CC:66/23 2023 B. NO.5

IN THE HIGH COURT OF SIERRA LEONE
(LAND, PROPERTY & ENVIRONMENT DIVISION)

BETWEEN:

BSB INTERNATIONAL LIMITED **No. 1, LUMLEY STREET** **FREETOWN**	-	**PLAINTIFF**

AND

MOHAMED BANGURA	-	**1ST DEFENDANT**
FODAY SAYMA KAMARA (FSK)	-	**2ND DEFENDANT**
MORLAI KALOKOH	-	**3RD DEFENDANT**
OSMAN CONTEH (GOTRY)	-	**4TH DEFENDANT**
UNISA KAMARA	-	**5TH DEFENDANT**
GIBRILLA KAMARA	-	**6TH DEFENDANT**
ISHMAEL KAMARA	-	**7TH DEFENDANT**
FODAY KAMARA	-	**8TH DEFENDANT**
ABDULAI KAMARA	-	**9TH DEFENDANT**
MOHAMED KAMARA	-	**10TH DEFENDANT**
ABDUL SALAM KAMARA **ALL OF MASORIE VILLAGE** **BAMOI LUMA** **KAMBIA DISTRICT**	-	**11TH DEFENDANT**

REPRESENTATION:

Osman Jalloh Esq.	-	Plaintiff
M.M.Tejan Esq.	-	Defendants

Ruling Delivered by the Hon. Mrs. Justice Amy J. Wright on Friday the 8th day of September 2023.

08/09/2023

Hon. Mrs. Justice Amy J. Wright
Judge Of The High Court Of
Sierra Leone

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(1) **THE APPLICATION**

On File is an Application by way of Judges Summons dated the 29th day of March 2023 filed for and on behalf of the Plaintiff/Applicant for the Orders as prayed for on the face of the Motion Paper to wit:-

(1) That Judgment be entered for the Plaintiff in this action against the Defendants as set out below on the grounds that the Defendants do not have a defence to the reliefs sought herein:–

(i) Recovery of possession of all that piece or parcel of land and hereditaments, situate lying and being at Freetown Motor Highway Bamoi Luma, Magbema Chiefdom, Kambia District in the Northern Province of the Republic of Sierra Leone measuring approximately 24.389 Acres as shown and delineated on Survey Plan MLS 2368/2014 dated the 19th November 2014 and attached to Deed of Conveyance dated 31st December 2014, the same which is duly registered as No. 3/2015 in Volume 125 at page 11 of the Record Books of Conveyances kept in the Offices of the Registrar-General in Freetown.

(ii) An Injunction restraining the Defendants whether by themselves their servants, agents, privies or howsoever called from entering, remaining on, leasing, selling, alienating, disposing or howsoever otherwise from interfering with the Plaintiffs' interest or title in all that piece or parcel of land situate, lying and being at Freetown Motor Highway Bamoi Luma, Magbema Chiefdom, Kambia District in the Northern Province of the Republic of Sierra Leone measuring approximately 24.389 Acres as shown and delineated on Survey Plan MLS 2368/2014 dated 19th November 2014 and attached to Deed of Conveyance dated 31st December 2014, the same which is duly registered as No. 3/2015 in Volume 125 at Page 11 of the Record Books of Conveyance kept in the Office of the Registrar-General in Freetown portions thereof being currently occupied by the Defendants.

(iii) Any further or other relief(s) that this Honourable Court may deem fit and just.

(2) In the alternative, that this Honourable Court may determine the following questions of Law pursuant to Order 17 of the High Court Rules 2007: to wit:-

(i) Whether the Defendants, their Predecessors in title, privies or howsoever otherwise called having absolutely alienated, gifted and

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disposed of the piece or parcel of land the subject matter of this action by Deed which said transaction was and has severally been validated by the Paramount Chief/Tribal Authority of the Chiefdom where the said Land is situated and the relevant State Authority can exercise a claim of right or title and/or lay claim to the Plaintiff's piece of land.

(ii) Whether the actions of the Defendants in laying claim to the piece or parcel of land the subject-matter of this action interfere with the Plaintiff's rights, interest and title thereon and the same being trespass and wrongful.

(iii) If the answers to paragraphs (i) & (ii) are in the affirmative whether the Defendants are liable to the Plaintiff for damages occasioned the same by reason of the action of trespass and destruction of the property of the Plaintiff and for the same to be assessed by the Court.

(3) If the answers to the questions posed in paragraph (iii) are determined in the affirmative and consequent thereon, that Judgment be entered for the Plaintiff in the following:-

(i) Recovery of possession of all that piece or parcel of land and hereditaments situate lying and being at Freetown Motor Highway Bamoi Luma, Magbema Chiefdom, Kambia District in the Northern Province of the Republic of Sierra Leone measuring approximately 24.389 Acres as shown and delineated on Survey Plan MLS 2368/2014 dated the 19th November 2014 and attached to Deed of Conveyance dated the 31st December 2014 the same which is duly registered as No.3/2015 in Volume 125 at page 11 of the Record Books of Conveyances kept in the Office of the Registrar-General in Freetown.

(ii) Damages for trespass and destruction or property in respect of all that piece or parcel of land situate lying and being at Freetown Motor Highway Bamoi Luma, Magbema Chiefdom, Kambia District in the Northern Province of the Republic of Sierra Leone measuring approximately 24.389 Acres as shown and delineated on Survey Plan MLS 2368/2014 dated 19th November 2014 and attached to Deed of Conveyance dated the 31st December 2014 the same which is registered as No.3/2015 in Volume 125 at page 11 of the Record Books of Conveyances in the Office of the Registrar-General in Freetown the same to be assessed.

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(iii) An Injunction restraining the Defendants whether by themselves their servants, agents or privies or howsoever called from entering, remaining on, leasing, selling, alienating, disposing or howsoever otherwise from interfering with the Plaintiff's interest or title in all that piece or parcel of land situate, lying and being at Freetown Motor Road Bamoi Luma, Magbema Chiefdom, Kambia District in the Northern Province of the Republic of Sierra Leone measuring 24.389 Acres as shown and delineated on Survey Plan MLS 2368/2014 dated 19th November 2014 and attached to Deed of Conveyance dated 31st December 2014 the same which is duly registered as No. 3/2015 in Volume 125 at Page 11 of the Record Books of Conveyances kept in the Office of the Registrar-General in Freetown portions thereof being currently occupied by the Defendants.

(iv) Any further or other relief(s) that this Honourable Court may deem fit and just.

(v) Costs of this Application be assessed by the Courts or ordered to be taxed and in any event be borne by the Defendant jointly or severally.

(4) The Application is supported by the affidavit of Frederick Ishmail Bockarie sworn to on the 29th day of March 2023 with several exhibits attached thereto and filed therewith. Counsel relied on the entirety of this affidavit in support and made the Application pursuant to 0.16 of the High Court Rules 2007. The Affiant of this affidavit deposes that the Plaintiff was at all material times the Owner and entity entitled to possession of the property which is the subject of the action herein and it has been in quiet possession thereof enjoying the fruits therefrom until recently in December 2022 when the Defendants started trespassing and depositing building materials on the Res. It is further deposed that the Defendants destroyed and/or carted away 2,500 concrete blocks which were the property of the Plaintiff and demolished its wall fence valued at approximately Nle350,000.00 and damaged a water tank built on the Res.

(5) The Affiant further deposes that the Defendants were not only engaged in the act of trespass, but they were offering the Res for sale to prospective Purchasers notwithstanding the Plaintiff's and its Agents protests to the effect and they moved further to install property beacons on the Res thus depriving the Plaintiff of its proper use and enjoyment thereof. It is further deposed that upon the Defendants been released from Detention for

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Contempt of Court, they continued to boast that no one can remove them from the Res and the Plaintiff's Agents and/or Caretakers live in fear of their lives as the Defendants continue to threaten them. The Affiant further deposes that the illegal acts of the Defendants herein were not condoned by the Plaintiff and said the Defendants do not have a defence to the action herein as several Persons including the Section Chief, the Paramount Chief and one of the Vendors named in the Plaintiff's Deed have deposed on oath that the Plaintiff has the legal right and interest in the Res herein and dissociated themselves from the actions and conduct of the Defendants herein.

(6) **ORAL SUBMISSIONS BY COUNSEL FOR THE PLAINTIFF – OSMAN JALLOH ESQ.**

Counsel for the Plaintiff during his oral submissions told the Court that as at the 31st day of December 2014, title in the Res had passed to the Plaintiff and referred the Court to **Exhibit B1 – 21** which are photographs of the Res after it had been acquired by the Plaintiff and duly secured. He submitted that **Exhibits C & D** satisfy the requirements for an Application under Order 0.16 of the HCR 2007. He added that **Exhibit F paragraphs 5 – 15** thereto indicates and exposes how the transaction between the Plaintiff and the Vendors of the Res was done including the payment of the purchase price and the respective Parties it was made to. Counsel for the Plaintiff submitted that the Paramount Chief of Magbema Chiefdom deposed that it was based on confirmation from the Defendants that he gave his blessings for the Plaintiff to commence agricultural activities. He added that even when the Paramount Chief received reports from the Plaintiffs Agents of the encroachment by the Defendants, he called them to his Court Barray and warned then to stay off the Plaintiff's property and confirms the Plaintiff's Ownership of the Res herein, but they failed and/or neglected to do so. Counsel added that the Paramount Chief's position unequivocally proves that the Res belongs to the Plaintiff (pursuant to Native Law and Custom) and it had been acquired from Persons amongst the Defendants herein and having parted with their title, they cannot now lay claim to same. He said the 5th, 6th, 7th, 8th and 10th Defendants are all Children of Pa Artemu Kamara who is the first signatory of **Exhibit A,** which is the Plaintiff's title deeds to the Res.

(7) Counsel for the Plaintiff referred the Court to the Affidavit in Opposition filed for and on behalf of the Defendants and the exhibits attached thereto

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as **"MMT1"** which is the Defendants defence hereto. Counsel said the defence does not provide a basis for the Court not to grant the Plaintiff's Orders. He said the Defendant's defence in essence, denies the Plaintiff's entitlement to the Res herein and the execution of Exhibit A which is the Plaintiff's Title Deeds to the Res. He said this position is untenable in light of the contents of **Exhibit A, F, H, and J** – which is the affidavit of the Paramount Chief of Magbema Chiefdom confirming his knowledge of the transaction before attesting his seal/stamp to **Exhibit A.**

On the issue of the Defendant's credibility, Counsel cited the case of **"Westminister Bank PLC V Daniel (1993)"** where the test laid down therein is **"does what the Defendant say credible"** and referred the Court to Exhibit E & H and paragraph 13 of **Exhibits F & G.** He said what the Defendants have said is not credible thus invited the Court to grant the Orders as prayed for. The Plaintiff had applied in the alternative by posing three questions pursuant to Order 17 of the HCR 2007, and adopted the submissions made for the first part of the Application and said the requirements for the Court to consider O.17 R.1 of the HCR 2007 have been satisfied.

Counsel for the Plaintiff submitted that pursuant to Exhibits A,F,G,A & J the Defendants and/or their Predecessors in title had delineated and disposed of the Res herein, thus they cannot now lay claim to same. He added that the trespass on the Res is an interference with the Plaintiff's rights, interests and title thus, if the Court determines the questions in the affirmative, then the Court should award damages to the Plaintiff and further referred the Court to the cases of:- **"Betty Mansaray & 16 Ors V Marie Kamara & Anor (2018")** **Ayea Rosaline Koroma V Sierra Leone Red Cross Authority (2022)"**

(8) **Affidavit in Opposition sworn to on the 20th day of April 2023 by Mohamed Alie Mogaji Tejan (for and on behalf of the Defendants herein) with One (1) exhibit attached thereto.**

The Affiant of this Affidavit in Opposition deposes that the Plaintiff's Application is not tenable as it contravenes the HCR 2007. It is deposed that the Defendants have a defence to the Plaintiff's claims as endorsed in the Writ of Summons herein. It is deposed that the Defendants defence had been filed before the Plaintiff had filed the Application herein dated the 29th March 2023. The Affiant further deposes that the second limb of the

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Plaintiff's Application is not suitable for determination without a full trial of the action and inter partes oral testimony presented to the Court. The Affiant further deposes that, the facts deposed to in the Plaintiff's affidavit in support of the Application herein are based on information from the Plaintiff and its Caretaker and are a mirror of what the Defendants suffered in the hands of the Palintiff in this matter. It is further deposed that the contents of the affidavit in support are not sufficient to support the prayers sought by the Plaintiff.

(9) During oral submissions Counsel for the Defendants submitted that for judgment to be entered under 0.16 of the HCR 2007, the Defendant must have entered an Appearance but must have failed to file a defence to the action. He further submitted that the Defendants' defence predates the Plaintiffs Application herein and the only exhibit in the affidavit in Opposition which is the defence should make the Plaintiff not entitled to Judgment under 0.16 of the HCR 2007. Counsel added that if the Plaintiff believes the Defendants do not have a reasonable defence, it should seek to strike it out and referred the Court to 0.21 R.17 s.r.1 para(a) of the HCR 2007. He added that as the Plaintiff's have not attacked the Defendants' defence, its credibility and/or reasonability the Court should discountenance the Plaintiff's Application.

Counsel said he relied on paragraphs 4,5,6 & 7 of the affidavit in opposition to canvass the point that the second limb of the Plaintiff's Application and said it is not suitable for determination without a full trial. He said the questions are contentious with intricacies attached thereto which means the action needs to be fully examined to determine the full action herein.

(10) **Reply to the Affidavit in Opposition – Osman Jalloh Esq.**

Counsel for the plaintiff in reply to the affidavit in Opposition submitted that, the Defendants' Counsel Position that The Orders as prayed for are inappropriate and untenable is erroneous because of the dichotomy between 0.16 of the HCR 2007 and an Application for default of pleadings – filing a defence outside the time prescribed for filing same.

Counsel for the Plaintiff said the Application herein is not made pursuant to 0.21 R.17 of the HCR 2007 but to 0.16 thereto for Summary Judgment. Counsel for the Plaintiff referred the Court to Exhibits C&D and MMT1 which is the Defendants' defence and stated that it is not tenable and there is nothing therein for the Court to consider under 0.17 or 0.21of the HCR

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2007. He added that the questions posed in the alternative are suitable for determination which would determine the matter in full. He said the Defendants have been heard fully and have not provided an acceptable reason to make the Court not grant the Orders as prayed for thus Judgment should be entered for the Plaintiff.

(11) **Order 16 R 1(1) of the High Court Rules 2007 provides that:-**
"Wherein an action to which this rule applies, a Defendant has been served with a statement of claim and has entered appearance, the Plaintiff may, on notice apply to the Court for a Judgment against the Defendant on the ground that the Defendant has no good defence to a Claim included in the Writ, or to a particular part of the claim except as to the amount of any damages claimed"

Rule 3(1) provides that:-
"Unless on the hearing of an application under Rule 1, either the Court dismisses the application or the Defendant satisfies the Court with respect to the Claim or the part of the Claim, to which the application relates, that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such Judgment for the Plaintiff against that Defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed"

Rule 4(1) provides that:-
"A Defendant may show cause against an application under Rule 1 by affidavit or otherwise to the satisfaction of the Court".

(12) The Plaintiff has approached the Court for Summary Judgment under 0.16 of the HCR 2007. The Policy behind this procedure is to prevent delay in cases where there is no defence to the Plaintiff's Claims.
To succeed on an 0.16 Application, the Applicant must establish that there is no defence to the claims made by the Plaintiff and that there are no triable issues to the matter before the Court. The Defendant on the other hand must state in an affidavit and in argument that there is indeed a case for trial. Reference is hereby made to The Supreme Court Practice 1999 Edition where the test and powers of the Court to grant a Summary Judgment to the Applicant is stated.

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Paragraph 14/1/1 at page 163 thereto and paragraph 14/1/14 at page 165 provide that:-

(a) The Defendant must give notice to defend the action against him.
(b) The Statement of Claim must have been served on the Defendant.
(c) The Affidavit in support of the application must comply with the requirement of the Rules.

(13) In this instant case, the Plaintiff contends that the Defendants have no defence to the Plaintiff's claims and they have not raised any triable issues before the Court. A Statement of Claim was endorsed in the Plaintiff's Writ of Summons and duly served on the Defendants. The Plaintiff's affidavit in support of the application is in full compliance with the HCR 2007. The Defendants have given notice of their intention to defend that action against them, on file is a defence dated the 24th day of March 2023 filed for and on behalf of the Defendants herein.

It is duly noted that the requirements for Summary Judgment under 0.16 of the HCR 2007 in this instant case have been fulfilled.
The issue to be determined is whether or not there are triable issues raised by the Defendants in the defence filed, in the affidavit in opposition and/or during oral submissions before the Court.

(14) It must be noted that Counsel for the Defendant has sought to defend and/or oppose the Plaintiff's Application by canvassing the Court under 0.21 R.17 of the HCR 2007 which provides for pleadings, service thereof and striking out and other matters thereto relating.
It would seem as is Counsel for the Defendants has erroneously based his opposition to the Plaintiffs' Application on a judgment in default of defence Application which is when a defence is not filed within the time prescribed by the Rules.

0.21 R.17(1) provides that:-
"The Court may at any stage of the proceedings, order to be struck out or amended any pleading or the indorsement of any Writ in the action, or anything in any pleading or in the indorsement on the ground that ....."

This Order has nothing whatsoever to do with an Application under 0.16 as this Order is for the Summary Judgment procedure and 0.21 is for

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Pleadings. I have perused the Defendants' defence out of an abundance of caution and fairness and to maintain a fair balance between the Parties herein, there is nothing whatsoever therein that can be considered as a defence or answer to the Plaintiff's Claims, it raises no triable issues therein but dwells exclusively on the fact that the defence was filed before the Plaintiff's Application was filed. The defence further dwells on the fact that the alternative prayers on the Plaintiff's Application should not be granted as they are not suitable for determination at this point, but the action should proceed to a full trial.

(15) On the facts in this case, can I truthfully say there are no issues or questions in dispute which ought to be tried, I can't say there are any. The Plaintiff by Exhibit A purchased the Res herein from the Vendors and the said exhibit was executed in his favour. In this instant case, the Res is located in Kambia which makes its transfer susceptible to the authority of the Paramount Chief of the Area/Community; his full authority and consent was granted for the passing of the title to the Plaintiff. Furthermore, some of the named Defendants are directly related to the Vendors as stated in exhibit A hereto.

Paragraphs 5 1-15 of the affidavit in support and exhibits A,F & H clearly and palpably demonstrate the route and process of the transaction between the Purchaser and the Vendors and the full payment of the agreed upon consideration which resulted in title passing to the Purchaser/Plaintiff. The Defendants have not shown and/or proven to this Court the basis of their entering on to the Plaintiff's property and claiming it as their own. Their interference continued even after the statutorily recognized Tribal Authority who was a Party to the transaction warned them of the Plaintiff's property, it would seem as if the Defendants were bent on continuing the interference with the Plaintiff's rights and enjoyment to its property. In the premises, I believe there are no further issues to be litigated upon and the Summary Judgment procedure is therefore appropriate in these circumstances and I SO HOLD. As I have held that the Plaintiff's Application is appropriate in the circumstances, there is no need to consider the alternative Orders that the Plaintiff has prayed for

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in Orders 2 i,ii,iii 5 1,2,3,4,5, and 3&4 as Order 1 has been granted in its entirety and I SO HOLD.

UPON READING THE JUDGES SUMMONS dated the 29th day of March 2023 filed for and on behalf of the Plaintiff for the Orders as prayed for on the face of the Judges Summons and the supporting affidavit thereto sworn to on the 29th day of March 2023 together with the exhibits attached thereto and filed therewith; AND the Affidavit in Opposition sworn to on the 20th day of April 2023 together with the exhibit attached thereto and filed therewith;

AND UPON HEARING O. JALLOH ESQ of Counsel for the Plaintiff, AND **M.M. TEJAN ESQ** of Counsel for the Defendants herein;

IT IS THIS DAY HEREBY ORDERED As Follows:-

(1) Judgment is hereby entered in favour of the Plaintiff in this action against the Defendants as set out in Order 1-1, and 2.

(2) Costs in the sum of Nle80,000 (Eighty Thousand New Leones) to be paid jointly by all the Eleven (11) Defendants herein.

(3) Damages assessed at Nle80,000 (Eighty Thousand New Leones) to be paid jointly by all the Eleven (11) Defendants herein.

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Hon. Mrs. Justice Amy Juliet Wright J.

Hon. Mrs. Justice Amy J. Wright
Judge Of The High Court Of
Sierra Leone

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