CC: 288/18 2018 B. NO. 21

Between:

Ron Campbell Plaintiff/Applicant

39 Charles Street

Freetown

And

Isatu Jalloh Bradshaw 1st Defendant/Respondent

Aminata Jalloh 2nd Defendant/Respondent

Alpha Yillah 3rd Defendant/Respondent

All of Old Kent

Mama Beach Road

Counsels: Emmanuel Teddy Koroma Esq., for the Plaintiff/Applicant.

A. B. Moisia Esq., for the Defendant/Respondent.

Ruling on an Application for an Injunctive Relief, Pursuant to an Application via a Notice of Motion dated the 13th Day of October, 2020, delivered by The Hon. Dr. Justice A. Binneh-Kamara, on Monday, 2nd November, 2020.

1.0 Introduction.

This is a ruling, based on an application made to this Honourable Court by Emmanuel Teddy Koroma Esq., for a number of orders, including a specific interlocutory relief and cost. As required by Sub rule (4) of Rule 1 of Order 35 of the High Court Rules, 2007 (Constitutional Instrument N0. 25 OF 2007 (hereinafter referred to as The HCR, 2007), the application is made by a Notice of Motion, dated 13th October, 2020; bolstered by the apposite affidavit, sworn to and dated the 13th October, 2020.

The affiant to the said affidavit is Emmanuel Teddy Koroma Esq., who is the Counsel representing the Plaintiff/Applicant in this action. Nonetheless, as required by Sub rule (6) of Rule 1 of Order 35 of The HCR, 2007, the foregoing application is contested and vociferously pilloried by A. B. Moisia Esq., pursuant to an affidavit in opposition, sworn to by Robert B. kowa Esq., (Senior Advocate and Managing Partner of Mendewa Chambers) as a deponent and dated the 22nd October, 2020.

Nevertheless, no issue of procedural incongruity was detected and raised, when both Counsels came to argue the application on Tuesday, 27th October, 2020. And ordinarily my reading and appreciation of the papers as filed, justified the extent to which they both strove to comply with the appropriate provisions of The HCR, 2007. However, what is absolutely certain, is that both affidavits contain a plethora of facts that are diametrically opposed to each other. And considering the fact that both affidavits are of the apposite evidential value, it is rationally and legally expedient for this Honourable Court to accordingly scrutinize and juxtapose their contents, in a bid to ascertain whether the application should or should not be granted.

1.1 <u>The Arguments of Counsel for the Applicant.</u>

Essentially, by way of a synopsis, the arguments canvassed by Counsel for the Applicant in justification of why he thanks the application should be granted, are thus presented herein with the utmost lucidity.

1. The affidavit strengthening the application, contains seven (7) **attachments, marked Exhibit ETK1-7. Exhibit ETK1 is the writ of summons, commencing this action. Exhibit 2 is indexical of the** appearance and memorandum of appearance, entered by Counsel for the Respondent and the statement of defence and counter-claim. Exhibit ETK3 absorbs the notice of documents to be tendered

in evidence; in compliance with this Honourable Court's order on the Summons for direction, Counsel's court bundle, encompassing a list of witnesses and nature of evidence to be relied upon. Exhibit 4 is a copy of the Applicant's conveyance, an order for the said conveyance to be registered out of time and receipts from the National Revenue Authority (NRA). Exhibits ETK 5 and 6, depict a multitude of photographs of structures, being allegedly constructed on the land in question and the land's topography. And Exhibit ETK 7 is an unsigned undertaking for damages.

2. There are indeed a very serious contentious issues that should undoubtedly warrant a full blown trial, because the parties to this litigation are claiming their own real properties.
3. The balance of convenience is in favour of granting the injunctive relief; as a clear undertaking of damage is made by the Applicant, should it turn out that at the end of the trial, this Honourable Court hands down a Judgment in favour of the Respondent. Should this be so, such damages can be accordingly quantified.
4. Exhibits 5 and 6, undisputedly confirm that serious construction work is going on in the land and that the Respondents have thought it fit to indulge in sand mining on the land. This is indisputably undermining the free hold interest of the Applicant. And this fundamental interest can best be protected should this Honourable

Court grant the injunctive relief as prayed for. Counsel references the land mark decision on injunction in English jurisprudence. That is the American Cyanamid Co. Ltd. **v** Ethicon Ltd. All ER (1975).

1.2 The Arguments of Counsel for the Respondent.

In contravention of the aforementioned arguments, Counsel for the Respondent, rationalised his arguments on why he thinks the application should not be granted on the following points, which he believes are quite succinct enough, to convince any reasonable tribunal of facts, for the application to be denied and relegated to the doldrums and backwaters:

1. The affidavit in opposition, conspicuously articulates, the salient facts of the Respondent's case in eleven (11) distinctively short, sharp and unequivocal paragraphs. So the said affidavit, which encapsulates two (2) attachments, speaks for itself. The attachments are marked as Exhibits RBK 1 and 2. Exhibit RBK 1 reflects the notice of motion, pursuant to which the application is made and the requisite affidavit that accompanies and bolsters that application. Exhibit RBK2, engulfs the Respondent's conveyance, site plan (signed by the Director of Surveys and Lands), and receipts issued by the National Revenue Authority (NRA).

2. The aforesaid conveyance (Exhibit RBK2), establishes that the realty which is being claimed by the Respondent is distinctively different from that being claimed by the Applicant. Should this Honourable Court grant particularly the injunctive order that would undoubtedly occasion undue hardship for the Respondent, who believes that this action is completely unwarranted and devoid of the minutest of merits.
3. The application should be discountenanced because of the foregoing reasons and this matter should in no uncertain terms be detailed for trial at once.

1.3 <u>The Approach/Methodology Guiding the Determination of the Application.</u>

Having represented the submissions of both Counsels, I will thus proceed to examine their individual arguments, albeit comparatively, against the backdrop of the apposite statutory instrument (The HCR, 2007) and the requisite case law, embedded in the subsisting literature on injunctive reliefs, in a bid to determine whether the application should or should not be granted. The significance of reviewing the subsisting literature on the circumstances, pursuant to which a court of competent jurisdiction, can grant or refuse to grant an injunction, is rooted in the fact that, such a review will guide this Honourable Court, to assess how the Superior Courts of Judicature in the Commonwealth jurisdiction, have been

exercising their discretionary and temporary jurisdiction in making injunctive orders.

Meanwhile, the words 'discretionary' and 'temporary', as used in the above paragraph, presuppose that injunctive orders can only be made in circumstances, wherein the Superior Courts of Judicature, are discretionally authorised, via statutes or statutory instruments, to exercise such power, in the interests of justice, fairness and reasonableness; and such orders will never subsist beyond the trial period.

1.4 Analytical Exposition.

Essentially, the position of the law regarding the circumstances in which an injunction should or should not be granted is well articulated in the numerous legal authorities that dovetail with the principal sources of law in Sierra Leone. The shared-body of knowledge in this area of the law is embedded in statutes and a host of decided cases in and out of our jurisdiction. A trenchant perusal and analysis of the cases in this province of the civil law, leads me to put the following cases into context: American Cyanamid Co. Ltd. **v** Ethicon Ltd. (1975) 1 All ER (1975), Watfa **v Barrie Civ. App. 26/2005 (Unreported), Chambers v Kamara (CC 798/** 06) (2009) SLCH 7 (13th February, 2009) (Unreported) and Mrs. Margaret

Cozier **v** Ibrahim Kamara and Others CC. 165/18 2018 C. 06 (22nd January, 2020).

Significantly, the American Cyanamid Case (the only case law alluded to by Counsel for the Applicant) is a monumental precedent that has indubitably guided the Superior Courts of Judicature in the commonwealth jurisdiction in handing down their landmark decisions on a plethora of decided cases. In tandem with Lord Diplock's reasoning, the other Law Lords (of the House of Lords) that presided over this case (Lords Viscount Dilhorne, Cross of Chelsea, Salmon and Edmund Davies, held that to determine whether a court of competent jurisdiction should or should not grant an injunctive relief, the following threshold must be met:

1. The Court must determine whether there is a serious question of law to be tried. And at this stage, it would not be necessary for the Applicant to establish a prima facie case, when the application is **made, but the claim (upon which the application is based) must neither be frivolous, nor vexatious.**
2. The Court must also establish the adequacy of damages; as a remedy, should it turn out at the end of the trial that, the injunction (if granted) should not have been granted.

3. The Court must finally establish whether the balance of convenience is located in maintaining the status quo or not.

These criteria have clearly influenced the evolution of the jurisprudence in this province of the civil law in the Commonwealth jurisdiction because the American Cyanamid Case is a well cited authority in innumerable applications for injunctive reliefs in the United Kingdom, the Caribbean and Africa. Thus, The Hon. Justice Desmond B. Edwards J. (as he then was) applied the foregoing criteria to the facts in Chambers **v** Kamara (referenced above), to grant an interlocutory injunctive order in favour of the Applicant.

However, in Watfa v Barrie (referenced above) the threshold for the grant of an injunction as pontificated in the American Cyanamid Case, was incisively reviewed, but the application for the injunctive order, was accordingly repudiated. The Hon. Dr. Justice A. Binneh-Kamara, J. in Mrs. Margaret Cozier **v** Ibrahim Kamara (referenced above), granted the application for an interlocutory injunction; after an introspective reflection of the threshold established for the ward of such orders in the American Cyanamid Case.

Meanwhile, the trend of thought that is discernible in the analysis, leading to the decisions in the aforementioned cases, is that The HCR, 2007, strengthened the quintessential fact that interlocutory

injunctive orders are discretionary and temporary. Therefore, it is the peculiarity of the circumstances of any case that would determine whether a reasonable tribunal of fact should or should not grant injunctive reliefs.

1.5 <u>The Critical Context</u>.

I will commence this bit of the analysis by saying that I am compelled to clarify the uncertainty and dispel the misconception about the determination of the actual owner of the fee simple absolute in possession at this stage. Meanwhile, in Paragraph 7 of the affidavit in support of the application, Counsel for the Applicant, emphatically stated that the Applicant is the person entitled to the fee simple absolute in possession. He relied on Exhibit ETK 4, which inter alia, encompasses a deed of conveyance in the name of the Applicant. And in making his submissions, Counsel attached the utmost valence, salience and prominence to this point, as one that should sway this Honourable Court to grant the injunction.

Similarly, Counsel for the Respondent showcased the Conveyance (Exhibit RBK 2) of his client and vehemently argued that the property belongs to her; whilst drawing the Court's attention to Paragraph 5 of the affidavit in opposition. Thus, I must state at this juncture, that neither the submission of Counsel for the Applicant, nor that of Counsel for the

Respondent, is of sufficient quality to warrant this Honourable Court to grant or not to grant an injunction. Their submissions amount to a misnomer at this stage and does not have anything to do with whether the injunction should or should not be granted. And of course, their submissions fall outside the frameworks for injunctive orders; established in the American Cyanamid Case. Moreover, it should be noted that I am only faced with the determination of a pre-trial motion at this stage. And that does not have anything to do with the determination and declaration of who the actual fee simple owner is, in respect of the realty, for which this matter is actually in Court.

Furthermore, an in depth analysis of the notice of motion dated 13th October, 2020, and the requisite affidavit in support thereof, together with the Exhibits attached thereto, depicts a controversy, which should be resolved before any conscientious attempt can be made to determine the application. The undertaking for damages, rationalised in Exhibit ETK 7, is neither signed by the Applicant; nor is it witnessed by any member of the human race in or out of the jurisdiction. What is the implication of this issue in a strict procedural sense? Does this presuppose that an unsigned and an unwitnessed undertaking filed in an application for an injunction, is void abinitio? What is the position of the law, in the circumstance wherein an application is filed for an injunction, but the

Applicant fails to file an undertaking for damages; should the application be denied?

Procedurally, in connection with the first question, there is evidence that an undertaking for damages was filed; though it is neither signed, nor witnessed. But Counsel on the other side did not object to that; neither did he raise that in his affidavit in opposition. This simply means that Counsel for the Respondent did not countenance that as an irregularity, but proceeded in taking a fresh steep in filing his affidavit in opposition. That in itself amounted to a waver; which causes the said undertaking to be considered as a valid undertaking for damages. Therefore, it cannot be said that Counsel for the Applicant has not complied with the provisions of Sub rules (1) and (2) of Rule 9 of Order 35 of The HCR, 2007, by making an undertaking for damages.

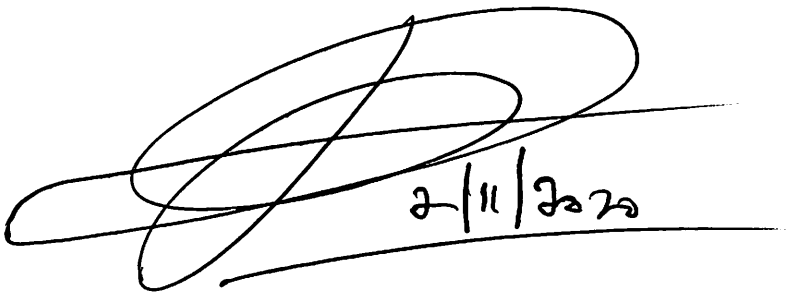
Circumspectly, the essence of an undertaking for damages, articulated in the foregoing order, is to guarantee Respondents that the Courts will never allow them to suffer any injustice in circumstances, wherein such orders should not have been made. However, even though the wordings of the above provision appear to be quite mandatory (not directory), there are many decided cases in and out of our jurisdiction, pursuant to which the Courts have granted interlocutory injunctions in circumstances in which Applicants have not made undertakings for

damages. So, nothing precludes the Courts from making such orders in the very peculiar circumstances, wherein the justice of cases so dictate or warrant. However, the Courts are obliged in such circumstances to direct that such undertakings be accordingly made. Thus, having sequentially unraveled the contentious individual issues, underpinning the arguments of both Counsels, in a bid to sway the decision of this Honourable Court on this application, I will now proceed with my final task, which is geared towards the determination of the application.

Against this backdrop, it should be reiterated that it is the peculiarity of the circumstances of every case that would determine whether a reasonable tribunal of fact, should or should not grant injunctive reliefs. My evaluation of the facts, deposed to in both affidavits (in support and opposition of the application), and the Exhibits attached thereto, depicts that there is indeed a serious question of law that should necessitate a full blown trial; even Counsel for the Respondent has called for an expeditious trial. Again, the Applicant is not bound to establish a prima **facie case at this stage, but the Court is bound to determine that the application is neither frivolous, nor vexatious. Circumspectly, it cannot** be said that the application is frivolous and vexation, because the facts as Exhibited in the affidavit in support of the application are quite worrisome to the Applicant; and have occasioned a reasonable apprehension, that he wants this Honourable Court to address. Of

course, the question of whether an award of damages to the Respondent, can be considered an adequate remedy, should the injunction be granted in favour of the Applicant at this stage, can be answered in the affirmative. Finally, the balance of convenience, does not lie in maintaining the status quo, because the Respondents are allegedly constructing structures and mining sand on a land that is being claimed by the Applicant. Until ownership of the land is determined, this Honourable Court hereby makes the following orders:

1. An interlocutory injunction is made restraining the Defendants/Respondents herein whether by themselves, their servants, privies or howsoever called from entering, building, constructing, selling, conveying, occupying, mortgaging, leasing, charging, and or creating a lien over or otherwise disposing of the land, situate, lying and being at Mammah Beach Road, Kent Village in the Western Area of the Republic of Sierra Leone as delineated on Survey Plan with an acreage of 7. 7350 Acre attached to a deed of Conveyance dated the 1st day of May, 2014 and registered as No. 763/2018 in Volume 808 at page 102 kept in the Record Books of voluntary conveyances in the Office of the Administrator and Registrar General, the subject matter of this action, pending its hearing and determination.
2. That the cost of this application shall be cost in the cause.



The Hon. Dr. Justice A. Binneh-Kamara, J.

Justice of the Superior Court of Judicature of Sierra Leone.