FTCC: 070/2022 2022 S. NO.15

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION
FAST TRACK COMMERCIAL COURT
ADMIRALTY ACTION IN REM AGAINST THE VESSEL MV KATA

BETWEEN:

SIERRA MINERAL HOLDINGS LIMITED - PLAINTIFF

MAAZ LIMITED - 1ST DEFENDANT

THE OWNERS, DEMISED CHARTERERS - 2ND DEFENDANTS
& OR PERSONS INTERESTED IN THE
VESSEL MV KATA AT NITTI

E. PABS-GARNON - COUNSEL FOR THE 2ND DEFENDANT/APPLICANT

B. KOROMA – COUNSEL FOR THE PLAINTIFF/RESPONDENT

RULING DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR ON THE 8th SEPTEMBER 2022

On the 8th August 2022, this court made the following orders in this matter;

1. The orders of this court dated 15th July 2022 and 20th July 2022 are hereby set aside.
2. The amended writ of summons dated 19th July 2022 is accordingly set aside
3. The Plaintiff is at liberty to add the 2nd Defendant/Applicant herein as a party to this action and amend and file the writ of summons in this action accordingly within 3 days from the date of this order.
4. The vessel MV KATA IMO 9015450 call sign UBZU4, NO 201241656 currently within the territorial waters of Sierra Leone shall continue to be under arrest pending the hearing and determination of the matter unless the Plaintiff defaults in amending and filing the writ of summons as ordered above.

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5. The captain of the vessel MV KATA IMO 9015450 call sign UBZU4, NO 201241656 currently within the territorial waters of Sierra Leone shall continue to be under arrest and on the terms of his release pending the hearing and determination of the matter unless the Plaintiff defaults in amending and filing the writ of summons as ordered above.
6. Notwithstanding the 4th and 5th Orders above herein, the vessel MV KATA IMO 9015450 call sign UBZU4, NO 201241656 currently within the territorial waters of Sierra Leone shall be forthwith released from arrest in the event the 2nd defendants deposits the sum of US$ 150,000 in an account to be opened at the Guaranty Trust bank Freetown by the Plaintiff, a representative of the 2nd defendant and the Undersheriff of which the Undersheriff of Sierra Leone shall be principal signatory and such sum as deposited therein shall be security for any judgment that may be passed against the 2nd defendant.
7. The cost of this application is assessed at Le 5 million to be paid by the Plaintiff to Solicitors for the 2nd Defendants.

The 2nd Defendant being dissatisfied with the said ruling has approached this court praying that the warrant for the arrest of the 2nd Defendant's vessel be discharged and that this court grants leave to appeal against the said ruling.

Having considered the facts and circumstances thus far, this court will discountenance the application for the discharge of the warrant of arrest of the vessel. In the application dated 29th July 2022 which culminated in the ruling of 8th August 2022 which said ruling is now intended to be appealed against, the 2nd defendant prayed inter alia for the following;

> That the Order of 20th July 2022 be set aside for same being a wrongful arrest because this court has no authority to arrest the captain and the first mate in an action in rem and that the writ of summons in fact discloses no cause of action against the 2nd defendant.

It was by the order of 20th July 2022 that the 2nd defendant was arrested. This court having ordered the arrest of the 2nd defendant and having heard and determined an application for its release is now functus of any authority to re-hear and determine any application relating to the same issue pursuant to the principle of Res Judicata. I cannot in the circumstances consider nor make a determination on the 2nd prayer on the face the notice of motion on this basis. Besides, the order of 8th August 2022 which the 2nd defendant seeks to appeal against did set aside the aforementioned order of 20th July 2022. I understand this to mean that the 2nd Defendant wants this

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order restored by the court of appeal which will in itself mean that the Plaintiff would again be at liberty to arrest the 2nd defendant nonetheless.

The 2nd defendant is also seeking the leave of this court to appeal against its ruling of 8th August 2022 to the court of appeal. In an application for leave to appeal against an interlocutory order of the court, the sole principle to be considered has been laid down by trite law. The Applicant must show that the appeal has a reasonable chance of success in the Court of Appeal. To assist in reaching this conclusion, this court must consider the contents of Exhibit EPG 5 which is the proposed notice of Appeal exhibited to the this application. By Exhibit EPG 5, the 2nd defendant seeks to appeal against the whole decision save the 2nd order in the ruling of 8th August 2022 which said order set aside the amended the writ of summons.

The first ground of appeal alleges that this court found "..that the writ of summons was wrongly issued by the Plaintiff in failing to seek the leave of the court..". This is certainly not the case. This court never held that the writ of summons was wrongly issued and therefor I see not prospect in this ground succeeding in the court of appeal.

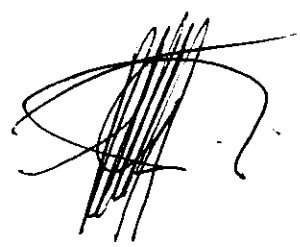
In the second ground of appeal the 2nd defendant alleges that this court after striking out the amended statement of claim could not make orders affecting the 2nd defendant who was no longer a party to the action as at the pronouncement of the order striking out the amended statement of claim. This ground I also do not see a prospect of succeeding as the orders of this court had to be read as a whole and not in parts that one party thinks is favourable to his situation.

The third ground of appeal is that this court has no authority to make an order to add a party to the action in the absence of a specific application. This ground of appeal also lacks merit. Order 18 rule 6 of the High Court Rules 2007 is quite instructive on the authority of the court in this regard.

The fourth ground of appeal is that this court has no authority to make orders against the Master of the Vessel who was at no time a party to the action. I have considered the title of the action and I hold that it is quite uncomplicated to understand and conclude that the Master of the vessel MV Kata is a person interested in the vessel and therefore himself a party to the action. This ground of appeal also stands no prospect of success.

That the ruling is against the weight of the evidence, I hold not as same was based on the evidence and arguments of both parties.

On these bases, I make the following orders;



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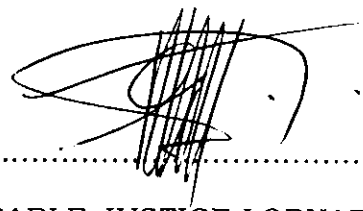
1. Leave to appeal against the ruling of this court dated 8th August 2022 is refused.
2. The cost of this application is assessed to Le 10 Million to be paid by the 2nd defendant to counsel for the Plaintiff.



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HONORABLE JUSTICE LORNARD TAYLOR

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