MISC. APP: 59/20 2020 F. N0. 12

In the High Court of Sierra Leone

(Land and Property Division)

Between:

Ibrahim Fofanah Plaintiffs/Applicants

Alhaji Kallon

Eco Centre

Hamilton

Freetown

And

Abu Bakarr Fofanah Defendant/Respondent

Sheriff Drive

Lumley

Freetown

Counsels: A.D. Achotoh Esq. for the Plaintiffs/ Applicants.

S. B. Mondeh Esq., for the Defendant/Respondent

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Ruling on an Application for an Injunctive Relief, Pursuant to an Application via a Notice of Motion dated the 29th Day of January, 2020, delivered by The Hon. Dr. Justice A. Binneh-Kamara, on Monday, 23rd November, 2020.

1.0 Introduction.

This is a ruling, predicated on a contentious application made to this Honourable Court by A. D. Achotoh Esq., of the Law Firm, Jamiru and Co., 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 the 29th January, 2020; supported by the requisite affidavit, sworn to and dated the 29th January, 2020.

The affiant to the said affidavit is the first Plaintiff/Applicant (hereinafter referred as The Applicant), who is a contractor, residing at Eco-Centre, Hamilton, Freetown. Nonetheless, as required by Sub rule (6) of Rule 1 of Order 35 of The HCR, 2007, the foregoing application is stoutly contested by S. B. Mondeh Esq., of G. K. Tholley and Co., pursuant to an affidavit in opposition, sworn to by Abu Bakarr Fofanah, the Defendant/Respondent (hereinafter referred as The Respondent); a local businessman of N0.42 Sheriff Drive, Regent Road, Freetown.

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Nevertheless, no issue of procedural incongruity was raised or detected, when both Counsels came to argue the application on Monday, 2nd November, 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, relative to the application and the response thereto. 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 five (5) attachments, marked Exhibit AF1-5. Exhibit AF1 and 2, are a deed of gift dated 19th August, 2014; and a correspondence from the Office of the Director Surveys and Lands in the Ministry of Lands and Country Planning and the Environment. Exhibit AF3 is a

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correspondence sent to the said ministry by Counsel for The Applicant; presenting a case of encroachment on the realty, which ownership is to be determined at the end of this matter. Exhibit IF4 is the writ of summons, commencing this action. And Exhibit IF5 is the undertaking for damages, filed with the application for the injunctive relief, pursuant to Sub rules (1), (2) and (3) of Rule 9 of Order 35 of The HCR, 2007. Counsel relies on the entirety of the affidavit and the Exhibits attached thereto; noting that there are indeed very serious contentious issues that should undoubtedly warrant a full blown trial, because the parties to this litigation are claiming the same realty.

2. 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.
3. Counsel references the land mark decision on injunction in English jurisprudence. That is the American Cyanamid Co. Ltd. **v** Ethicon Ltd. All ER (1975). Exhibit IF4 is further referenced to confirm the fact that there are triable issues, which this court must determine; reiterating the foregoing submission that the balance of convenience favours the basic fact that the status quo must be

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maintained. Counsel concludes that the peculiarity of the circumstances of this case frowns at the adequacy of damages.

4. The Respondent has hired military personnel, are constantly terrorizing The Applicant and his privies on the land. This submission is bolstered by Paragraphs 8 and 9 of the affidavit in support of the application. And The Respondent is putting up a structure on the land.
5. The report from the Ministry of Lands, Country Planning and the Environment, depicts a clear ownership of the 'Res' by The Applicant.

1.2 <u>The Arguments of Counsel for the Respondent.</u>

Meanwhile, contrary to 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 sufficient enough, to convince any reasonable tribunal of facts, for the application to be denied and relegated to the backwaters:

1. The affidavit in opposition, conspicuously articulates, the salient facts of the Respondent's case in sixteen (16) distinctively elaborate, but unequivocal paragraphs. So the said affidavit, which engulfs six (6) attachments, speaks for itself. The attachments are marked as Exhibits AFB1-6. Exhibits AFB1 reflects the

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memorandum and notice of appearance, entered by G. K Tholley and Co., on behalf of The Respondent. Exhibit AFB2, engulfs The Respondent's statement of Defence and counterclaim. Exhibit AFB 3, encompasses the registered conveyance of one Umaru Barrie, who is not a party to this action; and some photographs of a dilapidated structure, which appeared to have been physically destroyed. Exhibit 5 is an undertaking signed by The Applicant at the Adunkia Police Station, that he would desist from having anything to do with the land, which is the subject of this litigation. Exhibit 6, is a correspondence (dated 27th November, 2019) from the Office of the Director of Surveys and Lands to the O/C Task Force against Land-Grabbing Unit, Freetown-West.

2. By virtue of Exhibit ABF 3, The Respondent has been in possession of the realty in question in question since 2012; noting that The Respondent relies on both documentary and possessory titles; and his conveyance predates that of The Applicant.
3. The Applicant had gone ahead to destroy a structure and its foundation, which The Respondent, had erected on the land. And The Respondent's agents and privies are presently residing on the land. As it is, The Respondent is erecting a structure on the land; and there is nothing to establish that should this Honourable Court, refuse the application the 'Res' will dissipate.

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4. It is The Applicant that has the tendency to interfere with the 'Res, which has been in The Respondent's possession. Counsel in conclusion relies on 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 NO. 3) {2007} SLHC (22nd February, 2007).

1.3 The Approach/Methodology Guiding the Determination of the Application.

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 in 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 no doubt 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.

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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.

1.3 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, 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

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(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 on injunctive reliefs. 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.

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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.

Meanwhile, shortly after the clinical decision in the foregoing locus classicus, Lords Denning, Browne and Pennycuick, on the 15th, 16th April and 2nd May, 1975, replicated the aforementioned criteria in Cyanamid Co. Ltd. **v** Ethicon Ltd. (1975) 1 All ER in 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. Essentially, the salience of the precedent of the latter case, which should be given valence and prominence in this ruling, is rooted in how the Court of Appeal of England, dealt with the legally thornily controversial issue of balance of convenience in the determination of whether an injunctive relief, 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 taken into account, are the main considerations, which the

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Court of Appeal of England, made quite salient in the assessment of whether the Superior Court of Judicature, should or should not be inclined to grant or not to grant specific injunctive relieves.

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. Moreover, 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).

Nonetheless, The Hon. Justice Desmond B. Edwards J. (as he then was) applied the foregoing 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.

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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.

1.4 <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, citing the contents of Paragraphs 2-7 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. And Counsel for The Respondent made the same claim; alluding to the contents Paragraphs 7 and 15 of the affidavit in opposition.

Whereas the former relied on Exhibit AF1 and 2, the latter ultimately relied on Exhibit ABF3; which inter alia, encompasses a deed of conveyance in the name of one Umaru Barrie. And in making their submissions, both Counsels attached the utmost valence, salience and

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prominence to this point, as one that should sway this Honourable Court to grant or not to grant the injunction.

Nevertheless, 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 particularly 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. However, an in depth analysis of both Exhibits AF1 and 2 and ABF 3, reveals that both Exhibits are clearly problematic for this court. Whereas the former is duplicated and numbered differently; the latter is that of one Umaru Barrie, who is not a party to this action; even though the site plan in the photo sat copy of Umaru Barrie's conveyance, bears the name of The Respondent. Thus, that site plan, which is itself a photo copy, depicts that it is registered in one of the Record Books of Conveyances, kept in the Office of the

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Administrator and Registrar General. On this convoluted issue I will advise that both parties, should go through their papers, rectify the anomalies, and re-file them for purposes of the records' clarity and reliability.

Meanwhile, I note that the Ministry of Lands, Country Planning and the Environment, has compounded the problems that have culminated in this litigation. Exhibit AF 2 (dated 26th November, 2015) and Exhibit ABF 6 (dated 27th November, 2019) are correspondences, which the said ministry dispatched to the police, depicting that the same realty, belongs to both The Applicant and The Respondent. How can a particular realty be owned by two distinctively different persons at the same time? Why should the said ministry, put out such suspicious contents, which the parties to this litigation, are now relying on in justification of their case?

However, both Counsels should appreciate the fact that it is only the High Court of Justice of the Republic of Sierra Leone, which has the unfettered original exclusive jurisdiction to determine titles and true ownerships of realties in the Western Area. Nevertheless, the allegation that The Respondent has deployed military personnel that are being molesting and harassing the agents and privies of The Applicant, should be reported to the police for the requisite investigations and prosecutions. The same can be said of the allegation of the destruction of the structure

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and its foundation, which The Respondent, had allegedly erected on the land. Furthermore, the issue of possession has been raised by both Counsels on behalf their clients. And they are both requesting for an injunction, prohibiting either's client from having anything to do with the realty. Also, both have canvassed the inadequacy of damages, argument for the injunction to be grant in favour of either against the other.

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; both Counsels have consented to this. 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

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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 Respondent is allegedly constructing a structure on the land; and The Applicant claims the same land as the rightful owner, who according to the Respondent, destroyed his structure, which was already erected on the land. This complicated and convoluted situation can best be addressed in the interest of justice, when both parties are temporarily prevented from having anything to do with the realty, until ownership of the land is determined. This Honourable Court hereby makes the following orders:

1. An interlocutory injunction is made restraining The Applicant and The Respondent 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, which is the

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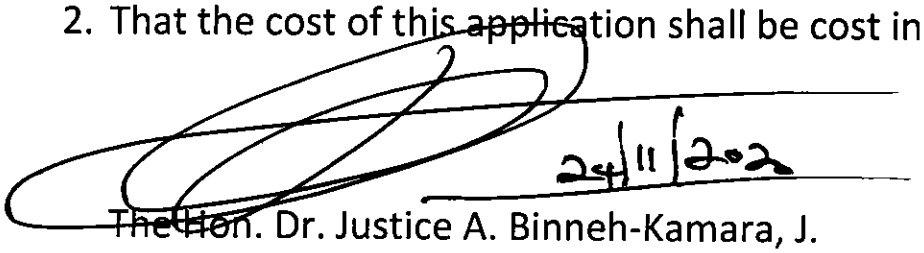
subject matter of this litigation, pending its hearing and determination.

2. That the cost of this application shall be cost in the cause.



24/11/2022

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

Justice of the Superior Court of Judicature of

Sierra Leone.

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