FTCC. NO. 031 2015 G. NO. 38

IN THE HIGH COURT OF SIERRA LEONE

COMMERCIAL AND ADMIRALTY DIVISION

IN THE MATTER OF THE COMPANIES ACT 2009 (ACT NO. 5 OF 2009)

INCLUDING SECTIONS 230-241 OF THE SAID ACT

BETWEEN

MOMOH ANSUMANA & ORS -PLAINTIFFS/APPLICANTS

AND

VOYTOVICH ROTISLAV & ANO -DEFENDANTS/RESPONDENTS

RULING ON PRELIMINARY OBJECTION DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR ON THE 5TH JULY 2022

M.P. FOFANAH -COUNSEL FOR THE PLAINTIFFS

Y.H. WILLIAMS -COUNSEL FOR THE DEFENDANTS

The Defendants have raised a preliminary objection to the Notice of motion filed by the Plaintiff dated 14th June 2022.

The defendants argue that the 13th Order in the Judgment of the Court of Appeal dated 21st December 2021 is not a carte blanche giving the High court the authority to consider any type of application. The authority of the High Court they argue, is limited only to supervision of the Orders herein. As such, when the Plaintiff came before this court by the present application seeking for an order for a comprehensive inventory of all the assets of Lora Golden wings (SL) Limited, the Plaintiff was no longer within the scope of the 13th Order of the Judgment of the court of Appeal. For this assertion, the defendant relies on several cases which cited the principle that the court cannot review its own judgment and that when a matter or issue have been determined, the court becomes functus officio thereof. **Francess Smith v Abraham Smith Civ. App. 48/17.**

As an example, reference is made to the 4th Order in the judgment of the Court of Appeal to make clear the point that where the parties are in

LANBUK.COM LANBUK SIERRA LEONE

disagreement with respect to the management of the assets, the remedy is not for the aggrieved party to approach this court. Rather the remedy lies in a petition for the dissolution of the company.

The Plaintiff disagrees with this reasoning. It argues that this court is not functus of this application. They maintain that the orders of the court of appeal cloaks this court with supervisory powers and that the orders prayed for on the face of the Notice of motion fall squarely within the authority handed down to this court by the Court of Appeal.

Both parties agree that the Court of Appeal did by the 13th Order in its judgement cloak this court with authority to supervise the compliance with the orders as contained in its judgment. What they seem to be at variance with whether the prayers of the Plaintiff on the face of the notice of motion fall within the scope of the supervisory powers granted to this court by the judgment of the court of appeal.

The Plaintiff's prayer is as follows;

1. *"That pursuant to the Judgment of the Court of Apppeal delivered in the matter entitled: VoytovichRotislav&Ano Vs MomohAnsumana&Ors Civ. App. 82/2018, inclusive of orders 5, 6, 8, and 13 of the said judgemtn dated 21st December 2021, this honourable court grants an order for G4S Security Company of No. 6 Spur Road, Freetown to take a comprehensive inventory of all assets of Lora Golden Wings (SL) Limited Company in Sierra Leone as contained in the respective statements of account filed for and on behalf of the respective parties herein at the Court of Appeal Registry dated 14th and 15th January 2022 respectively"*

A clear understanding of this prayer would reveal that what the Plaintiff seeks by this application is for an inventory to be taken of the assets of Lora Golden Wings (SL) Limited. The question for this court with respect to this preliminary objection is whether this court in supervising the compliance with the judgment of the Court of Appeal can consider the taking an inventory of the assets of Lora Golden Wings (SL) Limited as within its mandate.

This court took the liberty to read and understand the Orders in the Judgement of the Court of Appeal in this matter. This court at this stage cannot consider the facts as contained in the affidavit in support of the application considering that this is a preliminary objection and no reliance is made on the said affidavit by any party. As such the level of compliance thus far with the orders of the court of appeal cannot be ascertained.

LANBUK.COM LANBUK SIERRA LEONE

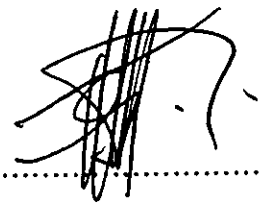
However, strong consideration is given to the 3rd order in the said judgment which states;

"The aforesaid company and its assets shall remain under the management of the directors jointly".

When read in concert with the prayers on the face of the Notice of motion herein, it is quite easy to see that management of the company and its assets will not be feasible in the absence of an inventory of the assets of Lora Golden Wings (SL) Limited.

This state of affairs when juxtaposed with the 13th Order in the judgment which grants this court supervisory powers limited as it may be to the compliance with the orders of the court of appeal, will leave this court with no other option but to rationally hold that there is no way compliance with the 3rd order can be supervised by this court if this court lacks the authority to even consider this application.

The preliminary objection is accordingly dismissed.



.....

HONORABLE JUSTICE LORNARD TAYLOR

LANBUK.COM LANBUK SIERRA LEONE