FTCC 014/23 2023 A. NO.1

IN THE HIGH COURT OF SIERRA LEONE

(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN:

LAURE AMPILHAC -1ST PLAINTIFF

2245462 ONTARIO INC. -2ND PLAINTIFF

AND

BARRY ABDULRAHAMAN JALLOH -1ST DEFENDANT

WEGO (SL) LIMITED -2ND DEFENDANT

RULING DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR ON THE 26TH APRIL 2023.

A.R. KARGBO -COUNSEL FOR THE PLAINTIFFS

A. KAMANDA -COUNSEL FOR THE DEFENDANTS

The Defendants have approached this court by Notice of Motion dated 29th March 2023 praying that this court dismisses the writ of summons in this action on the grounds that same is an abuse of process, discloses no reasonable cause of action and that it is scandalous, frivolous and vexatious.

The application is supported by the affidavit of Alfred Kamanda in which he deposed to the facts that the subject-matter of the present action is also currently being litigated by the Magistrate's court and that the defendants have presented their defence to the said court. On this basis, the defendants argue that the action is an abuse of process as the Plaintiffs cannot by law maintain both actions concerning the same subject-matter.

The Plaintiffs in opposing the application filed and relied on the affidavit of Abdulrahaman Kargbo. The Plaintiffs does not deny that it maintains both actions but argue that both actions are separate and distinct in their nature and purpose. The action before the magistrate is a criminal action as

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opposed to this matter and that the consequences of both matters are different as are their purpose and jurisdiction.

The question before this court is whether the Plaintiffs can by law maintain both a criminal and a civil action with respect to the same circumstances. In English law, criminal and civil actions have marked differences. Criminal actions are between the state and the individual and the result is punishment of the individual if found guilty. A Civil action on the other hand are between individuals with legal personality and has restoration as its goal. As such should a person be deprived of his right to institute civil actions because there is already a criminal action underway, he would technically be incapacitated in law to be restored to the position he ought to have been had it not been for the actions or inactions of the defendants. in other words, the state would punish the defendants if found guilty but the injured party would not be able to receive adequate compensation for his losses.

There are several case law authorities in English law where the courts have discussed the issue of whether a person can maintain both civil and criminal actions with respect to the same circumstances.

In **R v Brown (1993) 2 AER pg 75**, the court discussed the issue of whether the defendants could be convicted of both criminal offenses and sued for civil damages arising from the same acts. The court held that the defendants could be subject to both criminal and civil proceedings, as the two actions served different purposes that did not necessarily overlap.

In **Jones v Kaney (2011) UKSC pg 13**, the court considered whether a party could be sued for both professional negligence and perjury arising from the same case. It was the decision of the court that there was no rule preventing such claims from being pursued simultaneously and that the two causes of action were distinct.

Hunter v Chief Constable of the West Midlands Police (1982) AC pg. 529is another matter in which the court considered whether a claimant could pursue both civil damages and criminal charges arising from the same events. The court held that there was no general rule against this, but that the decision to prosecute would be a matter for the prosecution authorities.

As is clear, the courts have always held that there is no general rule preventing a person from maintaining both civil and criminal actions with respect to the same circumstances. Both types of actions serve different purposes and to prevent the one because of the other will certainly result in injustice. I cannot in the circumstances hold that the present action is an abuse of process because it is not.

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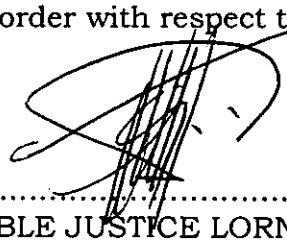
The defendantshave also asked that this court strikes out the action on the basis that it discloses no reasonable cause of action. I took the liberty to examine that writ of summons exhibited to the application. The Plaintiffs' claim is for payment of the sum of US$ 105,000 (One hundred and five thousand United States Dollars) which it gave to the defendants as a loan. The defendantsare yet to file a defence to the action and no further facts are deposed to in the affidavit in support of the application to make the case that the writ discloses no reasonable cause of action. There is no basis to hold that the writ discloses no reasonable cause of action because it does.

By the same token this action cannot be said to be scandalous, frivolous and vexatious.

I therefore make the following orders;

1. This application is accordingly dismissed.
2. No order with respect to costs.



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HONORABLE JUSTICE LORNARD TAYLOR

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