

CC. 3/3/09

2009

J.

NO.19

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL JURISDICTION)

BETWEEN:

Mr. RONALD BANKOLE JONES	-	PLAINTIFF
AND		
MR. ALEX HEROE	-	DEFENDANT
TRADING AT PADDY'S BAR		
AND RESTAURANT		

COUNSELS:

C. J. PEACOCK ESQ., FOR THE PLAINTIFF
R. B. KOWA ESQ., FOR THE DEFENDANT

RULING DELIVERED THIS 13th DAY OF January 2012 BY
HONOURABLE MRS JUSTICE V. M. SOLOMON J. A.

RULING

The Action herein is commenced by Writ of Summons dated 4th November 2009 in which the Plaintiff Claim is inter alia is in respect of sum of Le 9,654,544.00 being settlement of end of service benefits and other emoluments, damages, interest at a rate of 25% per annum from 12th March 2009 till judgment or payment, any other reliefs and costs. The Defendant caused an Appearance to be entered on his behalf on the 22nd April 2010 and filed a Defence and Counterclaim on the 17th June 2010.

The present Application is for Summary Judgment in which the Plaintiff is seeking the following reliefs to wit:

1. That liberty be granted to the Plaintiff/Applicant to enter Final/Summary Judgment against the Defendant on the Liquidated Claim as contained in paragraph one(1) of the Statement of Claim in the Writ of Summons i.e. Le 9,654,544.00.
2. That this honourable Court do hereby fix a date to assess interest and damages due the Plaintiff.

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3. Any other Orders (s) as this Honourable Court may deem fit and just.
4. That the costs of this Application be borne by the Defendant.

There are Affidavits in Support and in Opposition. Mr. C.J. Peacock Esq., of Counsel on behalf of the Plaintiff relied on the entire affidavit in support and exhibits. He submitted that that it was when this present Application was served on the Defendant that he filed a Defence out of time. Counsel referred to the dates of both documents and submitted that this present Application predates the Defence/Counterclaim. He contended that the latter ought not to be countenanced by this Court as the Defendant has failed to seek the leave of this Court before filing the said Defence/Counterclaim. He submitted that the Plaintiff resigned from employment of the Defendant and referred to "RBJ2" dated 12th March 2009. He further submitted that the Plaintiff did not abandon his post but resigned voluntarily. Counsel further submitted that there is no evidence that the Plaintiff was queried before or after his resignation. He submitted that there was no reply to his Letter of resignation and it was only when he claimed his benefits were the allegations made that he did not hand over and take stock of items in his possession. Mr. C.J. Peacock Esq. submitted that the Plaintiff is a Manager and not Storekeeper and latter is one Mohamed Sesay. He relied on Order 5 Rule 1 of the High Court Rules 2007 (hereinafter called "The Rules"). He urged this Court to grant Judgment in favour of the Plaintiff.

Mr. R.B. Kowa Esq. of Counsel on behalf of the Defendant relied on the affidavit in opposition particularly paragraphs

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3 and 4 thereof. He conceded that the Plaintiff is owed monies as his terminal benefits, but it is the quantum that is contested. He finally submitted that the Plaintiff had not accounted for the stock in his control and urged this Court to dismiss the application with costs.

My first consideration is whether this application can be properly made having regard to the Plaintiff's Claim. The first Order is in respect of a liquidated demand and second Order for an unliquidated demand, for which Counsel is seeking a date to be fixed for its assessment. The present application is properly before this Court and that the time of its filing the Defence/Counterclaim had not been filed.

I shall consider the Defence and Counterclaim filed marked "AH1" even though filed out of time, as that will assist me in my consideration of this application. The Defendant did

not file a defence within time stipulated by law nor was leave obtained to file it out of time. The said

Defence/Counterclaim was filed after the present application. The present Application is for the court to determine whether the Plaintiff is entitled to judgment by summary process. To be entitled to such judgment the Plaintiff is to prove his claim clearly and the Defendant's defence is not bona fide and raises no issues to be tried. In the case of Anglo-Italian

Bank v. Wells (1878) 38 L:T Page 197 at page 201 per Jessel M.R. he stated that judgment can be obtained when the Judge is satisfied that not only is there no defence but no arguable point to be argued on behalf of the Defendant. By

paragraph 14/4/5 of the Annual Practice 1999, a defendant's Affidavit should deal specifically with the Plaintiff's claim and affidavit and state concisely and clearly what the defence is and the facts relied on to support it. In the instant

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case the Defendant has filed an Affidavit in Opposition and has relied on the Defence marked "AH1". A Defendant ought to show sufficient facts and particulars that there is a triable issue. I refer also to case of S/C App: 4/2004 Aminata Conteh V APC. It is trite law that the mere assertion in an Affidavit of a situation does not, ipso facto, provide leave to defend since the Defendant must satisfy the Court that he has a fair or reasonable probability of showing a real or bona fide defence that is, and his evidence is reasonably capable of belief. In the case of National Westminster Bank PLC V Daniel (1994) 1 AER page 156 the Court of Appeal laid a definitive ruling that if the evidence of the Defendant is incredible in any material respect, it cannot be said that there is a fair or reasonable probability that the Defendant has a real or bona fide defence and judgment will be given for the Plaintiff. He enumerated 2 tests:

- Is what the Defendant says credible?
- Is there a fair or reasonable probability of the Defendant having a real or bona fide defence?

He stated that the 1st question must be answered in the affirmative before moving to the 2nd question.

From the aforesaid, that is the documents before this Court and the oral submission of Counsel for the Defendant there is evidence to show that the Defendant owes the Plaintiff his terminal benefits though the quantum is disputed. It is my view that the Defendant's defence does raise a triable issue to be tried which is the issue of stock taking. But the Defendant has not produced evidence before this Court to prove

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his counterclaim. Though at this stage I am not considering the final determination of this matter, but that would have assisted this Court in either the granting or refusal of the present application and to determine whether the counterclaim raises triable issues.

In the premises therefore, I am of the view that even though the Plaintiff has fully complied with the requirements for an Order 16 application I will not grant the Application at this stage especially so when there are some triable issues to be determined. At this stage there is also a counterclaim which has to be determined.

In the premises, I hereby order as follows to wit:

- (1) The application on Motion Paper is refused. The defence and counterclaim dated the 17th June 2011 is expunged from the records.
- (2) The Defendant is to file a defence and counterclaim within 5 days of the date of this order.
- (3) The Plaintiff is to file a reply and close all pleading 3 days thereafter.
- (4) That each party serves on the other party a list of documents to be used at the trial 28 days after the close of the pleadings.
- (5) That each party serves on the other party copies of documents to be used at the trial 28 days after the close of all pleadings.

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(6) That the Plaintiff shall lodge in the High Court Registry two copies of the Court bundle including the following documents to wit:

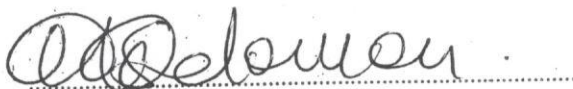
- (a) Pleadings (and any amendments thereto).
- (b) Any admissions arising out of these pleadings.
- (c) The issues in dispute.
- (e) The nature of the evidence to be relied upon.
- (f) List of witnesses to be called and witness statements.

7. There shall be Liberty to restore these directions for further directions.

8. Liberty to apply.

9. Costs in the cause.

10. Matter is re-listed for further directions to
21st day of February 2012.



HON. V. M. SOLOMON J. A.