

IN THE HIGH COURT OF SIERRA LEONE

Commercial and Admiralty Division

FAST TRACK COMMERCIAL COURT

BRIAN CONTON

- PLAINTIFF

V.

**GET GLOBAL EMERGING PATHOGENS
TREATMENT CONSORTIUM LTD & OTHERS**

- DEFENDANTS

C C V Taylor for the Plaintiff/Applicant

H M Ngevao for the defendant

RULING DELIVERED ON 29th September 2017

Reginald Sydney Fynn JA

1. This action was commenced by Writ of Summons dated 10th March 2017 in which the plaintiff/Applicant seeks inter alia the recovery of \$41,500 from the defendant or in the alternative \$ 57,500 which amount the former claims represents arrears in remuneration. The present application however seeks an injunction by which the defendant will be restrained from dissipating funds in account **No. 17-111 772 886 - 01** at Rokel Commercial Bank Ltd. The applicant argues that this account belonging to the defendant has enough funds to pay the debt due and that it is from this account that he is usually paid.
2. In support of the application the applicant has filed an affidavit dated 17th May 2017 in which he deposed to facts surrounding his relationship with the defendant and also exhibiting several documents to corroborate his several assertions therein. In brief the applicant contends that he is an employee of the respondent in the position of 'Project Leader' in respect of the respondents "Bio Banking of Ebola Samples". The Applicant holds out that his salary is \$8,000 per month but that he was short paid in July and August 2016 and that thereafter he was not paid at all. He contends further that his salary usually comes from an account at Rokel Commercial Bank numbered **17-111 772 886 - 01** to which account he is himself a signatory and which account

currently holds a balance of \$141, 982.39. (Exhibit BC6). The applicant argues further that funds are being drawn from this account without reference to the usual protocols for the withdrawing of monies from the said account. He is also concerned that the frequency of the recent withdrawals are such as to completely deplete the funds in the account if they were to continue unchecked thereby leaving him at the mercy of the respondents in the event he is successful with this action.

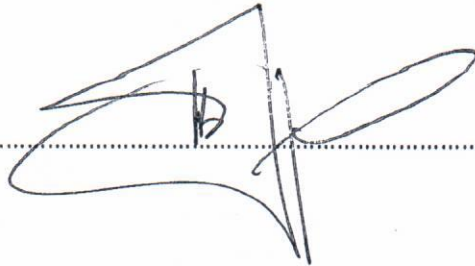
3. The respondent on its part opposes the application relying on the affidavit in opposition sworn to by Prof Sahr Moses Gevao and filed on the 24th May 2017, together with the exhibits attached thereto. Principally the affidavit in opposition denies the existence of any employer/employee relationship between the parties and consequently the debt which the applicant seeks to recover. The Respondent maintains stoutly that it is another company (a sister company by the same name) incorporated in Ghana that has a relationship with the plaintiff. It maintains that it is that Ghanaian relation that may owe the plaintiff if any company owes him at all.
4. Both parties filed supplemental affidavits and made extensive submissions on either side of the employment issue. I must point out that the present application does not need an enquiry into the employment issue per se. That issue may be the pith of the dispute and it will eventually be fully considered and ruled upon. The present application is for an order preserving the amount of money in the defendant's account pending the hearing and the determination of the action. It is my opinion that this application can be decided one way or the other without an inquiry into the employment or other relationship between the parties.
5. There is no contention that an order for preservation in the terms requested by the applicant can be made under O35 R2 of the High Court Rules 2007. The rules grant significant latitude to the courts to grant such orders *"if it appears to be just or convenient"*. The order may be made either *".....unconditionally or upon such terms...as the court considers just"*. It is for the applicant to show that the injunction sought will be just if granted notwithstanding any inconvenience that the defendant may suffer.
6. The Respondent has argued that the nature of the defendant/respondent's work is of such importance and dependence on these funds in this account that if an injunction were granted it would cause much disruption to it. It cannot be denied that collecting Ebola Samples and indeed any Ebola related work demands urgency attention and utmost efficiency. However the evidence before me fails to sufficiently convey the dependence on these funds which counsel has tried strenuously to assert. I have not seen evidence which show that if the injunction is not granted the respondents all important project will be in jeopardy.

7. On the other hand I have evidence before me that the funds in the account are being withdrawn at a frequency which will justify the applicant's concerns. There is no evidence that the funds in this account will be replenished once they are depleted. It seems to me that there is a greater risk of injustice resulting should the funds in this account dissipate before the case is concluded. On the other hand if the matter is heard speedily with the cooperation of the parties and it turns out the injunction was unnecessary the defendant will soon have full access to the untouched funds. Regrettably the reverse does not seem to have as easy an outcome if the funds are gone.
8. Apart from the fact that exhibit BC6 shows that there were six(6) withdrawals of \$10,000 on each occasion over the period of two months it is also of concern that the withdrawals may well have been made without following the defendant's own protocols for making withdrawals. If this is so then the motive for the withdrawals in such an unorthodox manner needs to be ascertained. I note that even though the applicant's counsel raised this issue both in his submissions and in his affidavits the respondent has not bothered to answer it. It therefore remains uncontroverted and I cannot but proceed with that consideration active in my mind.
9. The respondent has placed much emphasis on his submissions on the employment question. I have already indicated herein that in my opinion I need not decide that question to rule on the present application. I take the view that the respondents several submissions will properly form part of his defense and will ultimately be given full consideration when the matter proper comes to be decided.
10. The principles which should guide a court in its deliberation for the granting of an interlocutory injunction are found in the *American Cyanamid case*. This case has been frequently cited with approval in this jurisdiction, I see no need to restate it fully here save to state that those principles can safely be relied upon in any matter touching an injunction and I so rely.
11. I am satisfied that the parties' affidavits disclose a very serious dispute. I am also satisfied that there is a danger that if the injunction is not granted the funds in the account will not survive this action. I am also satisfied that the balance of convenience weighs heavily in favour of the applicant. However it is also my opinion that the injunction need not be any wider in scope than is absolutely necessary to protect the funds required and minimize any inconvenience consequent. I will therefore grant an injunction limited to a portion of the funds in the account sufficient to cover the applicants claim in the event it proves successful.

I therefore order as follows:

- a) That the funds in account No. 17-111 774 886 -02 at Rokel Commercial Bank Ltd shall until the determination of this action maintain a balance of no less than \$60,000
- b) That the defendant and its servants are restrained from doing any act that will cause the funds in account No. 17-111 774 886 -02 at Rokel Commercial Bank Ltd to fall below a balance of \$60,000 pending the hearing and determination of this action
- c) That this order shall be drawn up and served on the Rokel Commercial Bank Ltd
- d) Cost of this application shall be in the cause

Reginald Sydney Fynn JA



- (e) The parties are ordered to exchange all documents and summary of the statements of the witnesses they intend to rely upon no later than 10th October 2017 and agree on a consolidated bundle.
- (f) The plaintiff shall file a consolidated bundle including all documents and statements of witnesses on either side no later than 20th October.
- (g) Pre trial conference fixed for 23rd October 2017

