IN THE HIGH COURT OF SIERRA LEONE
LAND AND PROPERTY DIVISION

BETWEEN:
MARIATU KEITA - PLAINTIFF
AND
THE UNDER-SHERIFF 1ST DEFENDANT
REGINA KAMARA - 2ND DEFENDANT

S JAMIRU ESQ for the Plaintiff

J B JENKINS-JOHNSTON Esq for 2nd Defendant

The Under-Sheriff was absent, and unrepresented

JUDGMENT DELIVERED THE 2nd DAY OF MAY, 2011.

1. This Judgment is a follow up to the one I delivered on 25th February,2011 on the preliminary objection taken by Mr Jenkins-Johnston, Counsel for the 2nd Defendant, as to whether this Court had jurisdiction to hear the Plaintiff's Application dated 20 January,2011, as one of the Defendants in the substantive action, and in the Application, was the Under-Sheriff who, according to Mr Jenkins-Johnston, was immune from suit, having been granted such protection by Section 77(2) of the Courts' Act,1965. In that Judgment, I gave a resounding 'NO' to the argument canvassed by Mr Jenkins-Johnston. The Under-Sheriff has no protection, nor immunity where, the Court which granted the Order which the Under-Sheriff was called upon to execute, had no jurisdiction to issue the same. In that Judgment, I took pains to set out the facts of the case, as presented in the papers filed on behalf of the Plaintiff. That Judgment, forms part of this Judgment as well, so that I need not reiterate the facts I had already found. Save that, the reference to Le50million therein should actually read Le50,000.
2. The purpose of this Judgment, is to decide whether I should confirm the interim Order I made on 24 January,2011, granting the Plaintiff an Injunction in the terms sought by her in the Application herein, and whether, having now heard the 2nd Defendant's side of the story, I should go further, and grant the Plaintiff an Order restoring possession to her, of the property she has constructed at Henry Drive, Regent. To show his indifference to the outcome of the matter, the Under-Sheriff has

neither appeared himself to argue his case, nor has he appeared by Counsel. He has not attempted in any way whatsoever, whether by way of affidavit evidence, or otherwise, to show that he was right to execute the Orders made by FOFANAH,J on 21 December,2010 and on 6 January,2011 respectively. And as I observed in my earlier Judgment, no Defence has been filed on his behalf in these proceedings. The only reasonable inference I am left to draw is that perhaps, the Under-Sheriff is unable, or cannot support, nor justify his actions. My Judgment is that the Plaintiff should be restored to her property immediately, and I shall now go on to explain why I have reached that conclusion.

3. Mr Jenkins-Johnston has canvassed the interesting argument that the Plaintiff's remedy against the 2nd Defendant was either to apply to be joined as a party in the action brought by the 2nd Defendant herein against Rev George Johnson; or, to appeal against FOFANAH,J's Judgment. As both of us are sitting as High Court Judges, and have co-equal jurisdiction, I ought not to interfere with FOFANAH J's Orders. Obviously, Mr Jenkins-Johnston has conveniently forgotten that he proceeded ex parte before FOFANAH,J. What went before FOFANAH,J was an Application made by Rev George Johnson for an extension of time within which to file an appeal against the Judgment and Orders of MATTURI-JONES,J, and for a Stay of Execution of the said Orders. The 2nd Defendant herein was a Respondent in that Application, but neither Rev Johnson, nor his Counsel moved the Court. As I am Presiding Judge in a separate Application brought by Rev Johnson in that action, I have read FOFANAH,J's minutes of the proceedings. At no time did he record that the Court was moved by Rev Johnson, or by his Counsel. Instead, what happened was that the 2nd Defendant herein deposed and swore to a second affidavit in opposition to Rev Johnson's, on 15 December,2010. In paragraph 5 of this further affidavit, she deposed as follows: "*That in order to meet the justice of the case, I hereby most respectfully ask the Court to make an Order revoking the Conveyance to Mariatu Keita....and further Ordering that the said Land be conveyed to me by the Defendant, or the Master and Registrar.*" It was in response to this request, in an affidavit in opposition, that FOFANAH,J made the several Orders on 21 December,2010. The preamble to the Orders, drawn up by Jenkins-Johnston & Co, confirm the absence of Counsel for Rev Johnson: "*UPON READING the Motion papers dated the 2nd day of November,2010 together with the affidavit in support thereto and the*

exhibits attached thereon (sic) made by M S Turay and Associates of Counsel (Sic) for the Defendant/Applicant; AND UPON READING the affidavits in opposition filed in by Plaintiff/Respondent AND AFTER HEARING J B Jenkins-Johnston Esq of Counsel for the Plaintiff/Respondent this Court Orders as follows:" So the remarkable situation which arose, was that the Learned Judge did not hear Counsel for the Applicant in those proceedings, but proceeded to make Orders not even applied for by the Plaintiff/Respondent therein, but which were sought in an affidavit in opposition. Whatever may be the arguments in support of such a procedure, it is clear that the Law, and certainly this Court will not permit an absurdity, particularly an absurdity which results in gross injustice. The position is that the Orders made by FOFANAH,J were made ex parte. What he had before him, was an inter partes Application filed by a party who was not in fact heard in support of his Motion. It was not an ex parte Application, but the Learned Judge made the Orders ex parte. Order 8 Rule 3(1) of our High Court Rules,2007 is quite clear that an Order made ex parte can be set aside by the same Court. It is also trite Law. That Rule reads in part: "*Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby.....but the Court.....may make an Order ex parte on such terms as to costs or otherwise, and subject to such undertaking, if any, it thinks just; and any party affected by such order may apply to the Court TO SET IT ASIDE.*" The Plaintiff herein has applied to this Court to SET ASIDE an Order made ex parte. This Court therefore has jurisdiction to hear the Plaintiff, and to make the Orders sought by her. If the 2nd Defendant was dissatisfied, or rather, not completely satisfied with the Judgment of MATTURI-JONES,J her remedy there, was to appeal against that Judgment. There was an inter partes trial. She was not entitled to go to another High Court Judge and ask for a relief she had not even pleaded in her Writ of Summons.

4. The justice of the case also demands that the Orders sought by the Plaintiff be made. And I say this, because of the manifest untruths contained in the several affidavits deposed and sworn to by the 2nd Defendant, which have been filed in these proceedings. I shall start with her affidavit in opposition deposed and sworn to by her on 14 March,2011. In paragraph 3 of her affidavit, she deposes "*That right from the beginning the Plaintiff knew that the land she bought from Rev George*

Johnson in 2006 had already been sold to me in 2005 and was only sold to her when I travelled out of the jurisdiction. Copies of my receipt of initial payment made to Rev George Johnson, and my survey plan made on his instructions and with his cooperation are exhibited hereto and marked "A" and "B" respectively. The receipt shows that the full purchase price was Le10million but that the 2nd Defendant paid only Le5million on 18 December,2005. Though it is not absolutely necessary, the 2nd Defendant has not produced any evidence in these proceedings that she had completed payment of the purchase price, which would have entitled her to an Order for Specific Performance. In fact, the absence of such a claim made on her behalf by her very able and experienced Solicitors in exhibit "MK5", is perhaps a clear indication that she had not paid the full purchase price to Rev Johnson, and was not therefore entitled to that remedy. Exhibit "MK8B" an affidavit deposed and sworn to by Rev Johnson on 2nd November,2010 in support of his Application for an Extension of Time within which to appeal against the Judgment obtained by 2nd Defendant against him, clarifies the issue. There, Rev Johnson deposes in paragraph 4 " *That I did not see the Plaintiff/Respondent for a couple of months, hence in view of other previous competing interests, I had to instruct my Solicitor (then) to deposit the said Le5,000,000 into the Judicial Sub-Treasury after the Plaintiff/ Respondent refused to collect the money in the chambers of my Solicitor. Photostat copies of the Letter of refund and Judicial Sub-Treasury Receipt are now shown to me exhibited and marked "Exhibits RGC1 A&B".* The 2nd Defendant has not denied any of this. In her affidavit in opposition to that Application deposed and sworn to on 11 November,2010, she tells another lie. She deposes in paragraph 5 thereof: " *The simple fact of the matter is that the Defendant acted in a very dishonest and fraudulent manner by receiving my money for two plots of land on 18th December,2005.....*" This was untrue, as she had only paid part of the purchase price. I cannot imagine greater perfidy than this.

5. The survey plan she has exhibited is in my respectful opinion, close to being a forgery. I am not sure that it was signed by the Director of Surveys and Lands, though I am certain that if he did so, it certainly was not on 28 April,2006. All survey plans which are passed, and countersigned by the Director of Surveys and Lands, bear the Department's stamp 'ENTERED' and further below: 'ENTERED..... with the date it is so counter signed being inserted. 2nd Defendant's plan does

not bear this stamp. She has exhibited the Plaintiff's Deed of Conveyance enclosing Plaintiff's survey plan. A cursory inspection of Plaintiff's survey plan shows that it bears the stamp 'ENTERED'.

6. Secondly, she deposes in paragraph 5 of the same affidavit "*That it can be clearly seen from the Plaintiff's survey plan that it is marked at the bottom - "certified true copy of L S 685/2006", which is my survey plan. It can also be seen on a comparison of the two plans that the neighbour on the North is Mr Arthur Williams; and on the West Unisa Sesay; and on the south Henry Drive Leading to Kennex Drive.*" What she fails to say, and here it is clear that she wishes to deceive the Court, is that on the south, the plan reads: "*20 feet access road ..... TO KENNEX DRIVE*" whilst the Plaintiff's plan reads, in the same direction, '*Henry Drive*'. Further, on what I may call for convenience, the east side, her plan reads '*20 feet access road*.' On the other hand, this side of the Plaintiff's plan reads: '*Sugar Loaf Road.*
7. Now, contrary to what the 2nd Defendant alleges, the Plaintiff's survey plan does not read certified true copy of LS685/2006, but rather '*certified true copy of LS625/2006*'. The Plaintiff's survey plan is LS626/2006 signed by the Director of Surveys and Lands on 28th April,2006. Further, 2nd Defendant's plan is not LS625/2006 but rather LS685/2006 though it is itself, dated 28th April,2006. In my experience, it is unlikely the Director would have signed plans numbered consecutively 625 - 685 in one day. It follows that the 2nd Defendant was here trying, though unsuccessfully, to confuse and trick the Court. And as usually happens in litigation, when a litigant is being mendacious, he or she usually trips him or herself, unwittingly. 2nd Defendant has herself exhibited Plaintiff's conveyance to her affidavit. In the first preamble in that Deed, we find the words "*.....which land is more particularly demarcated on survey plan numbered LS625/2006 dated the 28th day of June,2006.*" This survey plan was, as is shown in the same preamble, that enclosed in the Statutory Declaration sworn to by Rev and Mrs Johnson on 9 June,2006 and duly registered as No.49/2006 at page 26 in volume 50 of the Record Books of Statutory Declarations kept in the office of the Registrar-General, Freetown. What is also noticeable about 2nd Defendant's plan is that, contrary to Rule 67 of the Survey Rules, Cap. 128 VOL VII of the Laws of Sierra Leone,1960, it does not bear the words: Certified true copy of original plan made by me on.... with the date inserted. Instead what we have on her plan are the words: 'certified true

Photostat C..... Further, in my experience also, the date the Director countersigns the plan, and the LS number, invariably appear under his designation and not above it as in 2nd Defendant's plan, exhibit "B". I am fairly certain, that if and when the action goes to trial, it would be shown that there is no such plan registered in the office of the Director of Surveys and Lands.

8. As I have stated above, the justice of the case demands that Plaintiff be restored to her property immediately. 2nd Defendant has no claim to it. She was able to bamboozle and confuse the Court with outright lies, half truths and a palpably false document, to grant the Orders which are the subject matter of this Application. I cannot allow such an unjust situation to continue. The 2nd Defendant had no right to the Orders she obtained before FOFANAH,J.
9. In the result, I make the following Orders:
   (1) I HEREBY SET ASIDE the Orders made ex parte by FOFANAH,J on 21 December,2010 and 6 January,2011 for the reasons stated above.
   (2) I DECLARE That the execution levied on and against the Plaintiff's property situate at and known as 12 Henry Drive, Regent Village on 12January,2011 was Wrongful and Illegal for the reasons I have stated above, and in my earlier Judgment on 25 February,2011.
   (3) I ORDER that the Plaintiff do immediately Recover possession of her property situate at and known as 12 Henry Drive, Regent of which she was wrongfully deprived on 12 January,2011.
   (4) I Grant an Interlocutory Injunction against the Defendant and her agents and servants RESTRAINING each and every one of them from remaining on, or doing anything to Plaintiff's property situate at and known as 12 Henry Drive, Regent pending the determination of the Action herein. The Plaintiff shall enter into, and file the usual undertaking as to Damages.
   (5) The Plaintiff shall have the Costs of this Application, which Costs I deem to be substantial because of 2nd Defendant's mala fides. Such Costs are assessed at Le3,000,000.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE