either by himself or through an agent or

servant; that the Defendant avers that he was granted a lease of the piece or parcel of land enclosing an area of 0.3024 acre and delineated on Survey Plan numbered LOA 2581A aforesaid by the Ministry of Lands by a letter dated 27th May, 1974 and has been in continuous possession of the same since then; that the Defendant admits receiving a letter dated the 4th April, 2002 demanding that he vacates the piece or parcel of land enclosing an area of 0.3024 acre and delineated on Survey Plan numbered LOA 2581A aforesaid but avers that the Plaintiff had no legal basis for making such a demand; that the Defendant denies that he threatens to continue to remain on the piece or parcel of land enclosing an area of 0.6041 acre and delineated on the Survey Plan numbered LS 182/02 aforesaid and aver that the Plaintiff was never in possession nor had he any right to the possession of the piece or parcel of land enclosing an area of 0.3024 acre in area and delineated on Survey Plan numbered LOA 2581A aforesaid at the time himself, the Defendant entered into occupation thereof; that the Defendant denies that he has deprived the Plaintiff of the use of his property enclosing an area of 0.6041 acre and delineated on Survey Plan numbered LS 182/02 and aver that the Plaintiff does not own the said piece or parcel of land and therefore has no entitlement to its use, enjoyment or otherwise; that the Defendant avers further that the Plaintiff is not entitled to any of the reliefs prayed for in the statement of claims aforesaid.

The particulars of the Defendants' Counterclaim are that he is the fee simple owner of all that piece or parcel of land and building situate lying and being at Off Spar Road, Wilberforce, Freetown in the Western Area of Sierra Leone by virtue of a Conveyance dated 2nd December, 2013 and made between the HON. MUUSA TARAWALLY the Minister of Lands on the one part and LT. COL. GABRIEL MANNI, the Defendant herein on the other part and registered as No. 5281 at page 6 in Volume 729 of the Book of Conveyances kept at the office of the Registrar General in Freetown; that the Defendant was first granted a lease of the said piece or parcel of land by the Ministry of Lands aforesaid, subject to its development by the Defendant, as a condition for the granting of the freehold thereof and that the Defendant having successfully developed the said piece or parcel of land in accordance with the terms of the lease aforesaid,

approval was given by the said Ministry of Lands for the Defendant to purchase the freehold thereof by a letter dated 29th August 2013 and that the Defendant purchased the freehold of the said piece or parcel of land for a consideration of the sum of Ten Million Sierra Leone Leones (SLL 10,000,000/00), wherefore the Defendant seeks a Declaration that he is the fee simple owner of the said piece or parcel of land measuring 0.3024 acre in area and delineated on Survey Plan numbered LOA 2581A dated 30th August, 2013 attached to the Conveyance dated 2nd December, 2013 aforesaid, a Perpetual Injunction restraining the Plaintiff his agents and servants from entering upon, occupying or otherwise interfering with the said piece or parcel of land and Costs.

In reply to the Defence of the Defendant and in Defence of the Defendant's Counterclaim, the same which was delivered and filed for and on behalf of the Plaintiff on the 24th November, 2015, the Plaintiff avers that he is the fee simple owner of all that piece or parcel of land situate lying and being at Off Spur Road, Wilberforce measuring 0.6042 acre in area, the same delineated on Survey Plan numbered LS 182/02 a portion of which the Defendant herein is claiming claims to, the said piece or parcel of land being the property of the Plaintiff herein by virtue of a Conveyance dated the 18th February, 2001 and made between HUSSEIN ABASS MACKIE of the one part and FAWZY F. AYOUB, the Defendant herein of the other part and registered as No. 1345 at page 72 in Volume 558 in the Book of Conveyance kept with Registrar General in Freetown; that the Plaintiff avers further that in so far as the Defendant's averments amount to admissions, he joins issue with the Defendant upon his Defence; that in addition to the above the Plaintiff avers that he cannot admit or deny that the Defendant is the fee simple owner of all that piece or parcel of land and buildings situate lying and being at Off Spur Road, Wilberforce, Freetown aforesaid by virtue of the Conveyance dated 2nd December, 2013 aforesaid and avers that himself, the Plaintiff, is the fee simple owner of all that piece or parcel of land situate lying and being at Off Spur Road, Wilberforce, Freetown aforesaid measuring 0.6041 acre in area, by virtue of the Conveyance dated 18th February, 2001 aforesaid; that the Plaintiff denies that the Defendant was first granted a lease of the said piece or parcel of land measuring 0.6041 acre

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in area by the Ministry of Lands, subject to its development by the Defendant, the freehold of which the said Defendant acquired after developing the said piece or parcel of land and ever that by a letter dated 1st October, 1996, the Ministry of Lands informed the Defendant that the piece or parcel of land leased to him by the said Ministry of Lands was not the property of the GOVERNMENT OF SIERRA LEONE, but that the Defendant failed to give up possession of the same: that the Plaintiff avers that save as hereinbefore admitted, he denies each and every allegation contained in the Defendants Counterclaim as if the same were herein set forth and traversed seriatim.

Prior to the delivery and filing of the amended Defence and Counterclaim of the Defendant and the Reply and Defence to the Counterclaim of the Plaintiff aforesaid, pleadings had been deemed closed and the action herein was entered for trial on the 29th December, 2002. These notwithstanding, the action herein never come up for trial until when Directions as to the preparation of the trial of the action herein was given the 18th day of December 2012, the said Directions which were eventually complied with by the parties herein who had lodged, a Court Bundle containing in particular signed statements of the witnesses of fact who would testify at the trial of the action herein and several documents which were central to either party's case and which either party relied on, tendered in evidence and used at the trial of the action herein, principal of which is the Deed of Conveyance dated the 18th February, 2001 and made between HUSSEIN ABASS MACKIE as Vendor of the one part and EMMANUEL E. AYOUB the Plaintiff herein as Purchaser of the other part, the same which is in respect of a piece or parcel of land situated Off Spur Road, Wilberforce Freetown aforesaid measuring 0.6042 acre in area and delineated on Survey Plan numbered LS 182/02 dated 28th February, 2002 attached to the Conveyance aforesaid and registered as No.1345 at Page 72 in Volume 558 in the Book of Conveyances kept in the office of the Registrar General in Freetown relied on and tendered in evidence by the Plaintiff as Exhibit A41-2 and the Deed of Conveyance dated the 2nd December 2013 and made between HON. MUSA TARAWALLY, Minister of Lands acting for and on behalf of the GOVERNMENT OF SIERRA LEONE as the Vendor of the one part and LT.

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JOL. GABRIEL MANNI the Defendant herein, as Purchaser of the other part, the same which is in respect of the property situated Off Spur Road, Wilberforce, Freetown aforesaid measuring 0.3024 acre in area and delineated on Survey Plan numbered LOA 2581A dated 30th August, 2013 attached to the Conveyance aforesaid and registered as No. 3281 at Page 8 in Volume 719 in the Book of Conveyances kept in the office of the Registrar General in Freetown read on and tendered in evidence by the Defendant as Exhibit B101-4. Trial of the action herein commenced on the 25th October, 2016 and at the said trial, BILLAL KODAMI as PW1 and MOHAMED F. AYOUB as PW2, testified for and on behalf of the Plaintiff whilst GABRIEL SYLVESTER TAMBA MANNI as DW1, the Defendant herein testified for and on his own behalf.

Having carefully read and considered the pleadings delivered and filed herein together with the evidence adduced in the action herein in its entirety, this Court holds the view that the principal issue in dispute which needs to be first determined is whether or not the piece or parcel of land situate lying and being at Off Spur Road, Wilberforce, Freetown in the Western Area of Sierra Leone, the same which is delineated in Survey Plan numbered LOA 2581A and dated 30th August, 2013 measuring 0.3024 acre in area, the same which the Defendant claims to be the fee simple owner of by virtue of a Deed of Conveyance dated 2nd December, 2013 aforesaid tendered in evidence as Exhibit B101-4, is a portion of, or is different, separate and distinct from the piece or parcel of land situate at Off Spur Road, Wilberforce, Freetown in the Western Area of Sierra Leone, the same which is delineated on Survey Plan numbered LS 182/O2 and dated 28th February, 2002 measuring 0.6042 acre in area, the same which the Plaintiff claims to be the fee simple owner of by virtue of a Deed of Conveyance dated the 18th February 2001 aforesaid tendered in evidence as Exhibit A41-7. This Court came to the conclusion that the issue whether or not the piece or parcel of land delineated on Survey Plan numbered LOA 2581A aforesaid is a portion of or is different, separate and distinct from the piece or parcel of land delineated on survey plan numbered LS 182/O2 aforesaid needs to be first determined, by reason that whereas from the pleadings, it would seem that the Plaintiff in his claim is referring to the piece or parcel of land measuring

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0.6042 acre in area, delineated on Survey Plan numbered LS 182/02 as being his and which encompasses the piece or parcel of land measuring 0.3024 acre in area and delineated on Survey Plan numbered LOA 2581A which the Defendant claims to be his, the Defendant on the other hand and from his claims, seem in one breath to be referring to a piece or parcel of land measuring 0.3024 acre in area and delineated on Survey Plan numbered LOA 2581A the same which is different, separate and distinct from the piece or parcel of land measuring 0.6042 acre in area and delineated on Survey Plan numbered LS 182/82 and in another breath seem to be referring to his piece or parcel of land as a portion of the piece or parcel of land claimed by the Plaintiff. Unfortunately this Court finds no evidence adduced by the Parties herein, suggesting a dispute between them that the respective pieces or parcels of land aforesaid are different, separate and distinct or that the piece or parcel of land measuring 0.3024 acre in area and delineated on Survey Plan numbered LOA 2581A is a portion of the piece or parcel of land measuring 0.6042 acre in area and delineated on Survey Plan numbered LS 182/82 by way of the said Parties making use of their respective surveyors, to have done a composite survey plan which would have shown the respective locations of the pieces or parcels of land aforesaid. As a result, this Court had recourse to the Director of Surveys and Lands in the Ministry of Lands who was handed with copies of the respective Survey Plans aforesaid who in turn got one of the officers at his department to do a composite survey plan of the pieces or parcels of land aforesaid. The respective Survey Plans aforesaid were handed back to this Court together with a composite Survey Plan showing the respective location of the pieces or parcels of land aforesaid, the same which is annexed to this Judgement and marked Appendix A¹⁻³.

The findings of this Court as shown on Appendix A¹⁻³ is that the piece parcel of land which is delineated on Survey Plan numbered LOA 2581A and dated 30th August, 2013 measuring 0.3024 acre in area, the same which the Defendant herein claims to be the fee simple owner of by virtue of a Deed of Conveyance dated 2nd December 2013 and tendered in evidence as B10¹⁻³ is not a portion of

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by the Director of Surveys and Lands, of a change of site to Off Spur Road, Wilberforce, under the same terms and conditions as mentioned in Exhibit B4 aforesaid, the only exception being the quantum of the annual rent payable. He identified Exhibit B5 which is a letter dated 27th May, 1994 written by the Director of Surveys and Lands and addressed to the Defendant notifying him that an alternative lease of state land at Off Spur Road, Wilberforce to the lease of state land at Off Regent Road, Hill Station has been approved on the same conditions as contained in Exhibit B4 save for a revised rent to Fifteen Thousand Sierra Leone Leones (SLL 15,000/00) annually from Three Thousand Sierra Leone (SLL 3,000/00) annually. He testified that by a letter dated 30th November, 1992 he accepted the alternative lease of state land as contained in Exhibit B5. He identified Exhibit B6 which is a letter dated 20th June, 1994 written by the Defendant herein and addressed to the Director of Surveys and Lands accepting the alternative lease of state land at Off Spur Road, Wilberforce on the terms and conditions as contained in Exhibit B4 aforesaid and enclosing payment of Forty Five Thousand Sierra Leone Leones (SLL 45,000/00) for the Three (3) year period of the Lease. He testified that in compliance with the terms of the lease as contained in Exhibits B5, he put up a structure on the piece or parcel of land at Off Spur Road, Wilberforce, Freetown aforesaid, the said piece or parcel of land which was at the time delineated on Survey Plan numbered LOA 2581A dated 18th July 1994 measuring 0.5024 acre in area and attached to Exhibits B5 and B6. He testified that having fulfilled all the terms and conditions as contained in Exhibit B5 aforesaid he applied for the grant of the freehold of the piece or parcel of land at Off Spur Road, Wilberforce, Freetown aforesaid. He identified Exhibit B7 which is a letter dated 18th January, 2002 written by the Defendant herein and addressed to the Director of Surveys and Lands, the said Defendant applying for the grant of the freehold of the piece or parcel of land at Off Spur Road, Wilberforce, Freetown delineated on Survey Plan numbered LOA 2581A dated 18th July, 1994 measuring 0.5024 acre in area and attached to Exhibits B5 and B6. He testified that on the 23rd May 2011, he sent a reminder of his application as contained in Exhibit B7. He identified Exhibit B8 which is a letter dated 23rd May, 2011 and addressed to the Director of Surveys and Lands, the Defendant herein reminding the Director of Surveys

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and Lands about his application for the grant of the freehold of the piece or parcel of land aforesaid as contained in Exhibit B7. He testified that on the 29th August, 2013 his application for the grant of the Freehold of the piece or parcel of land aforesaid as contained in Exhibit B7 was granted. He identified Exhibit B7 which is a letter written by the Permanent Secretary of the Ministry of Lands granting approval for the Defendant herein, to purchase the freehold of the piece or parcel of land at Off Spur Road, Wilberforce, Freetown delineated on Survey Plan numbered LOA 2581A dated 18th July 1994 measuring 0.3024 acre in area and attached to Exhibit B5 and B6, for a consideration of Ten Million Sierra Leone Leones (SLL 10,000,000/00) in addition to the Defendant bearing the cost of the resurvey of the said piece or parcel of land, together with the cost of the preparation and registration of the Conveyance. He testified that after paying as consideration the sum of SLL 10,000,000/00, paying for the cost of a resurvey of the piece or parcel of land aforesaid the same which was done and delineated on Survey Plan numbered LOA 2581A dated 30th August, 2013 measuring 0.3024 acre in area and paying for the preparation and registration of the Conveyance, a Conveyance executed in his favour, dated 2nd December, 2013 and made between HON. MUSA TARAWALLY, Minister of Lands acting for and on behalf of the GOVERNMENT OF SIERRA LEONE as Vendor of the one part and LT. COL. GABRIEL MANNI, the Defendant herein as Purchaser of the other part, the same which is in respect of the piece or parcel of land situate at Off Spur Road, Wilberforce, Freetown aforesaid, measuring 0.3024 acre in area and delineated on Survey Plan numbered LOA 2581A dated 30th August, 2013 being the resurvey of the Survey Plan numbered LOA 2581A dated 18th July, 1994 aforesaid and attached to the said Conveyance aforesaid and registered as No. 5081 at page 6 in Volume 719 in the Book of Conveyances kept at the office of the Registrar General. He identified Exhibit B10¹⁻⁴ as the Conveyance aforesaid.

Under Cross examination of him, DW1, GABRIEL SYLVESTER TAMBA MANNI was shown Exhibit A5 which is a letter written by the Solicitor for the Plaintiff dated 1st April, 2002 and addressed to him DW1, the Defendant herein informing him about his trespass on the piece or parcel of land at Spur Road,

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Wilberforce, Freetown, the subject matter of the action herein and warning him to refrain from trespassing thereon and to vacate the said piece or parcel of land or otherwise face legal action in respect of his actions. DW1 testified that he does not recall receiving Exhibit A5. DW1 was reminded of the contents of his amended Defence and Counter Claim delivered and filed on the 27th November, 2002 where at paragraph four (4) he admitted receiving Exhibit A5 but averred that the Plaintiff had no legal basis for demanding that he vacates the said piece or parcel of land in question. This reminder notwithstanding, DW1, testified that he still does not agree that he received Exhibit A5. He testified that he knows that the action herein was instituted sometime in 2002. He was shown Exhibit A6 which is a letter written by the Director of Surveys and Lands dated 1st October, 1996 addressed to LT. COL. G.S.T. MANI, c/o 2nd Battalion Teko, Naseni, informing him that the land leased to him at Off Spur Road, Wilberforce by the Ministry of Lands approval of which is contained in the Ministry's letter SLD 59/65 Vol. 1, which said lease became effective 1st June 1994 is a piece or parcel of land which is the private property of MR. MOUFID KASHID and that the Ministry of Lands erred in leasing it to him as state land, in effect of which he was therefore requested to cease construction work on the said piece or parcel of land immediately and call at the office of the Director of Surveys and Lands not later than the 14th October 1996 to reach some settlement over the issue. He testified that Exhibit A6 was not addressed to him as he was not Lieutenant Colonel at the time and that the address on it was not his at the time. He read paragraph one (1) of Exhibit A6 though and admitted that the lease to him of the piece or parcel of land at Off Spur Road, Wilberforce commenced on the 1st June, 1994.

This Court finds from the entire testimony of the Defendant above, that the principal issue centers around whether or not the Defendant took the lease of the state land offered him by GOVERNMENT OF SIERRA LEONE with knowledge that the piece or parcel of land so leased to him was encumbered. Clearly this Court finds that it is undisputed that the piece or parcel of land at Off Spur Road, Wilberforce, Freetown was leased to the Defendant with effect from 1st June 1994 by the GOVERNMENT OF SIERRA LEONE as is seen in Exhibit

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B5. The controversy is whether or not the Defendant himself received communication from the GOVERNMENT OF SIERRA LEONE revoking the said lease as Exhibit A6 reveals. It is undisputed though that Exhibit A6 is a letter written by the Director of Surveys and Lands revoking the Defendant's lease of the piece or parcel of land at Spur Road, Wilberforce, Freetown aforesaid on the grounds that it has come to attention of the Ministry of Lands that the property in question is private property and not state land. This Court finds, and it is further undisputed that Exhibit A6 makes reference to the said piece or parcel of land which was leased to the Defendant with effect from the 1st June, 1994 by the GOVERNMENT OF SIERRA LEONE as seen in Exhibit B5. Notwithstanding the Defendant's denial that Exhibit A6 was not addressed to him and that the address on it was not his at the time, the same which this Court would construe as the Defendant saying that he lacks knowledge of Exhibit A6, the fact that under cross examination aforesaid, the Defendant would deny receiving Exhibit A5 when his pleadings had shown that he had admitted receiving it, makes him an untruthful witness. In this regard, this Court finds it more probably true than not, that the Defendant actually received Exhibit A6, its contents which actually put him on notice that the GOVERNMENT OF SIERRA LEONE had no title to the said piece or parcel of land at Spur Road, Wilberforce, Freetown delineated on Survey Plan numbered LOA 2581A dated 18th July, 1994 measuring 0.3024 acre in area, leased to him by the said GOVERNMENT OF SIERRA LEONE. In this regard the submission of W.C. ILOBA ESQ. of Counsel for the Defendant, that Exhibit A6 was only in the possession of the Plaintiff and that the Defendant was never aware of it, is untenable.

This Court holds the view that, in dismissing the submissions of W.C. ILOBA ESQ. of Counsel for the Defendant, that the Plaintiff omitted to make full and frank disclosure as to the contents of Exhibit A6 and the error of the GOVERNMENT OF SIERRA LEONE to lease the piece or parcel of land in question to the Defendant as contained in Exhibit A6 is being used as an instrument of fraud, it should be pointed out that Exhibit A6 is written by the Director of Surveys and Lands and is addressed to the Defendant. This Court

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holds the view then, that it is the Director of Surveys and Lands who should have taken steps to ensure that the contents of Exhibit A6 were communicated to the Defendant. This Court finds that Exhibit A6 was only copied the predecessor-in-title of the Plaintiff's Vendor, MOUFID RASHID and Exhibit A6 itself was communicated to him, otherwise the Plaintiff herein would not have been in possession of it. This Court holds the view that the contents of Exhibit A6 having been communicated to the predecessor-in-title of the Plaintiff's Vendor, the Plaintiff herein would be justified to assume that the same was communicated to the Defendant. In the circumstance, this Court holds the view that it cannot be said that the Plaintiff omitted to make a full and frank disclosure of the contents of Exhibit A6. Moreover the testimony of PW1, BILLAL KODAMI is that a few months after the Plaintiff bought the piece or parcel of land in question, he found out that the Defendant had started trespassing on the same. He testified that on the day in question when himself and the Plaintiff visited the said piece or parcel of land he observed the Defendant doing some construction work on the same. He testified that the Plaintiff told the Defendant that the said piece or parcel of land was his, that the Defendant was trespassing thereon and should forthwith discontinue his acts of trespass on the same. He testified that the Defendant in an annoying manner told the Plaintiff that he would not stop what he had started on the piece or parcel of land in question and would not move out of the same. He testified that the Defendant further stated that, in fact nobody was in the position to ask him out of the piece or parcel of land and not even the President of Sierra Leone would do so, considering that he is an ex-soldier. PW1, testified that he advised the Plaintiff that they leave the said piece or parcel of land so as to avoid any confrontation with the Defendant, which they did.

This Court finds that the above testimony of PW1 BILLAL KODAMI remains completely uncontroverted. This being the case, this Court holds the view that even if it was true that the contents of Exhibit A6 were not brought to the knowledge of the Defendant, the aforementioned acts of the Plaintiff as revealed by the testimony of PW1 BILLAL KODAMI, which said acts occurred in 2003, well after the date when the Director of Surveys and lands wrote Exhibit

As on the 1st October 1996, was sufficient enough to put the Defendant on his guard that the piece or parcel of land in question which he claims to have been handed to him by the GOVERNMENT OF SIERRA LEONE was not state land but privately owned, the said facts which are the same as those contained in Exhibit A6 aforesaid. In this regard, the submissions of W.C. ILOBA ESQ. of Counsel for Defendant, that no evidence that the piece or parcel of land in question was acquired illegally by the Defendant had been made out, that the Director of Surveys and Land having written Exhibit A6 aforesaid, failed to make a follow up, but nonetheless approved the freehold application of the Defendant and caused the conveying of the same to the Defendant and that in the circumstance, it is the Director of Surveys and lands who is to be blamed for the error, the remedy available to the parties herein for the said error of which lies with him are all clearly untenable. It should be pointed out that in the first place, the very submissions above together with the evidence adduced in its entirety undisputedly reveals that Exhibit A6 is not fictitious, it is in existence and that the same was written by the Director of Surveys and Lands. Secondly from the contents of Exhibit A6, it is not the Director of Surveys and Lands who should have made a follow up of the issue. This Court finds from the contents of Exhibit A6, that the Defendant should have ceased construction work, on the said piece or parcel of land immediately after receiving Exhibit A6 and call at the office of the Director of Surveys and Lands not later than the 14th October, 1996 to make some settlement over the issue of the said piece or parcel of land being privately owned rather than state owned. This Court finds overwhelming evidence that between the date of Exhibit A6 being the 1st October, 1996 and up to the institution of this action on the 6th May, 2002, the Defendant actually received Exhibit A6 and or was sufficiently notified that the piece or parcel of land being the subject matter of the action herein is privately owned rather than being owned by the GOVERNMENT OF SIERRA LEONE. From the evidence adduced herein, the Court finds that the Defendant actually ignored such notification that the piece or parcel of land aforesaid is privately owned rather than being owned by the GOVERNMENT OF SIERRA LEONE without considering what the consequences of such would be.

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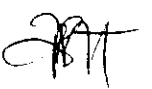
In order to buttress the point being made above that the Defendant deliberately ignored the notification given him, that the piece or parcel of land was privately owned, it becomes necessary to put in perspective, the evidence of DW1, GABRIEL SYLVESTER TAMBA MANNI, the Defendant herein. In accordance with Exhibit B5 aforesaid the piece or parcel of land at Off Spur road, Wilberforce, Freetown aforesaid delineated on Survey Plan numbered LOA 2581A dated 18th July, 1994 measuring 0.3024 acre in area was leased to the Defendant which said lease became effective on the 1st June, 1994 on the terms and conditions as contained in Exhibit B4 aforesaid. This Court finds that from Exhibit B4 aforesaid the lease of the piece or parcel of land aforesaid was for Three (3) years and should have determined on the 31st May, 1997. There is absolutely no evidence whatsoever that the said lease of the said piece or parcel of land was renewed. This Court finds further that from Exhibit B4, the grant of the said lease was conditional upon the construction of a dwelling house with an option for the Defendant to purchase the freehold interest after completion of the construction of a dwelling house on the said piece or parcel of land, the said lease which would be forfeited by the state if no building development was in place at the expiration of the third anniversary of the said lease. However, the Court finds absolutely no evidence whatsoever that the Defendant commenced the construction of a dwelling house on the piece or parcel of land herein within the lease period of Three (3) years and construction work was ongoing at the third anniversary of the said lease of the piece or parcel of land in question. The uncontroverted evidence herein is that a few months after the Plaintiff bought the piece or parcel of land which is the subject matter of the action herein on the 18th February, 2002, the Plaintiff observed the Defendant occupying on the said piece or parcel of land and doing construction work thereon. In the circumstance, this Court holds the view that the Defendant's statement that he has satisfied all the conditions necessary for acquiring the freehold of the piece or parcel of land in question as is contained in Exhibit B7 which is a letter dated 16th January, 2002 written by the Defendant herein and addressed to the Director of Surveys and Land, the said Defendant applying for a grant of the Freehold of the piece or parcel of land at Off Spur Road, Wilberforce, Freetown, cannot be true since as the evidence reveals above, the

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Defendant's construction of a dwelling house on the piece or parcel of land was on going on the 18th February, 2002, about a month after the date on Exhibit B7. Clearly this means that the Defendant could and should not have applied for the grant of the freehold of the piece or parcel of land in question on the 16th January, 2002 by reason that it would have been premature to do so since on the said date, the Defendants construction of a dwelling house on the piece or parcel of land aforesaid was on going. Accordingly this Court holds the view that the Defendant could not have exercised the option to purchase the freehold interest of the piece or parcel of land in question since he could only have done so after completion of the construction of the dwelling house on the said piece or parcel of land as is stipulated in Exhibit B4 and if the said lease had been renewed after it expired, evidence of which is lacking. Apparently, notwithstanding the minutes of the Director of Surveys and Lands as contained in Exhibit B7 aforesaid dated 16th January, 2002 to the appropriate authority that the Defendants' application for the grant of the freehold of the piece or parcel of land herein be possessed without delay, this Court finds that the evidence does not reveal anything whatsoever been done in that regard. This Court finds further, no evidence suggesting that the Defendant's application for the grant of the freehold of the said the piece or parcel of land as contained in Exhibit B7 was not granted because of some other reason than the fact that on the date of the Application aforesaid, the Defendant had still yet not fulfilled the condition under which the option to purchase the freehold interest of the piece or parcel of land in question as stipulated in Exhibit B4 aforesaid could be exercised. The above findings of this Court cannot be destroyed by the contents of Exhibit B8 which is a letter dated 23rd May, 2011 the Defendant herein demanding the Director of Surveys and Lands about his application for the grant of the freehold of the piece or parcel of land herein as contained in Exhibit B7 aforesaid, which contents suggest that the Defendant's application aforesaid, as contained in Exhibit B7 dated 16th January, 2002 was not considered by reason of a moratorium placed on the grant of freehold on state land since this Court has no evidence whatsoever adduced that between 16th January 2002 and 23rd May 2011, there was a moratorium placed on the grant of freehold on state land throughout that period.

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in view of this Court's finding above, it cannot in the circumstance, hold the view that the Defendant's acquisition of the piece or parcel of land in question was anything other than being improper or illegal. This Court finds no explicable reason(s) from the evidence adduced herein as to why the Defendant's application for the grant of the freehold of the piece or parcel of land in question as contained in Exhibit B7 dated 16th January 2002 was only approved eleven (11) years later as seen in Exhibit B9, which is a letter dated 27th August, 2013 written by the Permanent Secretary of the Ministry of Lands granting approval for the Defendant herein, to purchase the freehold of the piece or parcel of land at Off Spur Road, Wilberforce, Freetown aforesaid. This Court further finds no explicable reasons why the Defendant's application for the grant of the freehold of the piece or parcel of land in question was so granted as is seen in Exhibit B9 aforesaid on the 29th August 2013, when in fact by Exhibit A6 aforesaid, the Director of Surveys and Lands had informed the Defendant that the piece or parcel of land in question was privately owned rather than being owned by the GOVERNMENT OF SIERRA LEONE and when in fact by the uncontroverted testimony of PW1, BILLAL KODAMI, that in 2002, the Defendant had been sufficiently notified that the piece or parcel of land in question which he claimed was leased to him by the GOVERNMENT OF SIERRA LEONE was privately owned. This Court also finds no explicable reason(s) why the Defendant herein, when he sent a reminder to his application for the grant of the freehold of the piece or parcel of land in question, as is seen in Exhibit B8 which is a letter dated 25th May, 2011, failed to disclose that there was a pending suit which had been instituted by the Plaintiff herein since May, 2002 against him for Declaration of title to land in respect of the same piece or parcel of land herein. In the circumstance, this Court finds no explicable reason(s) why the Defendant would fail to disclose such material facts in his application for the grant of the freehold of the said piece or parcel of land, unless such failure to disclose the fact of the pending aforesaid, in respect of the said piece or parcel of land was meant to deceive the GOVERNMENT OF SIERRA LEONE into conveying the said piece or parcel of land, as seen in Exhibit B10th, which is a Conveyance executed in favour of the Defendant dated 28th December, 2013 and made between HON. MUSA TARAWALLY, Minister

of lands, acting for and on behalf of the GOVERNMENT OF SIERRA LEONE is Vendor of the one part and LT. COL. GABRIEL MANNI, the Defendant herein as Purchaser of the other part, the same which is in respect of the piece or parcel of land situate at Off Spur Road, Wilberforce, Freetown aforesaid measuring 0.3024 acre in area and delineated on survey plan numbered LOA 2581A dated 30th August, 2013 attached to the said Conveyance and registered as No. 5281 at page 6 in Volume 719 in the Book of Conveyances kept at the Office of the Registrar General in Freetown.

Under it can be said that officials of the Ministry of Lands were complicit in the Defendant's non-disclosure of the material fact that at the time when the Defendant sent a reminder to his application for the grant of the freehold of the piece or parcel of land in question as seen in Exhibit B8 aforesaid which is a letter dated 25th May 2011, there was a pending suit which had been instituted by the Plaintiff herein since May 2002 against the defendant for Declaration of title to the piece or parcel of land herein, the said non-disclosure by the Defendant herein which was meant to deceive the GOVERNMENT OF SIERRA LEONE into conveying the said piece or parcel of land, this Court holds the view that singularly, it is the said non-disclosure of the relevant fact as stated above that led to the grant of the freehold of the piece or parcel of land in question to the Defendant as is seen in Exhibit B9 and the conveying of the same as is seen in Exhibit B10¹⁻⁴ and not the so called 'error' of the Director of Surveys and lands as submitted by W.C. ILOBA ESQ. of Counsel of the Defendant. This Court holds the view that it is unfathomable that the Minister of Lands would have executed Exhibit B10¹⁻⁴ for and on behalf of the GOVERNMENT OF SIERRA LEONE if the relevant facts aforesaid had been disclosed and that there was no way it could have been said that officials of the Ministry of Lands were complicit in the Defendant's non-disclosure of the relevant facts aforesaid which was meant to deceive the GOVERNMENT OF SIERRA LEONE into conveying the said piece or parcel of land aforesaid. This Court holds the view further that in any case, whether the Minister of Lands executed Exhibit B10¹⁻⁴ for and on behalf of the GOVERNMENT OF SIERRA LEONE because of the non-disclosure of the material facts aforesaid or because



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of the complicity of the officials of Ministry of Lands with the Defendants in the non-disclosure of the relevant facts aforesaid which was meant to deceive the GOVERNMENT OF SIERRA LEONE into conveying the said piece or parcel of land aforesaid, it is obvious that the said Minister of Lands could not have validly executed Exhibit B10¹⁴ for and on behalf of the GOVERNMENT OF SIERRA LEONE in favour of the Defendant herein by reason that at the time he so executed Exhibit B10¹⁴ the GOVERNMENT OF SIERRA LEONE did not possess any title to the said piece or parcel of land as expressed in Exhibit A6 which is a letter dated 1st October, 1996 in which the Director of Surveys and Lands expressed that the piece or parcel of land leased to the Defendant at Off spur Road, Wilberforce, Freetown aforesaid which is the subject matter of the action herein is not state land but the private property of MOUFID RASHID, the predecessor in title of the Plaintiff's vendor to the said piece or parcel of land. The principle in this regard is as follows: -

'No one can transfer a better title to goods than that which he possesses, the same more neatly expressed by the maxim, *nemo dat quod non habet*'.

This Court holds the view that even if the above were absolutely wrong, it cannot be disputed that on the assumption that, the Defendant's claim that his piece or parcel of land measuring 0.3024 acre in area and delineated on Survey Plan numbered LOA 2581A is a portion of the Plaintiff's piece or parcel of land measuring 0.6042 acre in area and delineated as Survey plan numbered LS 182/02, both Exhibit A4¹⁷ being the title deeds of the Plaintiff in respect of the piece or parcel of land at Spur Road, Wilberforce, Freetown aforesaid measuring 0.6042 acre in area and Exhibit B10¹⁴ being the title deeds of the Defendant, in respect of the piece or parcel of land at Spur Road, Wilberforce, Freetown aforesaid measuring 0.3024 acre in area, are registered documents kept at the Registrar General in Freetown, Exhibit A4¹⁷ having been so registered on the 18th February, 2002 and Exhibit B10¹⁴ having been so registered on the 2nd December 2013. Section 4(1) of the REGISTRATION OF INSTRUMENTS ACT, CHAPTER 256 of the LAWS OF SIERRA LEONE 1960 as amended provides as follows:

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'Every Deed, Contract or Conveyance executed after the 9th February 1857 so far as regards any land to be thereby affected shall take effect as against other Deeds affecting the same land from date of its registration'.

In this regard, it cannot be disputed that Exhibit A4¹⁻⁷, in respect of the piece or parcel of land at Off Spur Road, Wilberforce, Freetown having been registered on the 18th February, 2002 takes precedence over Exhibit B10¹⁻⁴, in respect of the same land which was registered Eleven (11) years later on the 2nd December 2013. Accordingly for as long as Exhibit A4¹⁻⁷, remains a Conveyance whose validity is not in question, in respect of the piece or parcel of land at Spur Road, Wilberforce, Freetown aforesaid, the subject matter of the action herein and validly registered with the Registrar General on the 18th February, 2002 in accordance with Section 4(1) of the REGISTRATION OF INSTRUMENT ACT aforesaid, Exhibit B10¹⁻⁴, which was registered with the Registrar General on the 2nd December 2013 will remain a worthless document in so far as the piece or parcel of land which is the subject matter of the action herein is concerned. Accordingly this Court holds the view that the Defendant's Counterclaim for a Declaration that he is the fee simple owner of the piece or parcel of land measuring 0.3024 acre in area delineated on Survey Plan numbered LOA 2581A dated 30th August, 2013 attached to Exhibit B10¹⁻⁴ which is a Conveyance dated the 2nd December 2013 and made between HON. MUSA TAKALVALLY, Minister of Lands acting for and on behalf of GOVERNMENT OF SIERRA LEONE as Vendor of the one part and LT. COL. GABRIEL MANNI, the Defendant herein as Purchaser of the other part and registered as No. 3281 at page 6 in Volume 719 in the Book of Conveyance kept in the office of the Registrar General in Freetown and his Counterclaim for a Perpetual Injunction restraining the Plaintiffs herein his agents and servants from entering upon, occupying or otherwise interfering with the piece or parcel of land aforesaid completely fails in so far as the assumption that the Defendant's claim to the piece or parcel of land measuring 0.3024 acre in area and delineated on survey plan numbered LOA 2581A dated 30th August, 2013 is a portion of the piece or parcel of land claimed by the Plaintiff measuring 0.6042 acre in area and

delineated on Survey plan numbered LS182/O2 dated 20th February, 2002, holds.

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As stated above, the findings of this Court as shown on Appendix A1³, could well be a finding that suggests that the action herein is completely unnecessary had it been the case that what pertains is the Defendant's claim that his piece or parcel of land measuring 0.5024 acre in area and delineated on Survey Plan numbered LOA 2581A is different, separate and distinct from the piece or parcel of land measuring 0.6042 acre in area and delineated on Survey Plan numbered LS 182/O2 and that his conduct complained of are all being carried out on his piece or parcel of land aforesaid. It is clear though that, notwithstanding the findings of this Court as shown on Appendix A1³, that the piece or parcel of land which is delineated on Survey Plan numbered LOA 2581A dated 30th August, 2013 measuring 0.5024 acre in area, the same which the Defendant herein claims to be the fee simple owner of, is not a portion of and is different, separate and distinct from the piece or parcel of land which is delineated on the survey Plan numbered LS 182/O2 and dated 20th February, 2002 measuring 0.6042 acre in area, the same which the Plaintiff herein claims to be the fee simple owner of, it cannot be disputed that the Defendants conduct complained of are all being carried out on the piece or parcel of land situated at Off Spur Road, Wilberforce, Freetown aforesaid and delineated on Survey Plan numbered LS 182/O2 and dated 20th February, 2002 measuring 0.6042 acre in area, the same which the Plaintiff herein claims to be the fee simple owner of by virtue of a Deed of Conveyance dated 18th February, 2001 and tendered in evidence marked Exhibit A4¹⁷. This Court holds the view that it is abundantly clear and obvious then, that the subject matter of the action herein is the aforementioned piece or parcel of land delineated on Survey Plan numbered LS 182/O2 and dated 28th February, 2002 measuring 0.6042 acre in area, the same which the Plaintiff herein claims to be the fee simple owners of by virtue of Exhibit A4¹⁷. This Court holds the view further that it is also abundantly, clear and obvious that the Defendant herein would only be improperly using Exhibit A10¹⁸ as his title deeds in respect of a piece or parcel of land which is delineated on Survey Plan numbered LOA 2581A dated 30th August, 2013 to

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lay claims to the piece or parcel of land which is delineated on survey plan numbered LS 182/O2 dated 28th February, 2002, which as stated above is the subject matter of the action herein.

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The Plaintiffs herein claims that he is the fee simple owner of and entitled to possession of all that piece or parcel of land situate lying and being at Off Spur Road, Wilberforce, Freetown aforesaid enclosing an area of 0.6041 acre, the same delineated an survey plan numbered LS 182/O2 dated 28th February, 2002 and herein also claims for a Declaration of title to the same. In answering the question,

'What then must a Plaintiff who claims or a Defendant who counterclaims for Declaration of title to land prove, to be entitled to the same'?

RENNER THOMAS C.J. in the case between **SORIE TARAWALLY** and **SORIE KAMARA** S.C. Civ. App 7/2004 in the Supreme Court of Sierra Leone, distinguished between a documentary or paper title and a possessory title, stating that for a person relying on a documentary paper title he must be able to trace his title to some grant by the state. RENNER-THOMAS C.J. stated further that on the other hand a Plaintiff who relies on the fact of possession by himself or his predecessor-in-title must prove more than just mere possession. He stated also that to be entitled to a Declaration of title he must prove that he has a better title not only as against the Defendant but that there is no other person having a better title than himself and that he can do this by showing that the title of the true owner has been extinguished in his favour by the combined effect of adverse possession and the limitation statute. RENNER-THOMAS C.J. stated that the nature of the root of possessory title is thus explained by MEGARRY and WADE in the 4th Edition of **THE LAW OF REAL PROPERTY** at Page 1004 as follows:

'Limitation is thus not per se a mode of transferring property from one person to another. But it may operate as such when combined with the principle that adverse possession gives a title. If S (Squatter) wrongfully takes possession of land belonging to O (owner), O immediately acquires a right of action against S

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for recovery of land. If O takes no action in twelve years (normally) his right of action becomes barred and his title extinguished by limitation. S can no longer be disturbed by O and as against all the world except someone having a better legal right to possession'.

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PW1, BILLAL KODAMI and PW2 MOHAMED F. AYOUB, the lawful Attorney of FAWZY F. AYOUB, the Plaintiff herein by virtue of a Power of Attorney dated the 21st December, 2011 and registered as No. 595/2011 in volume 103 at page 70 in the Book of Powers of Attorney kept in the office of the Registrar General in Freetown, tendered in evidence and marked Exhibit A7, both claim and testified that the said FAWZY F. AYOUB the Plaintiff herein is the fee simple owner of and person entitled to possession of the piece or parcel of land situated Off Spur Road, Wilberforce Freetown aforesaid measuring 0.6042 acre in area and delineated on Survey Plan numbered LS 182/02 dated 28th February, 2002 being the subject matter of the action herein by virtue of a Deed of Conveyance dated the 18th February, 2001 and made between HUSSEIN ABASS MACKIE as Vendor of the one part and FAWZY F. AYOUB the Plaintiff herein as Purchaser of the other part, the same which is registered as No. 1345 at page 70 in Volume 558 in the Book of Conveyances kept in the office of the Registrar General in Freetown, tendered in evidence and marked Exhibit A41-7. Both PW1, BILLAL KODAMI and PW2 MOHAMED F. AYOUB, testified further that the Plaintiff's predecessor-in-title, HUSSEIN ABASS MACKIE became fee simple owner of the piece or parcel of land aforesaid being the subject matter of the action herein by virtue of a Deed of Conveyance dated 27th December, 1996 and made between MOUFID RASHID as Vendor of the one part and HUSSEIN ABASS MACKIE, the Plaintiff's predecessor in title as Purchaser of the other part, the same which is registered as No. 1758 at Page 6 in Volume 504 in the Book of Conveyance kept in the office of the Registrar General in Freetown, tendered in evidence and marked Exhibit A3(2)nd. PW1, BILLAL KODAMI, testified also that MOUFID RASHID, the predecessor in title of HUSSEIN ABASS MACKIE became fee simple owner of the piece or parcel of land aforesaid, being the subject matter of the action herein, by virtue of a Deed of Conveyance dated 5th April, 1989 and made between PAUL KAREFA-SMART

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as Vendor of the one part and MOUFID RASHID, the predecessor in title of
MUSSEIN ABASS MACKIE as Purchaser of the other part, the same which is
registered as No. 378 at page 106 in Volume 424 in the Book of Conveyances
kept in the office of the Registrar General in Freetown, tendered in evidence and
marked Exhibit A3(1)¹⁻⁶.

This Court finds that the recitals as contained in Exhibit A3(1)¹⁻⁶ reveal that
PAUL KAREFA-SMART, the predecessor in title of MOUFID RASHID became
the fee simple owner of the piece or parcel of land aforesaid being the subject
matter of the action herein by virtue of a Deed of Conveyance dated 2nd
November, 1985 and made between OLUFEMI SYBLE HEBRON as Vendor of
the one part and PAUL KAREFA-SMART, the predecessor in title of MOUFID
RASHID, as Purchaser of the other part, the same which is registered as No. 1710
at page 100 in volume 394 of the Book of Conveyance kept in the office of the
Registrar General in Freetown. This Court finds further that the recital as
contained in Exhibit A5(1)¹⁻⁶ aforesaid, reveal that OLUFEMI SYBLE HEBRON,
the predecessor in title of PAUL KAREFA-SMART became the fee simple owner
of the piece or parcel of land aforesaid, being the subject matter of the action
herein by virtue of a Deed of Conveyance dated 8th January, 1985 and made
between ACHMED TORONKA as Vendor of the one part and OLUFEMI SYBLE
HEBRON, the predecessor in title of PAUL KAREFA-SMART, as Purchaser of
the other part, the same which is registered as No. 49 at Page 23 in Volume 372
of the Book of Conveyance kept in the office of the Registrar General in
Freetown. This Court finds also that the recitals as contained in Exhibit A3(1)¹⁻⁶
aforesaid, reveal that ACHMED TORONKA, the Predecessor in title of
OLUFEMI SYBLE HEBRON, became the fee simple owner of the piece or parcel
of land aforesaid, being the subject matter of the action herein by virtue of a
Deed of Conveyance dated 7th April, 1983 and made between ALIE TORONKA
as Vendor of the one part and ACHMED TORONKA, the predecessor in title of
OLUFEMI SYBLE HEBRON as purchaser of the other part, the same which is
registered as No. 496 at page 100 in Volume 349 of the Book of Conveyance
kept at the office of the Registrar-General in Freetown.

By reason that the recitals as contained in Exhibit A3(1)¹³ do not reveal how ALIE TORONKA, the Predecessor in title of ACHMED TORONKA, became the fee simple owner of the piece or parcel of land aforesaid, being the subject matter of the action herein, this Court had recourse to the Registrar General's department who were asked to extract the Deed of Conveyance dated 7th April, 1983 and made between ALIE TORONKA as Vendor of the one part and ACHMED TORONKA, the predecessor in title of OLUFEMI SYBLE HEBRON as Purchaser of the other part, the same which is registered as No. 496 at page 100 in volume 349 of the Book of Conveyances kept at the office of the Registrar General in Freetown, the same which is annexed to this Judgment and marked Appendix B¹⁴. This Court finds from Appendix B¹⁵ that ALIE TORONKA, the predecessor in title of ACHMED TORONKA established his possessory title to all that piece or parcel of land at Off Spur Road, Wilberforce, Freetown aforesaid measuring 2.444 acre in area and delineated on Survey Plan numbered LS 2428/82 dated 15th November, 1982, a portion of which is the subject matter of the action herein, by Statutory Declaration dated 14th March, 1983 and registered as No. 34 at page 67 in volume 22 in the Book of Statutory Declarations kept in the office of the Registrar General in Freetown, the same which is annexed to this Judgment and marked Appendix C¹⁶.

From the above, the Court finds that the title to the piece or parcel of land herein, being the subject matter of the action herein of the Plaintiff's predecessors in title dates back to the 14th March, 1983 when the possessory title to all that piece or parcel of land at Off Spur Road, Wilberforce Freetown aforesaid a portion of which is the subject matter of the action herein was established. Accordingly, this Court holds the view that the Plaintiff herein and his predecessors in title have shown not just mere possession of the piece or parcel of land which is the subject matter of the action herein, but have proved that the Plaintiff has a better title not only against the Defendant who has not shown any title whatsoever to the said piece or parcel of land, but against any other person who might want to lay claim to the said piece or parcel of land in view of the fact that in 2002 when the action herein was instituted nineteen (19) years had elapsed since the 14th March, 1983 when ALIE TORONKA

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established his possessory in title to all that piece or parcel of land at Off Spur Road, Wilberforce Freetown aforesaid a portion of which is the subject matter of the action herein. Accordingly, this Court holds the view that the supposed rights, if at all, of the Defendant herein and any other person who might want to lay claim to the said piece or parcel of land, is barred and their title extinguished by virtue of Section 5(5) of the STATUTE OF LIMITATION ACT 1961 which provides as follows:

'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'.

Consequently this Court holds the view that the Plaintiff is entitled to a Declaration of title sought herein, to the piece or parcel of land which is the subject matter of the action herein.

As regards the Plaintiff's claim against the defendant for Damages for Trespass, the law as stated by RENNER-THOMAS C.J. in the case between SORIE TARAWALLI and SORIE KAMARA cited above is that;

'all the Plaintiff has to prove is a better right to possession than the Defendant and that one way to do this is to show that he has a better title to the piece or parcel of land in question'.

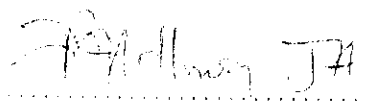
Clearly as this Court had found above, it holds the view that the Plaintiff has proved that he has a better title to the piece or parcel of land which is the subject matter of the action herein against the Defendant who has not shown any title to the same. The uncontroverted testimony of PW1, BILLAL KODAMI and PW2, MOHAMED F. AYOUB, the lawful Attorney of FAWZY F. AYOUB, the Plaintiff herein by virtue of Exhibit A7 being a Power of Attorney dated the 28th December, 2011, is that the Plaintiff retained the services of a Solicitor who had done Exhibit A5 which is a letter written by the Solicitor for the Plaintiff dated 4th April, 2002 and addressed to the Defendant herein informing him about his trespass on the piece or parcel of land at Spur Road, Wilberforce,

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Freetown, the subject matter of the action herein and warning him to refrain from trespassing thereon and to vacate the said piece or parcel of land or otherwise face legal action in respect of his actions. They testified that the Defendant herein continued his trespass aforesaid notwithstanding him receiving Exhibit A8 as a result of which the action herein was instituted. The Plaintiff has pleaded that as a result of the Defendant's action aforesaid he has been deprived of the use of his piece or parcel of land being and has been prevented from developing the same claiming that he has suffered loss and damage. In consequence of the above, this Court holds the view that the Defendant has trespassed on the piece or parcel of land which is the subject matter of the action herein and the Plaintiff is therefore entitled to damages to trespass though the same cannot now be assessed due to lack of evidence in that regard. In this vain, this Court holds the view that the said Plaintiff is also entitled to recovery of possession of the said piece or parcel of land from the Defendant herein inclusive of all those whom the said Defendant has allowed occupation thereof. As a consequence of the above this Court holds the view that the Plaintiff is also entitled to the Injunction sought herein.

By reason of the above, this Court holds the view that on a balance of probabilities, the Plaintiff herein has proved his case and gives Judgment in his favour as follows:

1. It is hereby DECLARED that FAWZY F. AYOUB, the Plaintiff herein is the sole simple owner of all that piece or parcel of land situate lying and being at Off Spur Road, Wilberforce Freetown in the Western Area of Sierra Leone, the same measuring 0.6042 acre in area and delineated on Survey Plan numbered LS 182/02 dated the 28th February 2002 and attached to a Deed of Conveyance dated 18th February, 2001 and made between HUSSEIN ABASS MACKIE of the one part and FAWZY F. AYOUB, the Plaintiff herein of the other part and registered as No. 1345 at page 72 in Volume F5B in the Book of Conveyance kept with Registrar General in Freetown.

2. That the Plaintiff herein RECOVERS from the Defendant herein, Damages for trespass the same to be assessed.
3. That the Plaintiff herein RECOVERS Possession of the said piece or parcel from the Defendant herein and all those whom he has allowed occupation thereof.
4. That a Perpetual Injunction restraining the Defendant herein whether by himself, his servants or agents or howsoever called from entering on and remaining on the said property or from disposing of the same by sale, gift, lease, exchange or barter or any other form of disposition thereof is hereby GRANTED.
5. That the Costs of the action herein, the same which is to be taxed if not agreed on be BORNE by the Defendant herein.


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HON. MR. JUSTICE ALLAN B. HALLOWAY JA
Delivered this 15th day of February 2018

