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OF STATE LAND, DEMOLITION AND THE LAW!

[FOOD FOR THOUGHT.]

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In the last few years, *and* certainly since the commencement of the term of office of the incumbent Minister of Lands, there have been numerous arguments, contests, discussions, disagreements *and* (unfortunately) violent confrontations between Officials of the Ministry of Lands, The Police *and* Private Citizens over the question of whether or not a particular *Piece of Land* somewhere in the Western Area is "STATE LAND"; and whether or not some private individual has built a House or a Shop on "STATE LAND"; *and* whether or not such private individual has "valid documents" for such land [*that is to say, VALID as far as the Ministry of Lands is concerned,*] or whether the Ministry of Lands has the right *and* the power to demolish the property of a private citizen, acting only on their own decision *and* without the Order of any Court of Law. The most recent violent confrontation between the Officials of the Ministry of Lands, The Police *and* ordinary citizens of Sierra Leone which resulted in the tragic *and* untimely death of a Senior Ministry of Lands Official, *MR. KEN MOORE*, has focused the minds of many Sierra Leoneans even more on this very

vexed question, which in my opinion, needs to be looked into rather more seriously than we have been doing so far, in the hope that any further confrontation and tragedy can be avoided in the future.

It would seem that some Officials of the Ministry of Lands believe [whether justifiably or not,] that ALL LAND IN THE WESTERN AREA "APPARENTLY NOT OCCUPIED" BY ANYONE IS VESTED IN THE GOVERNMENT, AND THEREFORE IS THE SO-CALLED "STATE LAND". I make bold to submit, that as a matter of Law, this belief is totally false, totally wrong, and totally unsustainable in any Court of Law.

In the *Interpretation Act No.8 of 1971*, the word "LAND" is defined as follows:-

".....Land includes land covered by water, any house, building or structure whatsoever, and any estate, interest or right in, to, or over land or water....."

The significance of this definition will be illustrated later in this piece.

The phrase "STATE LAND", which used to be "CROWN LAND" before we became a Republic is very clearly defined in *Section 2 of the Crown Lands Act No.19 of 1960* as follows:

".....STATE LANDS mean all lands which belong to the Crown by virtue of any treaty, cession, convention or agreement, and all lands which have been, or may hereafter be acquired by or on behalf of the Crown for any public purpose or otherwise howsoever, and lands acquired under the Provisions of the PUBLIC LANDS ACT and includes all shores, beaches, lagoons, creeks, rivers, estuaries and other places and waters whatsoever belonging to, acquired by, or which may be lawfully disposed of by or on behalf of the Crown....."

From the above definition, it is clear, in my submission, how any particular piece of land becomes STATE LAND, and illustrates the incorrectness of the assumption that all land which is apparently unoccupied is STATE LAND. It is my further submission from the said definition of "STATE

LAND", that in any case where it is alleged that a particular piece of land is "STATE LAND", there ought always to be some record of when *and* how such land became *State Land*, i.e. THE TREATY, CESSION, CONVENTION, AGREEMENT, WARRANT Or ORDER by which such land became *State Land*, and in the case of land acquired by the State under the *Public lands Act Cap.116* of the Laws of Sierra Leone, there will be a record of the compensation paid to the Owners of such land compulsorily acquired by The State.

I would therefore submit finally on this particular issue, that the *Ministry of Lands and Surveys* should always know from their records, *and* ought never to be in doubt about which land is *STATE LAND*, and there certainly ought never to be a situation where the Director of Surveys *And* Lands has passed, approved *and* authenticated a particular Survey Plan *and* assigned to it an *L.S. Number* as being private land, only for the *Minister* to later claim that such land is *State Land* without any supporting evidence whatsoever. In all such cases, it is my submission that the presumption of regularity [*OMNIA PRAESUMUNTUR RITE ET SOLEMNITER ESSE ACTA*] would apply against the claim that such land is *State Land*, as indeed would the "CONTRA PROFERENTEM" Rule *and* Rules of *ESTOPPEL* by conduct, because that would be an excellent example of the STATE itself, approbating *and* reprobating at the same time, which the Law definitely frowns upon.

It is also noteworthy that we have in our Law certain other pieces of legislation dealing with land, *to wit*,

- (a) *The Public Lands Act – Cap.116*
- (b) *The Unoccupied Lands Act - Cap.117*
- (c) *The Crown Lands Conservancy Act - Cap.119.*
- (d) *The Defence Lands Acquisition Act - Cap.119*
- (e) *The Airfields and Defence Lands Act - Cap.120*

- (f) *The Concession Act - Cap. 121*
- (g) *The Admiralty Lands Act - Cap.123*
- (h) *The War Department Lands Act - Cap.124*
- (i) *The Ordinance Lands Act - Cap.125.*

The *Public Lands Act* deals essentially with a situation where any land is required for the use of the State for ["PUBLIC PURPOSES"] and makes provision for such land to be acquired by the State and compensation paid to the Owner thereof. Section 8 of the Act provides that,

".....Within 8 days after such appropriation the Director of Surveys And Lands shall cause a plan of the Land so set out, appropriated and taken as aforesaid, together with a certificate, under his hand, to the effect that the same has been taken and appropriated for the service of the State, to be registered in the office of the Registrar-General....."

Section 9 provides that,

".....when any land has been taken and appropriated for the service of the State, whether under the provisions of this or any other Act, the registration of the Plan of such land, together with the certificate in the office of the Registrar-General.....shall be conclusive evidence, that such land has been set out, taken, and appropriated for the service of the State under the provisions of this Act....."

In all cases where the owner of such land taken for the service of the State is not satisfied with the compensation offered to him/her, the matter can be referred to Court for determination up to the Highest Court of Appeal The Provisions of the *Unoccupied Lands Act Cap.117* are most instructive and relevant, in the Western Area.

The long title of the Act reads -

".....An Act FOR MORE READILY ASCERTAINING THE OWNERSHIP OF UNOCCUPIED LANDS....."

Section 3 of the Act provides -

"....Whenever the Director of Surveys and Lands shall be of the opinion that any land is an unoccupied land, it shall be lawful for him to cause such land to be marked out, and a Notice to be pasted in some conspicuous part of such land, and such Notice shall be in these words, viz: "CLAIMED AS STATE LAND," and shall be signed by the Director of Surveys and Lands and dated."

Section 4 provides that:

".....For the purposes of this Act, all land shall be deemed to be unoccupied land where it is not proved by the person claiming the same, that beneficial use thereof for cultivation or inhabitation, or for collecting or storing water, or for any industrial purposes has been made for 12 years next prior to the commencement of this Act. PROVIDED THAT the following lands shall not be deemed to unoccupied land, *namely* –

- (1) Where the person claiming the same is able to produce the instrument or instruments by virtue of which he is in possession thereof, or the register thereof, or a certified copy showing a title to such lands.....
- (2) Where the land forms part of lands included in the Public Register *and* Plan of town lots of Freetown, Bonthe *and* York Islands;
- (3) Where the land is planted with Banana, Coffee, Cocoa, Gum, Kola or Plantain trees, or other trees of a permanent nature...."

Section 5 provides that within a period of *Six(6) months* after the pasted of the Notice referred to in *section 3* of the Act, it shall be lawful for all persons claiming such land to send a written notice to the Director of Surveys *And* Lands setting out the extent *and* boundaries of the lands claimed by them.

Section 6 provides as follows:

".....Whenever it appears to the High Court that any person is wrongfully claiming any unoccupied land, the Court, on the application of the Attorney-General, may cause a summons to be served upon such person requiring him to appear before the Court at the time *and* place therein mentioned, *and* to produce the instrument or instruments by virtue of which he claims such land, or the register thereof, or a certified copy, or to otherwise prove his right to same.

- (2) If, on the hearing of such summons, the Court shall find that such person is wrongfully claiming such land, the Court may order him to give up possession of same, *and* shall issue such process as may be necessary for carrying out its order into effect.

Section 7 provides that,

".....On the hearing of such summons, the Court shall be guided by equity *and* good conscience only, *and* by the best evidence that can be procured although not such as may be required or be admissible

in ordinary cases, nor shall it be bound by the strict rules of evidence or procedure in any case, or by technicalities or legal forms whatsoever....."

This particular provision, in my submission, suggests that the Law has been specifically framed so as to allow claimants a wide latitude and great flexibility to enable them to prove their claims to such land without any undue restrictions or difficulties.

Section 8(i) reinforces my view stated above. It provides that,

"....If the Court shall be of the opinion that the land is not unoccupied land, but that the person claiming the same cannot produce any instrument showing a title to such land extending over a period of not less than 12 years prior to the commencement of this Act,.....it shall report same to the Governor, and there upon the Governor may issue a Crown Grant of such land to such person, subject to such reservations and conditions as the Governor shall determine....."

To close the first part of this Piece, I make the following concluding submissions:-

- (1) THAT NO LAND in the Western Area of the Republic of Sierra Leone IS AUTOMATICALLY OR INHERENTLY STATE LAND except within the meaning of Section 2 of the State Lands Act No.19 of 1960.
- (2) THAT THERE OUGHT always to be some documentary record of how and when any particular Piece of Land became State Land either in the Attorney-General's Office, The Ministry of Lands And Surveys or in the Office of the Administrator And Registrar-General. [See Sections 3, 4, 5, 6, 7, 8, and 9 of the Public Lands Act Cap.116.]
- (3) THAT THERE IS A Laid-down procedure to determine whether or not any land alleged to be *Unoccupied Land*" is indeed so, the ownership of such land is to be determined by the High Court. [See Sections 3, 4, 5, 6, 7 and 8 of the Unoccupied Lands Act Cap.117.]
- (4) THAT THE MINISTER OF LANDS And SURVEYS has NO POWER, inherent or Statutory, to determine which land is STATE LAND, *Unoccupied Land* or *Private Land*, such power being vested exclusively in the HIGH COURT, and on appeal to the Higher Courts, in the Court of Appeal or Supreme Court.

I now turn to the other vexed question of "*DEMOLITION OF HOUSES And OTHER STRUCTURES* by the Ministry of Lands." In the recent past, the Ministry of Lands, with the assistance of the Police [sometimes the Armed Wing of the Police,] have engaged in what they call "*demolition exercise*", wherein hundreds of structures, some of a permanent nature, *and* others of a temporary nature [PAN BODIES] were bulldozed or destroyed by Officials of the Ministry *and* the Police, notwithstanding the protests of the owners, on the allegation that they were illegally built on *State Lands*, or that they were built on *Private Land* without proper permission from the Ministry or without proper proof of ownership. In the course of these exercises, several hundred citizens have been rendered homeless *and* destitute, several have lost all their life-savings, *and* others have lost whatever few possessions they had, [particularly those who fled to Freetown to escape from rebels in the Provinces.] In the situation where Government itself is not able to provide shelter for those in need of housing at a reasonable cost, *and* is also not able to help those who lost their homes during the rebel war, it is my considered opinion that Government ought to have been very circumspect *and* extremely cautious about demolishing the homes of mostly poor *and* low income people built by their own efforts, for whatever reason.

BUT DOES THE MINISTER EVEN HAVE SUCH POWER? Let us look at the Provisions of the Law! The usual excuse for the demolition exercise is that people are occupying "*STATE LAND*" without lawful authority. Section 30(1) of the *State Lands Act No. 19 of 1960* provides as follows:-

- (1) ".....without prejudice to any remedy which the Grantor may have under any other law, where any person without right, title, or licence, or whose right, title or licence has expired, or been forfeited or cancelled, is in occupation of Crown Land, the Attorney-General or some person appointed by him in that

behalf, or the Director of Surveys and Lands, may enter a suit in the Supreme Court or in a Magistrates Court to recover possession thereof....."

- (2) "If upon the hearing of such suit the defendant does not appear, or appears but fails to establish an absolute right to the possession of the land, the Court shall order that the possession of the land sought to be recovered shall be given by the Defendant to the Plaintiff on behalf of the State, either forthwith or on or before such day as the Court shall think fit to appoint, and shall issue such process as may be necessary to carry such order into effect....."

In the light of the foregoing, it is my submission that there is a laid down procedure to be followed wherever any person is alleged to be on State Land without RIGHT, TITLE OR LICENCE and that under the Act, THE MINISTER OF LAND HAS NO POWER TO ORDER THE DEMOLITION OF ANY BUILDING OR STRUCTURE ALLEGED TO BE ON STATE LAND WITHOUT AN ORDER FROM A MAGISTRATES COURT OR THE HIGH COURT FIRST OBTAINED FOR THAT PURPOSE.

IT IS FURTHER SUBMITTED that by demolishing such structures otherwise than as set out in the Act above quoted, the *Minister of Lands*, his Demolition team and the Police who normally accompany them, are acting contrary to the Provisions of *Section 30 of the STATE LANDS ACT NO.19 OF 1960* and therefore acting UNLAWFULLY, for which they are liable to Sanctions from the High Court in a Civil Suit. It is my further submission that the said Minister of Lands, his Demolition team and the Police are also acting contrary to the Constitution of Sierra Leone, in so far as it guarantees every citizen protection from deprivation of property, and promises every citizen that the State shall enforce the Rule of Law. The situation is made worse by the fact that the Police are supposed by law to protect and defend the lives and property of every citizen, instead of which they are now being used to destroy the property of private citizens in an

unlawful manner. In these actions, it is my view that the *Minister of Lands* is also contravening both rules of Natural Justice, that is to say, "AUDI ALTERAM PARTEM" ['Let the other side be heard'] and "NEMO JUDEX INSUA CAUSA" ['No man ought to be a Judge in his own cause'], in that the Ministry being *the Accuser* is also *the Judge* of whether or not the individuals accused are occupying State Land, when the Law decrees that it is the Court which should determine such matters, impartially and transparently. The Ministry then goes in to enforce its own unilateral decision, most times without listening to those whose houses are to be demolished. And just in case anyone wants to suggest that the demolitions were done pursuant to the provisions of the *Freetown Improvement Act [Cap.66]* [as Amended], that also requires a Court Order obtained from a Court of competent jurisdiction, before any citizen can be deprived of his property.

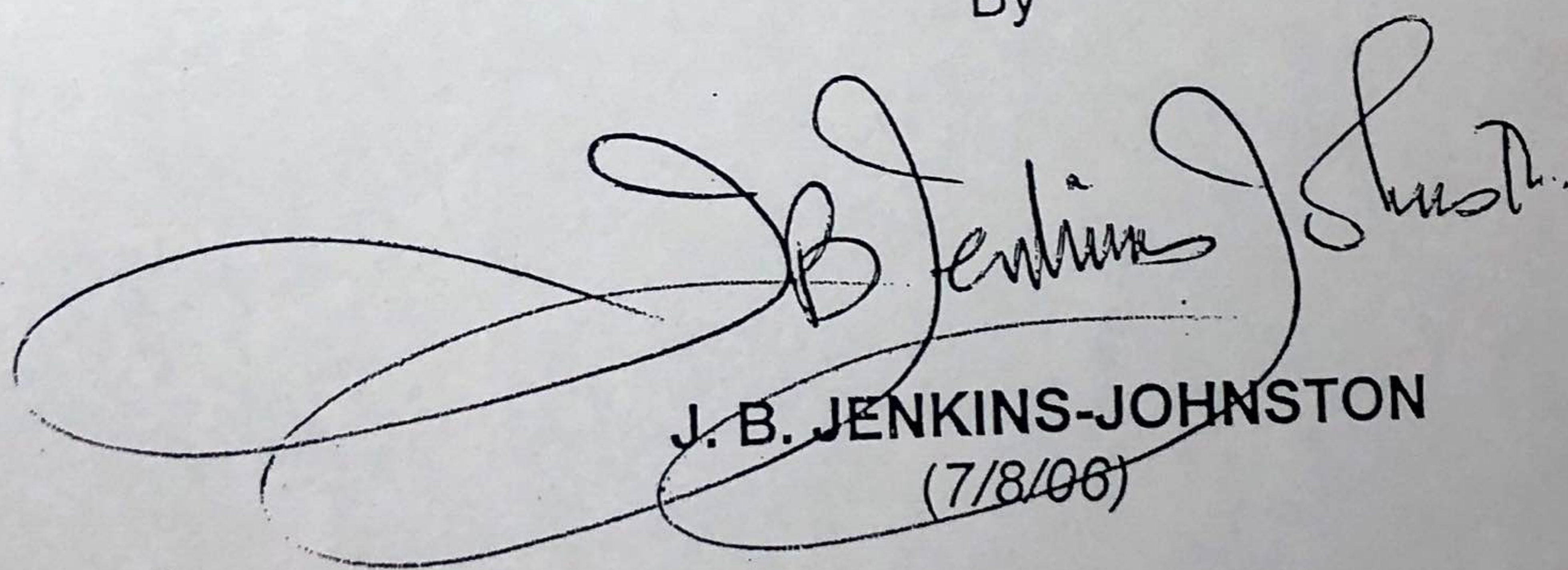
It is a matter of total amazement to those of us who have to deal with the Law and its consequences every day of our lives, that a whole Minister and Member of a Government headed by Lawyers, and having a whole Attorney-General's Office at his disposal for free advice, can engage in such palpable illegality without any guidance or direction from any quarter, leading to a situation where so many poor and helpless citizens have been rendered homeless and destitute; so many citizens' lives have been ruined; so many citizens have lost all their life-savings; and so many citizens have had their "safe havens" destroyed by the State, after the trauma of having had to run away from the "rebels" in the provinces to the comparative and relative safety of the Western Area.

IT IS SINCERELY and genuinely hoped that someone will call the Minister of Lands to order that his actions are unlawful, and that what

someone has described as "Executive Lawlessness" will stop immediately. If we constantly pay lip-service to constitutionality *and* the *Rule of Law*, then we must ensure that both are observed *and* scrupulously followed especially by the State itself in its dealings with its own citizens, particularly the poor *and* voiceless ones. Misuse *and/or* Abuse of Power or even the appearance thereof must be avoided at all costs!!!

L O N T A!!!

By



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