C.C 23/22 2022 M. N0.1

In the High Court of Sierra Leone

Between:

Dawn Macaulay - Plaintiff/Applicant

(Through Her Attorney as

Administratrix of the Estate of

Dolcie Enid Macaulay)

14 Wilberforce Street

Freetown

And

Bob Koker - Defendant/Respondent

Youyi Building

Brookfields

Freetown

Counsel: Augustine. S. Marrah Esq. for the Plaintiff/Applicant

Julius N. Cuffie Esq. for the Defendant/Respondent

Ruling on an Application for an Interlocutory Injunctive Relief and Cost, Delivered by the Hon. Dr. Justice Abou B.M. Binneh-Kamara, on Wednesday, 20th July 2022.

1.1 Background and Context

This is a ruling, contingent on an application for an interim exparte injunction, an interim Injunction, an Interlocutory Injunction, and cost. This application was originally made, before the Hon. Mr. Justice Samuel Omodale Taylor, JA., by Augustine S. Marrah Esq., Counsel for the Plaintiff/Applicant (herein after referred to as Counsel for the Applicant), pursuant to an exparte notice of motion,

LANBUK.COM LANBUK SIERRA LEONE

strengthened by the affidavit of one Antoinette O'Neil, of N0.25 Syke Street, Freetown, in the Western Area of the Republic of Sierra Leone, sworn to and dated 20th January 2022. Thus, on Tuesday, 25th January 2022, the Hon. Justice Taylor, heard the exparte notice of motion and the submissions made by Counsel for the Applicant, based on the valent facts deponed to, on the content of the foregoing affidavit. Meanwhile, Justice Taylor (in his wisdom), on the same day, made an order of an interim exparte injunctive relief, restraining the Defendant/Respondent, his agents, servants, privies or howsoever called, from entering upon, remaining on, leasing, renting, selling or trespassing on, the realty (the subject matter of this litigation), which ownership is yet to be determined; and simultaneously ordered for the writ of summons, to be served on the Defendant/Respondent.

Thus, the writ of summons was served, an appearance subsequently entered, by Julius N. Cuffie Esq., Counsel for the Defendant/Respondent (hereinafter referred to as Counsel for the Respondent). On Monday, 7th February 2022, Counsel for the Applicant, applied for the interim injunction to be extended; and the application was eventually granted. Subsequently, on 4th February 2022, Counsel for the Respondent, filed a seventeen (17) paragraph affidavit in opposition, deponed to by the Applicant, in response to the twenty-six (26) paragraphs affidavit, supporting the application. Thus, Justice Taylor, on Monday, 14th March 2022, listened to, and conscientiously recorded, the submissions of both Counsel, in justification of why the application should or should not be granted. Nonetheless, this matter was subsequently re-assigned to this Honourable Court; and Counsel for the Applicant, on Tuesday, 7th June 2022, addressed the Bench on the content of the application, concerning the interlocutory injunction and cost.

LANBUK.COM LANBUK SIERRA LEONE

On Wednesday, 8th June 2022, Counsel for the Respondent filed a supplemental affidavit to bolster his affidavit in opposition of 4th February 2022. On 10th June 2022, he made submissions in response to the submissions of Counsel for the Applicant.

1.2 <u>Submissions of Counsel for the Applicant</u>

The Applicant's Counsel made the following submissions, to convince this Honourable Court, to make an interlocutory injunctive order, restraining the Respondent, his servants, agents, privies or howsoever called from restraining the Defendant/Respondent, his agents, servants, privies or howsoever called, from entering upon, remaining on, leasing, renting, selling, or trespassing on, the realty (the subject matter of this litigation):

1. The affidavit contains twelve exhibits. Exhibit A is a power of Attorney executed by Dawn Macaulay of N0. LJ, 54 York Road, New Barnet, Herts, EN5 1 LJ London, United Kingdom of England, and Wales (as Administratrix of the Estate Dolcie Eind Macaulay, appointing Antoinnette O'niel of N0.23 Syke Street, Freetown in the Western Area of the Republic of Sierra Leone, to perform some specific functions, clearly as stipulated on the power of attorney. Exhibit B is the letter of administration under seal of the estate of Dolcie Eind Macaulay, deceased intestate. Exhibit C is a lease agreement of a Crown land executed between His Excellency the Governor and J.P. Holman Limited. Exhibit D is another lease agreement made between Mrs. Maria Holmen on the one part and J.P. Holmen's Successor Ltd. and Vagn Jensen, Esq. Exhibit E is another lease agreement between the Hon. Aloysius Joseph Demby for the Government of Sierra Leone and the Diamond Corporation

LANBUK.COM LANBUK SIERRA LEONE

(Sierra Leone) Ltd. Exhibit F is an assignment of lease made by Diamond Corporation (Sierra Leone) Ltd. to Diamond Corporation West Africa Ltd. Exhibit G is an indenture of assignment from Diamond Corporation West Africa Ltd. to Sierra Leone Brewery Ltd. Exhibit H is an indenture of assignment from Sierra Leone Brewery Ltd. to Dolcie Enid Macauley. Exhibits J1-2 are receipts from the National Revenue Authority (NRA). Exhibit K is a letter, addressed to the Executive Secretary, National Assets and Government's Property Commission, by Yada Williams and Associates, on behalf of the Applicant. Exhibit L is a notice to quit issued by the Ministry of Works and Public Assets. Exhibit M is the writ of summons, commencing this action.

2. The principal thrust of this action touches and concerns a lease of a property (realty) situate at N0. 6A and 6B Hill Cot Road, Freetown. The Applicant's leasehold interest is derived from the Government of Sierra Leone. Counsel alludes to Exhibit H of the affidavit in support of the application, which he says is a lease agreement of the leasehold interest from the Sierra Leone Brewery Ltd. to the estate mentioned on the faces of the notice of motion, pursuant to which this application is made and the very writ of summons, originating this action.
3. That assignment, dated 31st October 1975, assigned a leasehold interest to the Applicant for a period of eighty-six years (86). That assignment was made to Dolcie Enid Macualey. The Applicant is the administratrix of the estate of the former. Since 1975, the Applicant has enjoyed unhindered occupation and quite possession of the said property, pursuant to a registered instrument, dated 31st October 1975 (Exhibit H).

LANBUK.COM LANBUK SIERRA LEONE

4. Exhibit J1-2 are evidence of receipts of payment of rent by the Applicant to the Government of Sierra Leone. Exhibit K, which is a letter dated 5th June 2019, was addressed to the Executive Secretary of the National Assets and Government Property Commission, highlighting the nature of the Applicant's interests in that property.
5. Counsel further notes that this case has met the threshold of the guiding principles, concerning the circumstances, culminating in the award of an injunction by a court of competent jurisdiction; adding that Exhibit M, which is the writ of summons (commencing this action), contains a plethora of triable issues. The Applicant has done business with the Government of Sierra Leone; and that was given effect to by Exhibit H, which is a registered instrument.
6. The Applicant contends that the Respondent is laying a fictitious claim to the realty. Counsel furthers that the leasehold interest that the Applicant seeks to enforce is still subsisting; noting that his client's interest spans for up to 86 years. 'In factt can damages be considered an adequate remedy for somebody with an 86-year unexpired lease, which terms and conditions, have been unfairly impugned'? The answer is definitely no, he says. The balance of convenience lies in the award of an injunction, to ensure that the Respondent, does not alter the character of the leasehold property; and hereby preventing the Applicant suffering an irreparable damage.
7. The conducts of the Applicant, which necessitated this application, are serialized between paragraphs 18 and 21 of the supporting affidavit. This Honourable Court cannot be seized of an action, with a truculent Respondent that is determined to proceed with his defiant attitude, without being

LANBUK.COM LANBUK SIERRA LEONE

restraint. The cases of American Cyanamid Ltd. **v.** Ethicon Ltd. (1975) 3 All ER and Alhaji Samuel Sam-Sumana **v.** The Attorney General and Minister of Justice of Sierra Leone and Victor Bockarie Foh S.C 2015, are the common law authorities, that inform the Applicant's application for injunction. The said authorities are the basis of the codified provision of the equitable remedy of injunction in Order 35 of the HCR 2007, which this Honourable Court, should invoke to maintain the status quo of this matter.

1.3 <u>Submissions of Counsel for the Respondent</u>

Counsel thus adduced the following arguments in justification of why the injunctive order as prayed, should not be granted:

1. In opposition to the application, there are two affidavits, sworn to by Bob Misheck Koker and dated 4th February 2022 and 8th June 2022, respectively. There are nine (9) exhibits attached to the first affidavit, whereas the second contains only two. The celebrated case of American Cyanamid Ltd. **v.** Ethicon Ltd. (1975) 3 All ER, clearly articulates the guiding principles, enunciating the circumstances, pursuant to which an injunctive relief, should or should not be granted.
2. It is the court's descretion to grant or not to grant an injunction. This descretion must be guided by two principles: The court must be satisfied that the claim is not frivolous and vexatious; and there must be a serious question to be determined by a trial and the cases of 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

LANBUK.COM LANBUK SIERRA LEONE

Minister of Justice of Sierra Leone and Victor Bockarie Foh S.C 2015, are quite clear on these guiding principles.

3. This case does not have any serious matter to be tried. Exhibit B, which is attached to the supplemental affidavit, is a letter authored by the Ministry of Works, Housing and Infrastructure, on behalf of the Government of Sierra Leone, to the Applicant in this action. That correspondence is dated 10th July 2017; and it is captioned 'Default on Lease Agreement- Property Situated at South of Hill Cot Road, Freetown. That letter expressly terminated the lease agreement between the Government of Sierra Leone and the Applicant's predecessors in title. Therefore, the Applicant has no interest in the property.
4. Counsel implores this Honourable Court to examine paragraphs 2 and 3 of the Respondent's defense, filed on 3rd February 2022. These paragraphs indicate that the Respondent is the lessee of the realty; and Exhibit BMK 5, which is attached to the original affidavit in opposition, is a letter authored by the Ministry of Works, Housing and Infrastructure, on behalf of the Government of Sierra Leone, to the Respondent. The letter, which is dated 22nd November 2019, is captioned 'Allocation of Government Quarter H7 Hill Cot Road, Freetown. The letter of allocation is supported by the letter of acceptance of offer of allocation of Government Quarter H7 Hill Cot Road, Freetown. That letter authored by the Respondent, is dated 6th January 2020.
5. The Applicant's interest in the property comes to an end on the day the allocation is accepted. Exhibit K (attached to the Applicant's supporting affidavit) is a letter dated 5th June 2019, written to the Executive Secretary, National Assets and Government Property Commission. The letter is

LANBUK.COM LANBUK SIERRA LEONE

captioned ‘National Civil Service Quarters Verification’. The letter confirms the subsisting interest of the Respondent, by virtue of the allocation of the property to the Respondent and his subsequent correspondence accepting the allocation. The letter threatens to take the Government of Sierra Leone to court for interfering with the Applicant’s leasehold interest of the property. ‘This is where the Applicant shot herself in the foot’, Counsel stresses. So, the proper person the Applicant should sue is the Government of Sierra Leone and not the Respondent.

6. Exhibit B of the supplemental affidavit contains the reasons why the lease was terminated. The termination was done in accordance with section 4 of the Crown Lands (State Lands Act) N0. 19 of 1960. This section empowers the Crown to grant lands to deserving citizens. And section 7(2) empowers the Government of Sierra Leone to enter upon any land, which is the subject of any part under this law. Further, section 13 stipulates the implied and expressed circumstances, pursuant to which leases granted to citizens, can be withdrawn. So, the Government of Sierra Leone exercised its powers under that provision and thus revoked the lease (see Exhibit PMK 9a and 9b). The Applicant was issued with the appropriate notice to quit, after the termination of the lease. Thus, there is no serious question of law to be tried. The realty’s address is H7 Hill Cot Road. The survey plan refers to property at Hill Cot Road (see Exhibit C).

LANBUK.COM LANBUK SIERRA LEONE

1.4 Analytical Exposition of the Law on Injunction

The jurisprudence 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 affair has generated a very reach literature 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-rial 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 the grant or refusal of an interlocutory injunctive relief. Therefore, it will amount to an exercise in futility, should this analysis spread its tentacles, to incorporate 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 Annual Practice of 1999). That is, courts of competent jurisdiction, can exercise their discretion to grant or not to grant them, via statutes or statutory instruments, in the interest 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 dovetail with the principal sources of law in Sierra

LANBUK.COM
LANBUK
SIERRA LEONE

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, 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 and 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 (the only foreign case law alluded to by Counsel for the Applicant), reflects the most salient precedent that has undoubtedly guided the Superior Courts of Judicature in the Commonwealth jurisdiction in handing down their decisions on decided cases on injunction. 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:

LANBUK.COM LANBUK SIERRA LEONE

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 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 15th, 16th April and 2nd May, 1975, replicated the criteria for the grant or refuse of 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 to grant the interlocutory 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.

LANBUK.COM
LANBUK
SIERRA LEONE

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 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 decision 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 interlocutory injunctive order in favour of the Applicant. Furthermore, 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 both the American Cyanamid and Fellowes cases.

LANBUK.COM
LANBUK
SIERRA LEONE

Essentially, the trend of thought that is discernible in the analysis, leading to the decisions in the above cases, is rationalized in the HCR, 2007. This argument strengthens 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 such injunctive reliefs. Thus, Order 35 Rule1 of the HCR 2007, states that:

> '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 of the Applicant seeking for an injunction to make the requisite undertaking, to pay damages to the other side, should it turn out at the end of the trial that, the interlocutory 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 to the Applicant.

1.5 The Critical Context: A Contextual Analysis of the American Cyanamid's Threshold in Relation to the Application's Facts and Facts- in -Issue

This critical context, examines whether the Application meets the threshold, set in the American Cyanamid's case as particularly expounded and applied in the English and Sierra Leonean authorities of Fellowes and another **v.** Fisher (1975) C A 829-843 and Alhaji Samuel Sam-Sumana **v.** The Attorney General and Minister of Justice

LANBUK.COM LANBUK SIERRA LEONE

of Sierra Leone and Victor Bockarie Foh S.C 2015. The first component of the threshold is to determine whether there is a serious question of law to be tried. Thus, on this point, V. V. Thomas C. J., made the following laconic, but interesting comment: 'If there is no serious question to be tried, this is virtually the end of the matter in an application for an injunctive relief'.

The application's twenty-six (26) paragraphs bolstering affidavit, contains a plethora of facts and facts-in-issue, resonating with a prima facie case, which needs not be established at this stage. So, I will only dilate on the relevance of most of those facts and facts- in-issue, in the determination of this application. Thus, the principal thrust of the Applicant's Counsel's submission, that the Applicant is a lessee of the realty, which is the subject matter of the application, is categorically debunked by the opposing affidavit thereto. Meanwhile, in 1.3 above, the Respondent's Counsel argues that the very lease agreement, pursuant to which the Applicant has predicated her equitable right and those of her predecessors in title that, spans for up to 86 years, has been categorically revoked, by the Government of Sierra Leone, which holds the reversionary interest of the realty, which it had put on lease.

Further Counsel emphasizes the point that the realty, which had hitherto been, in possession of the Applicant and her predecessors in title, has now been leased to the Respondent. And that the Respondent accordingly accepted the offer of the lease and has so far complied with its terms and conditions, since he came into occupation of the realty. He cautiones that the Applicant's remedy in equity, lies against the Government of Sierra Leone and not the Respondent that now judiciously holds the subsisting equitable interest. Alas! The administrative and

LANBUK.COM LANBUK SIERRA LEONE

statutory authorities, in justification of the Government's revocation of the Applicant's equitable interest, are accordingly serialized in the Respondent's Counsel's submissions in 1.3 above. Nonetheless, the Applicant's Counsel's conviction that there is indeed a serious question of law to be tried, is distilled from his argumentations that the circumstances, culminating in the revocation of the Applicant's equitable interest is questionable; and hence unjust, unfair and unreasonable; noting that the revocation contravened the provision in section 27 of the Crown Lands Ordinance, Act N0.19 of 1960.

He further contends that the procedure, pursuant to which the Government transferred the lease to the Respondent is illegal. Thus, Exhibit L, attached to the application's supporting affidavit, does not state the procedure, informing the lease's termination. Nevertheless, the immediate question that emerges from the foregoing argumentations, is how relevant are they to the determination of whether there is a serious question of law to be tried in this action? Thus, the answer to this question is accordingly inferred from the analysis below. Subsection (1) of section 27 of Act N0.19 of 1960, concerns the power of re-entry, vested on the grantor, in circumstances where there is evidence of a breach of a covenant (s), pursuant to which the lease was executed. The section states:

> If there shall be any breach or non-compliance by the grantee or by any person deriving any interest in the premises through or under the grantee of any of the covenants or conditions whether express or implied contained in any grant under this Ordinance, the grantor may at any time after such breach or non-observance re-enter into and upon the premises or any part

LANBUK.COM
LANBUK
SIERRA LEONE

thereof in the name of the whole, and have again, repossess, hold and enjoy the same as in his former estate:

Provided that the power of re-entry authorized by this subsection shall not be exercisable in respect of the breach or non-observance of any covenant or condition express or implied which is capable of immediate remedy *(other than a covenant of payment of rent or a covenant against assigning or sub-letting)* (*my emphasis is underlined and in italics*) unless and until the grantor shall have caused to be served upon the lessee a notice specifying the particular breach or non-observance of which the complaint is made and requiring the lessee to remedy such breach or non-observance, and at the discretion of the grantor, to make reasonable compensation in money therefore, and the lessee has failed to remedy such breach or non-observance and to pay such compensation as aforesaid to the grantor. Such notice shall-

(a) be served personally on the lessee; or
(b) be sent to him by registered post to his last known address; or
(c) be published in the gazette and a copy thereof be affixed to the premises.

More importantly, it is worthwhile, to put the communication from the Ministry of Works and Public Assets into context, revoking the Applicant's leasehold interest in the realty, and examine whether the revocation, was really done in accordance with the foregoing law, to assess whether there is indeed, a serious question of law to be tried. The notice to quit thus reads:

Based on not honoring the lease agreement for over 20 years (*my emphasis is underlined and in italics),* the occupant of the Government Quarter (6A

LANBUK.COM LANBUK SIERRA LEONE

> Bellevue House, should give vacant possession of this premises on or before the 31st of October 2021. The ministry deems it therefore fit, that you handover to the Chairman of the Housing Allocation Committee of the Ministry of Works and Public Assets. The Inspector-General has been duly informed.

Meanwhile, it should be noted that section 27 (1) of the foregoing statute, clearly states, the circumstances in which the lessor (in this case the Government of Sierra Leone) shall exercise its right of re-entry. These circumstances are restrictive to issues, relative to a breach of a covenant of payment of rent; or a breach of a covenant against assigning or sub-letting. The subsection further states the circumstances in which the right to re-entry cannot be exercised. Such circumstances are clearly restrictive to issues, regarding a breach or non-observance of any covenant or condition (express or implied), which can be immediate remedy. Again, the subsection pinpoints the indisputable fact, that in circumstances, wherein the Government of Sierra Leone, exercises its right of revocation and re-entry as a lessor, it is obliged to notify the lessee, through personal service of the communication revoking the lease; or the communication can be sent by post; or published in the gazette; and same must be affixed to the premises.

Thus, a plethora of questions can be posed at this stage to determine whether there is indeed a serious question to be tried in this action. First, does the Applicant's supporting affidavit evidence and exhibits attached thereto, contravene the statutory circumstances, pursuant to which the Government of Sierra Leone, exercised its right (as lessor) of re-entry? Second, does the

LANBUK.COM LANBUK SIERRA LEONE

Respondent's bolstering affidavit and exhibits attached thereto, dovetail with the statutory circumstances, pursuant to which the Government of Sierra Leone, exercised its right of re-entry? Was there a communication from the Government of Sierra Leone to the lessee, served on the latter or sent by post or published in the gazette, notifying the lessee of the revocation? Was that communication even pasted at a conspicuous place of the realty (the subject matter of the lease?

Analytically, the fact that the supporting and opposing affidavits and the pieces of evidence attached thereto, can lead this Honourable Court, to raise the foregoing questions, presupposes that there is a serious question of law to be tried in this matter. However, the other issue that is cognate with this point that must also be examined, is whether the action has been instituted, against the right juridical or juristic person. Who should have been the actual Defendant in this action? The Government of Sierra Leone, or the Respondent in this application? Should it have been wise for the action to have been brought against both, or against the former, with the latter coming in as an interested party? Thus, I will conclude on this point, that the above questions also bolster this Bench's conviction that there is a serious question of law to be tried. So, the application meets, the first limb of the thresholds for the award of an injunction in the American Cyanamid case. Therefore, the application is neither frivolous nor vexatious.

More importantly, the second limb is that the court must 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. To this limb of the American Cyanamid litmus or acid test, an analysis of the affidavits' evidence and the exhibits attached thereto, strengthened this Honourable Court's conviction, that the award of

LANBUK.COM
LANBUK
SIERRA LEONE

damages, would not be an adequate remedy, should it turn out at the end of the trial that, the interlocutory injunction (if granted), should not have been granted. The Respondent got into occupation as a lessee of the realty, through the Government of Sierra Leone, which is not a party to this action. He is of the conviction that he holds a leasehold interest, which must subsist for the period stipulated in the offer, which he had accepted. And he is also of the conviction that, even the Applicant's predecessors in title, had been issued with notices to quit on 12th May 2010 and 31st October 2021, respectively (see paragraph 3 of the supplemental affidavit in opposition, deponed to on 8th June 2022), even before the Applicant came to claim the existence of an equitable interest, which had been controversially terminated. As a result of these facts, the Respondent who is now in possession, believes he must enjoy that quite possession, which the Applicant now claims.

Thus, this Honourable Court is unconvinced that should it grant an injunction at this stage; an award of damage, would be an adequate remedy, if it turned out that the injunction, should not have been granted. Concerning this point on damages, Counsel for the Applicant's conception that damages, would not amount to an adequate remedy at the end of the trial, should the injunction be denied, is a misconception that should be dispelled and an uncertainty that must be clarified. Thus, the question about the adequacy of damages, as enunciated in the American Cyanamid case, is geared towards appeasing the Respondent, should it turn out at the end of the trial that, the injunction should not have been granted. Most importantly, the conclusion on the foregoing second limb, feeds into the consideration of the American Cyanamid's litmus or acid test, regarding the determination of the balance of convenience.

LANBUK.COM
LANBUK
SIERRA LEONE

The facts and facts-in-issue, as they stand, clearly depict that the status quo should be maintained, until this matter is eventually determined. Interestingly, even Counsel for the Applicant, alluded to the need for the status quo in this matter to be maintained (see page 12 of this Honourable Court's records) Alas! Whether the Applicant's Counsel, consciously or unconsciously, made that allusion concerning the need to maintain the status quo, is not for this Bench to comment on. Thus, since two of the considerations in the American Cyanamid threhold, regarding the award of an interlocutory injunction, has not been fulfilled, I will repudiate the application for injunction; and simultaneously award no cost to neither the Respondent; nor his Counsel. I so order.

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

Justice of Sierra Leone's Superior Court of Judicature

LANBUK.COM
LANBUK
SIERRA LEONE