

CC: 119/15

IN THE HIGH COURT OF SIERRA LEONE HOLDEN AT FREETOWN

Between: OSMAN MANANSU CONTEH – Plaintiff

And SYDNEY SHOOTER – Defendant

FRIDAY the 12th July 2019

Before the Hon Mr Justice A.B. Hollman, JSC

Case called

Plaintiff present; S. Barkor Nls. for the Plaintiff present.

Defendant present; M. P. Gfank Gp. for the Defendant present

JUDGEMENT

The action herein commenced by the issue of a specially indorsed Writ of Summons on the 19th March, 2015, for and on behalf of OSMAN MANANSU CONTEH, the Plaintiff herein, whose claim as contained in the Statement of Claim accompanying the said Writ of Summons, against SYDNEY SHOOTER, the Defendant herein, is for a Declaration that the said Plaintiff is the fee simple owner of all that piece or parcel of land situate, lying and being at Aberdeen Road, Wilberforce Village in the Western Area of Sierra Leone, delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14; Recovery of

immediate Possession of the said piece or parcel of land; Damages for Trespass; An Injunction restraining the Defendant herein, whether by himself, his agents, servants, workmen, privies or howsoever called, from interfering with the said piece or parcel of land and disposing of the same by sale or otherwise, pending the hearing and determination of the action herein; Any further or other order(s) as this Honourable Court may deem fit and just and Costs.

The particulars of the Plaintiff's claim aforesaid are that, he is and was at all material times to the action herein, the fee simple owner of all that piece or parcel of land situate lying and being at Aberdeen Road, Wilberforce Village aforesaid delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 measuring for Plot 1, 0.2439 acre in area and for Plot 2, 0.0525 acre in area, the said Survey Plan attached to a Deed of Conveyance dated 9th July, 2013 and expressed to be made between MRS. HAFSATU YATTA BAH (nee PESSIMA) of the one part as Vendor and MR. OSMAN MANANSU CONTEH, the Plaintiff herein of the other part as Purchaser, the said Deed of Conveyance registered as No. 1715/2014 at Page 115 in Volume 732 of the Book of Conveyance kept in the office of the Registrar General in Freetown; that sometime in June, 2014, the Defendant herein trespassed on the Plaintiff's said piece or parcel of land and maliciously destroyed the corrugated iron sheet structure which the Plaintiff herein had erected on the said piece or parcel of land; that subsequent upon the trespass aforesaid the Plaintiff herein reported the matter to the Wilberforce Police Post, the said Police who conducted investigations and warned the Defendant herein to desist from trespassing on the said piece or parcel of land but that the said Defendant refused to do so; that by a letter dated 4th September, 2014, the Plaintiff herein, through his Solicitors wrote a letter to the Defendant herein, warning him to desist from his acts of trespass, but that the said Defendant has deliberately failed and or refused to do so and has continued his acts of trespass; that the Defendant herein, threaten and intend, unless restrained by this Honourable Court, to continue his trespass on the said piece or parcel of land and cause inconvenience to the Plaintiff herein; that by reason of the matters aforesaid, the Plaintiff has been deprived of the use and enjoyment of the said piece or parcel of land and has also suffered loss and damage.

The Statement and Particulars of Claim accompanying the Writ of Summons aforesaid were served on the Defendant herein, who had an Appearance entered for and on his behalf on the 26th March, 2015. The said Defendant had a Defence and Counterclaim delivered and filed on the 7th April, 2015, particulars of which are that he denies that the Plaintiff is and was at all material times to the action herein, the fee simple owner of all that piece or parcel of land situate lying and being at Aberdeen Road, Wilberforce Village aforesaid, delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 measuring for Plot 1, 0.2435 acre in area and for Plot 2, 0.0525 acre in area and avers that he is the bona fide owner of the piece or parcel of land situate at Old Railway Line, Wilberforce Village Freetown, in the Western Area of Sierra Leone having established his possessory title to the same by Statutory Declaration dated the 26th January, 1997 and registered as No. 17/97 in Volume 42 at Page 9 of the Book of Statutory Declarations kept in the office of the Registrar General in Freetown; that the Defendant herein denies in its entirety that sometime in June, 2014 he trespassed on the Plaintiff's piece of parcel of land aforesaid and maliciously destroyed the corrugated iron sheet structure which the Plaintiff claimed he had erected on the said piece or parcel of land; that in response to the Plaintiff's claim that subsequent upon the alleged trespass by the Defendant, he reported the matter to the Wilberforce Police Post, the said Police who conducted investigation and warned the Defendant herein to desist from trespassing on the Plaintiff's said piece or parcel of land, but that the Defendant herein refused to do so, the Plaintiff's claim that by a letter dated 4th September, 2014, himself through his Solicitor wrote a letter to the Defendant herein, warning him to desist from his acts of trespass but that the Defendant has deliberately failed and or refused to do so and has continued his acts of trespass and the Plaintiff's claim that the Defendant herein threaten and intend, unless restrained by this Honourable Court to continue his trespass on the said piece or parcel of land and cause inconvenience to the said Plaintiff, the Defendant avers that he is the legal owner of the aforementioned piece or parcel of land and has never in any way trespassed and or encroached upon the Plaintiff's purported piece or parcel of land and contend that the Plaintiff herein and MRS. HAFSATU YATTA BAH (nee PESSIMA) have never owned any piece or parcel of land in the area claimed by them; that the Defendant pleads Section 5(3) of

The LIMITATION ACT 1961 and aver that the Plaintiff's action herein is statute barred, as the Defendant and his predecessors-in-title have been on their piece or parcel of land for more than Forty (40) years inclusive of the period since 1997 when the Defendant herein established his possessory title to the piece or parcel of land aforesaid, by Statutory Declaration aforesaid; that the Defendant avers that save as is hereinbefore expressly admitted, he denies each and every allegation contained in the Plaintiff's statement Claim aforesaid as if the same has been traversed and set out serialim.

The Particulars of the Defendant's Counterclaim are that, he repeats the above Particulars of his Defence and aver that he is the bona fide owner of the piece or parcel of land situate at Old Railway Line, Wilberforce aforesaid having established his possessory title to the same, by Statutory Declaration aforesaid; that the Defendant contends that the Plaintiff herein is trespassing upon and making unlawful claims to his piece or parcel of land aforesaid without any justification, the title of the Plaintiff's predecessor-in-title which is most questionable and smacks of fraud; that by the Plaintiff's conduct, the Defendant contends that he has been deprived of quiet enjoyment of his land and that he has suffered damages as a result, wherefor he counterclaims against the Plaintiff herein for a Declaration that he is the fee simple owner of and entitled to ownership and possession of all that piece or parcel of land situate lying and being at Old Railway Line, Wilberforce Village, Freetown in Western Area of Sierra Leone particularly delineated on Survey Plan dated 22nd August, 1996 and numbered LS 915/96 enclosing an area of 0.8119 acre in area, attached to a Statutory Declaration dated 28th January, 1997 and registered as No. 17/79 in Volume 42 at Page 9 of the Book of Statutory Declarations kept in the office of the Registrar General in Freetown; a Perpetual Injunction restraining the Plaintiff herein whether by himself, his servants, employees and or agents from entering upon occupying or interfering with the Defendant's piece or parcel of land aforesaid; Damages for Trespass by the Plaintiff herein on the Defendant's piece or parcel of land aforesaid and Costs.

In his Reply to the Defence of the Defendant and his Defence to the Defendant's Counterclaim, the same which was delivered and filed on the 23rd April, 2015, the Plaintiff herein joined issue with the Defendant herein on his Defence. The

Particulars of the Plaintiff's Defence to the Defendant's Counterclaim are that he denies the entire contents of the Defendants Counterclaim aforesaid, avers that the Defendant is not the bona fide owner of all that piece or parcel of land situate lying and being at Old Railway Line, Wilberforce Village, Freetown aforesaid and puts him to strict proof thereof and avers that save as is hereinbefore admitted or denied, the Plaintiff denies each and every allegation of the Defendants' counterclaim as if the same were set out seriatim and specifically traversed.

By an order of this Court dated 1st July, 2015 an Injunction restraining the Plaintiff herein his agents, servants, security officers, workmen, relations and those claiming under or through him, from constructing any structure or building on the piece or parcel of land situate lying and being at Old Railway Line, Wilberforce Village, Freetown in the Western Area of Sierra Leone delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96 measuring 0.8119 acre in area and or from interfering with or depositing any material(s) on the said piece or parcel of land, was granted pending the hearing and determination for the action herein on terms that the Defendant herein gives an undertaking to pay damages to the said Plaintiff for any loss sustained by reason of the injunction aforesaid, should it turn out at the trial that the said Plaintiff ought not to have been restrained aforesaid, the said undertaking which was given, delivered and filed by the Defendant herein in the 10th July, 2015. The Plaintiff's claim for an Injunction restraining the Defendant herein whether by himself, his agents, servants, workmen, privies or howsoever called, from interfering with all that piece or parcel of land situate lying and being at Aberdeen Road, Wilberforce village in the Western Area of the Sierra Leone delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 measuring for Plot 1, 0.2439 acre in area and for Plot 2, 0.0525 acre in area and depositing of the same by sale or otherwise, pending the hearing and determination of the action herein, was not pursued by the Plaintiff herein all throughout the trial of the action herein, the said claim which is deemed to have been abandoned by the Plaintiff herein and is hereby dismissed by this Court.

Pleadings were deemed closed after the delivery and filing of the Plaintiff's Reply to the Defence of the Defendant herein and his Defence to the Defendant's Counterclaim, on the 23rd April, 2015. Pursuant to the Order of this Court dated 1st July, 2015 aforesaid, Directions as to the trial of the action herein was sought and that by Order of the Judge dated 3rd July, 2015, Directions were given and eventually complied with by the parties herein who had lodged, Court bundles containing in particular signed statements of the witnesses who would have to testify at the trial of the action herein and several documents which are central to either party's case and which either party relied on tendered and used at the trial of the action herein, principal of which is a Deed of Conveyance dated 9th July, 2013 and expressed to be made between MRS. HAFSATU YATTA BAH (nee PESSIMA) of the one part as Vendor and MR. OSMAN MANANSU CONTEH, the Plaintiff herein, of the other part as Purchaser, in respect of all that piece or parcel of land situate lying and being at Aberdeen Road, Wilberforce Village, Freetown in the Western Area of Sierra Leone, LS 3082/14 measuring for Plot 1 0.2459 acre in area and for Plot 2 0.0525 acre in area, the said Deed of Conveyance registered as No. 1713/2014 at Page 115 in Volume 732 in the Book of Conveyances kept in the office of the Registrar General in Freetown, relied on and tendered in evidence by the Plaintiff herein as Exhibit A¹³⁻²³, a report of the investigations of the piece or parcel of land at Aberdeen Road, Wilberforce Village, Freetown aforesaid relied on and tendered in evidence by the plaintiff herein as Exhibit Q²⁷⁻¹⁰⁶, a Statutory Declaration of SYDNEY SHOOTER, PERCY JOHNSON and ADJAYE THOMPSON dated 28th January, 1997 establishing the possessory title of SYDNEY SHOOTER, the Defendant herein, to the piece or parcel of land situate lying and being at Old Railway line, Wilberforce Village, Freetown in the Western Area of Sierra Leone, more particularly delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96 measuring 0.8119 acre in area, attached to the Statutory Declaration aforesaid, registered as No. 17/97 in Volume 42 at Page 9 of the Book of Statutory Declarations kept in the office of the Registrar General in Freetown, relied on and tendered in evidence by the Defendant herein as Exhibit SS²⁷⁻³¹ and a report of the investigations of the piece or parcel of land situate, lying and being at Old Railway line, Wilberforce Village, Freetown aforesaid, delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96

aforesaid together with a composite plan of the same in relation to the piece or parcel of land situate, lying and being at Old Railway line, Wilberforce Village, Freetown aforesaid, delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 and on Survey Plan dated 1st June, 2012 and numbered LS 1531/12 called on and tendered in evidence by the Defendant herein as Exhibit R⁸⁻¹⁵. Trial of the action herein commenced on the 17th February, 2016 and at the said trial OSMAN MANANSU CONTEH, the Plaintiff herein, testified for and on his own behalf as PW1 and had HAFSATU YATTA BAH and JAMES MORLAI BANGURA testify for and on his behalf as PW2 and PW3 respectively. SYDNEY SHOOTER, the Defendant herein testified for and on his own behalf as DW1 and had ADJAYE THOMPSON, ALEX MOININA BUREH and ALLIAH JOSEPH SUNDIMA testify for and on his behalf as DW2, DW3 and DW4 respectively.

Having carefully read and considered the pleadings delivered and filed herein, the evidence adduced in the action herein and the submissions made by the party's respective Counsel as contained in their written addresses submitted herein, this Court holds the view that whereas either party to the action herein claim a Declaration of title to their respective pieces or parcels of land situate, lying and being at Aberdeen Road, Wilberforce Village, Freetown aforesaid delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 being the piece or parcel of land claimed by the Plaintiff and the piece or parcel of land situate, lying and being at Old Railway line, Wilberforce Village, Freetown delineated on Survey Plan dated 22nd August, 1996 and numbered LS 915/96 being the piece or parcel of land claimed by the Defendant herein, the real dispute which needs to be first determined is whether or not the respective pieces or parcels of land aforesaid are the same or separate and distinct from each other with one overlapping over the other to a limited extent, with both parties herein, claiming that the other has encroached into and trespassed into the other's piece or parcel of land. The Plaintiff's contention herein is that the Defendant has trespassed into his, the Plaintiff's piece or parcel of land delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14. The Defendant on the other hand denies trespassing on the Plaintiff's piece or parcel of land aforesaid contending that he is owner of the piece or parcel of land

delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96, which said piece or parcel of land, the Plaintiff herein is trespassing upon and making unlawful claims to and which said claims are statuted barred.

In order for this Court to determine whether or not the respective pieces or parcels of land aforesaid are the same or separate and distinct from each other with one overlapping over the other to a limited extent, it would have to turn to the evidence adduced in that regard and in particular the testimonies of either party's experts in surveying, presented herein. In this regard this Court would proceed by first making comparisons of the testimonies presented by the party's respective surveyors and experts.

DW4, ALLIAH JOSEPH SUNDINA is a Licensed Surveyor employed to investigate and report on the status of the piece or parcel of land situate lying and being at Old Railway Line, Wilberforce aforesaid delineated on the Survey plan dated 22nd August, 1996 and numbered LS 913/96 being the piece or parcel of land claimed by the Defendant herein. He testified that his findings on the investigations aforesaid were reduced into a report which he identified as Exhibit 'R⁶⁻⁶⁶' tendered in evidence by the Defendant herein. Attached to Exhibit 'R⁶⁻⁶⁶' is the composite plan arrived at by the use of Global Positioning System (GPS) mechanism showing the satellite positions and correct locations on the ground of the piece or parcel of land claimed by the Defendant herein as delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96 edged RED, measuring 0.8119 acre in area, the piece or parcel of land claimed by OLGA SMITH, delineated as Plot C on Survey plan numbered LS 1058/71 edged BLUE, the same which encompasses, a portion of the piece or parcel of land claimed by the Plaintiff herein situate lying and being at Aberdeen Road, Wilberforce Village, measuring for Plot 1, 0.2439 acre in area and for Plot 2, 0.0525 acre in area and the piece or parcel of land claimed by ERL JOHNSON, delineated on Survey Plan numbered 1058/71 edged YELLOW. The conclusion of the investigations aforesaid arrived at by DW4, ALLIAH JOSEPH SUNDIMA is contained in Exhibit 'R⁶⁻⁶⁶' is that there is no encroachment or overlap of the piece or parcel of land claimed by the Defendant herein, delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96, with that of the piece or parcel of land claimed by the Plaintiff herein, delineated on Survey Plan dated

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5th May, 2014 and numbered LS 3089/14 and those of the respective pieces or parcels of land claimed by ERL JOHNSTON and OLGA SMITH, his predecessors-in-title, delineated as Plots B and C respectively of Survey Plan numbered LS 1058/71. As contained in Exhibit 'R⁸⁻¹⁶', the piece or parcel of land claimed by the Defendant herein is situated at Old Railway Line, Wilberforce Village, aforesaid whereas the piece or parcel of land claimed by the Plaintiff herein is situated at off Aberdeen Road, Wilberforce Village aforesaid, far apart from the piece or parcel of land claimed by the Defendant as seen on the composite plan attached to Exhibit 'R¹⁻¹⁶'.

Under Cross Examination of him by S. BAKARR MS. of Counsel for the Plaintiff, DW4 ALLIAH JOSEPH SUNDIMA testified that he visited the piece or parcel of land claimed by the Defendant herein sometime in October, 2015. He testified that he could not recall the name of the road he used to go to the piece or parcel of land claimed by the Defendant herein, but it was on the South West side of the Survey Plan dated 22nd August, 1996 and numbered LS 913/96. He testified that he used Old Railway Line to get to the piece or parcel of land claimed by the Defendant herein. He testified that it is not true that the access road leading to the piece of land claimed by the Defendant is on Old Railway Line. He testified that it is true that the piece or parcel of land claimed by the Defendant is on Old Railway Line but the access road is at off Aberdeen Road. He testified that the access road leading to the piece or parcel of land claimed by the Defendant herein is not the same as the access road leading to the piece or parcel of land claimed by the Plaintiff herein.

DW5, ALEX MOININA BUREH testified that he is a Technical Officer in the Ministry of Surveys and Lands and that he is familiar with the piece or parcel of land at Old Railway Line, Wilberforce Village, aforesaid, claimed by the Defendant herein and had cause to visit the same and the piece or parcel of land at Aberdeen Road, Wilberforce Village aforesaid, claimed by the Plaintiff herein. He identified Exhibit 'R⁹⁻¹⁶' which is the report of DW4, ALLIAH JOSEPH SUNDIMA on the status of the piece or parcel of land situate lying and being at Old Railway Line, Wilberforce Village aforesaid, delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96 being the piece or parcel of land claimed by the Defendant herein. He identified Exhibit 'R¹¹' showing the

composite plan of the respective locations of the pieces or parcels of land herein, the same which he testified, was prepared by him. He tendered in evidence Exhibit 'SS 11A' which is a broader composite plan to Exhibit 'R' aforesaid. He testified that his conclusions arrived at from Exhibit 'SS 11A' is that Old Railway Line passes in front of the piece or parcel of land claimed by the Defendant and that Aberdeen Road is at the back of Old Railway Line. He testified that the distance between the piece or parcel of land edged BLUE on Exhibit SS 11A a portion of which is the piece or parcel of land claimed by the Plaintiff is about Sixty (60) feet apart from the piece or parcel of land edged RED on Exhibit 'SS 11A' which is the piece or parcel of land claimed by the Defendant.

This Court finds that from the testimony of DW3, ALEX MOININA BUREH above and in particular from Exhibit 'SS 11A' aforesaid, the piece or parcel of land edged BLUE, a portion of which is the piece or parcel of land situate lying and being at Aberdeen Road, Wilberforce Village aforesaid, delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 being the piece or parcel of land claimed by the Plaintiff herein is separate and distinct from and does not overlap with the piece or parcel of land situated lying and being at Old Railway line, Wilberforce Village aforesaid, delineated on Survey Plan dated 22nd August, 1996 numbered LS 913/96 being the piece or parcel of land claimed by the Defendant herein, the respective pieces or parcels of land aforesaid which are about Sixty(60) feet apart from each other.

Under Cross examination of him by S. BAKARR MS of Counsel for the Plaintiff herein, DW3, ALEX MOININA BUREH identified Exhibit 'OMC¹⁰⁶' and agreed that the conclusion aforesaid arrived at from the findings as contained in Exhibit 'SS 11A' that the respective pieces or parcels of land aforesaid are separate and distinct from and does not overlap with each other, the said pieces or parcels of land which are about Sixty(60) feet apart with each other, is the same conclusions arrived at as shown in Exhibit 'OMC¹⁰⁶', the same which is a composite plan done by PWS, JAMES MORIAI BANGURA attached to his report of the investigation of the piece or parcel of land at Aberdeen Road, Wilberforce Village aforesaid, tendered in evidence as Exhibit 'Q⁷²⁻¹⁰⁶', Exhibit OMC¹⁰⁶ aforesaid, being the same as Exhibit 'Q¹⁰⁶'

PWS, JAMES MORLAI BANGURA testified that he is a Licensed Surveyor and was consulted by the Plaintiff herein to do a resurvey of the piece or parcel of land situate lying and being at Aberdeen Road, Wilberforce aforesaid, delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 being the piece or parcel of land claimed by the said Plaintiff. He testified that he visited the said piece or parcel of land carried out measurements on it and tried to ascertain the location of the piece or parcel of land at Old Railway Line, Wilberforce Village aforesaid claimed by the Defendant herein. He testified that his findings on the investigations aforesaid were reduced into a report which he identified as Exhibit 'Q⁹⁹⁻¹⁰⁶', identifying also the composite plan attached it and marked Exhibit 'Q¹⁰⁶'. He testified that he plotted the Survey Plan dated 5th May, 2014 and numbered LS 3089/14 delineating the piece or parcel of land claimed by the plaintiff herein and Survey Plan dated 22nd August, 1996 and numbered LS 913/96 delineating the piece or parcel of land claimed by the Defendant herein using Theodolite and Steel Band Survey System to determine the respective locations of the pieces or parcels of land aforesaid. He testified that his findings as contained in the composite plan marked Exhibit 'Q¹⁰⁶' which is the same as Exhibit 'OMC¹⁰⁶', shows that the piece or parcel of land claimed by the Plaintiff herein as delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 is edged RED whereas the piece or parcel of land claimed by the Defendant herein as delineated on Survey plan dated 22nd August, 1996 and numbered LS 913/96 is edged GREEN, observing that the respective pieces or parcels of land aforesaid, are separate and distinct, the one claimed by the Defendant being at Old Railway line, Wilberforce aforesaid and the one claimed by the Plaintiff being at Aberdeen Road, Wilberforce aforesaid, observing also that a C.I. Sheet structure erected by the Defendant herein edged YELLOW on the composite plan marked Exhibit 'Q¹⁰⁶', which is the same as Exhibit OMC¹⁰⁶, falls outside of the piece or parcel of land claimed by the Defendant herein as delineated on Survey Plan dated 22nd August 1996 and numbered LS 913/96, the same having been constructed on Plot 1 of the piece or parcel of land claimed by the Plaintiff herein as delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14, stating that it would be wrong to propose that an access road passes through Plot 2 of the piece or parcel of land claimed by the Plaintiff as delineated on Survey Plan dated 5th May, 2014 and numbered LS

EOB9/14. His conclusion as contained in Exhibit 'Q⁹⁹⁻¹⁰⁶', is that, by reason that the piece or parcel of land claimed by the Defendant herein lies on Old Railway Line, the Defendant herein cannot leave Old Railway Line and pass through someone else's piece or parcel of land to find his way out.

Under cross examination of him by M.P. FOFANAH ESQ of Counsel for the Defendant herein, PW3, JAMES MORLAI BANGURA testified that it is true that he is familiar with the disputed piece or parcel of land and the area on which it is located. He testified that himself and his surveying team visited the said piece or parcel of land sometime in 2015. He testified that he knows one ARISTOBOLUS JOHN COKER and he is a Government Surveyor. He testified that he went to the disputed piece or parcel of land with the said ARISTOBOLUS JOHN COKER sometime later, subsequent to the time when he visited the same with his surveying team. He testified that it is true that he is the private Licensed Surveyor for the Plaintiff herein. He identified his report of the investigation of the piece or parcel of land at Aberdeen Road, Wilberforce aforesaid tendered in evidence as Exhibit 'Q⁹⁹⁻¹⁰⁶' and agreed that it is dated 20th December, 2015. He identified a document signed by himself, tendered in evidence and marked Exhibit 'OMC 80', its subject being 'REPORT ON SITE INSPECTION CARRIED OUT AT ABERDEEN ROAD, WILBERFORCE' and content of which states that himself and ARISTOBOLUS JOHN COKER visited the piece or parcel of land at Aberdeen Road and to report back to MR. FAYIA ALPHIA, the Deputy Director of Surveys and Lands in connection with the dispute on the piece or parcel of land, observed that the Defendant holds a Statutory Declaration in respect of the piece or parcel of land claimed by him, comparing the same with a Deed of Conveyance held by the other party to the disputed piece or parcel of land, stating that for an area like Wilberforce, title by a Deed of Conveyance takes precedence over a Statutory Declaration and admonishing that it is time the Ministry of Surveys and Lands start telling people the correct thing right from the start, so as to avoid unnecessary delays and that if this done, anyone who feels dissatisfied can seek redress in Court.

Under further cross examination of him by M.P. FOFANAH ESQ of Counsel for the Defendant herein, PW3, JAMES MORLAI BANGURA testified that Exhibit 'OMC 80' is a report but denied that it is addressed to no one. He

testified that on its face it is addressed to the Deputy Director of Surveys and Lands. He testified that he did not prepare any composite plan explaining Exhibit 'OMC 80'. He testified that Exhibit 'OMC 80' is an opinion coming from him as a Licensed Surveyor. He identified Exhibit 'SS 17', which is a letter written by MR. DONALD JONES, the Assistant Director of Surveys in the Ministry of Surveys and Lands on the subject 'ENCROACHMENT INTO ACCESS ROAD SITUATED OFF ABERDEEN ROAD, WILBERFORCE, FREETOWN AND REQUEST FOR DEMARCATION AND CLEARING OF THE SAID ACCESS ROAD' and testified that he has not seen it before. He agreed that Exhibit 'SS 17' was written on the 4th September, 2015 and done after Exhibit 'OMC 80'. He agreed further that Exhibit 'SS 17' was done before his report of the investigations of the piece or parcel of land at Aberdeen Road, Wilberforce Village, tendered in evidence as Exhibit 'Q2-106'. He testified that Exhibit 'OMC 80' was prompted by the Ministry of Surveys and Lands for him to inspect the piece or parcel of land in dispute and for him to report back. He testified that the prompting was not put in writing. He testified that Exhibit 'OMC 80' was not copied to anyone. He testified that he did not consult the Defendant before Exhibit 'OMC 80' was done and he did not find out who the Defendant's Licensed Surveyor was. He testified that it is true that he did not mention anything in Exhibit 'OMC 80' about Old Railway Line, Wilberforce aforesaid.

Under further cross examination of him by M.P. FOFANAH ESQ. of Counsel for the Defendant herein, PW5, JAMES MORLA BANGURA testified that it is true that Aberdeen Road is the access road into the piece or parcel of land claimed by the Plaintiff herein. He testified that it is true that as shown on Exhibit OMC¹⁰⁶, part of the piece or parcel of land claimed by the Plaintiff herein edged RED is outside of Plot C of the piece or parcel of land edged BLACK. He testified that it is true that entire Plot C aforesaid has always been along Aberdeen Road and that part of it is on Old Railway Line. He identified Exhibit OMC 104, which is a Survey Plan showing pieces or parcels of land divided into Plots A, B, C, D and E of the Estate of E.O. JOHNSON at Wilberforce and agreed that the Old Railway Line track shown on it is the same as Old Railway Line. He testified that it is not true that there is an Aberdeen

Road shown on Exhibit OMC 104. He testified that what is shown on it is written access road and it is this access road which is the one dividing Plots A, D, and E aforesaid from Plots B and C aforesaid. He identified Exhibit 'OMC 105' which is the Survey plan dated 1st June, 2012 and numbered LS 1531/12 delineating the piece or parcel of land at Aberdeen Road, Wilberforce, which is the same as the piece or parcel of land edged BLACK on Exhibit 'OMC 106' and testified that there is no Aberdeen Road shown on it and that what is shown on it is written access road on it. He agreed that the access road shown on Exhibit 'OMC 105' is the same as the Aberdeen road shown on Exhibit 'OMC 106'. He testified that as shown on Exhibit 'OMC 106' aforesaid, both the pieces or parcels of land claimed by the respective parties herein lie east of Old Railway Line. He agreed that the piece or parcel of land edged Black as shown on Exhibit 'OMC 106' borders not only on Old Railway Line but also on Aberdeen Road. He identified Exhibit 'SS 11A' and agreed that it was done using GPS Survey and also agreed that GPS Survey does not change. He agreed that Exhibit SS 11A is a true reflection of the positions of the respective pieces or parcels of land therein.

In re-examination of him by S. BAKARR MS. of Counsel for the Plaintiff, PWS JAMES MORLAJ BANGURA testified that the access road shown on Exhibit 'OMC 104' which is the same as Exhibit 'SS 12' dividing Plots A, D, and E from Plots B and C aforesaid which leads to Aberdeen Road is the access being used by the Plaintiff herein to access the piece or parcel of land claimed by him.

This Court finds that from the above and from the entire evidence adduced and aimed at determining the location of the respective pieces or parcels of land claimed by the parties herein the issue of the access road which leads to either or both of the respective pieces or parcels of land aforesaid is a topical one. In this regard, this Court should uphold the submission of S. BAKARR MS., that it cannot be disputed that the piece or parcel of land claimed by the Plaintiff herein is on Aberdeen Road, by reason of which it is expected that the pieces or parcels of land aforesaid claimed by the parties herein, will be accessed on Old Railway Line and Aberdeen Road respectively. This Court finds further, that this notwithstanding, the Plaintiffs contention, is that the access road into the piece or parcel of land claimed by him, is that access road which the Defendant contends, is that one at off Aberdeen Road, leading into his piece or parcel of

land. In other words, whereas the contentions of the Plaintiff is that the access road into the piece or parcel of land claimed by him is that one at off Aberdeen Road and is the same as the one commencing from beacon numbered B 1061/13 moving in a North Easterly direction at a bearing of 77 degrees and 00 minutes for a distance of 71.4 feet to beacon numbered B 1062/13 along Aberdeen Road as shown on the Survey Plan dated 5th May, 2014 and numbered LS 3089/14, the Defendant contends that the said access road into the piece or parcel of land claimed by the Plaintiff along Aberdeen Road aforesaid is separate and distinct from that access road at off Aberdeen Road, leading into his piece or parcel of land which commences from beacon numbered B 1061/13 with a fifteen (15) feet width across from it enclosing a road which moves in a South-Easterly direction, off Aberdeen Road as shown on the Survey Plan dated 5th May, 2014 and numbered LS 3098/14.

This Court holds the view that it was primarily the controversy surrounding the issue of the access road aforesaid that brought about the Plaintiffs' claim herein that the Defendant herein had encroached on and trespassed on the piece or parcel of land claimed by him. PW1, OSMAN MANANSU CONTEH, the Plaintiff herein testified that subsequent to his reports made at the Police in respect of the Defendant's acts of trespass into his piece or parcel of land, both himself and the Defendant submitted their documents of title to the Police who had it sent to the Ministry of Lands. He identified Exhibits 'OMC 78-79' which was tendered in evidence by the Plaintiff herein. Exhibit 'OMC 78-79' is a memorandum dated 11th February, 2015 from the O/C TASK FORCE AGAINST LAND GRABBING, FREETOWN WEST to the DIRECTOR SURVEYS AND LANDS, YOUYI BUILDING, FREETOWN the same forwarding documents which had been submitted to them by the parties herein in relation to a dispute regarding an access road, requesting the DIRECTOR, SURVEYS AND LANDS to determine the authenticity of the documents submitted and the rightful owner of the piece or parcel of land in question. PW1, OSMAN MANANSU CONTEH testified that the Ministry of lands had this matter assigned to one MR. ANISTOBOLUS JOHN COKER for investigations, who visited the land with the documents submitted, but that the parties herein are yet to receive any report in conclusion of the matter aforesaid.

Under cross examination of him by M.P. FOFANAH ESQ of Counsel for the Defendant, PW1, OSMAN MANANSU CONTEH, the Plaintiff herein, confirmed that indeed in his evidence in chief he testified that the matter aforesaid was investigated by the Ministry of Lands but were yet to bring out a report of their investigations. He testified that he has never seen any letter written by one MR. DONALD JONES, Assistant Director of Surveys and Lands in respect of the investigations of the matter aforesaid. He identified Exhibit 'R 17' and testified that he had never seen it before. Exhibit 'R 17' is a letter dated 4th September, 2015 written by MR. DONALD JONES, the Assistant Director of Surveys and Lands in the Ministry of Surveys and Lands and addressed to MOHAMED PA-MOMOH FOFANAH, Solicitor, on the subject 'ENCROACHMENT INTO ACCESS ROAD SITUATED OFF ABERDEEN ROAD, WILBERFORCE, FREETOWN AND REQUEST FOR DEMARCATION AND CLEARING OF THE SAID ACCESS ROAD', the contents of which are that the documents which had been forwarded have been carefully studied and that the information contained therein reveals that MR. SYDNEY SHOOTER, the Defendant herein, is the lawful owner of the piece or parcel of land situated at Old Railway Line Wilberforce Village aforesaid and that a team comprising of staff from Surveys and Land Division and the Country Planning Division have visited the site and pegged out the access road which leads to the piece or parcel of land claimed by the Defendant herein, the same which has been communicated to the parties herein. PW1, OSMAN MANANSU CONTEH, testified that it is true that there is an access road leading into the disputed area of the respective pieces or parcels of land claimed by the parties herein, which said access road is the same which leads into the piece of land claimed by him and which was carved out by his Surveyors in 2013. He testified that it is not true that the Ministry of Surveys and Lands through MR. DONALD JONES aforesaid confirmed that the access road aforesaid leads to the piece or parcel of land claimed by the Defendant.

This Court finds that indeed, notwithstanding the fact that it is stated in Exhibit 'S 17' aforesaid that both parties herein were notified that the access road off Aberdeen Road had been pegged out and leads into the piece or parcel of land claimed by the Defendant herein, Exhibit 'S 17' itself is addressed only to

MOHAMED PA-MOMOH FOFANAH, the Solicitor herein and Counsel for the Defendant herein. This Court finds no evidence that Exhibit 'S 17' was served on the Plaintiff herein. This Court finds though that from the testimony of DW3, ALEX MOININA BUREH, that before Exhibit 'S 17' was prepared for the signature of MR. DONALD JONES aforesaid, himself the said ALEX MOININA BUREH together with both parties herein visited the piece or parcel of land in question, the said testimony which was uncontroverted during cross examination of him by S. BAKARR MS. of Counsel for the Plaintiff herein. In this regard the submission of S. BAKARR MS., that Exhibit 'S 17' is self serving and has no probative value is clearly untenable. As regards the statement as contained in Exhibit 'S 17' that the documents forwarded have been carefully studied and that the information contained therein reveals that MR. SHOOTER, the Defendant herein is the lawful owner of the piece or parcel of land situated at Old Railway Line, Wilberforce Village, this Court holds the view that the same can only be an opinion expressed by MR. DONALD JONES the Assistant Director of Surveys in the Ministry of Surveys and Lands. In this regard, this Court upholds the submission of S. BAKARR MS. of Counsel for the Plaintiff herein, that it is beyond the jurisdiction of the Ministry of Surveys and Lands to determine the lawful owner of the piece or parcel of land at Old Railway Line, Wilberforce Village, its jurisdiction being limited to the identification of boundaries and access roads. This Court finds that this was precisely what the Ministry was undertaking to do when it embarked on the exercise leading to the issue of Exhibit 'S 17'. This Court holds the view that the subject of Exhibit 'S 17' itself, that being 'ENCROACHMENT INTO ACCESS ROAD SITUATED OFF ABERDEEN ROAD, WILBERFORCE, FREETOWN AND REQUEST FOR DEMARCATION AND CLEARING OF THE SAID ACCESS ROAD' is indicative of an existing access road encroachment of which is complained of by the Defendant herein against the Plaintiff, the said Defendant who has requested for its demarcation and its clearing which said request was made for and on behalf of the Defendant by his Solicitor MOHAMED PA-MOMOH FOFANAH by letter dated 8th January, 2015 as is contained in Exhibit 'S 17' aforesaid. This Court finds that it was as a result of the request aforesaid that a team comprising of staff from the Ministry of Surveys and Lands, visited the site and pegged out the access road, the same which was

communicated to both parties herein, that the said access road leads to the piece or parcel of land claimed by the Defendant herein. It is as a result of the above that this Court would find untenable, the submissions of S. BAKARR MS., that since the said Defendant claims to have been on his piece or parcel of land before 1974 and had the same delineated on a Survey Plan made in 1997, it is perplexing that a request for demarcation of an access road is only been made in 2015, the said access road requested to be demarcated being at off Aberdeen Road and not Old Railway Line. This Court holds the view that the insinuation gathered from the submission aforesaid is that, it was only in 2015 that a request was made for the access road aforesaid to come into existence and it was only after the said request was made that the Ministry of Surveys and Lands created the said access road at off Aberdeen Road.

This Court finds abundant evidence showing that, indeed the access road at off Aberdeen Road, referred to above was already in existence before 2015, contrary what is submitted above by S. BAKARR MS. of Counsel for the Plaintiff. Attached to Exhibit A²⁵⁻²⁶, is the Survey Plan dated 5th May, 2014 and numbered LS 3089/14, the same on which the piece or parcel of land claimed by the Plaintiff herein is delineated on. As stated above, on it is shown a 15 feet access road located at off Aberdeen Road moving in a South-Easterly direction, which this Court finds to be the same access road which the Defendant claims was encroached upon and which a request was made for this demarcation which was eventually pegged out by the Ministry of Surveys and Lands, as stated in Exhibit 'S 17' aforesaid. This Court holds the view that if the Survey Plan aforesaid was signed by the Director of Surveys and Lands on the 5th May, 2014 prior to which date a Licensed Surveyor delineated on the same piece or parcel of land on the 1st October, 2013 showing on it the access road off Aberdeen Road, aforesaid, it stands to reason then that the said access road referred to above was already in existence in 2013 long before 2015 when a request for its demarcation was made.

This Court holds the view that whereas the contention above regarding the existence of an access road, off Aberdeen Road, before 2015 has been resolved, the Plaintiff's contention that the access road into the piece or parcel of land claimed by him shown on Survey Plan dated 5th May, 2014 and numbered LS

FC089/14, as Aberdeen Road is that access road which the Defendant herein contend is shown on the same Survey Plan aforesaid at Off Aberdeen Road leading into the piece or parcel of land at Old Railway Line claimed by him so far remains unresolved in so far as the judgment herein is concerned.

Under cross examination of him by S. BAKARR MS., of Counsel for the Plaintiff, DWS MOININA testified that the piece or parcel of land claimed by the Defendant is located at Old Railway Line, Wilberforce Village aforesaid, but the access road into the piece or parcel of land starts at Aberdeen Road and runs off it, terminating into the said piece or parcel of land.

This Court holds the view that it was the visit to the Locus-in-quo done on Saturday the 17th June, 2017 that conclusively put to rest and had resolve the contention above. This Court found that on the ground and as shown on survey Plan dated 5th May, 2014 and numbered LS 5089/14 aforesaid, when moving in a South-Westerly direction, Aberdeen Road runs from a distance on the North-East and passes the access road off it. This Court found further that across the access road and opposite off Aberdeen Road on Aberdeen Road is another road called Hardington Street, so much so that if one were to move in a North-Westerly direction, along Aberdeen Road, from the piece or parcel of land claimed by the Plaintiff to the intersection at Hardington Street and the access road off Aberdeen Road, one would have to make almost a 90 degree turn into the access road off Aberdeen Road. This Court finds also that on the ground, if the Plaintiff herein intends accessing his piece or parcel of land as delineated on Survey Plan dated 5th May, 2014 from the North and at a distance on Aberdeen Road, he would have to move in a South-Westerly direction along Aberdeen Road and pass the intersection at Hardington Street and the access road, off Aberdeen Road and continue on Aberdeen Road along Plot 2 measuring 0.0525 acre in area of his piece or parcel of land at Aberdeen Road and continue moving in a South Westerly direction for a distance of 71.4 feet to his piece or parcel of land aforesaid. This Court finds also that on the ground, if the Plaintiff herein intends accessing his said piece or parcel of land aforesaid from Hardington Street, he would have to move in a South-Easterly direction along Hardington Street and make a turn of about 75 degrees on the intersection at Hardington Street and the access road off Aberdeen Road and

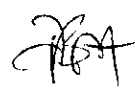
continue on Aberdeen Road along Plot 2 aforesaid moving in a South-Westerly direction for a distance of 71.4 feet to his piece or parcel of land aforesaid. This Court finds conclusively from the above that, from the intersection aforesaid, Aberdeen Road along which is Plot 2 measuring 0.0525 acre in area of the piece or parcel of land claimed by the Plaintiff and which leads to Plot 1 of the said piece or parcel of land at Old Railway Line claimed by the Plaintiff, is separate and distinct from the access road off Aberdeen Road, the same which leads into the piece or parcel of land at Old Railway Line claimed by the Defendant herein, the said access road off Aberdeen Road which is almost at a right angle to Aberdeen Road from the intersection aforesaid.

It is glaring from the above and the visit to the Locus-in-quo aforesaid that Aberdeen Road along which is plot 2 and leads into Plot 1 of the piece or parcel of land claimed by the Plaintiff shown on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 is not that access road which is shown on the same Survey Plan aforesaid at off Aberdeen Road leading into the piece or parcel of land at Old Railway Line, claimed by the Defendant herein. If this is the case, then it becomes puzzling as to the reason(s) why the Plaintiff herein should continue contending that Aberdeen Road from the North and at a distance when moving in a South-Westerly direction runs directly into the access road off Aberdeen Road into the piece or parcel of land at Aberdeen Road claimed by him. Again, this Court found a clear answer to this, when it visited the Locus-in-quo on Saturday the 17th June, 2017. When one moves in a South-Westerly direction on Aberdeen Road, this Court found that a few feet from the intersection at Hardington Street and the access road off Aberdeen Road, along Plot 2 of the piece or parcel of land claimed by the Plaintiff herein, there are permanent structures all around that area, so much so that if one moves about ten (10) to fifteen (15) feet into this Road from the intersection one would find himself inside the compound of some owner of a permanent structure. This Court found that this part of Aberdeen Road from the intersection aforesaid along Plot 2 and leading into Plot 1 of a piece or parcel of land claimed by the Plaintiff herein, has been completely blocked off so that one would be unable to access so much of Plot 2 and all of Plot 1 of the piece or parcel of land claimed by the Plaintiff together with an access road running

between Plot 1 and Plot 2 aforesaid between Beacon numbered B 1050/13 and Beacon numbered B 1061/13 as shown on Survey Plan dated 5th May, 2014 and numbered LS 3089/14.

This Court holds the view that the reason(s) why the Plaintiff herein is now attempting to merge Aberdeen Road into the access road off it, so that, that part of Aberdeen Road from the intersection aforesaid leading into Plot 1 along Plot 2 of the piece or parcel of land claimed by him, would no longer exist and which in fact no longer exists, Aberdeen Road from the North East when moving in a South-Westerly direction now merging into the access road off it making all Aberdeen Road, is because the said Plaintiff is unable to access the piece or parcel of land claimed by him aforesaid, through Aberdeen Road as shown on Survey Plan dated 5th May, 2014 and numbered LS 3089/14. This Court holds the view that merging Aberdeen Road into the access Road off it making all of it Aberdeen Road would entail the impossible task of physically moving the piece or parcel of land claimed by the Plaintiff herein as is shown on Survey plan dated 5th May, 2014 and numbered LS 3089/14 about ninety (90) degrees South-Easterly so that on the said Survey Plan, Plot 2 of the piece or parcel of land claimed by the Plaintiff would be on the left hand side of the 15 feet access road off Aberdeen Road when moving in a South-Easterly direction and so much of Plot 1 on the right hand side. This Court holds the view that a reconstructed Survey Plan like this would show as if so much of Plot 1 of the piece or parcel of land claimed by the Plaintiff is part of the piece or parcel of land claimed by the Defendant. The fact remains though, that unless these permanent structures erected about ten (10) to fifteen (15) feet into Aberdeen Road along Plot 2 of the piece or parcel of land claimed by the Plaintiff herein are pulled down, the said Plaintiff would forever be unable to access the piece or parcel of land claimed by him through Aberdeen Road, as shown on Survey Plan dated 5th May, 2014 and numbered LS 3089/14.

As has been stated above this Court finds that inextricably linked with the contention regarding the access into the party's respective pieces or parcels of land, is their respective location and determination of whether or not the respective pieces or parcels of land aforesaid are the same or separate and distinct from each other and or with one overlapping over the other to a limited extent.



This Court finds clearly from the testimonies adduced aforesaid from DW3, ALEX MOININA BUREH, DW4, ALLIAH JOSEPH SUNDIMA and PW3, JAMES MORLAI BANGURA, together with their respective composite plan showing the respective location of the party's respective pieces or parcels of land on Exhibits 'SS 11A 'R 11' and 'Q 106', the consistent findings are that the pieces or parcels of land situate lying and being at Aberdeen Road, Wilberforce aforesaid delineated on Survey Plan dated 5th May, 2014 and numbered LS 5089/14 being the piece or parcel of land claimed by the Plaintiff herein is separate and distinct from and does not overlap with the piece or parcel of land situate lying and being at Old Railway Line, Wilberforce village aforesaid, delineated on Survey Plan dated 22nd August, 1996 numbered LS 913/96, being the piece or parcel of land claimed by the Defendant herein. This notwithstanding, it cannot be disputed that, as the evidence adduced as above reveals, if the Plaintiff herein contends that the access into the piece or parcel of land claimed by him is that access which the Defendant herein contends lead into his piece or parcel of land, there is bound to be a dispute as to the location of their respective pieces or parcels of land. This Court holds the view that the fact that it has, as above, been resolved that the access into the piece or parcel of land claimed by the Plaintiff is not the same as the access into the piece or parcel of land claimed by the Defendant, does not make the issue of determining the respective location of the pieces or parcels of land aforesaid, go away. This Court holds the view that, in the same way as it was the visit to the locus-in-quo, done on Saturday the 17th June, 2017, that conclusively put to rest and had resolved the contention regarding the access into the party's respective pieces or parcels of land, so also is the fact that it was the results obtained from the same visit to the locus-in-quo that conclusively put to rest and had resolved the issue of the location of the respective pieces or parcels of land claimed by the parties herein.

At the locus-in-quo, the Court was shown the disputed area of the party's respective pieces or parcels of land claimed by them. Either party to the action herein had surveyors at the locus-in-quo representing them, PW3, JAMES MORLAI BANGURA representing the Plaintiff herein, DW3, ALEX MOININA BUREH and AUGUSTINE SUNDIMA ALLIAH representing the Defendant

herein. This Court directed that Global Positioning System (GPS) coordinate points be taken at various locations outside and inside of the disputed area of the party's respective pieces or parcels of land claimed by them, the said GPS coordinate points which will be plotted jointly by the surveyors aforesaid on a global mapper produced to show the respective location of the party's respective pieces or parcels of land claimed by them. By reason of the fact every part of this globe do have a GPS co-ordinate point and that there can be no two(2) GPS co-ordinate point for any particular point on this globe, together with the fact that if the GPS coordinate point taken at various locations aforesaid are plotted on a global mapper jointly, the same results will be produced by all, it was agreed that a joint report be submitted by the party's respective surveyors aforesaid. Unfortunately the party's respective surveyors failed to produce a joint report as agreed, the surveyors of the Defendants aforesaid accusing the Surveyor of the plaintiff of non cooperation in plotting the GPS co-ordinate points taken from various locations aforesaid on a global mapper. Eventually the party's respective surveyors presented to this Court two distinct reports.

This Court finds that, the testimonies presented by DW5, ALEX MOININA BUREH, DW4, ALLIAH JOSEPH SUNDIMA, the surveyors of the Defendant and DW3, JAMES MORIAI BANGURA together with their respective composite plans showing the respective locations of the party's respective pieces of parcels of land on Exhibits 'SS 11A', 'K 11' and 'Q 106', the result of the exercise done at the locus-in-quo also consistently show that the party's respective pieces or parcels of land are separate and distinct, as shown on the composite plan found at page 61 of the records herein attached to the report dated 6th November, 2017, found on pages 59 and 60 of the records herein, submitted by DW5, ALEX MOININA BUREH and AUGUSTINE SUNDIMA ALLIAH, the surveyors representing the Defendant herein at the locus-in-quo produced after the GPS coordinate points taken from various locations on the disputed area of the party's respective pieces or parcels of land had been plotted on a global mapper, the piece or parcel of land at Old Railway Line Wilberforce Village aforesaid, claimed by the Defendant herein is edged RED, the piece or parcel of land enclosing a portion of the piece or parcels of land at Aberdeen Road, Wilberforce aforesaid, claimed by the Plaintiff is edged MAUVE and the

disputed area of the party's respective pieces or parcels of land is edged GREEN, the report which concludes that the disputed area aforesaid falls within the piece or parcels of land at Old Railway Line, Wilberforce Village aforesaid, claimed by the Defendant and outside of the piece or parcel of land at Aberdeen Road Wilberforce claimed by the Plaintiff, their respective pieces or parcels of land aforesaid located far apart from each other. On the other hand as shown on the composite plan found at page 69 of the records herein attached to the report dated 3rd July, 2017 found on pages 62 to 68 of the records herein submitted by PW3, JAMES MORLAI BANGURA, the surveyor representing the Plaintiff, produced after the GPS coordinate points taken from various locations on the disputed area of the parties respective piece or parcels of land had been allegedly plotted on a global mapper, the piece or parcel of land at Old Railway Line, Wilberforce Village aforesaid, claimed by the Defendant herein is edged YELLOW, the piece or parcel of land claimed enclosing a portion of the piece or parcel of land at Aberdeen Road, Wilberforce Village aforesaid, claimed by the Plaintiff is edged RED and the piece or parcel of land at Aberdeen Road, Wilberforce Village aforesaid, claimed by the Plaintiff, itself is edged GREEN, the report itself which observed that the piece or parcel of land at Old Railway Line Wilberforce Village aforesaid, claimed by the Defendant and edged YELLOW overlaps to a large extent with the piece or parcel of land enclosing a portion of the piece or parcel of land at Aberdeen Road, Wilberforce Village aforesaid, claimed by the Plaintiff, edged RED and overlaps to a limited extent with Plot 1 of the piece or parcel of land at Aberdeen Road, Wilberforce Village aforesaid, claimed by the Plaintiff edged GREEN.

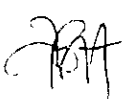
This Court finds that from the above, whereas the composite plan submitted by the surveyors representing the Defendant herein at the locus-in-quo produced after the GPS coordinate points taken from various locations on the disputed area of the party's respective piece or parcels of land had been plotted on a global mapper is consistent with the testimonies presented by DW3, ALEX MOININA BUREH, DW4 ALLIAH JOSEPH SUNDIMA, the expert witnesses of the Defendant and PW3, JAMES MORLAI BANGURA, the expert witness of the plaintiff together with their respective composite plans showing the respective locations of the party's respective pieces or parcels of land on Exhibits 'SS 11A',

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R 11' and 'Q 106' all of which show that the party's respective pieces or parcels of land are separate and distinct, the composite plan submitted by the surveyor representing the Plaintiff herein at the locus-in-quo, produced after GPS coordinate points taken from various locations on the disputed area of the party's respective pieces or parcels of land had been allegedly plotted on a global mapper is completely inconsistent with the above and in particular inconsistent with Exhibits 'SS 11A' and 'R 11' including his own composite plan tendered in evidence as Exhibit 'Q 106' aforesaid produced before the visit to the locus-in-quo, the said composite plan which was produced after the visit to the locus-in-quo, showing that the piece or parcel of land claimed by the Defendant herein overlaps with Plot 1 of the piece or parcel of land claimed by the Plaintiff herein.

As stated above, by reason of the fact that every part of this globe do have a GPS co-ordinate point and that there can be no two GPS co-ordinate points for any particular point on this globe together with the fact that if the GPS Co-ordinate points taken at various locations aforesaid are plotted on Survey Plan dated 5th May, 2014 and numbered LS 3089/14 on a global mapper jointly, the same results will be produced by all, the fact that the party's respective surveyors representing them could not produce a joint report with either of them producing results which are inconsistent with each other is conclusive proof that the result produced by one of them is completely incorrect. In order for this Court to determine which of them is incorrect, it ordered each to testify and present their respective report and be cross examined by Counsel for the opposing side.

PWS, JAMES MORLAI BANGURA the Surveyor representing the Plaintiff at the locus-in-quo testified that the Surveyors who had survey plan done when the predecessors-in-title to the Plaintiff herein, in respect of the piece or parcel of land claimed by him when title was being passed, wrongly co-ordinated their pieces or parcels of land. He testified that as a result he had to use another Survey Plan numbered LS 203/71, which said survey plan is found at page 68 of the records herein, to co-ordinate that piece or parcel of land enclosing a portion of the piece or parcel of land at Aberdeen Road, Wilberforce claimed by the Plaintiff herein and edged RED as shown on the composite plan submitted by him and found at page 69 of the records herein and to give the correct values



to the co-ordinates which were wrongly plotted. He testified that the points coloured white with red crossings shown on the composite plan submitted by him and found at page 69 of the records herein are the GPS co-ordinate points taken at the locus-in-quo showing the area in dispute and that the points coloured red and marked 6 and 7 shown on the composite plan aforesaid are the GPS co-ordinate points taken at the locus-in-quo where the junction of Aberdeen Road links to the access road to the area in dispute.

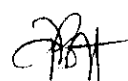
AUGUSTINE SUNDIMA ALLIAH, the Surveyor representing the Defendant at the locus-in-quo testified that from the composite plan submitted by PW5 JAMES MORLAI BANGURA and found at page 69 of the records herein, the piece or parcel of land claimed by the Defendant herein edged YELLOW is at the correct location but that the piece or parcel of land claimed by the Plaintiff herein edged GREEN is not at its correct location. He testified that on the composite plan submitted by PW5 JAMES MORLAI BANGURA, the piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff edged RED and the piece or parcel of land claimed by the Plaintiff itself edged GREEN should be further at the right hand side of and apart from the piece or parcel of land claimed by the Defendant edged YELLOW and closer to the GPS co-ordinate points coloured red and marked 6 and 7, taken at the locus-in-quo, where the junction of Aberdeen Road links to the access road to the area in dispute. He testified that from the composite plan submitted by PW5, JAMES MORLAI BANGURA aforesaid, the GPS co-ordinate points coloured white with red crossings showing the area in dispute are not placed in the correct positions where they were taken. He testified that they should be at the left hand side and outside of the piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff edged RED and the piece or parcel of land claimed by the Plaintiff itself edged GREEN.

This Court finds that when the composite plan submitted by PW3 JAMES MORLAI BANGURA and found at page 69 of the records herein is compared with the composite plan submitted by DW3 ALEX MOININA BUREH and AUGUSTINE SUNDIMA ALLIAH and found at page 61 of the records herein, it is seen, that the GPS coordinate points taken at the locus-in-quo were taken at exactly the location, shown on the composite plan submitted by DW3, ALEX

MOONINA BUREH and AUGUSTINE SUNDIMA ALLIAH, as the area edged GREEN being the contested area, the pink markings taken outside the piece or parcel of land claimed by the Defendant and the blue markings taken at Aberdeen Road Junction, the said location being outside of and on the left of the piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff edged MAUVE. It cannot be disputed that these same co-ordinate points taken at the locus-in-quo are the ones shown on the composite plan submitted by PW3, JAMES MORLAI BANGURA, being the points coloured white with red crossing as the area in dispute and the points coloured red and marked 6 and 7 where the junction of Aberdeen Road links to the access road to the area in dispute. This Court finds however that in sharp contrast to the exact location where the GPS coordinate points were taken when it visited the locus-in-quo on Saturday the 17th June, 2017 that being outside of and on the left of the piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff edged MAUVE, the composite plan submitted by PW3, JAMES MORLAI BANGURA shows the GPS co-ordinate points taken at the locus-in-quo, particularly the points coloured white and red crossing as the area in dispute were taken within the piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff edged RED and the piece or parcel of land claimed by the Plaintiff edged GREEN. By reason of the fact that the GPS co-ordinate points taken at the locus-in-quo aforesaid were not taken at the points where the composite plan submitted by PW3, JAMES MORLAI BANGURA aforesaid shows they were taken in relation to the party's respective pieces or parcels of land aforesaid, this Court finds that the location of the piece or parcel of land claimed by the Plaintiff edged RED and the piece or parcel of land claimed by the Plaintiff edged GREEN as shown on the composite plan submitted by PW3, JAMES MORLAI BANGURA has been shifted leftwards from its correct location and apart from the piece or parcel of land claimed by the Defendant edged YELLOW into the said piece or parcel of land making it look on the said composite plan as if the parties respective pieces or parcels of land overlap.

The findings of this Court above was confirmed by the testimony of AUGUSTINE SUNDIMA ALLIAH the Surveyor representing the Defendant at

the locus-in-quo, that from the composite plan submitted by PW3, JAMES MORLAI BANGURA, the correct location of the piece or parcel of land enclosing the portion of the piece or parcel of land claimed by the Plaintiff edged RED and the piece or parcel of land claimed by the Plaintiff edged GREEN as shown on the composite plan aforesaid has been shifted from the right hand side and apart from the piece or parcel of land claimed by the Defendant to the left hand side and into the said piece or parcels of land. The testimony of AUGUSTINE SUNDIMA ALLIAH aforesaid was corroborated by the testimony of DW3 ALEX MOININA BUREH the other surveyor representing the Defendant at the locus-in-quo who testified that he signed the report submitted by himself and AUGUSTINE SUNDIMA ALLIAH dated 6th November 2017 and found pages 59 and 60 of the records herein. He testified that PW3, JAMES MORLAI BANGURA, the Surveyor representing the plaintiff at the locus-in-quo refused to have produced a joint report by all the Surveyors representing the parties herein at the Locus-in-quo, by reason that they all could not agree that PW3, JAMES MAORLAI BANGURA the Surveyor representing the plaintiff at the locus-in-quo, introduce additional documents needed for the investigations regarding the dispute herein, the said additional document which this Court finds to be the Survey Plan numbered LS 213/71 found at page 68 of the records herein which PW3, JAMES MORLAI BANGURA said he had to use to co-ordinate that piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the plaintiff herein and to give the correct values to the co-ordinates which were wrongly plotted. DW3, ALEX MOININA BUREH testified that PW3 JAMES MORLAI BANGURA eventually had his own composite plan done which he identified as that found at page 69 of the records herein attached to the report dated 3rd July, 2017 found at pages 62 to 68 of the records herein. He testified that in his opinion, of the composite plan of PW3, JAMES MORLAI BANGURA aforesaid, the location of the piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff edged RED and the piece or parcel of land claimed by the Plaintiff herein itself edged GREEN has been shifted leftwards. In answer to questions put to him by S. BAKARR MS of Counsel for the Plaintiff, DW3 ALEX MOININA BUREH testified that he does not know why the location of the piece or parcel of land enclosing a portion of the piece or parcel



of land claimed by the Plaintiff edged RED and the piece or parcel of land claimed by the plaintiff itself edged GREEN was shifted. He testified that all that he knows is that the correct location of the piece or parcel of land aforesaid are not where it is, as shown on the composite plan done by PW3, JAMES MORLAI BANGURA found at page 69 of the records herein.

The findings of this Court aforesaid are that, from the composite plan done by PW3 JAMES MORLAI BANGURA found at page 69 of the records herein, the location of the piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff edged RED and the piece or parcel of land claimed by the Plaintiff edged GREEN has been shifted leftwards from its correct location and apart from the piece or parcel of land claimed by the Defendant edged YELLOW into the said piece or parcel of land making it look on the said composite plan as if the party's respective piece or parcel of land overlap. As stated above, the said findings of this Court was confirmed by the testimony of AUGUSTINE SUNDIMA ALLIAH, the Surveyor representing the Defendant at the locus-in-quo which said testimony was corroborated by the testimony of DW2, ALEX MOININA BUREH, the other Surveyor representing the Defendant at the locus-in-quo, the testimonies aforesaid which were not in anyway impeached by S. BAKARR MS of Counsel for the Plaintiff during questions put by her to both AUGUSTINE SUNDIMA ALLIAH and DW3, ALEX MOININA BUREH, making the findings of this Court aforesaid uncontroverted.

On the other hand, in answering question put to him by M.P. FOFANAH ESQ of Counsel for the Defendant PW3, JAMES MORLAI BANGURA the Surveyor representing the Plaintiff at the locus-in-quo agreed that Exhibit 'Q 106' aforesaid is the composite plan prepared by him before the visit to the locus-in-quo. He agreed further that Exhibit 'Q 106' aforesaid is completely different from the composite plan which he did after the visit to the locus-in-quo found at page 69 of the records aforesaid, testifying that the reasons for this was that Exhibit 'Q 106' aforesaid was done using the wrong co-ordinates. What this Court finds inconceivable is, how is it that when those so called wrong co-ordinates were used initially by the party's respective Surveyors before the visit to the locus-in-quo, DW3, ALEX MOININA BUREH and DW4, ALLIAH JOSEPH SUNDIMA produced a composite plan, the same being Exhibits 'SS 11A'

and 'R 11' precisely similar to Exhibit 'Q106' aforesaid but that when AUGUSTINE SUNDIMA ALLIAH and the said DW3, ALEX MOINIMA BUREH used the same so called wrong co-ordinates, the composite plan found on page 61 of the records herein was produced similar to Exhibits 'SS 13A' and 'R 11' and 'Q 106' but completely different from the composite plan produced by PW3, JAMES MORLAI BANGURA found on page 69 of the records herein. In other words, PW3, JAMES MORLAI BANGURA has not in any way shown how he came to the conclusion that Exhibit 'Q 106' aforesaid was done using wrong co-ordinates. This Court holds the view that the testimony of PW3, JAMES MORLAI BANGURA that in order for him to produce the composite plan found at page 69 of the records herein he had to use another survey plan numbered LS 213/71 found at page 68 of the records herein to co-ordinate that piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff and edged RED as shown on the composite plan submitted by him and found at page 69 of the records herein and to give the correct values to the co-ordinates which were wrongly plotted is complete rhetoric. Clearly and in addition to the fact that PW3, JAMES MORLAI BANGURA has not in any way shown how he come to the conclusion that Exhibit 'Q 106' aforesaid was done using the wrong co-ordinates he has further failed to show how Survey Plan numbered LS 213/71 aforesaid was used to co-ordinate that piece or parcel of land enclosing a portion of the piece or parcel of land claimed by the Plaintiff and edged RED and to give the correct values to the co-ordinates which were allegedly wrongly plotted aforesaid.

From the entire evidence outlined above, this Court finds undoubtedly and conclusively that the piece or parcel of land situate lying and being at Aberdeen Road, Wilberforce, Freetown in the Western Area of Sierra Leone delineated on the Survey Plan dated 5th May, 2014 and numbered LS 5089/14 measuring for Plot 1, 0.2439 acre in area and for Plot 2, 0.0525 acre in area, the same which the Plaintiff herein claims to be the fee simple owners of, by virtue of a Deed of Conveyance dated 9th July, 2013 and registered as No. 1715/2014 at page 115 in volume 752 of the Book of Conveyances kept in the office of the Registrar General in Freetown tendered in evidence and marked Exhibit A⁽¹³⁻²³⁾, is completely different, separate, distinct and far apart from the piece or parcel of

land situate lying and being at Old Railway Line, Wilberforce, Freetown in the Western Area of Sierra Leone, delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96, measuring 0.8119 acre in area the same which the Defendant herein claims to be the owner of, having established his possessory title to the same by Statutory Declaration dated 28th January, 1997 and registered as No. 17/97 in Volume 42 at page 9 of the Book of Statutory Declaration kept at the office of the Registrar General in Freetown, tendered in evidence and marked Exhibit SS 27-31.

This Court finds no evidence that the Defendant by himself, his servants, agents, or workmen sometime in June, 2014, trespassed on the place or parcel of land at Aberdeen Road, Wilberforce Village aforesaid, claimed by the Plaintiff herein to be fee simple owner of, finds no evidence that the Defendant herein maliciously, destroyed a corrugated iron sheet structure which the said Plaintiff had erected on the said the piece or parcel of land, finds no evidence that the Defendant has deliberately failed and or refused to desist from his acts of trespass alleged aforesaid and has continued same, finds no evidence that the Defendant herein, threatens and intends unless restrained, to continue his acts of trespass alleged aforesaid on the piece or parcel of land aforesaid claimed by the Plaintiff herein and cause inconvenience to him and finds no evidence that the Defendant herein has caused the plaintiff to be deprived of the use and enjoyment of the piece or parcel of land aforesaid claimed by him.

It is abundantly clear and obvious that the subject matter of the action herein is the piece or parcel of land at Old Railway Line, Wilberforce Village aforesaid, delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96 claimed by the Defendant herein. This Court holds the view that what the dispute herein seems to be is whether the Plaintiff herein is entitled to ownership and possession of the piece or parcel of land at Old Railway Line, Wilberforce aforesaid claimed by the Defendant which said piece or parcel of land is the Plaintiff's piece or parcel of land, located at Aberdeen Road, Wilberforce aforesaid. Accordingly, consideration of the Plaintiff's claim to a declaration that he is the fee simple owner of all that the piece or parcel of land situate lying and being at Aberdeen Road, Wilberforce Village aforesaid and delineated on Survey Plan dated 5th May, 2014 and numbered LS 3089/14

measuring for plot 1, 0.2439 acre in area and for Plot 2, 0.525 acre in area is completely unnecessary. Having said that the subject matter of the action herein is the piece or parcel of land at Old Railway Line, Wilberforce aforesaid delimited on Survey Plan dated 22nd August, 1996 and numbered LS 913/96 claim by the Defendant herein, it is the said Defendant's claim for a declaration that he is the fee simple owner of and entitled to possession of the said the piece or parcel of land which will be considered. In a long line of cases reviewed by our Courts from the case between MACAULEY and STAFFORD & OTHERS Civ. App. No. 11/73 in the Supreme Court of Sierra Leone to the leading authority being the case between SEYMOUR WILSON and MUSA ABESS Civ. App. No. 5/79 in the Supreme Court of Sierra Leone, it has been established that in an action for a declaration of title to land, the Plaintiff must succeed on the strength of his title and not on the weakness of the Defendant's title. As stated by WEBBER CJ in the case between KODOLINYE and ODU (1935) 5 WACA 356 at pages 357 to 358,

'The onus lies on the Plaintiff to satisfy the Court that he is entitled on the evidence brought by him, to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the Defendant's case. If this onus is not discharged, the weakness of the Defendant's case will not help him'.

This Court holds the view that in line with the principle enumerated above, that in an action for the Declaration of title to land, the Plaintiff must succeed on the strength of his title and not on the weakness of the Defendant's title, it now questions the need to evaluate the entire evidence adduced by PW2, HAFSATU YATTA BAH (nee PESIMA) a predecessor-in-title to the piece or parcel of land at Aberdeen Road, Wilberforce claimed by the Plaintiff herein. This Court finds that the testimony of PW2, HAFSATU YATTA BAH (nee PSSIMA) adduced herein in favour of the Plaintiff herein is of no value to the determination of the matter herein as all what such evidence seeks to do is establish the strength of the Plaintiff's title to the piece or parcel of land at Aberdeen Road, Wilberforce Village aforesaid, a claim for the Declaration of which will not be considered, as stated above. Clearly such evidence does not in any way seek to establish the strength of the Plaintiff's title to the piece or parcel of land at Old

Exhibit 'SS²⁷⁻³¹'. This Court finds that from Exhibit 'SS²⁷⁻³¹' aforesaid, the title of the Defendant herein to the piece or parcel of land aforesaid dates back to the 28th January, 1997 when evidence of his possessory title to the said piece or parcel of land was recorded. It follows that on the date of the institution of the action herein on the 19th March, 2015, eighteen (18) years have elapsed since 28th January, 1997 when the Defendant herein established his possessory title to the piece or parcel of land aforesaid which is the subject matter of the action herein. Accordingly this Court finds that the supposed right if at all of any person including the Plaintiff herein who as is stated above seems to be claiming ownership of and possession of the piece or parcel of land aforesaid which said piece or parcel of land he claimed is located at Aberdeen Road, Wilberforce aforesaid. In this regard, this Court holds the view that the Defendant herein is entitled to the Declaration of title sought to the piece or parcel of land at Old Railway Line, Wilberforce aforesaid delineated on Survey Plan dated 22nd August, 1996 and numbered LS 915/96.

As regards the Defendant's claim against the Plaintiff herein for Damages for Trespass, the law as stated by **RENNER THOMAS CJ** in the case between **SORIE TARAWALLY** and **SORIE KOROMA** cited above is that, all the Plaintiff and in this case the Defendant herein has to prove is a better right to possession than the Defendant and in this case the Plaintiff 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 Defendant herein has proved that he has a better title to the piece or parcel of land situate at Old Railway Line, subject matter of the action herein against the Plaintiff who have not shown any title to the same. In consequence and from the testimony of **DWY, SYDNEY SHOOTER**, the Defendant herein that the Plaintiff herein has been trespassing on his piece or parcel of land at Old Railway Line, Wilberforce aforesaid, the said Defendant is entitled to Damages for Trespass, though the same cannot now be accessed by reason of the lack of the evidence in that regard. The Defendant 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 Defendant herein has proved his case and gives Judgment in his favour as follows:

1. It is hereby **DECLARED** that **SYDNEY SHOOTER**, the Defendant herein is the fee simple owner of and entitled to ownership and possession of all that piece or parcel of land situate lying and being at Old Railway Line, Wilberforce Village, Freetown in Western Area of Sierra Leone, more particularly delineated on Survey Plan dated 22nd August, 1996 and numbered LS 913/96 enclosing an area of 0.8119 acre, by virtue of the Statutory Declaration of **SYDNEY SHOOTER**, **PERCY JOHNSON** and **ADJAYE THOMPSON** dated 28th January, 1997 and registered as No. 17/97 in Volume 42 at Page 9 of the Book of Statutory Declarations kept in the office of the Registrar General in Freetown.
2. That the Defendant herein, **RECOVERS** from the Plaintiff herein, Damages for Trespass, the same to be assessed.
3. That a Perpetual Injunction, restraining the Plaintiff herein whether by himself, his servants or agents or howsoever called from entering upon and remaining on or interfering with the Defendant's piece or parcel at Old Railway Line, Wilberforce Village, Freetown, aforesaid, is hereby **GRANTED**.
4. That the Costs of the action herein, the same which is to be taxed, if not agreed upon, be **BORNE** by the Plaintiff herein.

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 HON. MR. JUSTICE ALLAN B. HALLOWAY JSC
 Delivered this 12th day of July 2019