

Between:

Mr. Tamba Musa Saffea ---

Plaintiff

NO. 12 Escott Crescent Road

Ferry Junction

Kissy Dock Yard

Freetown

And

Administration and Registrar-General ---

Defendant

Roxy Building

NO. Walpole Street

Freetown

Counsel:

F. Carlton-Hanciles Esq.

**Ruling on an Application for the Registration of a Conveyance Out of Time, regarding a Reality that is Located in the Northern Province of the Republic of Sierra Leone, Delivered by The Hon. Dr. Justice Abou B. M. Binneh-Kamara, on Monday 11<sup>th</sup> June, 2018.**

### **1.1 Introduction.**

On Monday, 1<sup>st</sup> November 2018, an application was made to this Honourable Court, pursuant to an originating summons, dated 24<sup>th</sup> October 2018. The application was bolstered by an affidavit sworn to by Frederick Carlton-Hanciles Esq. and dated 24<sup>th</sup> October, 2018. The eight (8) paragraphs affidavit, contained

an attachment marked Exhibit FCH1, which is the conveyance that is said to be registered out of time. Frederick Carlton-Hanciles Esq. relies on the entirety of the affidavit and makes the application, pursuant to section 4 of the Registration of Instruments Ordinance, Cap. 256 of the Laws of Sierra Leone, 1960 and section 2 of the Registration of Instruments (Amendment) Act NO.6 of 1964.

## **1.2 The Analysis.**

Procedurally, having examined Counsel's documents as filed, I reckoned that, the application indeed dovetails, with the exact procedure, as prescribed by the High Court Rules (Constitutional Instrument) NO.8 of 2007 (hereinafter referred to as The HCR, 2007). Thus, the remedy for which Counsel has approached this Honourable Court, is completely statutory. So, the application is bound to be made, pursuant to an originating summons {see Sub-Rule (1) of Rule 3 of Order 5 of The HCR, 2007}. The application was essentially made in Chambers by way of originating summons, which is supported by a well-articulated affidavit; and the instrument which is to be registered out of time, is accordingly exhibited. However, notwithstanding the correctness of the procedure, which Counsel invokes in approaching this Honourable Court for the foregoing order to be granted, it seems to me that the application has been made in contradistinction to the very statute, pursuant to which Counsel has sought to register Exhibit FCH1, which is the subject matter of the application. Meanwhile, Paragraph (b) of subsection (2) of section 2 of Act NO.6 of 1964, which expressly amended section 4 of Cap. 256 of the Laws of Sierra Leone, 1960, reads:

**'This subsection shall not apply to any transactions relating to land in the provinces, except leases entered into under the provisions of the Provinces Lands Act'.**

Thus, the aforementioned provision is framed in tandem with the spirit and intent of the Provinces Land Ordinance, Cap. 122 of the Laws of Sierra Leone, 1960. This issue of registration of instrument out of time, with which this Honourable Court is faced, is not unconnected with a realty in the Northern Province of the Republic of Sierra Leone, to which the Plaintiff is laying claim. Indeed, this area of Sierra Leone's civil law is compounded by the fact that the country's land tenure system is shaped by a somewhat clear binary, relating to land ownership in the Western Area and the Provinces. Moreover, in the

provinces, questions relating to ownership of land, are determined by the Local Court, pursuant to the customary law of the very chiefdom in which a particular realty is located, by virtue of sections 18 and 31 of the Courts Act N0. 31 of 1965 {see also the cases of Caulker v. Kangama (S.C Civ. App. 2/74 Judgment delivered on 18<sup>th</sup> June, 1975 Unreported; Marie Kargbo (As Administrator of the Estate of Pa Murray (Moray) Kargbo (Deceased Intestate v. Saio Turay, The Paramount Chief of Nongowa Chiefdom (Kenema District), The Presiding Magistrate Kenema (Kenema) and Ahmed Younes (Civ. App. 14/2004)}. However, questions relative to the determination of realty in the Western Area, falls within the purview of the original exclusive jurisdiction of the High Court of Justice.

Thus, even though section 132 of the Constitution of Sierra Leone, Act N0.6 of 1991, concerns the original exclusive jurisdiction of the High Court of Justice, it is the Third Schedule of the Courts Act N0.31 of 1965, that more clearly articulates this point. Significantly, it logically follows, that transactions relative to ownership of land in the provinces, do not fall within the original exclusive jurisdiction of the High Court of Justice. Therefore, paragraph (b) of subsection (2) of section 2 of Act N0.6 of 1964, precludes me from granting the orders as prayed in the originating summons, dated 24<sup>th</sup> October, 2018. I will therefore dismiss the application. I will as well make no order as to cost. I so order.

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

Justice of Sierra Leone's Superior Court of Judicature.