

IN THE HIGH COURT OF SIERRA LEONE

(LAND AND PROPERTY DIVISION)

BETWEEN:

HARRIET ROSEMARIE B. DANJAJI (NEE COKER) - PLAINTIFFS/RESPONDENTS

MRS. JAMES COKER

(SUING AS BENEFICIARIES TO THE LAST WILL AND TESTAMENT  
OF ELKANAH ERASTUS COKER DECEASED)

AND

WALCUT METZGER

- DEFENDANT

GILPIN JACKSON

- 2<sup>ND</sup> DEFENDANT/APPLICANT

SYDNEY LISK

- DEFENDANTS

ARNOLD BISHOP GOODING

HAWA SESAY

C.B. COX

ADMINISTRATOR & REGISTRAR – GENERAL (added by an order of Court)

COUNSEL

J. Benjamin (Ms). for 2<sup>nd</sup> Defendant/Applicant

S.S. Kamara Esq. for Plaintiffs/Respondents

**RULING DELIVERED THIS 18TH DAY OF NOVEMBER 2022 BY HONOURABLE MRS.  
JUSTICE JAMESINA E. L. KING J.A**

1. By Notice of Motion dated 3<sup>rd</sup> February 2022 the 2<sup>nd</sup> Defendant/Applicant applied to this Court for the following orders
  1. That this Honourable Court grants an injunction restraining the Plaintiff/Respondents herein from interfering or building or doing any form of development on the property of the 2<sup>nd</sup> Defendant/Applicant

situated at Old York Road Sussex in the Western Area of the Republic of Sierra Leone delineated on Survey Plan No. L.S. 1626/83 dated 7<sup>th</sup> July 1983 and measuring 0.4984 acre pending the hearing and determination of this application.

2. That this Honourable Court grants an injunction restraining the Plaintiff/Respondents herein from interfering or building or doing any form of development on the property of the 2<sup>nd</sup> Defendant/Applicant situated at Old York Road Sussex in the Western Area of the Republic of Sierra Leone delineated on Survey Plan No. L.S. 1626/83 dated 7<sup>th</sup> July 1983 and measuring 0.4984 acre pending the hearing and determination of this action.
  3. That this Honourable Court grants an injunction compelling the Plaintiff/Respondents herein to remove the zinc structure which they have constructed or caused to be constructed on the property of the 2<sup>nd</sup> Defendant/Applicant situated at Old York Road Sussex in the Western Area of the Republic of Sierra Leone delineated on Survey Plan No. L.S. 1626/83 dated 7<sup>th</sup> July 1983 and measuring 0.4984 acre pending the hearing and determination of this application.
  4. That this Honourable Court grants an injunction compelling the Plaintiff/Respondents herein to remove the zinc structure which they have constructed or caused to be constructed on the property of the 2<sup>nd</sup> Defendant/Applicant situated at Old York Road Sussex in the Western Area of the Republic of Sierra Leone delineated on Survey Plan No. L.S. 1626/83 dated 7<sup>th</sup> July 1983 and measuring 0.4984 acre pending the hearing and determination of this action.
  5. That this Honourable Court grants any further or other reliefs that may be necessary in this application.
  6. That the costs of this application be costs in the cause.
2. The application is supported by the affidavit of Ayorinde Gilpin-Jackson sworn to on the 3<sup>rd</sup> of February 2022, Attorney of Ayodele Beatrice Henrietta Gilpin-Jackson the Administratrix of the Estate of Roderick Claudius Omotayo Gilpin-Jackson. Exhibited to that affidavit are copies of the Power of Attorney dated 21<sup>st</sup> May 2021, Letters of Administration in respect of the Estate of Roderick Claudius Omotayo Gilpin-Jackson, Registered Deed of Conveyance of the said Roderick Claudius Omotayo Gilpin-Jackson dated 14<sup>th</sup> July 1983, the Writ



instituted in this action and the Defence and Counter-claim of the 2<sup>nd</sup> Defendant/Applicant as well as two other documents mentioned in paragraphs 6 – 8 thereof.

3. Paragraph 6 – 8 of the said Affidavit states as follows:

*6. That sometime in July 2018 one Bobby also known as Bobby Kanu who claimed to be a caretaker and agent of the Plaintiffs/Applicants trespassed upon the 2<sup>nd</sup> Defendant/Applicant property at Old York Road Sussex aforesaid uprooted all the property beacons and pillars affixed or erected thereon. This action by the said Bobby Kanu was reported by me to the Anti-Lands Grabbing Unit stationed at the Lumley Police Station. Copies of the request from the Lands Grabbing Unit at the Lumley Police Station to the Ministry of Lands to investigate the differing claims to the property at Old York Road which was identified as the underlying cause for the removal of the aforesaid beacons and pillars is now produced shown to me and marked AGJ6.*

*7. That sometime in 2021 the Plaintiffs/Respondents caused a zinc structure to be erected on the property of the 2<sup>nd</sup> Defendant/Applicant which is occupied by someone appointed by the Plaintiffs/Applicants. The erection of the zinc structure was overseen and facilitated by Bobby Kanu. Copies of photographs of the property at Old York Road Sussex showing the structure erected on the 2<sup>nd</sup> Defendant/Applicant's property are now produced shown to me and marked AGJ6A-E respectively*

*8. That the aid of this Honourable Court is prayed to compel the Plaintiffs/Respondents to remove the structure which they have erected or caused to be erected on the 2<sup>nd</sup> Defendant/Applicant's property at Old York Road Sussex, for the person occupying the same to vacate the property and to restrain the Plaintiff/Respondents from interfering, building or doing any form of development on the property of the 2<sup>nd</sup> Defendant pending the hearing and determination of this application and of this action."*

4. Counsel for the Plaintiffs/Respondents opposed the application of the 2<sup>nd</sup> Defendant on the grounds that firstly the Defence and Counterclaim was not served on them which contravenes Order 21 Rule 2(1) of the High Court Rules 2007 as well as the Court's order granting leave to file same. He relied on Order 46 Rule 10 of the High Court Rules for his submission that the 2<sup>nd</sup> Defendant/Applicant's failure to comply with the condition of service of the Defence and Counter Claim in the said order granting leave is deemed to be a



waiver of the said order. As such he submitted that because the pleading was not served, it is not properly before the court. He also noted that the order granting leave to file the Defence and Counter-Claim is dated 5<sup>th</sup> March 2021 and the application for leave to file was dated 21<sup>st</sup> November 2021. These he submit are all in support of his contention that there is no defence and Counter-claim on behalf of the 2<sup>nd</sup> Defendant/Applicant before this court and as such there is nothing before this court to show that there is a serious issue to be tried between the Applicant and the Plaintiff that would warrant the court to grant an injunction in favour of the Applicant. He relied on *American Cyanamid Co. v. Ethicon Ltd. (1975) A.C. 396*, HL and paragraph 29/1/2 of the Supreme Court Practice 1999 at page 565.

5. Counsel's second ground of opposition is that the 2<sup>nd</sup> Applicant are asking for orders of mandatory injunction as opposed to a prohibitory injunction and relied on Paragraphs 29/L/1 of the Supreme Court practice supra and submitted that the 2<sup>nd</sup> Defendant/Applicant has failed to meet the requirement in order to be granted a mandatory injunction and is therefore not entitled to the orders sought herein. He referred to the case of *Dr. Stanella Beckley v David Chambers Civ/App 61/2012* dated 28<sup>th</sup> February 2013 which adopted the said requirements of an unusually strong and clear case on the part of the Applicant.
6. In reply, Counsel for the 2<sup>nd</sup> Defendant/Applicant submitted that the Court Order granting leave to the 2<sup>nd</sup> Defendant/Applicant to file a Defence and Counterclaim is dated 6<sup>th</sup> December 2021 and not 5<sup>th</sup> March 2021 as alleged by Counsel for the Plaintiffs/Respondents. Counsel also submitted that there were no specific orders regarding service of the said Defence and Counterclaim and therefore the order of 6<sup>th</sup> December 2021 was not contravened. She further submitted that the application for leave was served and it was not opposed and it was granted. She submitted that in the absence of an affidavit in opposition, the facts stated in the affidavit in support are not contended. She conceded that indeed Counsel for the Plaintiffs/Respondents were not served with the Defence and Counterclaim and apologised to Counsel. She however pointed out that the Plaintiffs/Respondent had received the Defence and Counterclaim of the 2<sup>nd</sup> Defendant/Applicant and which is exhibited in the affidavit supporting the Notice of Motion of 10<sup>th</sup> November 2021 as AGJ7. She submitted that the Plaintiffs/Respondent did not oppose that application having received AGJ7.



7. On the issue of the mandatory injunction and to Counsel's submission relying on *Beckely v Chambers supra*, Counsel pointed to a distinction in the facts from the facts of the 2<sup>nd</sup> Defendant/Applicant's case, as the applicant in that case was claiming a portion of the land in dispute, that portion of the land she could not even identify and permanent structures were being built. In the 2<sup>nd</sup> Defendant's case he is saying that the whole portion of the land described in the application is his and there are no permanent or solid structures on the land as evidenced in the photos attached to the affidavit. The picture indicates a temporary zinc structure on the land. Counsel submitted that paragraph 6 is to the effect that it was after the Plaintiff had gone on the land and uprooted beacons and pillars from the Applicant's property and the Applicant made a report to the police. It was thereafter the Plaintiff instituted an action in 2019 naming the 2<sup>nd</sup> Defendant and been fully aware that this property was in dispute in Court in 2019 and it was in 2021 that the Plaintiffs/Respondents erected the zinc structure on the land putting themselves in possession of the property.
8. Counsel referred to Order Supreme Court Practice Order 29 R 18 pages 563 and 564. She submitted that the 2<sup>nd</sup> Defendant/Applicant's case is unusually strong and clear and referred to the title deeds and letters of administration and it has been shown the risk and greater injustice that he would suffer if the Respondents remain in possession of the property. She submitted that the Respondents have not shown what hardship they will suffer if the makeshift structure is removed from the property. She submitted that the Respondent does not reside on the property and have never resided on it. In 2018 they trespassed and in 2021 they erected the zinc structure.
9. Counsel also submitted that this matter has been in court since 2019 and if the Plaintiffs/Respondent continues in possession the case may slumber. Removing the Plaintiffs/Respondents on the land will prompt them to pursue the matter to conclusion speedily.
10. The issue for determination is whether or not it is just or convenient to grant the injunction orders sought pending the hearing and determination unconditionally or upon such terms and conditions as the Court considers just as provided in Order 35 Rule 1 of the High Court Rules 2007.
11. An injunction is an order of the court restraining the commission or the continuance of some wrongful act, or the continuance of some omission. An injunction is said to be prohibitory if it forbids the commission or continuance



of the act and said to be mandatory if it directs that a positive act should be done to repair some omission or to restore the prior position by undoing some wrongful act. See para. 291A/2 of the Supreme Court Practice 1999. With mandatory injunctions they are exceptional forms of reliefs and the Court ought to be able to tell the enjoined party, exactly what it has to do in order to conform or comply. Both forms of injunction are sought in this case.

12. The affidavit of the 2<sup>nd</sup> Defendant/Applicant deposed to facts similar in nature to the case of *Von Joel v. Hornsey* 1895 2 Ch. 774 CA, referred to at para 29/L/1 Supreme Court Practice p564. In that case the court granted an interlocutory mandatory injunction to a plaintiff in an obstruction of ancient lights action requiring the defendant to pull down so much of a building as had been erected after receiving notice of the action.
13. The principles and guidelines to be applied in interlocutory injunctions are set out in *American Cyanamid Co. v. Ethicon Ltd.* (1975) A.C. 396, HL adopted and followed by our courts in Sierra Leone. These principles are that there must be a serious question to be tried, whether damages would be an adequate remedy for a party injured by the Court's grant of, or its failure to grant? If not where does the "balance of convenience lies".
14. The affidavit evidence of the 2<sup>nd</sup> Defendant/Applicant remains uncontroverted about the Plaintiffs/Respondent' on the 2<sup>nd</sup> Defendant's land, erection of a structure and putting in possession a person without any authority or endorsement from the 2<sup>nd</sup> Defendant. All of the said activities are allegedly done by one Bobby Kanu the Plaintiffs/Respondent's agent and caretaker.
15. The Plaintiffs and 2<sup>nd</sup> Defendant are both claiming ownership and being entitled to possession of the land the subject matter of the action evidenced by reference to their title deeds in the pleadings. The Plaintiffs/Respondents' construction of a make shift zinc structure on the land claimed by the 2<sup>nd</sup> Defendant/Applicant, after this matter had been instituted and putting someone to live in the said structure is inconsistent with having the dispute determined by the Court and threatens the proper determination of the issues in dispute. Having regard to the conduct of the Plaintiffs'/Respondents' after this matter is in court, the balance of convenience lies in favour of the 2<sup>nd</sup> Defendant/Applicant to have the status quo reversed prior to these proceedings as well as to preclude any further development of the land by the Plaintiffs/Respondents or their agents. Damages will not be an adequate



remedy if the injunction orders sought are not granted, as the Plaintiffs would have taken undue advantage after the action, the topography of the land will be permanently changed as well as the 2<sup>nd</sup> Defendant/Applicant will have to contend not only with the Plaintiffs/Respondents but the person already in occupation on the land whose unauthorized activities may be inimical to the interest of the 2<sup>nd</sup> Defendant.

16. Furthermore, since this matter was instituted in 2019 there have been a multiplicity of applications and this Court notes that actual trial has not commenced and judicial time spent has been mainly on interlocutory matters. Apart from the 2<sup>nd</sup> Defendant's application there is currently filed and waiting to be heard 2 more motions by Melron C. Nicol-Wilson an Intended Defendant/Applicant dated 9<sup>th</sup> December 2021 and 14<sup>th</sup> February 2022 respectively.
17. In as much as all of the parties and intended parties have a right to make applications in order to resolve the issues in dispute, this Court is concerned that future preoccupation with interlocutory matters will derail the actual trial which in the end will prejudice all of the parties. At some stage in this matter it will be necessary to have a case management conference with all of the parties concerned to ensure that the required is done for trial to commence as well as making sure that all persons with interest in the subject matter are parties and the title of the action adjusted accordingly.
18. Consequently, the 2<sup>nd</sup> Defendant/Applicant has made out a case for the granting of both the prohibitory and mandatory injunctions. The 2<sup>nd</sup> Defendant/Applicant is to provide a written undertaking to the Plaintiffs/Respondents to compensate them in damages for the cost of the structure that will be demolished in compliance with this Court's order as well as any further loss the Plaintiffs/Respondents will have occasioned pending trial should they become successful at the end of the trial.
19. The balance of convenience also lies in immediately halting all activities on the land by all the parties to this action thereby maintaining the status quo until conclusion of the trial and all parties are ordered to do so.
20. In respect of the Notice of Motion dated 3<sup>rd</sup> February 2022 on behalf of the 2<sup>nd</sup> Defendant/Applicant, I make the following orders:
  1. That an injunction is hereby granted, restraining the Plaintiff/Respondents herein from interfering or building or doing any



form of development on the property of the 2<sup>nd</sup> Defendant/Applicant situated at Old York Road Sussex in the Western Area of the Republic of Sierra Leone delineated on Survey Plan No. L.S. 1626/83 dated 7<sup>th</sup> July 1983 and measuring 0.4984 acre pending the hearing and determination of this action.

2. That an injunction is hereby granted compelling the Plaintiff/Respondents, their agent or caretaker Bobby Kanu herein within **one month** from this order, to remove the zinc structure which they have constructed or caused to be constructed on the property of the 2<sup>nd</sup> Defendant/Applicant situated at Old York Road Sussex in the Western Area of the Republic of Sierra Leone delineated on Survey Plan No. L.S. 1626/83 dated 7<sup>th</sup> July 1983 and measuring 0.4984 acre pending the hearing and determination of this action.
3. Within 3 days of this order the 2<sup>nd</sup> Defendant/Applicant shall provide the court with not more than 3 printed photographs of the zinc structure and current status quo on the land. The Plaintiffs/Respondent shall also do likewise within the same period.
4. The 2<sup>nd</sup> Defendant/Applicant shall provide the Plaintiffs/Respondents with a written undertaking to abide by any order for damages if it turns out at the end of the trial that the injunction orders ought not to have been granted.
5. Cost of the application shall be costs in the cause
6. This matter is adjourned to the 23<sup>rd</sup> November 2022 for the hearing of the Notice of Motion dated 9<sup>th</sup> December 2021 and 14<sup>th</sup> February 2022 respectively filed by Adewale Showers Esq of 1<sup>st</sup> Floor Hillside Bypass Road Off Pademba Road.

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HON. MRS. JUSTICE JAMESINA E. L. KING J.A.