

cc: 172/14

2014

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No. 8

IN THE HIGH COURT OF SIERRA LEONE  
(LAND AND PROPERTY DIVISION)

BETWEEN:

FATMATA BOI DUMBUYA

(SUING AS ADMINISTRATRIX OF

ESTATE OF BENNY DUMBUYA- (DECEASED

INTESTATE)

- PLAINTIFF

AND

1. JOHN SMART
2. SANTIGIE KOROMA
3. YAPO CONTEH
4. SAMBA CONTEH
5. ABU MANSARAY
6. ALUSINE MANSARAY
7. ABU-BAKARR KAMARA

-DEFENDANTS

JUDGMANT DELIVERED ELECTRONICALLY BY HON. JUSTICE SENGU  
MOHAMED KOROMA, JSC ON THE 29<sup>th</sup> JANUARY, 2024.

The Plaintiff's claims against the Defendants are for the following  
Orders:

- 1) A declaration that the Plaintiff is entitled to the fee simple possession and absolute ownership of all that piece or parcel of land and hereditaments situate lying and being at off Blackhall Road, Kissy, Freetown in the Western Area of the Republic of Sierra Leone which constitutes or forms part of the Estate of Benny

Dumbuya (Deceased intestate) totaling 16.8936 Acres particularly delineated on survey plan marked LS 743/85 dated 29<sup>th</sup> March, 1985 contained in Statutory Declaration dated 22<sup>nd</sup> April, 1988 and registered as No. 19/98 at page 14 in volume 42 of the Book of Statutory Declarations kept in the Office of the Administration and Register - General in Freetown.

- 2) Delivery up and cancellation of any conflicting Deed(s), Instrument(s), or whatsoever document and consequential rectification of all the appropriate register.
- 3) Declaration that the Defendants have no title whatsoever to or over any portion of the Plaintiff's land.
- 4) Recovery of possession of the Plaintiff's said land and hereditaments from the Defendants.
- 5) A perpetual injunction restraining the Defendant's by themselves, their servants, agents, workmen or however otherwise from entering upon or remaining thereon or from carrying on any construction or building or work or in any way interfering with the said land.
- 6) Damages for Trespass.
- 7) Any further relief that this Honourable Court may deem fit and just.
- 8) Costs.

2. In the particulars of claim, the Plaintiff avers as follows:

- That she is the Administratrix and one of the beneficiaries of the Estate of Benny Dumbuya (Deceased Intestate)
- That on the 28<sup>th</sup> day of October, 2013, Letters of Administration were granted to her by the High Court of Sierra Leone in its Probate



jurisdiction to singularly administer the Estate of Benny Dumbuya (Deceased Interstate).

- That sometimes in 2010, the Defendants by themselves, their servants, privies and or agents encroached upon and/or trespassed on her said land.
- That she both verbally and in writing through her Solicitor informed the Defendants of their trespass and requested them to vacate her land but they refused and/or neglected to do so.
- That by letters dated 24<sup>th</sup> September, 2012 and 4<sup>th</sup> December, 2012 respectively, the Ministry of Works and Infrastructure instructed the Defendants to demolish/remove the structures they were erecting on the said land failing which legal action will be instituted against them, but the Defendants have neglected and/or refused to adhere to the Ministry's instructions.
- That after a report was made by her to the Ministry of Lands, Housing and Environment, sometime in 2013, the Defendants were advised to stop all activities on the land pending investigation, but the Defendants failed to abide by the advice.
- By a letter dated 8<sup>th</sup> July, 2013, acting on her instructions, her Solicitor wrote to the Defendants warning them that if they continued with their acts of trespass on the said land, legal action would be instituted against them. The Defendants refused to adhere to the warning and her Solicitor therefore issued a Writ of Summons against them.
- That by reason of the aforesaid, circumstance and conduct of the Defendants, she has suffered loss and damage.

### DEFENCE OF THE 1<sup>ST</sup> AND 7<sup>TH</sup> DEFENDANTS

3. A Defence and Counterclaim dated 9<sup>th</sup> December, 2016 was filed on behalf of the 1<sup>st</sup> and 7<sup>th</sup> Defendants by Abdul Karim Kargbo Esq. in which they aver as follows: -

- That the father of the 1<sup>st</sup> Defendant and the 7<sup>th</sup> Defendants by a conveyance dated 8<sup>th</sup> November, 2004 acquired fee simple ownership of that piece or parcel of land situate, lying and being at off Black Hall Road, Kissy Freetown in the Western area of the Republic of Sierra Leone measuring 7.050 Acres.
- That they neither deny or admit paragraph 1 of the Plaintiff's particulars of claim and puts her to strict proof of same.
- That they have never encroached or trespassed on the Plaintiff's land or any part thereof but maintain that they have been in undisturbed and uninterrupted possession of their land aforesaid for the past 24 years or thereabout.
- That they deny paragraph 4 of the particulars of claim and aver that it was the 7<sup>th</sup> Defendant who had made frantic efforts in the past three years to lawfully evict tenants from the land aforesaid.
- That they instituted proceedings against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in Court and obtained Judgment in their favour.
- That they can neither deny or admit paragraphs 5, and 7 of the particulars of claim and put the Plaintiff to strict proof of same.



- That the Ministry of lands requested them to submit their documents of title which they did but no investigation was carried out nor was any advice given.
- That they deny paragraph 14 of the particulars of claim since the only correspondence received from the Plaintiff's Solicitors, BETTS & BAREWA was a Writ of Summons commencing this action.

### COUNTERCLAIM

4. The 1<sup>st</sup> and 7<sup>th</sup> Defendants filed a Counter claim in which they aver as follows: -
  - That they repeat paragraphs 1-15 of their Statement of Defence.
  - That 1<sup>st</sup> Defendant's father, Santigie Smart (Deceased) and the 7<sup>th</sup> Defendant acquired fee simple interest absolute in possession of the land lying situate and being at off Blackhall Road, Kissy, Freetown in the Western Area of the Republic of Sierra Leone delineated by a survey plan with number LS 2196/91 dated the 18<sup>th</sup> day of October, 1991 with an area of 7.0500 Acre contained in conveyance dated 8<sup>th</sup> day of October, 2004 registered as 1580A/2004 at page 122A in volume 579 of the Book of conveyance kept in the office of the Administrator and Registrar-General in Freetown.
  - That the 1<sup>st</sup> Defendant's father, Santigie Smart (Deceased) and the 7<sup>th</sup> Defendant after acquisition of the land have been in an undisturbed and uninterrupted possession for the past 24 years.

5. The 1<sup>st</sup> and 7<sup>th</sup> Defendants therefore counter claim as follow: -

- (1) A declaration that the 1<sup>st</sup> Defendant's father, Santigie Smart (Deceased) and the 7<sup>th</sup> Defendant are lawfully entitled to fee simple absolute in possession and ownership of all that piece and parcel of land and hereditaments lying situate and being at Blackhall Road, Freetown in the Western Area of the Republic of Sierra Leone totaling 7.050 acres and particularly delineated on survey plan numbered LS 2196/91 dated 18<sup>th</sup> day of October, 1991 contained in a conveyance dated 8<sup>th</sup> November, 2004 registered as 1580/2004 at page 122A in volume 579 of the Book of conveyances kept in the office of the Administrator and Registrar-General in Freetown.
- (2) Delivery up and cancellation of any conflicting Deed(s), instrument(s) or whatever document and consequential rectification of all appropriate registers.
- (3) Declaration that the Plaintiff and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants have no title whatsoever to or over any portion of the 1<sup>st</sup> and 7<sup>th</sup> Defendants' land.
- (4) A perpetual injunction restraining the Plaintiff and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Defendants from any unlawful interruption or disturbance on the land.
- (5) Damages.
- (6) Any further relief that this Honourable Court may deem fit and just.



(7) Costs.

The 7<sup>th</sup> Defendant passed away in the course of the proceedings and was substituted by Abu Bakarr Kamara.

### DEFENCE OF THE 2<sup>nd</sup>, 3<sup>RD</sup> AND 4<sup>TH</sup> DEFENDANTS

6. A Defence and Counterclaim were filed on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants on the 16<sup>th</sup> June, 2014 by Alhaji Kamara Esq (now deceased) in which they aver as follows: -

- That they are not in a position to admit or deny the averments in paragraph 1 of the particulars of claim but contend that they are in lawful occupation of the land.
- That they deny paragraph 6 of the Plaintiff's particulars of claim and will aver that they never received such letters from the Ministry of Works, Housing, and Infrastructure since the land occupied by them is state land leased by the State to them.
- The said Defendants repeat paragraph 5, of their defence and counterclaim in answer to paragraph 7 of the Plaintiff's particulars of claim and will put the Plaintiff to strict proof.
- That the said Defendants deny paragraph 10 of the particulars of claim and will aver that the Plaintiff has no authority to evict them from the land that is lawfully theirs.

### COUNTERCLAIM

8. The 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants repeat paragraphs 1-11 of their defence.
9. That they have been in possession of the aforementioned piece of parcel of land for a period of 5 years.  
That they therefore counterclaim as follows: -
- A declaration that they are the fee simple owners of all that piece of parcel of land lying, situate and being at off Blackhall Road, Kissy, Freetown in the Western Area of the Republic of Sierra Leone.
  - An injunction restraining the Plaintiff, her heirs, assigns, agents, workmen or whosoever called from entering, remaining and being thereon.
  - Costs.
10. The 5<sup>th</sup> and 6<sup>th</sup> Defendants did not file any defence.

### TESTIMONIES OF WITNESSES

11. The Plaintiff testifies that she is the second child of the Late Benny Dumbuya formally of 5 Kamanda farm, Moyinba, Freetown who died intestate on the 8<sup>th</sup> March, 1999. After his death, the beneficiaries of the Estate agreed amongst themselves that the Plaintiff should administer same. However, since the cost of administration was high, the Plaintiff on the advice of her then Solicitor registered the Letters of Administration Pendent lite. She



narrates that the root of title of the land of the disputed land is a Statutory Declaration which was registered in the office of the Administrator-General. After the death of her father, the beneficiaries constructed a building on the said land. The Plaintiff clarifies that the said land was originally owned by her grandfather who had farmed the land since 1952. After the death of her father, the 1<sup>st</sup>, 2<sup>nd</sup> 4<sup>th</sup> and 7<sup>th</sup> Defendants encroached on the land for which she made a complaint to the Ministry of Lands. Other persons unknown has also encroached on the land.

14. Under Cross-examination by the Counsel for the 1<sup>st</sup> and 7<sup>th</sup> Defendants, the Plaintiff reiterates that the property was originally owned by her grandfather who was in possession before she was born. She confirms that her father had a document of title showing a measurement of the land as 16 acres. She insists that the 1<sup>st</sup> and 7<sup>th</sup> Defendants are trespassers on the land. The Plaintiff confirms that she took out letters of administration. She insists that the land occupied by the 1<sup>st</sup> and 7<sup>th</sup> Defendants lies within her property and that it is not state land.
15. Under cross-examination by Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, she stated she found out that the said 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants were trespassing on her land in 2005, she immediately reported the matter to the police. Another report was made to the Ministry of Housing which invited them, but they failed to show up. The Ministry of Housing advised her to report the trespass to the Ministry of Lands which she did. The Ministry of Lands invited them to a meeting, but they again failed to attend.
15. They testimony of the Plaintiff was corroborated by Sorie Bangura, who testifies as PW2.



16. Under cross-examination by Counsel for the 1<sup>st</sup> and 7<sup>th</sup> Defendants, PW2 admits that he knows all of the Defendants. He confirms knowing Santigie Smart, the alleged father of the first Defendant but does not know that he owned any property in the area. PW2 states that he was close to the said Santigie Smart. He confirms that the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants are occupying the land of the Plaintiff. The PW2 further confirms that the late father of the Plaintiff showed him the Statutory Declaration in 1998 together with a Master plan of the property. He admits that the plaintiff is his relative.
17. Under cross-examination by the Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, PW2 reveals that Benny Dumbuya, the late father of the deceased was his relative. He agreed knowing the late Santigie Smart but denies knowledge of his ownership of any property in the neighbourhood. PW2 states that he visits the land in dispute regularly and had at one point farmed on it. He therefore knows the boundary.
18. PW2 confirms knowing the Defendants and when they trespassed on the land, he joined the Plaintiff in making a report at the Ministry of Lands as he knows that she was appointed by the Benny Dumbuya's family as Administratrix of his Estate.
19. PW2 particularly confirms that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants are occupying the land of the Plaintiff but at the time of the report to the Ministry of Lands, only 1<sup>st</sup> and the 7<sup>th</sup> Defendants were mentioned. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> were not yet on the land.
20. PW3, Abdul Koroma also gave evidence corroborating that of the Plaintiff and the PW2. Under cross-examination by Counsel for the 1<sup>st</sup> and 7<sup>th</sup> Defendants, he recalls testifying that the family of the Late Benny Dumbuya appointed the Plaintiff to administer the Estate. He knows one Abu Dumbuya but does not know whether he took out



Letters of Administration in respect of the land. PW3 states that since the death of Benny Dumbuya, this action is the first litigation concerning the property. He does not know that the 1<sup>st</sup> and 7<sup>th</sup> Defendants own property around Blackhall Road and has known them for a long time. PW3 states that he has lived in the community for over 40 years as he has been there since 1971. He cannot tell if the Late Benny Dumbuya sold any part of the property.

21. Under cross-examination by Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, he confirms stating in his witness statement that the Plaintiff owns 15-16 Acres of land. He also confirms seeing the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants on the land. The PW3 answers that the 1<sup>st</sup> and 7<sup>th</sup> Defendants met him in the community as he had lived there since 1971.
22. The next witness, Jimmy Kawa who testifies as PW4 is a formal witness from the office of the Administrator and Registrar-General. He tenders a Statutory Instrument dated 27<sup>th</sup> April, 1998 numbered 19/98 made by Benny Dumbuya, Lahai Sesay, Abu Sesay and registered in volume 42, page 114 in Book of Statutory Declaration.
23. Under cross-examination by the Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, the PW4 identifies Exhibit A21-25 which is a plan. He confirms that it was signed on the 20<sup>th</sup> March, 1985 but registered on 22<sup>nd</sup> April, 1998. PW4 clarifies that though it took 13 years for it to be registered; there was Order of court for it to be registered out of time.
24. Under cross-examination by Counsel for the 1<sup>st</sup> and 7<sup>th</sup> Defendants, PW4 recognises a survey plan, attached to the Statutory Declaration and that it was registered on 29<sup>th</sup> April, 1998. He admits that there is no Court Order authorizing the registration of the said Statutory Declaration out of time.

25. At the close of the case for the Plaintiff, the Defendants opened their own case.
26. DWI- John Smart agrees knowing the Plaintiff and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.
27. The DWI testifies that his father was Chief Santigie Smart but after his father died, he did not take out Letters of Administration. He knows the 7<sup>th</sup> Defendant who has now been substituted by Abu Bakarr Kamara. He is aware of the Plaintiff's claims in the matter. DWI also knows the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants. He is also aware that they are claiming the land in dispute on the grounds that the State granted it to them.
28. He explains that the land is utilized as a quarry. He identifies Exhibit B5 but confesses that he is illiterate. DWI explains further that he resides on the land, and he started building on it since 1995. He clarifies that when his Deceased father showed him the land, it was not state land. When the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants came on the land, they met Pa Alimamy Kamara, Alpha Kamara and Santigie Smart in the home of Alpha Kamara and put "Bora" to work on the land. The two others, Pa Alimamy Kamara and Alpha Kamara agreed to allow them to work on the land but his father, Santigie Kamara did not. At this point, DWI asked the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants to vacate the land but they failed to do so.
29. Under cross-examination by the Plaintiff's Counsel, DWI informed the court that his father's correct name was Santigie Smart Fofanah. His father told him that the land was bought from one Pa Osman Kamara. DWI admits that he does not have any document of title except Exhibit B5 – conveyance (now Exhibit B5-10). He recognises Exhibit B8- a Site Plan which describes his father's property. He denies that the Plaintiff owns the land in dispute but contends that his late father owned 7 Acres and 8 town lots. The said property was owned by his father together with other persons.



30. Under Cross-examination by the Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, DW1 agrees that he is not an expert on land issues which the reason why the matter was brought to the Magistrates' Court. He insists that the land in dispute is not a quarry. DW2 answers that the High Court gave judgment against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants because he saw Bailiffs demolishing their structures.
31. The DW2, Chief Alfred Vinie Mattia describes himself as a Chief. He confirms knowing the 1<sup>st</sup> and 7<sup>th</sup> Defendants as the children of the Late Chief Santigie Smart and Alpha Kamara. He also knows that 2<sup>nd</sup> Defendants Santigie Kamara as one of the Chiefs crowned as Town chiefs of Moyinba. DW2 knows the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants as members of a group known as "NACKFORCE". He confirms knowing the Plaintiff since 1971 and knows the property situate at Moyinba, Kissy Road and agrees that they have been in court in respect of the said land.
32. Under cross-examination by the Plaintiff's Counsel, DW2 agrees that he has not seen the title deeds of the parties. He recognises Exhibit B17 and confesses not knowing the property the parties are in Court for. DW2 explains that he has been in the Community since 1971 and knew Benny Dumbuya. He however does not know whether Benny owned land in the Community and also does not know that the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants own land there.
33. Under cross-examination by Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, DW2 agrees that he is a chief and not an expert on land issues. He explains that the claim for the land came before him, and he adjudged that it belongs to the 1<sup>st</sup> and 7<sup>th</sup> Defendants. He recalls that the High Court had decided the land matter against NACKFORCE though he does not have the Court Order. DW2 explains that the land in dispute is not a quarry but the route to a quarry.
34. DW3 Abu-Bakara Kamara testifies that the 1<sup>st</sup> Defendant is his brother and the 7<sup>th</sup> Defendant (who has substituted) was his father. He recognises Exhibit B5-10 and states that the land indicated therein belonged to Pa Alimamy Kamara (deceased) and Alpha Kamara (deceased) and another owner is Santigie Smart.



35. Under cross-examination by the Plaintiff's Counsel, DW3 insists that his father bought the land from one Pa Osman Kamara, and he was present at the transaction. He does not know whether a conveyance was prepared but, other people bought land from the said Pa Osman Kamara. DW3 later states that there is a conveyance in the Court Bundle with his father's name as owner.
36. The Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants adopts the cross-examination of Counsel for the Plaintiff. DW3 states that he got to know the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants when they met his father and gave him Le200,000/00 for use of the land in dispute.
37. DW4 - Abdul Rahim Hamid. He described himself as a Licensed surveyor, attached to Geo Resources, a private surveying firm. He was hired by the 1<sup>st</sup> and 7<sup>th</sup> Defendants to ascertain the positions of the respective documents in relation to the land in dispute. DW4 testifies that he looked at the two documents belonging to the Plaintiff and the 1<sup>st</sup> and 7<sup>th</sup> Defendants and another document that was a lease of land from the Government allegedly to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The first survey plan in LS2196/91 property of Alimamy Kamara, Alpha Kamara and Santigie Smart and the second is L 5742/85 property of Benny Dumbuya all situate at off Blackhall Road, Kissy. He testifies that the property of Benny Dumbuya did not fall within the Kissy axis. It is way off in the Atlantic Ocean. He tenders his report as Exhibit BB 1-5.
38. The second report relates to survey plan LOA8476 state land leased to NACKFORCE phase 3 Community Organization: the findings are contained in a report which he tendered as Exhibit CC1-3. He testifies that he received confirmation from the Ministry of lands that LOA8478 was leased to one Momoh Mansaray.
39. Under cross-examination by the Plaintiff's Counsel, DW4, answers that he was taken to the land he surveyed by the 1st and 7th Defendants who claimed to own same. He explains that he used the G.P.S system to observe the coordinates of the area. He recognises Exhibit BB 1-5. There are two drawings on this exhibit. He also recognises a green drawing on it which is the position that was observed with G.P.S on the ground. He admits that the location the 1st and 7th Defendants took him is different from their land is actually located



and believes that he was taken there because they were convinced that it is their land. He also recognized Exhibit BB2 and recalls that he had stated that the land is different from that claimed by the 1st and 7th Defendants. He did not bother to ask the Ministry of Land whether the land was state land because they had already stated that it is private.

41. Under Re-examination, DW4 agrees that he was informed by the 1<sup>st</sup> and 7<sup>th</sup> Defendants that the land he was taken to be the one in dispute. He had reason to check with the Ministry of Lands to ascertain whether Site Plan LoA 8476 is State Land.
42. SW4 was Subsequently recalled and informs the Court that he received confirmation from the Minister regarding the Land, location and acreage of LoA 8476.
43. Under further Cross-examination, DW4 submits reports that the Plan of the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendant is faulty especially when there are no beacons on the land and from the document made available by the Ministry of Lands, the land claimed by them is State Land.

#### **DEFENCE WITNESSES FOR THE 2<sup>ND</sup>, 3<sup>RD</sup> AND 4<sup>TH</sup> DEFENDANTS**

44. DW5: Chief Santigie Koroma. He testifies that he lives at the NACKFORCE community by Quarry, Mamba Ridge and knows the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. DW5 knows the land at Mamba Ridge which is owned by NACKFORCE. The land was given to them by the Ministry of Lands. He recognises Exhibit C4 in the Court bundle which is the letter of Offer for lease of State Land at Mamba Ridge dated 26<sup>th</sup> August, 2008. DW4 testifies the receipts as C5, C6, C7.
45. DWs concludes by tendering his Written Statement marked C9, C10 and 22 in evidence.
46. Under Cross-examination by the Plaintiff's Counsel, DW5 denies testifying that the letter of offer from the Ministry of Lands is in the Court bundle but rather, he has it in his possession. He explains that the NACKFORCE Organisation was formed in 2008 and have built NACKFORCE phase 3

Community Primary School, Market, a Mosque and Church. The school which is managed by NACKFORCE is still functioning. DW5 does not agree that the property identifies in survey plan LoA 84176 is far away from the land in dispute or that it was leased to another person.

47. Counsel for the 1<sup>st</sup> and 7<sup>th</sup> Defendant also Cross-examines DW5. DW5 testifies that he was born in 1964 and was on the land in 1994, some thirty years later. He explains that they came together in 1999 to form NACKFORCE. When he was growing up in the Community, there was no Chief, only a headman and he is the first Chief to be appointed. He did know Santigie Smart and Pa Alpha Kamara as Elders in the Community. He did not know Pa Alimamy Kamara. DW5 recalls that an action was instituted against him at the Ross Road Magistrates' Court and the court ordered that their properties on the land be destroyed. He agrees that he occupied the land before NACKFORCE was founded but does not agree that Santigie Kamara Smart and Alpha Kamara allowed him to stay on the land as tenant -at-will.
48. The Court at this point calls the Independent Surveyor it appointed to tender his report. The witness, Sheriff Abass Kargbo (EW1) describes himself as a Licensed Surveyor. He recalls visiting the locus in quo on the 11<sup>th</sup> December, 2020 in respect of this matter. The report on the visit was tendered as Exhibit EE 1-5.
49. Cross-examination of EW1 was first done by Counsel for the Plaintiff. He explains that he conducted a GPS Survey and drew a plan in his report. He used the reduced Co-ordinate of the GPS to plot the position. EW1 concedes that he did not use a computer to plot the GPS position because the differences in the respective survey plans are far from each other. He recognizes paragraph 2 of his report and agrees that the report does not reflect the locations of the properties visited. He also agrees that it is not impossible to reflect the locations as a GPS printer could be used; he did not use the Printer because of the cost involved.
50. Under Cross-examination by Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, EW1 answers that all the documents given to him fall within the disputed land. He states that the land of NACKFORCE could not be located because it has no beacon number.



### ISSUE FOR DETERMINATION

51. The main issue for determination in this matter is whether the Plaintiff has on the strength of her title, proved that she is the fee simple owner of the land in dispute.

### AUTHORITIES CITED BY COUNSEL

52. The Plaintiff relies on the following Cases: -

- (i) GOBA -v- ALGONI (2020) LPELR (CCA) in which the Nigerian Court of Appeal set out five criteria to be fulfilled by the Plaintiff for the grant of Declaration of Title.
- (ii) OCEANS ESTATES LTD -v- PINDER (1969) 2 A.C. 19 at P. 24 where he quoted the dictum of Lord Diplock as follows: - "At Common Law... where the question of title to land arise in litigation, the Court is concerned only with the relative strengths of title proved by the rival claimants..."
- (iii) SEYMOUR WILLSON -v- MUSA ABESS (1981) Civ/APP. 5/79 (Unreported) per Livesey Luke C.J "...when one goes to Court to seek a declaration of title to land, one must succeed on the strength of one's title and not on the weakness of title of the other side".
- (iv) PETER.A. BANGURA -v- UNISA BANGURA (2008) cc 250/09 B. No.21) Unreported.

53. Relying on the aforementioned case law, Counsel for the Plaintiff submits that Plaintiff and her formal witness from the office of the Administrator and Registrar-General tendered in Court a Statutory Declaration which solemnly declared that the Plaintiff's predecessor -in- title, Benny Dumbuya together with Lahai Sesay, Abu Sesay Dumbuya and Umu Conteh and dated 27<sup>th</sup> April, 1998 registered as Instrument No. 19/98 Vol. 42 page 114 in the record book of Statutory Declarations as Exhibit A21 – 24. He submits further that the land was clearly identified, the acreage and location determined by Survey

Plan numbered LS 743/85 dated 29<sup>th</sup> March, 1985 attached to the said Statutory Declaration.

54. Counsel for the Plaintiff submits that on the death of Benny Dumbuya, the Plaintiff took out Letters of Administration dated 28<sup>th</sup> October, 2013 in the said property which is Exhibited and marked A27 – 57.
55. He concludes by submitting that she is entitled to the property by possessory title, but also by substantial documentary evidence tendered in Court. This in effect establishes that she has a better title than the Defendants and therefore is entitled to recover possession and damages for trespass.

#### 1<sup>ST</sup> AND 7<sup>TH</sup> DEFENDANTS

56. (i) JALLOH -v- MUSTAPHA (Civ. APP 2005) (2009) SLCA 17 AND WALTER RIDDLE AND SAMUEL NICOL (1971) C.A. (Unreported) where it was held that “before a declaration of title is given, the land to which it relates must be ascertained with certainty, the test being whether a surveyor can from the record produce an accurate plan of such land”.
- (ii) SAKPAKU -v- AHIKU (1942) & W.A.C.A. 76 at p. 82
57. In his submission, Counsel for the 1<sup>st</sup> and 7<sup>th</sup> Defendants Contends that the Plaintiff has not been able to adduce evidence clearly ascertaining the land she is claiming. He lays emphasis on the testimony of their hired License Surveyor. Counsel submits that the Expert Surveyor, DW4 in his report concludes that the Survey plans with their delineated Coordinates attached to the Conveyances of the parties did not fall within the disputed area. Counsel argues that the report of the Independent Surveyor hired by the Court corroborates the testimony of the DW4 as he also concludes that all the Survey plans fall out of the disputed land.
58. Counsel for the 1<sup>st</sup> and 7<sup>th</sup> Defendants submits that they have been in possession of the said land for 24 years and more. Though the document relied on is obscured (sic), they can rely on equity in aid of their case.
59. The 1<sup>st</sup> and 7<sup>th</sup> Defendants did not address the Court on their Counter claim.



## THE 2<sup>ND</sup>, 3<sup>RD</sup>, 4<sup>TH</sup> AND 5<sup>TH</sup> DEFENDANTS

60. Unfortunately, at the close of evidence, Counsel for the above-mentioned Defendants passed away. He was not replaced by the said Defendants and therefore no written address was filed. However, their Counsel had led his witnesses in evidence and rested their Case which the court shall take into consideration in determining the issue in dispute.

## THE LAW

61. The leading authority for actions for declaration of title to land in Sierra Leone is the Case of DR. CJ SEYMOUR-WILSON -v- MUSA ABESS (delivered on the 17<sup>th</sup> June, 1981) Unreported. The headnotes of this judgments deal with four broad areas:
- (a) The onus is also on the Plaintiff to prove ownership of land in dispute. The Registration of Conveyance and Statutory Instrument is sufficient to prove title. The requirement is for the claimant to prove that his predecessor- in- title had passed a good title.
  - (b) Registration of Conveyancing instrument does not confer or prove title as title is conferred by the Instrument itself.
  - (c) In an action for Trespass, the Plaintiff must prove that he has better right of possession. A party within a better title may be able to prove a better right of possession, but not necessarily a better title. Mere possession is sufficient to maintain trespass against a person who cannot show a better title.
  - (d) The plaintiff has the duty to discharge onus of proof as to the ownership of the land.
62. In the earlier case of JOHN & ANOR -v- STAFFORD & ORS (Supreme Court Civil Appeal No 1/75 13<sup>th</sup> July, 1976) Cole CJ., had stated that "Even if the claim for title fails, if a claim for trespass is sought, the Court should consider the evidence to see if possession has been proved to found a claim for trespass".

63. In KODILINYE -v- ODU (1935) 2 W.A.C.A 336 (Cited by Livesey-Luke CJ (Sierra Leone) had this to say: "The onus lies on the Plaintiff to satisfy the Court that he is entitled on the evidence brought by him for a declaration of title... 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 has not sought it".
64. In SEYMOUR WILSON (Supra) the Court made it clear that a Deed of Conveyance is not superior in quality to a statutory Declaration. What matters really is the Strength of the title. As Livesey-Luke CJ puts it "Indeed the Courts in Sierra Leone have on innumerable occasions decided in favour of owners of a possessory title without documents of titles against holders of registered Conveyances"
65. I shall look at what constitutes "Good root of title"? According to MEGARY & WADE'S LAW OF REAL PROPERTY 14<sup>th</sup> edition "... a good root of title is a document which describes the land sufficiently to identify it, which shows a disposition of the whole legal and equitable interest contracted to be sold and which contains nothing to throw away doubt on the title..."

#### APPLICATION OF THE LAW TO THE FACTS

66. In order to succeed in a claim for declaration of title to land, the Plaintiff must succeed on the strength of his title and not on the weakness of the Defendants. Per Livesey-Luke CJ. The issue for determination is whether the Plaintiff in this case has established a good of title.
67. The Plaintiff in her oral testimony describes the land in dispute and avers that the said piece or parcel of land was owned by her father, the Late Benny Dumbuya. She testifies further that on the death of her father intestate, she took out Letters of Administration dated 28<sup>th</sup> October, 2013 which was tendered in court as Exhibit A27-59. The Plaintiff called an official from the office of Administrator and Registrar-General who tendered a Statutory Declaration in favour of her deceased father and others dated 27<sup>th</sup> April, 1998 and registered as No. 19/98 in volume 42 Page 114 in the Record Book of



Statutory Declarations kept in the office of Administrator and Registrar-General marked Exhibit A21-24.

68. The Plaintiff testifies further that she has been in actual possession of the land enjoying quiet possession until 2005 when the Defendants trespassed thereon.
69. In his submission, Counsel for the Plaintiff quotes Livesey-Luke CJ in DR SEYMOUR WILSON -v- MUSA ABESS (Supra) as follows .... "When one goes to Court to seek a declaration of title to land, one must succeed on the strength of one's title and not on the weakness on the title of the other side".
70. He quotes Livesey-Luke CJ further. "Indeed the Courts in Sierra Leone have on numerous occasions decided in favour of owners of possessory title without documents against holders of registered conveyance". Counsel relies on these two quotations to conclude that the Plaintiff is not only entitled to the property by possessory title, but also with substantial documentary evidence tendered in Court.
71. In the case of the 1<sup>st</sup> and 7<sup>th</sup> Defendants, the first Defendant testifies that he is a beneficial owner of the land which he derives from his late father, Santigie Smart. He relies on a Deed of Conveyance dated 8<sup>th</sup> November, 2004 expressed to be made between one Osman Kamara and Pa Alimamy Kamara, Alpha Kamara and Santigie Smart which is Exhibited as B5 – B10. The 7<sup>th</sup> Defendant testifies that he was a co-owner of the land with the father of the 1<sup>st</sup> Defendant described in Exhibited as B5 – B10 and by a Site Plan numbered LS 2196/91 covering an area of 7.0500 acres situate at Off Blackhall Road, Kissy Freetown. The 1<sup>st</sup> and 7<sup>th</sup> Defendant relies further on the fact that they have been in adverse possession for over 24 years undisturbed and uninterrupted. It is noteworthy that the conveyance and Site Plan were never tendered in Court and so are not evidence.
72. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants rely on Exhibit C4 which is a letter of Offer of State land at Mamba Ridge, Kissy dated 26<sup>th</sup> August, 2008. DW5 who testifies for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants claims to be living on the land with the 3<sup>rd</sup> and 4<sup>th</sup> Defendants and it is owned by them through their organization known as Nackforce. Under cross examination, he recognizes

Exhibit C5, 6 and 7<sup>th</sup> as receipts issued to them by the Ministry of Lands in respect of lease rent paid.

73. The Court called an Independent Surveyor, Sheriff Abass Kargbo who tenders his report as EE 1-5. The reports, amongst others, states that

"I was able to compute the Survey Plan numbered LS 743/85 property of Mr. Benny Dumbuya and LOA 8476 land leased to NACKFORCE. The coordinates on Survey Plan LS 2196/91 (Conveyance of 1<sup>st</sup> and 7<sup>th</sup> Defendants) were not clear and so I had to go to the office of the Administrator and Registrar-General" to get a copy of the documents. The document I demanded is Volume 579 at page 122. The document was seen and photocopied and brought [sic]. To my greatest surprise, the Survey Plan enclosed in that conveyance is that for Mr. Francis Victor Nyama situate at Yams Farm, Off Freetown Waterloo Road, Roke Village and not for Alimamy Kamara and two others Off Blackhall Road, Kissy." This clearly establishes that the survey plan relied on the 1<sup>st</sup> and 7<sup>th</sup> Defendants is not reliable and the said Defendants failed to contradict that piece of evidence.

74. In the instant case, I have endeavored to analyse the evidence before me and find that though the Independent Surveyor has concluded that none of the documents submitted correctly describes the land in dispute, there is ample evidence before the Court to show that all of the parties are referring to the same piece of land. The Independent surveyor on page 3 of his report had this to say:

"Firstly, survey plan numbered LS 743/85 would have plotted at the correct position since the survey plan was tied on a colony survey beacon namely BP 3412 and BP 4313 the wrong coordinates must have been used to compute and draw the survey plan. Moreover, that survey plan was the first survey work done on the land."

It is noteworthy that this opinion of the independent surveyor corroborates the opinion of DW4, the Licensed surveyor called by the 1<sup>st</sup> and 7<sup>th</sup> Defendants expressed in Exhibit BB1-5 particularly on the second photo marked BB4 which is the compressed global mapper showing the area surveyed with respect to reference points and documentary position of LS 743/85. One of



the beacons admitted by DW4 to be in the records of the Ministry of Lands-  
PB 3412 is located on the Plaintiffs land.

75. What clearly stands out in the entire matter is that 1<sup>st</sup> and 7<sup>th</sup> Dependent have not tendered any document of title to the land. Even if they had tendered it, the report of the Independent Surveyor is damning. He states that "To my greatest surprise, the Survey Plan enclosed in that conveyance is for Francis Victor Nyama situate at Yams Farm, Off Freetown Waterloo Road, Freetown and not for Alimamy Kamara and two others at Off Blackhall Road, Kissy.
76. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants in turn have not tendered any acceptable document of title. What they have is a letter of Offer of Leasehold interest with a lease Survey Plan. As regards their documents, the Independent Survey had this to say: -
- ".... the lease Survey Plan numbered LoA 8476 ... is just an ordinary uncompleted Survey Plan. This is the reason why I doubt of its being processed in the Ministry and its correctness. The Survey Plan does not represent anywhere on the land because no beacon numbers were written on the plan and no Surveyor can locate any land that has a Survey Plan without beacon numbers".
77. Before concluding, I shall deal with the issue of whether the Statutory Declaration tendered by the Plaintiff is valid in law to establish title.
78. Statutory Declaration has been held to confer title to land. The background to this is that in the early days of the Settlement of Freetown, there was an abundant of land available and this meant that the settlers could appropriate as much land as possible for themselves. Thus, many of them did not have any evidence of their ownership except by the fact of their occupation of the land – See COLONIALISM AND THE MODERN STATE: LAND TENURE RELATIONS IN SIERRA LEONE by Seth Opuni Asiama Page 223.
79. The Author continues: "This issue was commented on by Livesey-Luke CJ in the case of SEYMOUR WILSON -v- MUSA ABESS" (supra) quoted by Renner-Thomas in his article, Case Review 1: Seymour-Wilson -v- Musa Abess – Revisited" in Sierra Leone – in Sierra Leone Law Review, 2000 vol. 1 No. 1 43-46, p.44:

"It is a matter of common knowledge that most of the lands in the Western Area outside of the City of Freetown are based on possessory title and most of them are not covered by title deeds".

80. To rationalise titles, the Statutory Declarations Act, 1835 comes into play. Renner- Thomas describes how this works:

"To make up for this absence of a document of title, a Claimant would make a declaration under Oath Setting out the root of title accompanied by a similar declaration by two corroborating witnesses. A Survey plan on which is delineated the land in question is invariably attached to the document. To give it further authenticity, as it were, the document is submitted for registration under the provisions of the Statutory Instruments Act, Cap 256 of the Laws of Sierra Leone, 1960.

81. As I have stated in this judgment, the Plaintiff tendered in evidence through an Official of the Office of Administrator-General, a registered Statutory Instrument. None of the Defendants questioned its validity. It follows that the Plaintiff has proved a better title than the Defendants and I so hold.
82. As regards the Counter claims of the 1<sup>st</sup> and 7<sup>th</sup> Defendants in the first Instance and those of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in the second instance, I hold that they have not been able to discharge the burden of proving that they have a better title or any interest than the Plaintiff. Their Counter claims therefore fail.

### CONCLUSION

83. For the reasons given in this Judgment, I hold that the Plaintiff has proved its case on a balance of probabilities whilst the Defendants have failed to prove their claims in their respective Counter claims.
84. In the circumstances, I hold as follows: -
- 1.) That the Plaintiff entitled to the fee simple ownership of all that piece or parcel of land and hereditaments situate, lying and being at Off Blackhall Road, Kissy, Freetown in the Western Area of the Republic



of Sierra Leone which Constitutes part of the Estate of Benny Dumbuya (Deceased Intestate) totaling 16. 8936 Acres particularly delineated on Survey Plan marked LS 743/85 dated 29<sup>th</sup> March, 1985 contained in Statutory Declaration dated 22<sup>nd</sup> April, 1988 at page 14 in Volume of the Book of Statutory Declaration kept in Office of the Registrar-General in Freetown.

- 2.) That the Defendants deliver up for cancellation all conflicting Deeds, Instruments or whatever document in their possession.
- 3.) That each of the Defendants jointly or severally pay damages to the Plaintiff for Trespass assessed at Le 15, 000.00 (New Leones) per Defendant.
- 4.) That the Plaintiff is entitled to the immediate possession of all piece or parcel of land herein.
- 5.) A perpetual Injunction is hereby granted restraining the Defendants by themselves, their servants, agents, workmen or however otherwise called from entering upon, remaining thereon or from carrying on any construction or building or work or in any way interfering with the said land.
- 6.) That the Defendants jointly or severally pay costs to the Plaintiff assessed at Le 150,000.00(New Leones).
- 7.) That the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants are at liberty to negotiate with the Plaintiff for the sale to them of the portion of the said land on which the Church, Mosque, School, or Market are constructed within 30 days from the date of this Judgment. The decision of the Plaintiff as regards this negotiation shall be binding on all the parties.



Hon. Justice Sengu M Koroma JSC