CC 179/13 2013 S. NO. 20

IN THE HIGH COURT OF SIERRA LEONE
GENERAL CIVIL DIVISION

BETWEEN:

THOMAS B. M. SABBAH - PLAINTIFF
(FOR AND ON BEHALF OF THE
GANGAMA LANDHOLDING FAMILY-
GANGAMA
C/O 4A LIGHTFOOT BOSTON STREET
FREETOWN.

AND

SIERRA RUTILE LIMITED - DEFENDANT
NO. 20 HILLCOT ROAD
FREETOWN.

Counsel:
Maurice Garber Esq. – for the Plaintiff
Berthan Macaulay Jnr. Esq. - for the Defendant

JUDGMENT DELIVERED THIS 12TH DAY OF DECEMBER 2024
BY HON. MRS. JUSTICE FATMATTA BINTU ALHADI J.A.
(Sitting as a High Court Judge).

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JUDGMENT

This matter commenced by a Writ of Summons filed on the 2nd of August 2013 praying for the following Orders:

1. Recovery of the total sum of Le262,790,280.00 (Two Hundred and Sixty-Two Million Seven Hundred and Ninety Thousand Two Hundred and Eighty Leones) being arrears of surface rent due and owing to the Plaintiff by the Defendant company.

2. Interest thereon at 35% per annum effective 2006 till date of judgment.

3. Damages for breach of contract.

4. Costs.

By way of a Notice of Motion dated 11th June 2019, the Plaintiff/Applicant applied for leave to amend the statement of claim in the said writ of summons to a revised sum of US$227,559.39 (Two Hundred and Twenty-Seven Thousand Five Hundred and Fifty-Nine United States Dollars and Thirty-Nine Cents). Counsel for the Defence/Respondent had no objection to the proposed amendment and the application was granted by the Court on the 20th of June 2019. Trial commenced on the 28th of June 2019.

SUMMARY OF SUBMISSION BY COUNSEL FOR THE PLAINTIFF

In his submission to the Court, Counsel for the plaintiff, Mr. Garber, said that the Plaintiff is the lawful owner and representative of the land known as Block IM/10A, situated within the Imperri Chiefdom, as recognised under customary law. This ownership he claimed to have been inherited by the plaintiff through family lineage, and thus making him the lawful custodian of the land. Mr. Garber pointed out that the defendant, Sierra Rutile Limited, acknowledged the plaintiff's ownership by making surface rent payments directly to him for decades until the payments were ceased unjustly.

He argued the existence of a lease agreement by relying on exhibit 244, which is a letter dated 17th May 1985, in which the terms of a lease agreement were outlined between the plaintiff and the defendant. Although the document was unsigned, it

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referred to key conditions such as: the defendant's use of the land for mining purposes and obligations to compensate for pollution and damage to crops. Mr. Garber pointed out that this correspondence constituted evidence of an oral or implied agreement between the parties. He asserted that the defendant's subsequent conduct, including consistent payment of surface rent, confirmed the validity of the agreement.

Counsel for the Plaintiff postulated that, while the Provincial Lands Act (Cap. 122) require written agreements for land transactions, customary law allows for verbal agreements, especially where they are supported by evidence of part performance. He contended that the payments made by the defendant amounted to acts of part performance, which validated the agreement under both customary and equitable principles.

Mr. Garber submitted multiple pieces of evidence, to demonstrate that the defendant recognised the plaintiff's entitlement to surface rent: "Exhibits KKK139, LLL141, and MMM143" are examples. These documents show that the government and the defendant engaged in consultations and directives related to the payment of surface rent to landowners, including the plaintiff. Cheques of Le58,641,000 and Le54,358,000 were paid to the plaintiff and were cited as proof of the defendant's acknowledgment of the plaintiff's ownership rights. He said that the defendant's abrupt cessation of payments constituted a breach of an established practice and implied contractual obligation. He opined that the irregular cessation of payment of surface rent was in bad faith, relying on adverse decisions made by the Paramount Chief and other administrative authorities.

Mr. Garber referred to exhibit C23, which is a letter from the Paramount Chief retracting previous directives not to pay the plaintiff; and exhibit S54-S57 which are correspondences from the Attorney General's Office and the Ministry of Mines advising the defendant to continue payments to the plaintiff's family. He said that these showed that the defendant acted unilaterally, and in contravention of the directives by ceasing payments, which deprived the plaintiff of his lawful entitlement.

Counsel argued that under customary law, land is held communally by families, with the head of the family serving as the custodian. He espoused that the plaintiff, as the head of his family, has an original interest in Block IM/10A, which could not be overridden by statutory provisions or mining agreements. Mr. Garber highlighted the

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provisions of the Mines and Minerals Act 2009 and the Sierra Rutile Agreement Act 1972. Section 35(6) of the Mines and Minerals Act provides for compensation in cases of disputes over land usage. Clause 6(a)(2) of the Sierra Rutile Agreement specifies that surface rent payments must be made to rightful beneficiaries. Counsel argued that the government's directives to the defendant to pay surface rent through the District Council did not absolve it from its obligation to pay the plaintiff directly, particularly when the plaintiff's entitlement had been previously established.

Summary of Submission by Counsel for the Defendant

Counsel for the defendant, Mr. Macaulay, argued that there was no valid or binding lease agreement between the plaintiff and the defendant concerning the land in question. Citing the Provincial Lands Act (Cap 122) and the Mines and Minerals Act 2009, he postulated that any lease or agreement involving provincial land must be formalised in writing and approved by the relevant authorities, such as the Tribal Authority and District Commissioner. The plaintiff's reliance on an oral agreement from 1985, supported by Exhibit 244, was challenged. Mr. Macaulay espoused that Exhibit 244 was merely a proposal and not an executed agreement. He pointed out that the defendant did not sign any document confirming the alleged lease terms, and no written lease agreement was ever tendered in evidence. Mr. Macaulay argued that the Provincial Lands Act (Cap 122) mandates that land transactions involving non-natives require the Tribal Authority's consent and proper documentation. He said that the plaintiff's failure to satisfy these legal requirements rendered the alleged lease agreement invalid.

Counsel for the defendant admitted making payments to the plaintiff but clarified that these payments were surface rents required by the Sierra Rutile Agreement Act, 1972, and were administered through government oversight processes. Mr. Macaulay cited exhibits KKK139, LLL141, and MMM143 to demonstrate that payments were directed by government officials, including the District Council and the Ministry of Mines. He also highlighted exhibits S54-S57, where the Attorney General's Office provided recommendations for surface rent payments to be paid to landowning families. He reiterated that such payments were subject to administrative procedures. Furthermore, he argued that the plaintiff's claim of a private lease was undermined by documentary evidence, indicating that all payments were government-directed and did not establish any contractual relationship with the defendant.

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Mr. Macaulay submitted that, the cessation of payments in 2006 and 2013 were due to adverse decisions regarding the ownership of the land. Exhibit C23 for instance, is a letter from the Paramount Chief advising against further payments to the plaintiff, thus citing disputes over ownership. Exhibit III 136 as well, is a correspondence from the Ministry of Mines indicating that after investigations and consultations were conducted, the decision to suspend payments was made. Counsel referred to minutes of meeting from 2013 and documents which established that the land (IM/10A) was owned collectively by five families, with the plaintiff's family entitled to only a portion of the surface rent. He argued that the suspension of payments was lawful and based on these findings, it clarified the ownership and entitlement to surface rents.

Mr. Macaulay contended that, while the plaintiff's family may claim an original interest in the land under customary law, such claims must be aligned with statutory requirements. The land in question, he said, falls under the defendant's mining concession, governed by the Mines and Minerals Act 2009 and the Sierra Rutile Agreement Act, 1972. He observed that Clause 3(c) of the Mining Lease Agreement and Clause 6(a)(2) of the Sierra Rutile Agreement specify that surface rent is payable to the Government of Sierra Leone, which then disburses payments to the rightful beneficiaries. The plaintiff's reliance on customary law he opined is insufficient, as statutory law takes precedence in matters involving mining concessions and land leased to non-natives.

Counsel for the defendant argued that the plaintiff failed to produce evidence of a binding lease agreement. He said whilst the plaintiff relied on Exhibit 244, that the document was unsigned and lacked the essential terms required to create a valid contract. Citing Walsh v. Lonsdale [1882] 21 Ch. D. 9, counsel pointed out that whilst equitable leases may arise from acts of part performance, he said that no such acts were evident in this case. The defendant's payments to the plaintiff he emphasised, were administrative and not indicative of any intention to create legal relations.

Mr. Macaulay urged the court to dismiss the plaintiff's claim on the basis that:

i.) There is no valid or binding lease agreement between the plaintiff and the defendant.

ii) Payments made to the plaintiff were administrative and not

indicative of a private lease.

iii) The defendant lawfully occupies the land under a mining lease executed with the Government of Sierra Leone in 1984.

iv) The plaintiff's failure to comply with statutory requirements and lack of documentary evidence undermine the claim.

v) The land in question is within the defendant's mining concession, governed by statutory law, which supersedes customary claims,

And that judgment should therefore be entered in favor of the defendant, Sierra Rutile Limited.

ANALYSIS OF LAW, FACTS AND EVIDENCE

From the facts of the case, the first question that arises is whether there was a valid lease agreement between the plaintiff and the defendant in respect of the land, Block IM/10A? The second question is, whether a lease agreement of land and moreover, provincial land can be carried out orally? Does it have to be in writing given that it pertains to land in the provinces?

According to Black's Law Dictionary (9th Edition, p. 970), a lease is "a contract by which one party conveys land, property, services ….., to another for a specified time, usually in return for a periodic payment." From the facts of the case, was there any direct conveyance of land in the form of an agreement for a specified period between the plaintiff and the defendant?

The Provincial Lands Act, Cap 122, governs provincial lands in Sierra Leone. It generally requires transactions involving land to be in writing, especially when transferring interests in land. However, customary law recognises verbal agreements when corroborated by conduct and established practices; A. Renner-Thomas, 'Land Tenure in Sierra Leone-The Law, Dualism and the Making of a Land Policy' (2010) Author House Publishers.

The Provincial Lands Act prioritises written agreements to ensure legal certainty in transactions involving land. Also, under both common law and statutory law, a lease becomes binding when there is clear evidence of offer, acceptance, consideration, and an intention to create legal relations. Written agreements are preferred for land transactions to reduce disputes; Renner-Thomas (supra).

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In this case, the plaintiff alleged that the defendant entered into a lease agreement in 1985. The plaintiff tendered Exhibit 244, a letter dated 17th May 1985, from Thomas B. Sabbah to Sierra Rutile Limited, outlining terms such as payment for the acreage used and compensation for pollution, trees etc. However, the plaintiff admitted that no formal written lease agreement exists. Verbal agreements can be legally binding as stated above. However, they are difficult to enforce without clear and convincing evidence. Evidence of a verbal agreement may include correspondence, witness statements, and the conduct of the parties. Certain agreements, including those involving the sale or lease of land, must be in writing to be enforceable under statutory law. Customary law may differ but must align with the overarching statutory framework when disputes arise; Renner-Thomas (supra). This is because there are risks of relying on verbal agreements. These could include denial of the agreement by one party, a lack of evidence to prove the terms, and different interpretations of the agreement.

Courts apply an objective test, asking whether a reasonable person would believe that the parties intended their discussions to create a legally binding agreement. In this case, while the plaintiff tendered correspondences and evidence of surface rent payments, the absence of a written agreement weakens the claim. Although the defendant made payments of surface rent, it ceased payments citing adverse decisions in 2006 and 2013.

The plaintiff on the other hand relied on various exhibits to show that these decisions were subsequently rescinded. The exhibits included exhibit C23, which is a letter from the Paramount Chief retracting earlier letters advising against payments to the plaintiff; exhibit S54-S57 which were correspondences from the Attorney General's Office recommending the continuation of payments to the plaintiff's family; exhibit III 136, which is a letter from the Ministry of Mines indicating that the decision to suspend payments was based on investigations and consultations.

Section 35(6) of the Mines and Minerals Act 2009 provides that if compensation is disputed, it may be determined by the Minister on the advice of the Minerals Advisory Board. Furthermore, section 35(7) stipulates that, claims for compensation must be made within two years from the date the compensation became due. The Sierra Rutile Act 2002 mandates surface rent payments to the Government, which directs payment to beneficiaries. Section 6(a)(2) specifies the rate of surface rent as USD $4 per acre annually. Thus, the plaintiff's reliance on customary law is insufficient since the land in question is within a mining lease area governed by statutory law. It is the defendant's argument that the land falls under the

concession granted by the Government under the Sierra Rutile Agreement, and the Court agrees.

To succeed, the plaintiff must prove that a valid and binding lease agreement existed. As mentioned earlier, the plaintiff relied on exhibit 244, which is a letter from 1985 outlining the conditions for leasing the land to the defendant and exhibit OO 90 is the document referencing the acreage of land within the Gangama deposit area. However, from the facts of the case, there is no formal written response from the defendant to Exhibit 244, the said letter stated above. Both parties agree that the land is within the defendant's mining concession, as evidenced by the Mining Lease Agreement dated 1st July 1984, exhibit 246. Also, the plaintiff failed to demonstrate that the agreement satisfied the requirements for a binding lease, particularly under the Provincial Lands Act and the Mines and Minerals Act 2009.

A question that comes to mind at this juncture, is whether land in the provinces under customary law and the provisions of the Provincial Land Act (Cap 122) can be exclusively leased by the Chiefdom Council as the lessor, and not by the landowners? Section 2 of the said Act Interpretation Section defines "non-native" as "any person who is not entitled by customary law to rights in land in a province;" whilst section 3(1) of the said Act states that "No land in the Protectorate shall be occupied by a non-native unless he has first obtained the consent of the Tribal Authority to such occupation". Section 3(3) of the said Act provides that, where no lease is executed, a memorandum of the terms of occupation must be prepared, consented to by the Tribal Authority, and approved by the District Commissioner and Section 4 limits non-natives to a tenancy for a term not exceeding 50 years, with possible renewal for an additional 21 years.

The Sierra Rutile Agreement Act, 1972 (Ratification Act) grants the defendant (Sierra Rutile Limited) rights to occupy, utilize, and lease land for mining purposes, subject to compensation for damages to crops and trees. The authority of Walsh v Lonsdale [1882] 21 Ch. D. 9 establishes that equitable leases can arise from written agreements to lease property, enforceable by acts of part performance. From the facts of the case, the plaintiff, as head of the family, claims original interest in the provincial land based on customary law. The defendant, a non-native, acquired a mining lease from the Government of Sierra Leone dated 1st July 1984, duly registered in Volume 37 at Page 52 in the Book of Miscellaneous Instruments. The plaintiff claims an oral lease was granted to the defendant, asserting part performance via payment of rent and occupation. The 1985 letter presented by the plaintiff does not satisfy the statutory requirements of Cap 122, particularly the memorandum provisions under Section 3(3).

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The authority of the Chiefdom Council as Lessor Under Cap 122 provides that land in the provinces is held communally by native families but is subject to the administration of the Chiefdom Council; Renner-Thomas supra. Section 3(1) requires that non-natives obtain the consent of the Tribal Authority (acting through the Chiefdom Council) for occupation. Section 3(3) further mandates that, in the absence of a formal lease, a memorandum must be drawn up with details of the occupation, including rent, duration, and conditions. There is no evidence that the plaintiff complied with these requirements, nor does the 1985 letter fulfill the legal obligations for documenting the lease.

Turning to the nature of the lease granted to the defendant, the Sierra Rutile Agreement Act, 1972, confers specific rights to the defendant, Sierra Rutile Limited, to occupy and utilize land for mining purposes. Clause 10(b)(2)(iii) of the Agreement explicitly addresses compensation for damages to crops and trees but states that surface rent is payable to the Government of Sierra Leone, not individual landowners. The plaintiff's claim that rent was paid under an oral lease is unsupported by documentary evidence.

Although the plaintiff, as head of the family, may have an original interest in the land under customary law, such interest is subordinated to statutory requirements under Cap 122 for dealings with non-natives; Renner-Thomas (supra) . Customary land leases must be formalised and approved by the Chiefdom Council and the District Commissioner. The mining lease registration and validity is key to the determination of this matter. The defendant's mining lease is duly registered and predates the plaintiff's claims. Registration under Volume 37 at Page 52 provides prima facie evidence of the lease's validity. Section 34(1) of the Mines and Minerals Act, 2009, cited by the plaintiff, does not retroactively invalidate the lease, or impose obligations inconsistent with the Sierra Rutile Agreement.

The plaintiff's reliance on Walsh v Lonsdale is misplaced. The doctrine applies where acts of part performance substantiate an otherwise defective lease agreement. Here, there is no credible evidence of oral or written lease agreement as sufficient acts of part performance in this case.

Decision

Given what I have considered above, the court is satisfied that the defendant is not under any legal obligation to pay surface rent directly to the plaintiff or the plaintiff's family, given the statutory obligations under the mining lease agreement, the Sierra Rutile Agreement and related evidence. I agree that clause 6 (a)(2) of the Sierra Rutile Agreement Act imposes a statutory obligation to pay surface rent

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directly to the Government of Sierra Leone and not individual landowners. Whilst the defendant does not dispute prior payments to the plaintiff, it argues that those payments were made as part of a broader administrative process involving landowning families, paramount chiefs, and government officials and I agree.

I agree that clause 3 (c) of the Mining Lease Agreement mandates the defendant to pay surface rent to the Government of Sierra Leone. The Sierra Rutile Act, being a ratification of the agreement, has statutory force. It does not impose a direct obligation on the defendant to pay surface rent to individual landowners such as the plaintiff.

The court is of the view that the plaintiff's claim of breach is unsupported by evidence of a binding contract. Exhibit OO is unsigned and does not satisfy the contractual requirements under the Statute of Frauds. Payments made do not constitute an acknowledgment of contractual obligation but reflect administrative practices under government oversight.

The letters and minutes of meeting confirm that the payment of surface rent was subject to governmental processes and customary leadership. The defendant's reliance on instructions from the Ministry of Mines further undermines the argument of a private lease agreement between the plaintiff and the defendant.

The plaintiff has not met the burden of proving the existence of a lease agreement or legal obligation requiring the defendant to pay surface rent directly to the plaintiff. - Documentary evidence tendered by the defendant, including Exhibits P159-160, P166-169, and P177-188, refutes the plaintiff's version of events.

The defendant's obligation to pay surface rent lies with the Government of Sierra Leone, as stipulated in the mining lease and Sierra Rutile Agreement. Payments made to the plaintiff do not establish a binding obligation. The plaintiff's evidence, including unsigned Exhibit 244, a letter dated 17th May 1985 and prior payments, fail to substantiate the claim of an enforceable lease agreement. The resolutions from 2013 affirm that IM/10A is owned by five families, limiting the plaintiff's entitlement to four bushels of land.

In conclusion therefore, the facts and applicable law support the defendant's position:

i. There is insufficient evidence to prove the existence of a valid and binding lease agreement between the plaintiff and the defendant.

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ii. The statutory provisions under the Mines and Minerals Act 2009 and the Sierra Rutile Act 2002 supersede any customary law claims, placing ultimate authority with the Minister of Mines to resolve disputes.

iii. The defendant is not under any legal obligation to pay surface rent to the plaintiff in respect of Block IM/10A, as it falls within the mining lease area governed by statutory law.

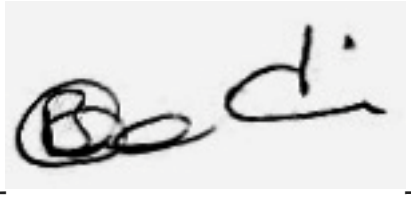
iv. The defendant lawfully occupies the land under the mining lease executed with the Government of Sierra Leone in 1984.

v. The plaintiff's failure to comply with Cap 122 and absence of documentary evidence undermines his claim.

vi. The plaintiff is not a party to the mining lease and cannot challenge its validity.

In view of the above, I HEREBY ORDER that:

1. the plaintiff's claim is DISMISSED.
2. There shall be no payment of US$227,559.39 by the Defendant to the Plaintiff.
3. There shall be no payment of interest as prayed for.
4. Costs for the Defendant to be taxed if not agreed upon.



Signed: _____ _____

Date:__12th December 2024_____

Hon. Mrs. Justice Fatmatta Bintu Alhadi J.A.

(Sitting as a High Court Judge)

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