

Civ App 64/2008 .

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

JOYCE DUNIE JOHNSON (Nee DAVIES)

AND

GEORGE AGIBADE JOHNSON - APPELLANTS/APPLICANTS

AND

SAHID DAKLALLAH

BUBA SAMURA - CONTEMNORS/RESPONDENTS

COUNSEL:

J B JENKINS-JOHNSTON ESQ for the Appellants/Applicant

E A HALLOWAY ESQ for the 1st Respondent/ Contemnor

OSMAN KANU ESQ, State Counsel for 2<sup>nd</sup> Contemnor/Respondent

CORAM:

THE HON. MR JUSTICE N C BROWNE-MARKE, Justice of Appeal

THE HON JUSTICE V SOLOMON, Justice of Appeal

THE HON MR JUSTICE A S FOFANAH, Judge

JUDGMENT DELIVERED THE 4<sup>th</sup> DAY OF MAY, 2011.

1. This is an Application by way of Notice of Motion dated 11 February, 2011 for the Contemnors herein to be committed to prison for Contempt of an Order of this Court made the 19<sup>th</sup> day of March, 2009 granting the Appellants herein, a Stay of Execution of the Judgment of the High Court dated 20<sup>th</sup> October, 2008. The Appellants allege that between 20<sup>th</sup> and 27<sup>th</sup> October, 2010 the Contemnors entered the Appellants' property, the subject matter of the appeal, together with a band of thugs, and proceeded to demolish structures on the same.
2. The Application is supported by the joint affidavit of the Appellants, deposed and sworn to on 11 February, 2011. Exhibited to that affidavit are "A", a copy of the Writ of Summons issued by the 1<sup>st</sup> Contemnor on 10 July, 2007. "B" is a copy of the Defence and Counterclaim filed on behalf of the original 1<sup>st</sup> Defendant in that action, since deceased. "C" is a copy

of the drawn-up Judgment of SESAY,J dated 20 October,2008. "D" is a copy of the Notice of Appeal dated 12 November2008 filed in this Court by the Appellants. "E" is a copy of the Judgment and of the Order of this Court, Coram: Hamilton, JSC, Ademosu,JA and SHOWERS,J dated 19 March,2009. That is the Order which granted a Stay of Execution of the Judgment of the High Court, exhibit "C". "F" is a copy of the Appellants' written submission dated 2 November,2009 filed during the course of the hearing of their appeal. "G1" and "G2" are respectively, Orders made by this Court on 12 March,2010 and 21 April,2010. "G2" is an order granting Leave to the Appellants to issue a Writ of Possession for Recovery of land situate at Off Smart Farm Road, George Brook, Freetown. Part of the 1<sup>st</sup> Contemnors claim in the action in respect of which an appeal has been brought by the Appellants, is land situate at Off Smart Farm Road, George Brook. The Appellants have not stated whether they have recovered possession of this property at George Brook or not. It is also, not quite clear in my mind, whether this land in respect of which the Appellants obtained a Judgment in default on 12 March,2010 is the same as that which was declared to be the property of the 1<sup>st</sup> Contemnors, by SESAY,J.

3. "H1-7" are copies of not-so-clear photographs of structures said to have been demolished or vandalised by the Contemnors and others between 20<sup>th</sup> and 27<sup>th</sup> October,2010. "J" is a copy of letter dated 11 August,2010 addressed by the Appellants' Solicitors, to the 2<sup>nd</sup> Contemnors, warning him to cease trespassing on Appellants' property at George Brook. That is the land in respect of which the Appellants had obtained a default judgment on 12 March,2010 as is evident when one reads through the letter. It does not refer to the land in dispute between the 1<sup>st</sup> Contemnors and the Appellants; nor does it refer to the Order of the Court of Appeal dated 19 March,2009. "K1" and "K2" are copies of letters addressed by Appellants' Solicitors, to 1<sup>st</sup> Contemnors, warning him to cease flouting the Order of this Court dated 19 March,2009. These exhibits are the pith and substance of the Appellants' case. What really is missing from the Appellants' joint affidavit, and from all their exhibits, is a positive assertion that they were present, and saw themselves, the 1<sup>st</sup> Contemnors enter their land, and carry out acts of destruction on the same. Their joint affidavit is in this respect a bit elliptical. This is the way they put it in paragraph 9 of that affidavit: " *That notwithstanding the Order of this Court..... The Contemnors did on divers dates between 20<sup>th</sup> and 27<sup>th</sup>*

*done*



*October, 2010 and with full knowledge of the existence of the said Order, go onto our land with a large number of OSD Police Officers, one Buba Samura of the Ministry of Lands.....all of whom proceeded to demolish and to vandalize various structures on the land belonging to us and other people...."* In the use of the singular "Contemnor", the Appellants are, I believe, referring to the 1<sup>st</sup> Contemnor only, and not to the 2<sup>nd</sup>, as he is clearly named in the fourth line. I think the slight error arose, because Appellants' Solicitors probably used the same affidavit they had used in an earlier Application brought before us, but which we had requested Appellants' Solicitors to amend to include as a party, the 2<sup>nd</sup> Contemnor, Buba Samura. Another striking feature is that they repeatedly use the words "*our land*". It seems to me that the land they could properly refer to as '*our land*', is that which was adjudged to be theirs on 12 March, 2010 and not that which was adjudged, rightly or wrongly by SESAY, J on 20 October, 2008 to be that of the 1<sup>st</sup> Contemnor. Confusingly also, reference to the photographs in the affidavit, comes immediately after references to the Court Orders in the other matter, exhibited as "G1" and "G2". Could it be therefore, that the Appellants' real complaint is that the Contemnors have been trespassing on the land which has been adjudged theirs by SHOWERS, JA. The words "*our clients land - the subject matter of this appeal*" and "*their land*" recur in the Appellants' Solicitors letters, exhibits "K1" and "K2" respectively.

4. The true identity or location of the property which is the subject matter of the Appellants' complaint matters, because 1<sup>st</sup> Contemnor has denied in his affidavit in opposition deposed and sworn to by him on 7 March, 2011 that he has ever been on the land the subject matter of the appeal, as contended by the Appellants.
5. Further, the Appellants have filed an additional affidavit deposed and sworn to by one Sahr Kpakima, a Masoner, on 2 March, 2011. In his affidavit Mr Kpakima deposes that on 24 February, 2011 "*I was working at the site of the Appellants/Applicants herein when the 2<sup>nd</sup> Contemnor/Respondent Buba Samura came with three others whose names I don't know but if seen would be identified.*" The first comment I would wish to make about this affidavit, is that it was filed months after it was alleged both 1<sup>st</sup> and 2<sup>nd</sup> Contemnors went onto Appellants' property. It deposes to incidents which occurred on 24 February, 2011. In addition, Mr Kpakima deposes that he was working "*...at the site of the Appellants.....*" Surely, this could not have been the same land in respect

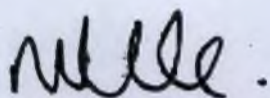
of which a Stay of execution had been Ordered. If it were, it would mean that while the party who succeeded at the trial, and in whose favour Judgment had been given was estopped from going onto the land which had been declared his, the Appellants, who had actually lost at the trial were free to go onto the same. I am sure the Law would not entertain such an absurdity. It is quite probable therefore, on the basis of the affidavit evidence filed by the Appellants, that the land they are really seeking to protect from interference, is that which was adjudged to be theirs by SHOWERS,JA and not that which is the subject of the appeal in this Court.

6. The 1<sup>st</sup> Contemnor also filed an additional affidavit in opposition deposed and sworn to by Augustine Fomba Kaibanya on 15 March, 2011. In it, he frankly admits that demolition work was carried out by his Ministry, the Ministry of Lands, Country Planning and the Environment between 20<sup>th</sup> and 27<sup>th</sup> October, 2010 at Leicester Road, from American Embassy End, as is shown in the Ministry's Notice published after the demolition exercise, and dated 3 November, 2010. He deposes further, that it was not the 1<sup>st</sup> Contemnor who carried out the demolition.
7. For his own part, the 2<sup>nd</sup> Contemnor, Buba Samura deposed and swore to an affidavit in opposition on 21 March, 2011. In it, he deposes that "*My involvement in the demolition exercise alleged.....was as a result of instructions from my superiors at the Ministry.....copies of the said instructions are exhibited hereto and marked ...*"BS1 A B C." He also, in paragraph 7 of the same affidavit, apologises unreservedly to the Court for any inconvenience his action may have caused. He was following Orders and did not intend to cause disrespect to the Orders of this Court. However, in trying to show that he was acting under Orders, he has signally failed. His exhibit "BS1A" is a copy of a memorandum dated 25 October, 2010 addressed by Mr Kai Banya to his Permanent Secretary. In it, Mr Kai Banya is requesting fuel allocation for the demolition exercise. "BS1B" is purportedly, a list of the personnel delegated to the task of demolition. It is quite clear that Buba Samura has squeezed in his name as number 2 on the list. The renumbering is clear for everyone to see. Numbers 2-6 have other numbers superimposed on them. Buba Samura's name was clearly not on that list. Even if it were, that would not fully exonerate him. But for the fact that evidence exhibited by the Appellants shows that the warning to him may have been given in connection with the Judgment and Orders of SHOWERS,JA, we would

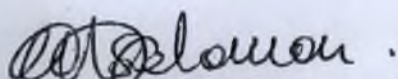


have had no hesitation in committing him for Contempt. As it is, we take a very deem view of the way he has acted in these proceedings, even before he was specifically joined as a party. It is the sort of behaviour, which, if given the appropriate evidence, would merit instant committal to Prison.

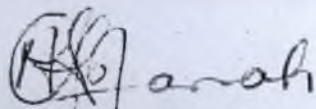
8. In conclusion, It is my considered Judgment that the Appellants have not made out a case which would warrant a Committal to Prison of the Contemnors named in this Application. There must be strong, cogent and irrefragable evidence to enable this Court to do so. Sadly, this is not the case here. However, we must make it clear to all concerned including officials of the Ministry of Lands, that if there is any clear breach of the Order of this Court made on 19 March, 2009, Committal will certainly follow.
9. The Orders of the Court are as follows:
  - (1) There is no clear and un-contradicted evidence before us that SAHID DAKLALLAH and BUBA SAMURA have acted in Contempt of the Order of this Court dated 19 March, 2009. The Application for their Committal to Prison is therefore refused.
  - (2) Notwithstanding (1) above, both SAHID DAKLALLAH and BUBA SAMURA are reminded that they are duty-bound to obey at all times, the Order of this Court dated 19 March, 2009.
  - (3) It is our considered Judgment that in view of the seriousness of the issues canvassed by the Appellants, and notwithstanding the conclusion we have reached in (1) above, each party should bear his own Costs.



THE HON MR JUSTICE N C BROWNE-MARKE,



THE HON MS JUSTICE V SOLOMON



THE HON MR JUSTICE A S FOFANAH