CC: 360/19 2019 D. N0.16

In the High Court of Sierra Leone

(Land and Property Division)

Between:

Abass Dumbuya - Plaintiff/Applicant

(Suing by His Lawful Attorney

Aminata Fofanah)

N0. 75 Kissy Road

Freetown

And

Yusuf Sillah - Defendant/Respondent

Off Regent Road

Obama Junction

Regent Village

Freetown

Counsel:

Brima Koroma Esq. for the Defendant/Applicant

Elvis Kargbo Esq. for the Plaintiff/Respondent

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Ruing on an Application for Interim and Interlocutory Injunction, Pursuant to a Notice of Motion, dated 8th August, 2022, Delivered by The Hon. Justice Dr. Abou B. M. Binneh-Kamara, J. on Thursday, 11th May 2023.

1.1 Context

Brima Koroma Esq. of Tanner Legal Advisory, had filed a notice of motion, dated 8 August 2022, for and on behalf of the Plaintiff/Applicant (hereinafter referred to as the Applicant) for interlocutory injunctive orders and costs. The application is strengthened by the affidavit of Aminata Fofanah, Civil Servant, of No.75 Kissy Road, Freetown in the Western Area of the Republic of Sierra Leone, sworn to on 8 August 2022. Contrariwise, Elvis Kargbo Esq. of Betts and Berewa Solicitors, filed an affidavit in opposition on behalf of the Defendant/Respondent (hereinafter referred to as Respondent), sworn to by Joseph M. French Esq., Barrister and Solicitor of the High Court of Sierra Leone and Associate Partner of Betts and Berewa Solicitors and dated 30 January 2023. Indeed, both affidavits contain salient facts about the action and the justifications why the application should or should not be granted.

1.2 The Submission of the Applicant's Counsel

Brima Koroma Esq. made the following submissions, which he said should influence the decisions of reasonable tribunals of competent jurisdiction, to grant injunctive reliefs to litigants, who are in dire need of them, when they so request:

1. The application dovetails with the criteria for the award of injunctive reliefs, espoused in American Cyanamid Co. Ltd. **v.** Ethicon Ltd. (1975) 1 All ER and Fellowes and another **v.** Fisher (1975) C A 829-843. To bolster his argumentation that the facts of this action, resonate with the considerations in the foregoing cases, in granting injunctive orders,

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Counsel refers the Court to a text (A Practical Approach to Civil Procedure: Fourteenth Edition at page 465).

2. The provisions in Order 35 of The High Court Rules 2007, Constitutional Instrument No. 8 of 2007 (hereinafter referred to as The HCR 2007) was thus invoked, as the legal architecture upon which the application is constructed.
3. That the Respondent being that he is in possession of the realty, even though this action is still pending and is yet to be finally determined, has been busy doing construction work. The pictorial evidence, showing on-going construction on the realty is exhibited and marked Exhibit AF (10a-f).
4. That because the action has not yet been determined, it would be fair and reasonable, and for justice to be seen done, for this Court as an arbiter of justice, to hold the scales balanced, by granting the orders as prayed on the face of the application. And that an undertaking for damages has also been filed in compliance with rules, regarding applications for injunctive reliefs.

1.3 The Submissions of the Respondent's Counsel

Elvis Kargbo Esq. opposed the application and negated the aforementioned submissions of Brima Koroma Esq. He rather canvassed the following arguments to dissuade the Court from granting the application:

1. There are eleven (11) exhibits attached to the affidavit, sworn to by Joseph M. French on 30 January 2023, marked Exhibit JMF 1-11. That the said affidavit, on which contents Counsel entirely relies, contains the issues, which the Court must consider to refuse the application.

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2. That prior to the application, the Respondent had filed his defence and counterclaim. And the Court had given directions, on how this action is to proceed, pursuant to a summons for direction, dated 28 February 2020. The Applicant's erstwhile Solicitor complied with such directives on 7 December 2020.
3. But the defence and counterclaim filed by the Respondent's erstwhile Solicitor, did not comply with the rules. And it was accordingly struck out on the ground of non-compliance. Exhibit JMF5 (1-2) is quite instructive on this point.
4. The Court granted an order for possession against the Respondent. It should be noted that both the Applicant and Respondent do have title deeds, which have been exhibited. An application for leave to comply was filed on behalf of the Respondent, it was granted and the apposite papers were filed. Exhibit JMF 7, depicts the compliance order to proceed to trial. Thus, it would not be convenient to grant an injunction at this stage.
5. The parties have title deeds for two distinctively different plots of land; already demarcated in their survey plans. The Applicant's conveyance, concerns plot 1 and that of the Respondent relates to plot 2. Since the stage is set for the trial to commence, it would be unfair to grant an injunction now. Further, this Court had made a restitution order, pursuant to which the Respondent was restored. Thus, granting an injunction at this stage means that the Court would be seen negating its own order.

1.4 Analytical Exposition: The Law on Injunction

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The law on injunctive reliefs, has continued to evolve, with the myriad of case law that has emerged in civil litigations (in the commonwealth jurisdiction). This state of affairs has generated a very reach body of knowledge on the equitable remedy of injunction in our jurisdiction. Injunctive remedies are so versatile that they can be invoked at any stage, even before, during and after a trial. At the pre-trial and trial stages, they can be either interim or interlocutory, but they can be made perpetual at the post-trial stage. They are made perpetual at this later stage, because the courts would have heard the evidence and would have determined the outcomes of the litigations. Injunctive reliefs are thus an effective mechanism, pursuant to which the courts can enforce the rights and liberties of deserving litigants. Thus, the application that is to be determined concerns an interlocutory injunctive relief. Therefore, it would amount to an exercise in futility, should this analysis spread its tentacles, to embrace any legal authority on perpetual injunction.

Meanwhile, it should be noted that injunctive interlocutory orders are thus discretionary and temporary (see Paragraph 29/L/3 at page 565 of the English Supreme Court Annual Practice, 1999). That is, courts of competent jurisdiction, can exercise their discretion to grant or not to grant them, via statutes or constitutional instruments, in the interests of justice and fairness. Moreover, such orders will never subsist beyond the trial period. 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 dovetailed with the principal sources of law in Sierra Leone. The shared epistemology in this area of the law is embedded in statutes and a host of decided cases (legal doctrines) in and out of our jurisdiction.

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A trenchant perusal and analysis of the cases in this province of the civil law, flags the inevitable precedents in the following cases for immediate considerations: American Cyanamid Co. Ltd. **v.** Ethicon Ltd. (1975) 1 All ER, Fellowes and another **v.** Fisher (1975) C A 829-843, Hussein Abess Musa (for and on behalf of the beneficiaries) **v.** Musa Abess Mousa and Others (C.C 745/06 S 2006 M N0. 3) {2007} SLHC (22nd February 2007). 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 Others CC. 165/18 2018 C. 06 (22nd January 2020), PC Dr. Alpha Mansaray Sheriff the II **v.** Attorney-General and Minister of Justice and Others (Misc. App. 6/2011) and Alhaji Samuel Sam-Sumana **v.** The Attorney General and Minister of Justice of Sierra Leone and Victor Bockarie Foh S.C 2015.

These cases are quite clear on the guiding principles that the courts have developed on injunction. Meanwhile, the American Cyanamid case, reflects the most salient precedent that has undoubtedly guided and guarded the Superior Courts of Judicature in the Commonwealth jurisdiction in handing down their decisions on injunctive orders. 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 injunction, 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.

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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 in maintaining the status quo or not.

These criteria have clearly influenced the development of the law on injunction in English jurisprudence. Thus, the American Cyanamid case is a well cited authority in innumerable applications for injunctive reliefs in the United Kingdom, the Caribbean and Africa. Meanwhile, shortly after the monumental decision in the foregoing locus classicus, Lords Denning, Browne and Pennycuick, on the 15 and 16 of April and 2 May1975, replicated the criteria for an injunction, established in American Cyanamid Co. Ltd. **v.** Ethicon Ltd. (1975) 1 All ER in the other celebrated case of Fellowes and another **v.** Fisher (1975) C A 829-843; and refused the application for injunction, which was the principal thrust of the appeal in that case.

Meanwhile, the valence of the precedent of the latter case, which should be given prominence and salience in this ruling, is rooted in how the Court of Appeal of England, dealt with the thornily controversial issue of balance of convenience in the determination of whether an injunction should or should not be granted. Significantly, the issues that are cognate with the relative strength of each party's case and the circumstances in which their relative strength should be considered, are the main concerns, which the Court of Appeal of England, made quite prominent in the assessment of whether the Superior Court of Judicature, should or should not grant an injunction.

Analytically, in our jurisdiction, in the celebrated case of Watfa **v.** Barrie (referenced above); the threshold for the grant of an injunction as pontificated

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in the American Cyanamid Case, was incisively reviewed, but the application for the injunctive order, was accordingly repudiated. More importantly, The Hon. Justice A. B. Halloway's injunctive order in Hussein Abess Musa (for and on behalf of the beneficiaries) **v.** Musa Abess Mousa and Others (C.C 745/06 S 2006 M N0. 3) {2007} SLHC (22nd February 2007), was made in tandem with the decision in Watfa **v.** Barrie Civ. App. 26/2005 (Unreported).

Most importantly, in Alhaji Samuel Sam-Sumana **v.** The Attorney General and Minister of Justice of Sierra Leone and Victor Bockarie Foh S.C 2015, the Hon. Justices V. V. Thomas, CJ., N. C. Browne-Marke, JSC., E. E. Roberts, JSC., V. M. Solomon, JSC., and P. O. Hamilton JSC., applied the same test in the American Cyanamid case, to refuse the injunctive interlocutory order as prayed in that constitutional case. Nonetheless, The Hon. Justice Desmond B. Edwards J. (as he then was) applied the same criteria in the American Cyanamid case to the facts in Chambers **v.** Kamara (referenced above), to grant an injunction in favour of the Applicant.

Furthermore, The Hon. Justice Dr. 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 award of such orders in both the American Cyanamid and Fellowes cases. Significantly, the trend of thought that is discernible in the analysis, leading to the decisions in the above cases, is rationalised in Order 35 of The HCR, 2007. This argument strengthens the quintessential fact that 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 such injunctive reliefs. Thus, Order 35 Rule1 of the HCR 2007, states that:

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> 'The Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so and the order may be made either unconditionally or upon such terms and conditions as the Court considers just'.

The other essential point which must be made very clear in this analysis, leading to the determination of the application, is cognate with the conditionality that the Applicant requesting for an injunctive order, is bound to make the requisite undertaking, to pay damages to the other side, should it turn out at the end of the trial that, the injunction ought not to have been awarded at all. Thus, Order 35 Rule 9 of The HCR 2007, makes the undertaking for damages a clearly mandatory conditionality, for the award of an interlocutory injunction.

1.5 <u>The Critical Context: Relating the Affidavits' Evidence to the Law</u>

Having analysed the law's position on injunction, I will now proceed to apply the laudable test in the American Cyanamid Case to the facts and facts-in-issue in the instant case. The first limb of the test is that 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. The application's supporting and opposing affidavits have clearly depicted that there is indeed a serious question of law to be tried in the instant case. The case's principal thrust swirls around declaration of title to realty.

The Applicant's Counsel exhibited the title deed, pursuant to which his client is claiming ownership. And Counsel for the Respondent has as well produced title deeds in respect of the same realty. In fact, the conveyances of both parties

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contain survey plans demarcating the realty into Plot 1. Plot 1 is located in the Applicant's conveyance. And Plot 2 is attached to that of the Respondent. This raises a serious question of law as to who really owns each portion. This is to be determined by the Court at the end of the trial. This means that there is indeed a serious question of law to be tried. Therefore, the case on which the application is based is neither frivolous nor vexatious. It is the Applicant's conviction that the realty for which the action is in Court is hers. So, she believes that the Respondent is a trespasser; and should hence be restrained from having anything to do with the realty, until the matter is eventually determined.

Nonetheless, it is known in our jurisdiction that the mere production of a conveyance in evidence, does not presuppose the establishment of a genuine and good title. A party that relies on a conveyance, must go further to prove a good root of title, because his conveyance may be even be worthless or useless: Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) and Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004). So, the Court at this stage, is not concerned about whether the Applicant has really made a prima facie case for a declaration of title to property. It is rather concern about the salient facts, resonating with the issues that are cognate with the test's first limb (which it has already examined): That there is a serious issue to be tried; and the application must be based on facts that are neither frivolous nor vexatious.

The second limb of the test is that 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. The issue of damages is cognate with the seriousness of applications for injunction. Thus, 35 Rule 9 of The HCR 2007, deals with damages regarding injunction. The rule makes it

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clear that an undertaking for damages is a pre-condition for the award of any interlocutory injunctive relief. The evidence has shown that the Applicant has made an undertaking for damage, should it turn out that the injunction, if granted, should not have been granted. This possibility can only be ascertained at the end of the trial. As it is, the peculiarity of the facts of this case, does not point to anything, that would convince this Court that damages might not be an adequate remedy, should it turn out that the injunction, if granted, should not have been granted.

The final consideration of the test is that the Court must establish, whether the balance of convenience is in maintaining the status quo or not. The Applicant's Counsel believes, that the balance of convenience is in the Applicant's favour. The Respondent's Counsel however confutes this. And alludes to the fact that the Court had made a restoration order in their favour; and that it would be unrealistic and repugnant for the Court to be repudiating or undermining its own orders. In as much as this argument appears logical and somewhat reasonable (in the circumstance), it is but fair and intriguing, to interrogate whether the restoration of the Respondent, is indeed a bar to the injunctive relief, being requested by the Applicant.

First, it should be noted that, the case law on injunction (see 1.4), swirls around a clear jurisprudence that has already been clearly articulated. And though that jurisprudence has continued to evolve, its evolution is yet to absorb the submission that restorative orders, are a bar to the Court's unfettered discretion, to award interlocutory injunctions, to deserving Applicants. Secondly, the restorative order in this case was contingent on a default judgment, occasioned by the simple fact that, the other side had failed

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to comply with the legal processes, sanctioned by the rules. Such processes were subsequently set aside for the action to proceed to trial.

And it a basic procedural rule of law, that default judgments (whether they are regularly or irregularly obtained) can be set aside either on terms or ex debitio justicae (as of right). So, from the Applicant's perspective, since the matter is yet to be determined, the Respondent becomes a trespasser, when the processes, leading to the award of the default order, are set aside. Conversely, the Respondent's position is that again, since the matter has not been finally determined, he is not a trespasser, because he is in possession of the realty and has accordingly counterclaimed ownership (see defence and counterclaim). So, the issue that is to be determined at this stage, resonates with the last limb of the test in the American Cyanamid Case: The Court must determine the balance of convenience is in maintaining the status quo or not. In the instant case, maintaining the status quo presupposes that the Respondent should be allowed to proceed with the construction works that the Applicant has complained of and upon which the instant application that is yet to determined is based.

Thus, if the Respondent is allowed to continue working on a realty, which ownership is contentious, and which is yet to be determined, the Applicant would confute that reasoning, but would be bound by the Court's decision. Contrariwise, should the Court conclude that the balance of convenience, is nuanced towards preventing the Respondent from being in possession of Plot 2, which he says is his, and has thus been in possession of, long before this action is instituted, which is also distinct and separate from Plot 1, which is in possession of the Applicant, and which ownership is not being contended, the Respondent would repudiate this, would be bound by the Court's decision. The

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balance of convenience is therefore located in the 'Golden Mean' (The Mid-Point).

With this in mind I thus hold as follows:

1. That the Respondent by himself, his servants, privies, workmen or howsoever called, known or described, is hereby restrained by this Honourable Court from further carrying out any work by way of further construction, digging of the soil, erecting any further structure or howsoever a construction work may be known or described on the realty which ownership is in contention or any portion thereof from further letting out any structure on the said land or any portion thereof or disposing of the said land by any other means whether the same is by further letting out to tenants, sale, mortgage, by deed of gifts or howsoever an interest in the realty is disposed of whether that interest is legal or equitable pending the eventual determination of this matter.
2. That the costs of this application shall be costs in the cause.
3. That the action shall be immediately set down for a speedy trial, to inter alia, determine the realty's ownership.

I so order.

The Hon. Justice Dr. Abou B.M. Binneh-Kamara, J.

Justice of Sierra Leone's Superior Court of Judicature

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