

C. C. 207/11

2011

S.

NO.23

IN THE HIGH COURT OF SIERRA LEONE

(GENERAL CIVIL DIVISION)

BETWEEN:

SIERRA LIGHT HOUSE LTD

- PLAINTIFF

AND

THE KOREAN GROUP LTD

- DEFENDANT

Counsels:-

G. THOMPSON (Ms) for the Plaintiff

J.B. JENKINS JOHNSTON for the Defendant

RULING DELIVERED THIS 14th DAY OF February 2012 BY
HONOURABLE MRS JUSTICE V. M. SOLOMON J. A.

RULING

The Action herein is commenced by Writ of Summons dated 29th September 2011 in which the Plaintiff is seeking the following reliefs to wit:

1. Rescission of a written contract dated 11th February 2011 between the Plaintiff and Defendant for the construction of a Commercial borehole to produce 20-30 tons of water every 24 hours for the sum of \$33,000 (Thirty Three Thousand United States Dollars).
2. Refund of the sum of (Thirty Three Thousand United States Dollars) USD 33,000 or its equivalent in Le 138,886,950.52 (One Hundred and thirty Eight million, Eight hundred and Eighty Six Thousand, Nine Hundred and Fifty Leones and Fifty Two cents) and interest on same at the rate of 15%.
3. Recovery of Le 6,000,000 (Six Million Leones only), cost of purchasing water from, with interest.
4. Recovery of Le 7,260,000 (Seven Million Two Hundred and Sixty Thousand Leones), with interest being fees for the services of a hydrologist to verify the quality of work by the Defendant.
5. Alternatively, damage in lieu of rescission.
6. Further or alternatively, damages for breach of the said contract.
7. Any further order(s) or reliefs that this Honourable Court may deem just and fit.

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8. Costs.

The Defendant entered an Appearance through its Solicitor on the 12th October 2011. Two searches were conducted on the 10th and 15th November 2011 and it was discovered that no defence has been filed for the Defendant. On the 15th November 2011 Judgment in Default of Defence was entered against the Defendant. Judgment was entered for the 1st, 2nd, 3rd, 4th and 8th reliefs as per the Writ of Summons. The Defendant filed a Defence on 15th November 2011 which was paid for on 17th November 2011.

By Motion Paper dated 24th November 2011 the Defendant is seeking the following orders to wit:

1. That the Court do grant a Stay of Execution of the Judgment in Default of Defence dated the 15th day of November 2011 pending the hearing and determination of this Application.
2. That the Judgment in Default of Defence entered by the Plaintiff/Respondent herein against the Defendants/Applicants herein on the 15th day of November 2011 and all subsequent proceeds BE SET ASIDE and that the Defence already filed by the Defendant/Applicant herein dated the 15th November 2011 DO STAND.

AND FOR FURTHER Order that the Action do proceed to trial accordingly as per the Rules of the high court 2007.

The Affidavit in Support is deposed to by Counsel for the Defendant. There is an Affidavit in opposition deposed to by Counsel for the Plaintiff.

Mr. J. B. Jenkins-Johnston Esq. of Counsel for the Defendant relied on the Affidavit in Support. He submitted that he was served with the Judgment in Default on the 22nd November 2011 after he had filed the Defence. Counsel conceded that he was late in filing the defence but that

should not disable the Defendant from defending the action. He relied on Authority of Evans V Bartlam (1937) A.C. page 473 per Lord Atkins. He finally referred to the defence filed and submitted that the Defendant be given the opportunity to defend the action in the interest of natural justice. Miss G. Thompson of Counsel for the Plaintiff referred to the affidavit in opposition. She submitted that there was no Entry of the Defence filed in the cause book and referred to "GT2". She urged to this court to allow the Judgment to stand. On the defence filed she submitted that the defence is an admission that the Defendant still has something else to do, and there is no arguable defence. She referred particularly to paragraph 6 of the defence.

I have considered the oral submissions of both Counsels. It is my view that every matter must be determined on its merits that is, each party is heard and the matter finally determined. Two searches were conducted but it disclosed no defence filed. I note by "GT2" that there was no entry of the defence in the cause book. It is not the responsibility of solicitors for entries to be made in the cause book. That duty is one for officials in the High Court Registry. A Solicitor cannot be found wanton for the neglect in duty of the said officials. Indeed two searches were conducted which disclosed that no defence was filed. The said Defence marked "C" was dated 15th November 2011 and was paid for on 17th November 2011 and as such could not be entered on the cause book before date of payment. Nonetheless, a litigant should not be deprived of the right to be heard due either to an irregularity or inadvertence. I shall now consider the defence marked "C". It is my view that the defence raises issues which ought to go to trial particularly paragraphs 4 and 5 thereof. Even if there is just one issue to be determined then by authority of *S/C App. 4/2004 Aminata Conteh V. APC* the matter ought to proceed to trial. A matter should proceed to trial in the interest of justice and this principle is encapsulated in Order 16 Rule 3 of the High Court Rules by use of the phrase "or that

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there ought for some other reason to be a trial of that claim or part" (emphasis mine).

Also in the case of Miles V. Bull (1968) 3 AER per Megarry J. he had this to say:

The words "other reason" refer to justice at page 637 to wit:

"These last words seem to me to be very wide. If the Defendant cannot point to a specific issue which ought to be tried, but nevertheless satisfies the court that there are circumstances that ought to be investigated, then I think those concluding words are invoked. There are cases when the Plaintiff ought to be put to strict proof of his claim, and exposed to the full investigation possible at a trial; and in such cases it would, in my judgment, be wrong to enter summary judgment for the Plaintiff."

This new concept reflected in the High Court rules 2007 was not in existence in 2004 when the Aminata Conteh case was determined. It has given this Court more discretion in its determination of whether a matter should be tried summarily or to proceed to its merits for final determination. It is my view that the interest of justice will be served if the Defendant is granted leave to defend the action and to file a defence out of time.

In the premises, the Default judgment is set aside and I hereby order as follows to wit:

1. The judgment in Default of Defence dated 15th November 2011 and all subsequent proceedings are hereby set aside.
2. The Defence filed by the Defendant is allowed to stand.
3. The Plaintiff is to file a reply and close all pleading 5 days thereafter.
4. That each party serves on the other party a list of documents to be used at the trial 14 days after the close of the pleadings.

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5. That each party serves on the other party copies of documents to be used at the trial 14 days after the close of all pleadings.
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.
 - (d) The nature of the evidence to be relied upon.
 - (e) 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.
10. Costs to be borne by the Plaintiff assessed at Le 3,000,000/00.
11. Directions are re listed for further directions to 8th day of February 2012. *man*
UMS



HON. JUSTICE V. M. SOLOMON J. A.