IN THE SUPREME COURT OF SIERRA LEONE

S.C. CIV.APP 7/2004

BETWEEN: SORIE TARAWALLI - APPELLANT

A N D

SORIE KOROMA - RESPONDENT
(As Administrator of the Estate of Sorie Mansaray)

CORAM:

HON. JUSTICE DR. ADE RENNER-THOMAS	-	**CHIEF JUSTICE**
HON. MR. JUSTICE E.C. THOMPSON DAVIS	-	**J.S.C.**
HON. MRS. JUSTICE V.A.D. WRIGHT	-	**J.S.C.**
HON. MR. JUSTICE MR. M.E.T. THOMPSON	-	**J.S.C.**
HON. MS. JUSTICE S. KOROMA	-	**J.A.**

AMADU KOROMA ESQ. FOR THE APPELLANT
MRS. J. KING FOR THE RESPONDENT

JUDGMENT DELIVERED THE 16th DAY OF MARCH, 2007.

RENNER-THOMAS, C.J. This is an appeal against the judgment of the Court of Appeal dated the 21st day of April 2004 in favour of Sorie Mansaray, the Plaintiff in the High Court. The said Plaintiff died before the determination of this Appeal and was ordered to be substituted by the Respondent herein. Thus all references to the Respondent herein include, where the context so permits one to the Plaintiff in the High Court. By the said judgment the Court of Appeal set aside that of the trial judge in favour of the Defendant (hereinafter referred to as "the Appellant") dismissing the claim of the Respondent and made the following orders:

"1.A declaration that the title to all that piece or parcel of land and hereditaments situate lying and being at 43 Will Street, Freetown in the Western Area of Sierra Leone vests in the Plaintiff

2. Damages for trespassing onto the plaintiff's land at 43 Will Street, Freetown in the sum of Le69,000.00 be paid to the plaintiff by the defendant.

3. An injunction restraining the defendant, by himself, his servants, agents, or howsoever otherwise from continuing their trespass onto the said land by remaining thereon or in any way dealing with the said land.

4. Costs of the proceedings in the court below and this appeal be costs to the plaintiff/appellant to be taxed if not agreed."

The Respondent's claim was for the following reliefs contained on the statement of claim:-

(1) A declaration of title of all that piece of parcel of land and hereditaments situate lying and being at 43 Will Street, Freetown in the Western Area of the Republic of Sierra Leone.

(2) Damages for wrongfully entering the plaintiff's land at 43 Will Street, Freetown, destroying property beacons and his fruit trees.

(3) An injunction restraining the said defendant, by himself, his servants., agents or howsoever otherwise from continuing their trespass upon the said land, by remaining thereon or in any way dealing with the said property.

For reasons which will become more apparent later in this judgment it is important to set out *in extenso* the particulars of the Respondent's claim as indorsed in the Writ of Summons and the defence filed by the Appellant herein in answer to the Respondent's claim.

The particulars of claim are as follows:-

"The Plaintiff is and was at all material times the owner and entitled to possession of a piece or parcel of land and hereitaments situate lying and being at 43 Will Street Freetown in the Western Area of the Republic of Sierra Leone a description whereof is as follows:-

"Starting from beacon marked FC591/80 on an bearing of 119°24' for a distance of 92.96 feet to beacon marked FC592/80 on a bearing of 221°01' for a distance of 147.0 feet to beacon marked FC593/80 on a bearing of 312°15' for a distance of 49.0 feet to beacon marked FC942/79 on a bearing of 22°43' for a distance of 134.0 feet to beacon marked FC591/80 which is the point of commencement thus enclosing

an area of 0.2247 acre or thereabout as is delineated on the Survey Plan numbered L.S. 694/80 dated 30th April 1980".

(1) The Plaintiff became seised of this said piece of parcel of land by means of a Statutory Declaration dated 17th December 1982 by the Plaintiff supported by Sorie Turay and Santigie Sesay registered as No.222 of page 30 in volume 22 of the Books of Statutory Declaration kept in the office of the Administrator and Registrar General Freetown.

(2) The predecessor in title of the plaintiff being his father Langima Mansaray (Deceased) had been in full, free and undisturbed possession of the said land for a considerable period of time preceding the date of the said Statutory Declaration as is evidenced therein.

(3) On or about May 1992 the defendant and his agents wrongfully and without any proper or lawful right or title entered the plaintiff's land removed plaintiff's beacon and destroyed his fruit trees. Thereafter the defendant set himself up as owner of the said property to the detriment of the plaintiff and his heirs.

(4) By reasons of the matters aforesaid the plaintiff has been subjected to humiliation and has suffered great mental anguish and stress and he has been deprived of the use and enjoyment of part of his said land and has suffered loss and damage.

PARTICULARS OF SPECIAL DAMAGE

(a) Two beacons destroyed at 2,500.00 each	=	*Le5000.00*
(b) Three pear trees at Le6,000.00 each	=	*Le18,000.00*
(c) Four Guinea Mango trees at Le10,000.00 each	=	*Le40,000.00*
(d) Banana Trees destroyed	=	*Le6,000.00*
		Le69,000.00

(5) Despite repeated requests and demands by the plaintiff and his Solicitor to the Defendant to vacate the plaintiffs land he has still failed refused or neglected to do so and threatens and intends unless restrained by an injunction from this Honourable Court to continue in occupation of the said land and to trespass thereon."

The defence filed on behalf of the Appellant stated as follows:-

"The Defendant cannot admit or deny paragraphs 1,2, and 3 of the particulars of claim but will aver that the Will Street to which the same relate is not the same place or Street as "Off Morgan Street".

(1) The Defendant as to paragraph 4 of the particulars of claim will aver that he is the owner of a piece of parcel of land, situate, lying and being OFF MORGAN STREET, Freetown, by virtue of a conveyance of sale dated 17th January, 1989, registered as No.71, at Page 99 in Volume 422 in the Book of Conveyances kept in the Office of the Registrar-General in Freetown, bounded

(2) The Defendant will further aver as to paragraph 4 of the particulars of claim that neither the Defendant not his agents did the several acts complained of on the Plaintiff's land.

(3) The Defendant as to paragraph 5 of the particulars of claim will aver that the Defendant by his Solicitor fixed appointments on at least 2 occasions with the Plaintiff through his Solicitor to visit both the Plaintiff's land and the Defendant's land to ascertain any encroachment if any with the assistance of Surveyor but that the plaintiff failed to turn up as arranged. Further the Defendant will aver that if the plaintiff suffered as alleged in paragraph 5 of the particulars of claim, he the Defendant is not responsible or in anyway liable for same.

(4) As to paragraph 6 of the particulars of claim, the Defendant repeats paragraph 4 of this defence.

(5) Save as is hereinbefore specifically admitted, the Defendant denies each and every allegations of fact as if the same were set forth and denied seriatim".

A reply was filed on behalf of the Respondent in the following terms:-

"(1) Save that the Plaintiff admits that "Will Street" is not the same as "Off Morgan Street", the Plaintiff denies paragraphs one (1) and two (2) of the Defence herein and repeats that he is the owner of the land and premises situate lying and being at

Will Street and numbered 43 Will Street for Municipal purposes".

(2) Paragraph three (3) and four (4) of the said Defence is categorically denied, the contents thereof being false, and the Plaintiff avers that locus was not visited by the Solicitors aforesaid because the Defendant failed to turn up on the appointed day as he had taken a Surveyor to the said land on the previous day.

(3) Save as is hereinbefore specifically admitted, the Plaintiff joins issue with the Defendant on his defence".

Based on the pleadings as set out above the Appellant, in my view, was not resisting the claim of the Respondent for a declaration that he was the owner of the piece or parcel of land described in paragraph (1) of the particulars of claim.

I must hasten to state however that notwithstanding the fact that the Appellant did not resist the Respondent's claim for such a declaration the Respondent must satisfy the Court that he is entitled to such a declaration before it could be properly made.

In giving judgment in favour of the Appellant the learned trial judge found as a fact that the Respondent had failed to establish with any degree of certainty that the land the subject-matter of the Statutory Declaration relied on by the Respondent as proof of his title was indeed the same land that was allegedly being trespassed on by the Appellant. He went to state that this view was buttressed by the evidence of PW3, DW2, and DW3 to the effect that the two pieces of land were separate and distinct.

The learned trial judge concluded as follows:-

"It seems clear to me from the evidence of the aforementioned witnesses that two completely different parcels of land are involved. I am inclined to believe the evidence of these three witnesses. They impressed me as witnesses of truth. Moreover, DW3 is a Staff Surveyor attached to the Ministry of Lands and Housing. I would regard him as an independent witness.

> *I find as a fact that the defendant is and was at all material times of this act the fee simple owner [sic] and in possession of the entire land he occupies". [emphasis mine].*

When the matter came before the Court of Appeal that Court did not expressly upset the findings of the learned trial judge referred to above as to the location of the Respondent's land relative to that of the Appellant.

Indeed, Muria J.A. (as he then was) in delivering the reasons for the Judgment of the Court of Appeal on the 21st day of April 2004 had this to say:-

> *"The plaintiff claims title to his land, and which is not disputed by the defendant. In his defence the defendant neither admitted nor denied the plaintiff's claim. He simply relies on his claim of title to his land. The plaintiff's land is at 43 Will Street while the defendant's land is off Morgan Street. They are two separate lands, and are about 150 feet apart".*

He continued:-

> *"As to plaintiff's claim for declaration of title, the Court finds that the trial Judge erred in failing to make the declaration as claimed. The evidence puts it abundantly clear that the plaintiff's title to his land is incontrovertible. Exhibit A, the certified copy of which is Exhibit B, (Statutory Declaration) has never been challenged at all".*

With the greatest respect to the learned Justice of Appeal it is not sufficient for a plaintiff's claim for a declaration of title to a piece of land to be supported by uncontroverted evidence *simpliciter* to entitle that plaintiff to such a declaration.

In a long line of cases reviewed by this Court in Macauley v. Stafford and Ors (S.C Civ App No.1/73, judgment delivered the 13/7/76, unreported) and in the leading authority of Seymour Wilson v. Musa Abbess (Sup Ct Civ App 5/79, judgment delivered 17/6/81, unreported) it has been established that in action for a declaration of title the plaintiff must succeed on the strength of his title and not on the weakness of the defendant's title.

In other words, as stated by Webber C.J. in delivering the Judgment of the West African Court of Appeal in Kodolinye v. Odu ([1935] 5 WACA 336 at p. 337-338)

> *"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 and the proper judgment is for the defendant. Such a judgment decrees no title to the defendant, he not having sought the declaration".*

This passage was cited with approval by Livesey Luke C.J. in the Seymour Wilson case (supra).

What then must a plaintiff who claims or a defendant who counterclaims for a declaration of title prove to be entitled to same?

In this regard, a distinction should be made between a documentary or paper title and a possessory title. In the Western Area of Sierra Leone, which used to be a Crown Colony before combining with the Protectorate of Sierra Leone to become the unitary State of Sierra Leone at independence in 1961, in theory at least, the absolute or paramount title to all land was originally vested in the Crown (in the same way as in England, the largest estate a person deriving title from the Crown can hold being the fee simple). After independence such absolute title was deemed vested in the State as the successor in title of the Crown. According to the State (formerly Crown) Lands Act, No. 19 of 1960, all grants of such title made by the Crown and later the State were said to be made in fee simple (see section 2 of the State Lands Act, No. 19 of 1960). Thus, a declaration of title in favour of a plaintiff without more is a shorthand for saying that plaintiff is seised of the said land in fee simple.

For a person relying on a paper title he must be able to trace his title to some grant by the Crown or the State. This is how Livesey Luke puts it in the Seymour Wilson case (supra).

> *"But in a case for a declaration of title the plaintiff must succeed by the strength of his title. He must prove a valid title to the land. So if he claims a fee simple title he must prove it to entitle him to a declaration of title. The mere production in evidence of a conveyance in fee simple is not proof of a fee simple title. The document may be worthless. As a general rule the plaintiff must go further and prove that his predecessor in title had title to pass to him. And of course if*

there is evidence that the title to the same land vest in some person other than the vendor or the plaintiff, the plaintiff would have failed to discharge the burden upon him."

In the instant case, there is no question of making such an enquiry as all that the plaintiff relies on to establish his title is a Statutory Declaration, Exhibit "A". It is trite law that a Statutory Declaration is not a document of title. At best is might said to be an attempt to record evidence of how a person came to claim possessory title to a piece of land. It does not by itself establish the fact of a possessory title to entitle a person basing his claim thereon to a declaration of title. (See Bright v. Roberts (1964-66) ALR (S.L) 156).

A plaintiff who relies on the fact of possession by himself or his predecessor in title must prove more than just mere possession. It is true that proof that a claimant was in possession before the defendant is *prima facie* evidence of his having a better title than the defendant and that such prior possession raises a presumption that the claimant is seised in fee. As it is some times put colloquially "possession is nine-tenths of the law". However, if I may continue in that vein, 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.

How then can he prove this? 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. The nature of the root of possessory title is thus explained by Megarry and Wade:

"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 for recovery of the 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 the rest of the world S is protected by the fact of his possession. Possession by itself gives a good title against all the world except someone having a better legal right to possession".
(The Law of Real Property 4th ed page 1004).

In the instant case, apart from the Statutory Declaration admitted in evidence the Respondent did not adduce any independent evidence to show that he and those through whom he claims have extinguished the title of the true owner or that they have possessed the land for a time sufficient to exclude any reasonable probability of a superior adverse claim. In my opinion, for this reason alone, the Respondent cannot be said to be entitled to the declaration of title as claimed in the Writ of summons and I so hold. As a result, I would set aside the first order made by the Court of Appeal and to that extent the present appeal succeeds.

I now turn to the next claim which is for damages for trespass. It would appear that the learned trial judge did not direct his mind to the fact that though damages for trespass are frequently claimed together with a declaration of title to the land allegedly trespassed on the two claims must be considered as separate and distinct issues. For one thing, as has been established earlier in this judgment, a claim for a declaration of title demands a much higher degree of proof (see Dunstant E. John & Reuben L. Macauley vs.William Stafford & ors, (*supra.*)

In a case for trespass all the plaintiff has to prove is a better right to possession than the defendant. One way to do this is to show that he has a better title to the land. According to Livesey Luke in Seymour Wilson case (*supra*):

> *"But better title in the context of an action for trespass is not necessarily "valid" title. In a case for trespass the court is concerned only with the relative strengths of the titles or possession proved by the rival claimants. The party who proves a better title or a better right to possession succeeds, even though there may be another person, not a party, who has a better title than he".*

Thus, in the instant case, though the evidence adduced by the Respondent may not be sufficient to entitle him to a declaration of title there was some evidence before the learned trial judge that he was in possession of a piece or parcel of land that he alleges that the Appellant was trespassing on. The Plaintiff in the Court below himself gave evidence that as far back as 1945 he had been in possession of the land in question. Apart from using the land for the purpose of growing fruit trees he also built a structure made of zinc and started to pay City Rates for the same. He then had this to say in support of his claim:

"The defendant first challenged my title in 1985. He started working in my land. I protested. Both of us reported at the Criminal Investigation Department (C.I.D.). At the C.I.D. they looked at our respective documents and conclude that mine is numbered 43 Will Street and the defendant property is situate at Morgan Street. Later C.I.D. personnel visited the same.....

We made indications to the C.I.D. personnel. When the defendant was asked about his claim to the land he said that some one sold to him. Therefore the defendant ceased to go to the land. Subsequently the defendant re-entered the said land. As a result I went to one Mr. Barber a Law Officer. An invitation was then sent to the defendant. Both of us appeared before the said Mr. Barber. It was revealed that my land was registered. He gave both of us his advice. Thereafter the defendant ceased going to the land. After a period of three years he re-entered the said land".

This evidence was never challenged or controverted in any way. The defendant never gave evidence at the trial. It is true that acts of possession on the part of the Appellant in respect of the land that the Respondent also claims could be inferred from the fact that he started to build a house thereon some time in 1985. Apparently, subsequent to 1985, a survey plan dated 6th December 1988 was produced in his name and a Conveyance, Exhibit "B" executed in his favour in January 1988.

Based on the above evidence alone one might be tempted to conclude that the Respondent had a prior and therefore better right to possession.

But unfortunately, that was not all the evidence led at the trial. Further evidence led by both sides tended to raise some doubt as to the exact location of the Appellant's and the Respondent's land respectively.

Before going further to deal with this issue of the identity of the land the subject-matter of the alleged trespass it must be emphasized that it was agreed all round that both parties were claiming possession to some land or the other in the area of Will Street and Morgan Street respectively

In answer to a question put to him under cross-examination the Plaintiff, P.W.2, stated thus:

"It is true that Will Street is not Morgan Street. The Defendant lives at Morgan Street. It is true that the Defendant has land at Morgan Street".

The licensed Surveyor, F.D. During, who gave evidence on behalf of the Plaintiff as P.W.3 prepared an encroachment plan which he tendered as Exhibit "H." Referring to Exhibit "H" he had this to say:

"On Exhibit "H" I can see the properties of the Plaintiff and the Defendant. The property of the Plaintiff is situate off Will Street and that of the Defendant is situate off Morgan Street".

Another licensed Surveyor, J.M. Samura, testified on behalf of the Defendant as D.W.2. He tendered what he described as an encroachment plan as Exhibit "M". I fail to see how this witness could describe Exhibit "M" as an encroachment plan when it clearly depicts the two properties in question at a distance from each other. He confirmed this in his oral testimony as follows:

"The property of the Defendant is situated off Morgan Street. The property of the Plaintiff is situated off Will Street. Will Street is not the same as Morgan Street."

Under cross-examination D.W.2 went on further to testify as follows:

"It is true that the Plaintiff's land is not <u>where it should be</u>. [emphasis mine] It is true that from the documents shown to me the two lands are apart".

A third surveyor gave evidence at the trial. This witness, R.A. Sandy, was not a licensed Surveyor but "*a staff Surveyor who claimed that he was a Civil Servant attached to the Ministry of Lands and Housing*". He gave evidence that the plans in Exhibit "B" and Exhibit "D" depicting the lands claimed by the Respondent and Appellant respectively were charted in Cadastral Sheet and that they did not overlap.

However, under cross-examination by Counsel for the Plaintiff he stated referring to Exhibit "H" the encroachment plan tendered by P.W.3;

"It appears correct to me"

He gave this answer despite the fact that like most of the other witnesses he had maintained that Morgan Street and Will Street are two different Streets and are about one hundred feet apart.

In my opinion, the apparent doubt about the exact location of the respective properties claimed by the Plaintiff and the Defendant, which seemingly was the basis for the trial judge's dismissal of the Plaintiff's claim, could have been cleared if P.W.3, D.W.2 and D.W.3, the three surveyors who testified at the trial, had accompanied the Court on the visit to the *locus in quo*.

Unfortunately, the only Surveyor present at the *locus* and who took measurements of the land in dispute was a certain Mr. Coker who never testified at the trial before or after the visit to the *locus*.

In the light of the above analysis of the available evidence what conclusion can this Court, as a Court of rehearing, reach as to the location and identity of the subject-matter of the trespass by the Appellant as alleged by the Respondent?

In this regard, it is my considered opinion that I can safely rely on the oral and documentary evidence adduced by P.W.3, Mr. During, and the short answer of D.W.3 relating to the correctness of Exhibit "H" given under cross-examination. Mr. During visited the land in dispute armed with both Exhibit "C" and Exhibit "D" copies of the Statutory Declaration and Conveyance of the Plaintiff and Defendant respectively. Armed with these documents he was able to produce Exhibit "H," an encroachment plan clearly showing the land claimed by the Defendant delineated on Survey Plan No. LS 2658/88 virtually overlapping that claimed by the Plaintiff delineated on Survey Plan No. LS 694/80. I say virtually overlapping because the extent of the encroachment is 0.0798 acre out of the total area of 0.0846 acre claimed by the Defendant in Exhibit "D". This is in contrast with a total of 0.2247 acre claimed by the Plaintiff in Exhibit "B".

P.W.3 also testified that the said properties are described as being off Will Street and off Morgan Street respectively as opposed to actually being on Will Street and Morgan Street respectively.

As stated earlier, neither the oral nor the documentary evidence adduced by P.W.3 relating to the alleged encroachment by the Appellant on the Respondent's land to the extent of 0.0798 acre as shown on Exhibit "H" was challenged or controverted in any significant way by the Defendant's

witnesses or his Counsel. Indeed, in the excerpt from his evidence quoted above D.W.3 acknowledged that Exhibit "H" the encroachment plan produced by P.W.3 appeared "correct" to him".

Indeed, if the learned trial judge had properly evaluated the evidence of P.W.3 and D.W.3 the only conclusion he could have arrived at was that there was an encroachment, if not an overlapping, in respect of the land claimed by the Appellant *vis-à-vis* that claimed by the Respondent. As a result I hold that the Appellant is indeed liable to the Respondent for trespass as claimed in the Writ of Summons.

The Court Appeal having found the Appellant so liable went on to order damages in the sum of Le69.000/00 without more. This award has not been challenged in any way. Suffice it to say I see no reason for interfering with it. I would therefore uphold the second order made by the Court of Appeal and to that extent the present appeal fails.

I shall now deal with the claim for an injunction. Before I do so, I must observe that the Plaintiff did not, as he could well have done, claim for recovery of possession of the land encroached upon by the Defendant. Instead the Plaintiff sought to obtain as it were the same objective by seeking a perpetual injunction in the following terms:

> *"restraining the said Defendant by himself, his servants, agents or howsoever otherwise from continuing their trespass upon the said land, by remaining thereon or in any way dealing with the said property.".*

I say this because I read in the Case for the Appellant that the Appellant had been evicted from the property in dispute. This was not made an issue in this appeal. But for what it is worth I can only say in passing that none of the orders made by the Court without more could be the basis of such eviction.

It is trite law that an injunction, unlike a claim for recovery of possession which is a remedy at law, is an equitable remedy and therefore could be granted and rejected at the discretion of the court.

As to the principles governing the grant or refusal of an injunction in a case such as the instant one the following passage to be found in Clerk and Lindsell on Tort is quite instructive:

> *"The grant of an injunction, being an equitable remedy is always discretionary and this discretion belongs to the trial Judge: an*

appellate court may not substitute its own views on the merits of the case but may interfere only "if the Judge misdirected himself in law, took into account irrelevant matters or failed to take into account relevant matters". The principles governing the exercise of the discretion differ according to the nature of the injunction sought. Where an injunction is sought to restrain the continuation of a wrongful act which interferes with the claimant's rights and is prohibiting in substance as well as in form, then in the absence of special circumstances, the claimant is entitled to his injunction "as of course". The most that a defendant can hope for is a suspension of the operation of the injunction to enable him to take steps to bring the nuisance (as it usually is) to an end". (18th ed; page 1639)

In this case, though the injunction was granted by the Court of Appeal it was in effect exercising the powers vested in the trial judge. Applying the principle stated in the passage just quoted from Clerk and Lindsell I see no grounds for interfering with the exercise of the said discretion by that Court. The injunction sought was a prohibitory one to restrain the continuation of a wrongful act, trespass by the Appellant on the Respondent's land. Having analysed the totality of the evidence I hold that there is evidence that unless restrained therefrom the Appellant by himself his agents or howsoever wise intend to continue the said trespass upon the said land by remaining thereon.In the absence of any special circumstances in the instant case I hold that the injunction was properly granted as of course.

Having said that in order to aid the Appellant/Defendant comply with the terms of the injunction the same should be worded more precisely and unambiguously. The finding relating to the trespass by the Defendant relates only to 0.0798 acre of the Plaintiffs land not the whole land which is imprecisely described simply as being at 43 Will Street Freetown. A more precise description of the land to which the injunction relates is as is contained in Exhibit "H" the encroachment plan produced and tendered by P.W.3. I shall vary the third order made by the Court of Appeal accordingly.

In the circumstances the appeal partly succeeds and I make the following orders:

(1) The first order of the Court of Appeal granting a declaration of title in favour of the Respondent herein is hereby set aside.

(2) The Order of the Court of Appeal awarding damages for trespass to the Respondent is hereby upheld.

(3) In lieu of the injunction granted by the Court of Appeal an injunction is hereby decreed restraining the Defendant, the Appellant herein, by himself, his servants, agents or howsoever otherwise from continuing to trespass on that portion of the Respondent's land measuring 0.0798 acre and delineated in the encroachment plan tendered herein and marked Exhibit "H".

(4) Each party to bear its own costs of the proceedings in this Court and in the Courts below.

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Hon. Justice Dr. A. Renner-Thomas -Chief Justice

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Hon. Mr. Justice E.C. Thompson Davis - J.S.C.

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Hon. Mrs. Justice V.A.D. Wright - J.S.C.

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Hon. Mr. Justice M.E.T. Thompson - J.S.C.

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Hon. Ms. Justice S. Koroma - J.A.