

91
SC. 6/2009

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE, 1991
ACT NO. 6 OF 1991, SECTION 21, 28, 122 & 124 (1) (A)

IN THE MATTER OF ACTION PURSUANT TO THE SUPREME COURT RULES
1982 PART XVI RULES 89 - 98 OF STATUTORY INSTRUMENT NO. 1 OF
1982

BETWEEN:

MOHAMED GHAZI R. FAIAD - 1ST PLAINTIFF

DUNIA FAIAD - 2ND PLAINTIFF

(SUING BY THEIR ATTORNEY
BALA S. AMARAKSEKARAN)
NO. 4 SMART FARM
OFF WILKINSON ROAD
FREETOWN

AND

ATTORNEY-GENERAL - 1ST DEFENDANT
& MINISTER OF JUSTICE
GUMA BUILDING
LAMINA SANKOH STREET
FREETOWN

THE BANK OF SIERRA LEONE - 2ND DEFENDANT
SIKA STEVENS STREET
FREETOWN

CORAM:

THE HON. MRS. JUSTICE S. BASH-TAQI	-	J.S.C.
THE HON. MRS. JUSTICE V.A.D. WRIGHT	-	J.S.C.
THE HON. MR. JUSTICE M.E.T. THOMPSON	-	J.S.C.
THE HON. MR. JUSTICE G.B. SEMEGA-JANNEH	-	J.S.C.
THE HON. MR. JUSTICE E.E. ROBERTS	-	J.A.

COUNSEL:

92

YADA WILLIAMS ESQ. AND OSMAN JALLOH ESQ. FOR THE PLAINTIFFS

**OSMAN KANU FOR THE 1ST DEFENANT
PATRICK LAMBERT ~~FOR~~ THE 2ND DEFENDANT**

JUDGEMENT DELIVERED ON THE 19th DAY OF October 2010

S EMEGA-JANNEH - J.S.C.

The facts are brief and the basic facts are undisputed. By a series of conveyances commencing with the conveyance (Exhibit B) dated the 29th April 1961 between the representatives of Toke village on the Sierra Leone Peninsular Circular Road of the one part and Cornelius Augustine Harding of 64 Wellington Street, Freetown, of the other part the suit land was finally conveyed (Exhibit A) in 1997 to the Plaintiffs, Ghazi Faiad and Mrs. Dunia Faiad by Shakib Najib Khalil Basma by his Attorney Jamel Kamel Nimer Wanza and others. Adjacent to the suit land is property owned by the 2nd Defendant who also purchased same from Mr. Cornelius Harding. By a letter dated the 12th January 2007 (Exhibit L), the 2nd Defendant was informed of the Minister of lands and Country Planning's approval of the allocation of the suit land, described as state land, to the 2nd Defendant. The Plaintiffs and their predecessors in title have been in possession of the suit land for several years and in the mid 1980s up to 1998 had developed the suit land, built chalets and operated the premises as a hotel under the names of AFRICANA TOKE VILLAGE and TOKE VILLAS HOTEL.

The 2nd Defendants have now embarked upon fencing of the suit land along its perimeter except the dividing line separating the suit land from the land owned by the 2nd Defendant and thus incorporating the suit land and the other land within one fenced area. The Plaintiffs were alarmed by this development and after a series of correspondence, the Plaintiffs commenced action in the High

Court. This was subsequently abandoned and the Plaintiffs brought this action under this Court's original jurisdiction claiming the following:

- A. *A declaration that the Plaintiffs are the fee simple owners free from all incumbrances of all that piece of or parcel of land situate lying and being at the Off Peninsula Circular Road, Tokeh village Freetown, in the Western Area of the Republic of Sierra Leone as shown on the survey plan with L.S. no: 722/96 by virtue of a conveyance dated 28th February 1997 and made between Shakib N.K. Basma, Rached R. Faiad & M. Ghazi R. Faiad as vendors of the one part and Mohamed Ghazi Faiad & Dunia Faiad, the Plaintiffs herein, as purchasers of the other part covering an area of approximately 2.4744 acre and Registered as no. 348 at page 74 in volume 618 in the Record Book of Conveyances kept in the Office of the Registrar-General, Freetown, save for any restrictions referred to in the conveyance aforesaid.*
- B. *That the 2nd Defendant, installed by the Minister of lands, Housing and the Environment and the Director of Surveys and lands of the Republic of Sierra Leone on the said piece or parcel of land, be ordered by this Honourable Court to vacate the said land and deliver up possession to the Plaintiffs.*
- C. *That the Honourable Court do award the Plaintiffs damages to be paid by the 2nd Defendant for the contravention of the Plaintiffs rights provided for in section 21 of the Constitution.*
- D. *That the Honourable Court grants a perpetual injunction restraining the Defendants, jointly and severally, by themselves their servants, agents, privies or howsoever or otherwise from selling, leasing, mortgaging, entering, remaining parting, with possession and/or in any way whatsoever from disposing or interfering with said piece or parcel of land or any part thereof.*

- E. Any further or other relief that this Honourable Court may deem fit and just*
- F. That the costs of and/or incidental to this application be borne by the 2nd Defendant.*

The Plaintiffs filed a Statement of Case. The 2nd Defendant filed a Statement of Case. The 1st Defendant failed to file a Statement of Case and at the hearing failed to offer any evidence or argument. By virtue of rule 92(1) of the Supreme Court Rules, 1982, and the conduct of the 1st Defendant, I conclude that the 1st Defendant clearly did not wish and had not contested the case. On the other hand the 2nd Defendant vigorously contested the case and, therefore, it would be prudent in the circumstances of the case, to deal with the case as a whole.

The defence of the 2nd Defendant primarily rested on two pillars: (1) that the suit land was at all times state land and (2) that the Plaintiffs and some of their predecessors were not Sierra Leoneans. Let me firstly deal quickly with the first pillar as I recognize the thrust and emphasis of the 2nd Defendant is on the second pillar with its foundation being rested on statutes.

Mr. P. Lambert, of counsel, for the 2nd Defendant, quoted extensively the judgement of the Supreme Court dated the 16th March 2007 delivered by Justice Renner-Thomas, Chief Justice – (as he then was) in the matter between Sorie Tarawalli and Sorie Koroma (as administrator of the estate of Sorie Mansaray) S.C. Civ. App No. 7/2004 (unreported) at pages 7 and 8 before he submitted that the primary vendors (the villagers of Toke by their representatives) had no title in and to the land which they purported to convey (Exhibit B to the affidavit of Bala S. Amara Sekaran dated the 11th May 2009) to Cornelius Augustine Harding (subsequently a Justice of the Supreme Court) and further submitted that the concept of “Community land” is not recognized by law in the Western Area and therefore no titled passed. The quotation is extensive but due to its significance I repeat it in full hereunder:

"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 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 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 (sic 1961), 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 declaration of title in favour of a Plaintiff without more is a short hand for saying that the plaintiff is seised of the said land in fee simple.

For a person relying on a paper title he must be able to track his title to some grant by the Crown or the State. This is how LIVESEY LUKE puts it in Seymour Wilson's 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 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 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 has title to pass to him. And of course if there is evidence that the title to the same lands vest in some person other than the vendor of the Plaintiff, the Plaintiff would have failed to discharge the burden upon him" (emphasis provided by Mr. Lambert of counsel)

The quotation, within the quotation, attributed to Livesey Luke, in my humble view, does not state that a person relying on a paper title must be able to trace his title to some grant by the Crown or the State. In my view all that the learned Justice Livesey Luke is saying in the quotation is that a person claiming for a declaration of title must prove a valid title on the strength of his title and that a mere production of a conveyance in fee is not proof of a fee simple title and the person may need to show that his predecessor in title has title to pass. For instance notwithstanding the strength of the person's title, if there is evidence that the lands in question vest in some other person (even if not a party to the suit) other than the vendor of the claiming party (the plaintiff), the claiming party would have failed to discharge the burden upon him.

The historical background given by the learned Chief Justice may well be correct and must have given rise to the conclusion that a person relying on a paper title must be able to trace his title to some grant by the Crown or the State. But the statement even if correct appears to be so only in theory, and not in practice, particular in areas outside Freetown in the Western Area. Support for this is found in the judgement dated the 17th June 1981 delivered by Livesey Luke, C.J. in the case of Seymour Wilson Vs. Musa Abess Sc. App. M=No. 5/79 at P78 of the Book of Judgements where he stated:

"Quite apart from this, it is a matter of common knowledge that title of the lands in the Western Area outside the city of Freetown are based on possessory title and most of them are not supported by title deeds. That situation is the result of the history of land holding established in the Western Area about several centuries ago. The system which has been in operation in the Western Area since the founding of the colony (now the Western Area) is that land passes within the same family from one generation to the other in many cases without the existence of any document of title. The question then arises: Does the mere registration of a deed conveying any

such land confer title on a purchaser as against the true owner who may have an indefeasible title but no document of title"?

From the subsequent discourse the learned Livesey Luke C.J. gave a resounding no as the answer. The view of the learned Livesey Luke C.J. find support in the colonial policy of **"Indirect Rule"**. This was a device by which the British ruled their colonies by allowing and generally leaving intact the institutions, customs and practices of the subject people except where they view such as being well beyond the pale of civilisation or threatening the order, paramount interest or supremacy of British rule. The objective was to make administration easier and less likelihood of revolt from the subject peoples; the policy was expected to reflect business as usual. In the implementation of this policy it was not necessary for the British to take over or physically take all the land from the subject peoples. Land was taken over in a possessory sense when it was really required by the crown and hence the development of the policy/practice of compensation and compulsory acquisition or purchase. The historical background is some what different. The Norman conquest of England in a sense resulted in immigration, occupation and seizure of the conquered lands for the invaders, particularly for the leaders and generals – not unlike the Dutch invasions of South Africa.

Coming back to the situation at hand, the Plaintiff's title is traced through a chain of conveyances (about four (4) in number) spanning from the 29th April 1961 (Exhibit B) to the 28th February 1997 (Exhibit A). The Plaintiffs had several predecessors in title and have been in possession in excess of forty years. During the period the land was completely developed with structures and chalets and the premises for a considerable period of time was operated as a hotel, paying outgoings, rates and taxes without let or hindrance by the Government or by any one until the advent of the 2nd Defendant in the scene. Prior to the conveyance of the suit land to Cornelius Augustine Harding, the suit land was in the possession of the villagers of Toke in the Western Region. It is a historical fact that such lands were, and continued, in the possession of the villagers and used by village family units or village individuals or

communally for residence, farming, commerce, etc. It is irrelevant for the discourse on possession or ownership whether the suit land is labeled "*community land*". In my view it is the historical realities that matter. I am therefore of the considered opinion that the villagers of Toke by their representatives had title which they properly passed onto Hon. Mr. Justice Cornelius Augustine Harding.

The foundation to the second pillar rest on statutes, primarily the Non-citizens (Interests in land) Act, 1966. In the 2nd Defendant's Statement of Case, Mr. Lambert submitted that Muhamed Ghazi R. Faiad (the 1st Plaintiff), Rached R. Faiad, Feisal R. Faiad and Imad Faiad could not own freehold land in the Western Area of Sierra Leone by virtue of the provisions of the Non-citizens (Interests in land) Act, No. 30 of 1966 contrary to section 3 which provides:

"3 No.-non-citizen shall purchase or receive in exchange or as a gift any reserved freehold land is the Western Area".

Non-citizen is defined by section 2 "as (a) any individual who is not a citizen of Sierra Leone"

Mr. Lambert argued that Mohamed Ghazi R. Faiad and Rached R. Faiad were not citizens of Sierra Leone at the material time that the Deed of Conveyance (Exhibit SM 9 dated 8th December 1987 to the affidavit of Sullay Mannah sworn to on the 4th June 2009) was executed by the Hon. Justice Cornelius Harding. He further argued that Feisal R. Faiad and Imad Faiad are still not citizens of Sierra Leone because there is no record with the government officer (the Chief Immigration Officer) responsible for keeping such records that they were ever issued with naturalization certificates as required by the Citizenship Act No. 4 of 1973 as amended. During the hearing on the 14th December 2009, Mr. Lambert withdrew his challenge to the validity of the naturalization certificate (he was now confronted) issued on the 26th day of October 1973 and exhibited as "M" to the affidavit of Bala S. Amarasekaran sworn to on the 22nd October 2009. Mr. Lambert withdraw the challenge giving three reasons.

1. He had regard to the provisions of section 23 of the Sierra Leone Citizenship Act, 1973, which provides:

"23 the Minister shall not be required to assign any reason for the grant or refusal of any application under this Act, and the decision of the Minister on any such application or on any other matter under this Act shall not be challenged in any Court"

2. He had no proof that the document is not genuine.
3. Finally, he had to, given the decision of the Supreme Court in the Case of THE STATE VS. ALGHASSIM JAH S.C. MISC. APPLIC. 1/94 in which the Court held that the courts were barred or forbidden from any excursion in any form whatsoever for the purpose of examining the decisions of courts – martial by section 29 of the REPUBLIC OF SIERRA MILITARY FORCES (AMENDMENT) ACT, 1971, which provides:

"29 the decisions of a court – martial shall not be questioned in any court of law"

For some unstated reason Mr. Lambert did not proceed with argument in respect of Rached R. Faiad and Feisal R. Faiad. Rached R. Faiad has a naturalization certificate issued on the 3rd October 1985 and exhibited as "R" to the affidavit of Bala S. Amaraseraran sworn to on the 22nd October 2009. As regards Feisal R. Faiad a copy of his Sierra Leone passport is exhibited as "Q" to the said affidavit of Bala S. Amarasekarian. I take it that Mr. Lambert was satisfied that they are of Sierra Leonean nationality and therefore dropped the challenge to their nationality that he initially raised. In respect of Imad R. Faiad Mr. Lambert vigorously presented his argument.

Mr. Lambert submitted that on the evidence Mr. Issam Raiad is not a citizen of Sierra Leone. He argued that by virtue of section 3 and section 5 (1) of the Non-citizens (Interests in Land) Act, 1966, any conveyance in favour of a non-citizen whether alone or together with others, whether citizens or otherwise, shall vest such lands on the Board for the whole estate or interest conferred. The Board is defined under section 2 as "consisting of the Ministers responsible for Trade and Industry, Lands, Finance, and Development and the Attorney-General, of which the Minister of Lands shall be the Chairman". He further argued that the vesting of the lands in question on the Board is automatic. The result, he further argued, is that Mohamed Ghazi R. Raiad, Feisal Raiad, Rached G. Raiad and Imad R. Raiad had no title in the land (the suit land) that they conveyed to Shakib N.K. Basma, Rached R. Faiad and Muhamed Ghazi R. Raiad by the conveyance dated the 8th December 1988 and exhibited to the affidavit of Sullay Mannah sworn to on the 4th June 2009 as "SM10" and, therefore, passed no title to the purchasers and they in turn passed no title to the land (the suit land) conveyed by them to Mohamed Ghazi R. Faiad (the 1st Plaintiff) and Dunia Faiad (the 2nd Plaintiff) by the conveyance dated the 28th February 1997 and exhibited to the affidavit of Bala S. Amarasekaran as "A" as they themselves did not acquire any title to the said land to pass to Mohamed Ghazi R. Faiad and Dunia Faiad; *nemo dat quod non habet*.

In conclusion Mr. Lambert submitted *"that the Plaintiffs have no proprietary right in and to the property of which they can be deprived"* thus wrongly invoking the original jurisdiction of the Court for violation of section 21 of the Constitution of Sierra Leone 1991 and argued that "they therefore have no locus standi to invoke the jurisdiction of the Supreme Court under the provisions of section 28 of the Constitution of Sierra Leone 1991". He urged that the prayer for possession of the suit land, damages and injunction ought to fail because the Plaintiffs have no estate or interest in the suit land.

Let me firstly deal with the issue of fact: whether Imad R. Raiad is a naturalized Sierra Leonean citizen or not? There is affidavit evidence from Imad R. Faiad that he is a naturalized Sierra Leonean. In the affidavit sworn to by

Imad R. Faiad he deposed that he and his brother, Faisal R. Raiad, became naturalized citizens of Sierra Leone in 1978. He explained the circumstance in which he lost his naturalization certificate and passport; the loss occurred when his house was looted during the prolonged civil war and disturbance in Sierra Leone. The civil war and its attendant looting, burning of properties and unimaginable violence to civilians that caused many to flee across borders to the safety of neighbouring countries is common knowledge in Sierra Leone, the sub-region, Africa and even the wider world. There is no reason to disbelieve Imad particularly if one takes into account that his other brothers and members of his family became naturalized Sierra Leonean citizens. See the affidavits of the said Bala S. Amarasekaran and Sullay Mannah respectively. There is no convincing evidence to undermine Imad's evidence. Of course there is the information received from the Deputy Chief Immigration Officer, Anthony M.B. Aruna and the Chief Immigration Officer Alpha Kholifa Koroma respectively. One common feature of their information is that it was not the duty of the Immigration Department to keep record of naturalized Sierra Leonean citizens and the Department did not keep one. The Deputy Chief of Immigration provided a list of naturalized citizens after the Department advertised that naturalized citizens should come forward to present their naturalization certificates. He informed Mr. Yada Williams in his affidavit of the 22nd October 2009 that the list was not exclusive as most naturalized citizens living abroad were not aware of the advertisement. In fact the list did not have the names of others, for example, the Faiad brothers, whose certificates of naturalization are in evidence. The Chief Immigration officer on the other hand informed Sullay Mannah in his affidavit of the 10th December 2009, that the Government of Ernest Koroma provided the Department of the complete records of naturalized citizens. How he can be so sure that the records were complete is not explained and I wonder how he can be so sure. One thing is clear he never provided information on Mohamed Ghazi Faiad as requested by Mr. Sallay Mannah. Perhaps it was one of the names in the records provided. Mohamed Ghazi R. Faiad's certificate is exhibited as "M" to the said affidavit of Bala S. Amarasekaran sworn to on the 22nd October 2009. In the premises I

accept the evidence of Mr. Imad R. Faiad and find that he was at the material time a citizen of Sierra Leone since 1978.

Let us assume for arguments sake that Imad R. Faiad was not a naturalized citizen of Sierra Leone when together with others he executed the conveyance dated the 8th March 1988. By virtue of section 5 of the Non-citizens (Interests in Land) Act 1966 it is incumbent upon the Board to cause the Sheriff to sell any land that vests upon it and the proceeds of sale paid into the Consolidated Fund. The Registrar General under the provisions of section 6 of the Non-citizens (Interest in land) Act 1966, when a conveyance breaches section 4 of the Act, "shall not register any such instrument relating to freehold land or reserved leaseholds other than an assent in favour of persons entitled under a will or on an intestacy until" Now, were the purchasers, namely, Shakib N.N. Basma, Rached R. Faiad and Ghazi R. Faiad not entitled to presume regularity in the presence of registered conveyance of the same land to others including Imad R. Faiad? In my view they were so entitled to presume. The same applied to subsequent purchasers (including the Plaintiffs) who after searches found no break in the chain of conveyances or the absence of title in the vendors. I am of the considered opinion that the non application of sections 5 and 6 of the Non-citizens (Interests in Land) Act, 1966, raises a strong presumption of regularity. In my view it would be most unjust that a diligent purchaser, after making all relevant searches in the Register of Deeds in the Registrar-General's Office pertaining to the land in question and having found all conveyances in order, should be penalized for failure on the part of the Registrar-General not to refuse to register an offending conveyance under the provisions of the Non-citizens (Interests in land) Act, 1966. I have no doubts it was not the intention of Parliament to penalize a purchaser in the said circumstances.

Mr. Yada Williams, of counsel for the Plaintiff, submitted that section 32 of the State Lands Act, 1960, which provides:

"32 No action or other remedy by or on behalf of the Crown (State) for the recovery of Crown land shall be barred or affected by any statute ordinance or other law of Limitation"

was impliedly repealed by section 5(1) of the Limitation Act, 1961, which states:

"5(1) No action shall be brought by the Crown (the State) to recover any land after the expiration of thirty years from the date on which the right of action accrued to the Crown or, if it first occurred to some other person through whom the Crown claims, to that person."

Provided that....."

Mr. Williams, in follow up, submitted that where two legislations are in conflict the subsequent legislation takes precedence. In response, Mr. Lambert submitted that section 34, the repealing section, does not repeal section 32 of the State Lands Act, 1960. He further submitted that the provision of the State Lands Act, 1960, which has not been repealed takes precedence over the limitation period specified in the Limitation Act, 1961.

As regards the submission of Mr. Yada Williams that where two legislations conflict the legislation of a later date takes precedence, I agree with. As a general principle it must be noted however that this general principle is circumscribed by another principle that where as regards the opposing provisions one is general and the other specific, the specific takes precedence. As regards the further submission of Mr. Yada Williams that section 32 of the State Lands Act, 1960, was impliedly repealed by section 5(1) of the Limitation Act, 1961, I do not agree with. In relation to the general submission of Mr. Lambert, I am of the considered opinion that even though section 32 of the State Land Act, 1961 was clearly not specifically or impliedly repealed by the repealing section (section 34) of the State lands Act, 1961, it certainly modified and reduced the scope of application of section 32. Section 32 of the State Lands Act, 1961, set no limit to the right of the State to take action for the recovery of state Land. Section 5 (1) of the Limitation Act, 1961, however,

clearly sets a limit of thirty years from the date on which right of action by the State to bring an action to recover any land accrued. Applying this view to the instant case, the State would have been barred from bringing action to recover the suit land, if on the assumption, the suit land was state land at the material time it was conveyed by the representatives of Toke village to Hon. Mr. Justice Cornelius Augustine Harding on the 29th April 1961. It is forty eight years since the conveyance was executed to date, that is, eighteen years over the limitation period set by section 5(1) of the limitation Act, 1961, which takes precedence as both provisions deal with the same issue but the provisions of the limitation Act, 1961, being later in time took precedence. It must be presumed that at the time the Legislature was enacting the Limitation Act, 1961, they must have had section 32 of the State Lands Act 1960, firmly in mind. Now applying the said same view in the assumed circumstances that Imad R. Faiad was not a Sierra Leonean citizen at the material time that the suit land was conveyed to Imad R. Faiad and others as purchasers by the Honourable Mr. Justice Cornelius Harding as vendor by the said conveyance dated the 8th December 1987, the right of action, again assuming title to the suit land was vested in the State, would be alive and surviving. The reason would be that only twenty-three years have elapsed from the date of the assignment to date and therefore within the limitation period set down by section 5 (1) of the Limitation Act, 1961.

It is clear, in my view, that the objective of the Non-citizens (Interests in land) Act, 1966 is to prevent persons who are not Sierra Leonean citizens from owning freehold land in the Western Area of Sierra Leone. The Plaintiffs who are undoubtedly Sierra Leonean citizens and their predecessors in title have exercised the rights of owners over the suit land in excess of forty years. During the period the property was fully developed and utilized as a business/commercial premises and taxes and rates paid without let or hindrance from the State or any body for that matter. True the developments in the suit land were largely destroyed, like many other properties, during the civil war by mindless persons. This however does not detract the fact that the Plaintiffs and their predecessors in title did exercise ownership and continued to do so until the State claimed purported ownership and purported to allocate

the suit land to the 2nd Defendant. No grant has been made to the 2nd Defendant under the State Lands Act, 1960, or otherwise. The 2nd Defendant is without title. Plaintiffs' ownership of the land is not in contravention of the Non-citizen (Interests in hand) Act, 1965, and in the circumstances of the case in which the Plaintiffs have done no wrong or contravened a law, it would be most inequitable, and even immoral, to penalize them by an unwarranted seizure of their land in favour of the 2nd Defendant. I am hardly surprised that the 1st Defendant is not defending the case. I recognize that the 2nd Defendant is a para-statal and the suit land is needed for a lofty purpose. If the suit land is really needed for a public purpose, the Defendants should advise themselves as to how to properly acquire the suit land according to law and not by subterfuge or spurious legal claims or argument to disguise what in reality or in all appearances is a seizure by the Authority of Government of land in lawful possession of the Plaintiffs thereby infringing section 21 of the Constitution of Sierra Leone 1991. Even assuming the Government has a legally justifiable claim to the suit land the proper option for Government, in my considered opinion, was to initiate court action and follow due process for recovery of the suit land from proper possession by the plaintiffs. The instant case is distinguishable and indeed different from a situation where an irate owner of land employs self help to physically evict squatters. It is a course fraught with dangers, legal or otherwise, and perhaps an inadvisable course in most circumstances.

I have already indicated that the action was properly brought under Section 28 of the Constitution 1991 in order to have this Court enforce the provisions of Section 21 by the Defendants. In relation to the Court case of Sierra Leone Enterprises Limited Vs. Attorney-General and Minister of Justice and another S.C. 4/2005 (Unreported) the majority judgement dated the 18th July 2008 granted the Plaintiffs a declaratory judgement that they were the fee simple owners of the suit land. The Court also awarded them general damages and no special damages in the absence of evidence of special damages. In that action I was the sole dissenting voice. I was, and still of the view that section 28 is intended for the speedy enforcement of the provisions of sections 16 to 27

(inclusive) covering the fundamental human rights and freedoms of the individual.

In the instant case the material section is section 21(1) which provides:

"21. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say -

- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of any property in such a manner as to promote the public benefit or the public welfare of citizens of Sierra Leone; and
- (b) the necessity thereof is such as to afford reasonable justification for the causing of any hardship that may result to any person having any interest in or right over the property; and
- (c) provision is made by law applicable to that taking of possession or acquisition -
 - (i) *for the prompt payment of adequate compensation; and*
 - (ii) *securing to any person having an interest in or right over the property, a right of access to the court or other impartial and independent authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled and for the purpose of obtaining prompt payment of that compensation".*

is intended to protect the individual from deprivation of property particularly, in my view, by the use of State authority or quasi state authority.

The Supreme Court ordinarily does not have a general civil and criminal original jurisdiction as conferred upon the High Court by section 132(1) which provides:

"132(1) *The High Court shall have jurisdiction in civil and criminal matters and such other original appellate and other jurisdiction as may be conferred upon it by this constitution on any other law".*

The Supreme Court is conferred with original jurisdiction in specific situations or circumstances by the Constitution, 1991, under the provisions of section 28, 124 and 127. The Supreme Court by virtue of section 22(1), may be conferred with other jurisdiction by "this Constitution or any other law". For our purpose the material section conferring specific original jurisdiction is section 28, and relevant to the instant case are subsections (1) and (2) which state as follows:

"28 (1) Subject to the provisions of subsection (4), if any person alleges that any of the provisions of sections 16 to 27 (inclusive) has been, is being or is likely to be contravened in relation to him by any person (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then without prejudice to any other action with respect to the same matter which is lawfully available, that person, (or that other person), may apply by motion to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction -

(a) *of hear and determine any application made by any person in pursuance of subsection (1); and*

- (b) to determine any question arising in the case of any person which is referred to in pursuance of subsection (3) and may make such order issue such writs, and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said section 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law"

The section empowers the Supreme Court to enforce the protective provisions of sections 16 to 27 (inclusive) where there is evidence that any of the said provisions "has been, is being or is likely to be contravened" No power is conferred upon the Supreme Court by this section or any section under the Constitution or any other law to determine the civil issue between two or more litigants relating to a controversy over land in which a party seeks a declaratory judgement that he is an owner of the land in dispute in fee simple and to grant such a declaration. Claims for damages for a tort or breach of contract or otherwise, similarly, are outside the ambit of section 28(1) and (2). I do not see how an award of damages can be part of the enforcement envisaged by section 28. One can argue that the award of damages for contravention of any part of the protective provisions is incidental to the power of enforcement. I am inclined to think that "punitive" costs would be more appropriate and in line with the general power of the Supreme Court (or any court) to award costs during and/or at the conclusion of a case. The reason for my preference is that any contravention of any of the protective provisions inevitably gives rise to a civil wrong (or wrongs) that the High Court is empowered to try in its civil or criminal jurisdiction. In many of the Common Law jurisdiction in the sub-

region and other parts of the continent, it is the High Court that is empowered to enforce compliance with the fundamental Human Rights and Freedoms of the Individual. In these jurisdictions, the High Court with its general civil and criminal jurisdictions can easily attend to all the claims of the Plaintiff in the same action. Clearly this is not true of the Supreme Court and that is why, in my view, section 28(1) provides that action for enforcement under its provision is "without prejudice to any other action with respect to the same matter which is lawfully available" to the plaintiff. Why this avenue if the Supreme Court has the original jurisdiction of all the civil issues arising out of the same matter? The answer, in my view, is self evident! In my considered opinion the judgement of the Supreme Court in *Sierra Leone Enterprises vs. Attorney-General and Minister of Justice and Another*, *ibid*, granting declaration that the Plaintiff "is the fee simple owner free from encumbrances of the property at Fisher Lane, Kissy, Greater Freetown in the Western Area of the Republic of Sierra Leone" was made *per incuriam*. In these cases, it should generally be enough for the plaintiff to prove that he is/was in proper and lawful possession of the suit land and/or had interest in or right over the suit land and that the defendant(s) has compulsorily acquired an interest in or right over the suit land in contravention of the provisions of section 21 of the Constitution 1991. In other words the defendant has acted unlawfully and without due process in taking possession of or in acquiring an interest in or right over the suit land.

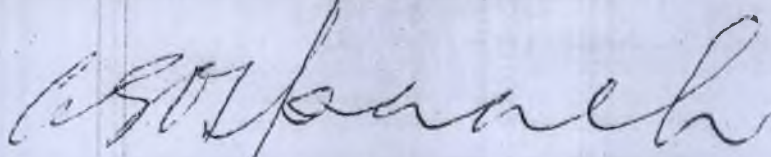
This case has been pursued in line with the claims and along the footsteps of the *Sierra Leone Enterprises* case (*ibid*). The Court is therefore inclined to act accordingly, give judgement to the Plaintiff and order as follows:-

- 1) *The Plaintiffs are the fee simple owners of all that piece of parcel of land situated, lying and being at Off Peninsula Circular Road, Tokeh Village, in the Western Area of the Republic of Sierra Leone as shown on the Survey Plan with L.S. No. 722/96 by virtue of a conveyance dated 28th February 1997 and made between Shakib N.K. Basma, Rache R Faiad and M.Ghazi R. Faiad as vendors, and Mohamed*

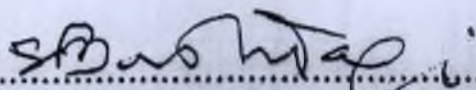
Ghazi Faiad and Dunia Faiad, the Plaintiffs herein, as Purchasers of the other part covering and area and registered as No. 348 at page 74 in volume 618 in the Record Book of Conveyances kept in the Office of the Registrar General, Freetown.

- 2) The purported acquisition and the taking possession of the said property situate at Tokeh Village, in the Western Area, is hereby declared null and void.
- 3) The 2nd Defendants, by themselves, their servants or agents to forthwith vacate the said landed property and deliver up possession to the Plaintiffs, failing which, a writ of possession to issue.
- 4) An injunction against the Defendants by themselves, their servants, agents and privies, howsoever or otherwise from disposing of or interfering with the said landed property.
- 5) Costs in favour of the Plaintiffs in the sum of ~~Le. 100,000/-~~.....

However, future plaintiffs would be well advised to frame claims in terms of the particular protective provision in issue, to follow the wording of the relevant section as closely as possible and pray for orders necessary for the enforcement of the section in question.



 HON. MR. JUSTICE G.B. SEMEGA-JANNEH - J.S.C.



 HON. MRS. JUSTICE S. BASH-TAQI - 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. MR. JUSTICE E.E. ROBERTS - J.S.C.