AN ASSESSMENT OF THE POWER OF THE HIGH COURT'S JURISDICTION TO HEAR AND DETERMINE DISPUTE AS TO TITLE TO LAND IN THE PROVINCES – VIS-À-VIS THE NATIONAL LAND COMMISSION ACT, 2022

Land tenure in Sierra Leone has been plagued by perennial problems and unending disputes, making it one of the most litigated issues in the country's courts. The Government and Parliament have tried to address these issues, including the recent National Land Commission Act 2022. This Act aims to institutionalize and provide solutions to many of the unresolved land disputes by establishing a National Land Commission and a District Land Commission with authority to regulate all conduct relating to land, including dispute resolution.

Despite this effort, one unresolved issue is the High Court's jurisdiction to hear and determine disputes over title to land in the provinces. According to the 1991 Constitution of Sierra Leone, the High Court has original, appellate, and supervisory jurisdiction throughout the country. However, the Courts Act of 1965 limits the High Court's jurisdiction over actions that relate to determining the title to land located in the provinces, except for leaseholds granted under the Provinces Land Act.

The Sierra Leone Supreme Court upheld this limitation in the case of Daniel K. Caulker v Komba Kangama. The Court held that unless a question of title relates to a leasehold granted under the Provinces Land Act, the High Court's jurisdiction is ousted on matters pertaining to land situated in the provinces. The original jurisdiction of the High Court, however, was not completely ousted, as it can still hear and determine questions relating to the title of land in the provinces if they arise from a leasehold granted pursuant to the Provinces Land Act.

The National Land Commission Act, 2022, repealed the Provinces Land Act, and consequently, Section 21(a)(i) of the Courts Act, 1965, which reads as follows: "Nothing in this Act shall be deemed to invest the High Court with jurisdiction regarding any action or original proceedings to determine the title to land situated in the Provinces."

Although the new legislation provides additional layers of grievance and dispute resolution mechanisms under the rubric 'Land Tenure Dispute,' it also provides a carte blanche sort to an aggrieved party in a land dispute to apply directly to any Local Court or any other appropriate court for redress. Nevertheless, an area of ambiguity within the legislation lies in the absence of a clear definition for the term 'any other appropriate court,' leaving uncertainty about its scope. Moreover, it fails to explicitly address whether the term 'dispute' encompasses 'title disputes,' leaving the question unanswered and requiring further clarification.

Therefore, it is up to the courts, especially the Supreme Court, to interpret and give proper efficacy to the intent of Parliament. Section 79(5) of the National Land Commission Act 2022 appears to be a saving provision for the High Court's jurisdiction to hear and determine disputes over title to land in the provinces arising from a leasehold position.
The Customary Land Rights Act 2022, which complements the National Land Commission Act 2022, does not address the jurisdictional issue either. The two legislations seem to work in tandem with each other, with several cross-references.

Notwithstanding the above, the Local Courts enjoy priority of hearing over all litigations governed by customary law pursuant to the Local Courts Act, 2011, i.e., to hear and determine all civil and criminal matters arising within the local limits of its authority.

In conclusion, while the National Land Commission Act, 2022, has attempted to address many of the problems plaguing land tenure in Sierra Leone, the issue of the High Court’s jurisdiction to hear and determine disputes over title to land in the provinces other than title arising from a leasehold remains imprecise.

REFERENCES LIST

LEGISLATIONS

1. THE COURTS ACT, 1965 (ACT NO. 31 OF 1965)
3. THE CUSTOMARY LAND RIGHTS ACT, 2022 (ACT NO. 20 OF 2022)
5. THE NATIONAL LAND COMMISSION ACT, 2022 (ACT NO. 19 OF 2022)
6. THE PROVINCES LAND ACT, CAP 221

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