

CC. 28/12

2012

M.

NO.4

IN THE HIGH COURT OF SIERRA LEONE  
(LAND & PROPERTY DIVISION)

BETWEEN:

MILTON MARGAI COLLEGE OF  
EDUCATION & TECHNOLOGY  
AND

DR. PHILIP JOHN KANU

- PLAINTIFF

- DEFENDANT

Counsel:

M. P. Fofanah Esq. for the Plaintiff

E. N. B. Ngakui Esq. for the Defendant

JUDGMENT DELIVERED THIS 17<sup>th</sup> DAY OF July 2012 BY  
HON. MRS JUSTICE V. M. SOLOMON J. A.

JUDGMENT

The Plaintiff has commenced this action by writ of summons dated 25<sup>th</sup> January 2012 in which the Plaintiff is seeking the following reliefs to wit:

1. Recovery of immediate possession by the Plaintiff from the Defendant of the Premises (Staff Quarter) situate at the Milton Margai College of Education and Technology (MMCE & T); and

2. Costs.

The Defendant caused an appearance to be entered on his behalf on the 16<sup>th</sup> February 2012 and thereafter filed a Motion Paper dated 28<sup>th</sup> February 2012 seeking an order that the said writ of summons be set aside for irregularity as the claim is not for a liquidated demand that is, a debt, but for immediate possession of premises. Another Motion Paper dated 27<sup>th</sup> March 2012 was filed on behalf of the Plaintiff in which it is seeking immediate possession of the premises situate lying and being at Staff Quarters at Milton Margai College of Education and Technology (hereinafter called "The Demised Premises"). There is an affidavit in opposition sworn on 18<sup>th</sup> June 2012 by the Defendant. The Motion Paper dated 28<sup>th</sup> February 2012 was heard and determined. Counsel for the Plaintiff conceded to the application and relied on Order 2 Rule 1 of the High Court

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Rules 2007 (hereinafter called "The Rules"). Counsel for the Defendant waived his objections to costs and a ruling delivered on the 22<sup>nd</sup> May 2012. This Court granted an amendment of the writ of summons and the Defendant was granted liberty to file his defence within 10 days of the date of the order. The hearing of Motion Paper dated 27<sup>th</sup> March 2012 the present application herein, was fixed for Friday 8<sup>th</sup> June 2012.

On the aforesaid date Mr. M. P. Fofanah Esq of counsel for the Plaintiff moved the court on his application and relied on the affidavit in support and exhibits. He sought an adjournment to file a supplemental affidavit which was done and he finally submitted that the Defendant has no defence to the action herein; and relied on Order 16 Rule 1 Rule 3 (1) of the Rules. Counsel submitted that there is inconsistency in the affidavit in opposition in that the Defendant has deposed that he is a yearly tenant and then deposes that he is monthly tenant. He submitted that the services of the Defendant were terminated in December 2011 and since that time he has held on to the demised premises and has refused to deliver vacant possession thereof. That the Defendant has held on to the demised premises for a period of over 6 months and so cannot complain of not having requisite notice and time to vacate the demised premises. He submitted that the defence filed marked "PJK8" lacks any merit and does not raise any triable issues; and that the Defendant has issued a writ of summons in the High Court for wrongful termination of his employment with the Plaintiff. By this writ, he submitted this Defendant has accepted that he is no longer in the employment of the Plaintiff and is unlawfully holding on to property of the Plaintiff and is a tenant at sufferance. He finally urged this court to grant immediate possession of the demised premises as this is the only claim in this action. Mr. E.N.B. Ngakui Esq of counsel for the Defendant relied on the affidavit in opposition sworn to by the Defendant. He conceded that his client is no longer in the employment of the Plaintiff and he is occupying the demised

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premises until he seeks alternative accommodation. He submitted that rent allowance is deducted from the Defendant's salary each month and that his client is entitled to one month's notice as the notice giving to him is not sufficient.

The present proceedings are in respect of possession of property owned by the Plaintiff which is presently being occupied by the Defendant. The party's relationship is based on a contract of employment in that the Defendant was an employee of the Plaintiff whose services were terminated in December 2011. There is no dispute that the services of the Defendant have been terminated and that being aggrieved with the method of his termination he instituted action in this court which is presently pending. During his tenure of employment he was allocated residential quarters of the Plaintiff referred to as demised premises. There is no dispute that inspite of the termination of his employment he is still holding on to the demised premises inspite of the notice served, commencement of this action, and even the hearing of this application. He has continued to occupy the said demised premises since his termination in December 2011 and is still in occupation thereof. Indeed it is part of a contract of employment with a University institution that a lecturer receives rent allowance and that sum will be deducted from his salary if he is given accommodation on campus as in this instant case. This rent allowance is deductly monthly and not yearly. From the submissions of Mr. Ngakui it is evident that the Defendant is seeking time to find alternative accommodation and so is holding on to the keys of the demised premises. On the other hand, Mr Fofanah is unwilling to give this Defendant additional time to quit as he has been occupying said demised premises since the termination of his employment and the said demised premises have been allocated to expatriate Nigerian lecturers who will be assisting the Plaintiff in the field of education. The Defendant has not controverted



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this in his affidavit save that notice of 7 days to quit the demised premises was not sufficient.

The Plaintiff herein is seeking summary judgment pursuant to Order 16 of the Rules for immediate recovery possession of the demised premises. 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 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 case

the Defendant has filed an Affidavit in Opposition and referred to the defence. A Defendant ought to show sufficient facts and particulars that

there is a triable issue. I refer to case of S/C App 4/2004 AMINATA CONTEH V APC and previous rulings/judgments of this Court

including the following to wit: CC: 172/2010 MOHAMED A. JALLOH V MRS ADELLA EHIMHAUN AND ADMIRE BIO unreported ruling delivered on the 22<sup>nd</sup> October 2010; CC: 158/10 ZAIOUX-SESAY V MATRIX

SERVICES AND MR. JAMES SESAY unreported judgment delivered on the 26<sup>th</sup> September 2011; CC: 331/10 ABERDEEN BEACH RENDEZVOUS V ALEX HEROE CHRISTIAN DAVIES, AND ACCESS BANK unreported judgment delivered on the 2<sup>nd</sup> February 2012.

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

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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. It 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?

It stated that the 1<sup>st</sup> question must be answered in the affirmative before moving to the 2<sup>nd</sup> question. This Defendant was granted leave to file a defence by the order of this Court dated 22<sup>nd</sup> May 2012 and should have done so within 10 days of the date of that order. He filed a defence on 18<sup>th</sup> June 2012 three weeks after the order of this court marked "PJK8". The basis of the defence filed is that the Defendant's services were unlawfully terminated by the Plaintiff and he was not given proper notice to quit the demised premises. The defence filed is not credible nor does it show that this Defendant has a real or bona fide defence to the action herein. I must state that the party's relationship is not strictly one of landlord and tenant. It is based on a contract of employment in which an employee in this case the Defendant is allocated college quarters whilst in the employment of the Plaintiff. These college quarters are not rented out to the public at large but are solely for use by serving members of staff of the Plaintiff. The Defendant having ceased to be a member of staff the same being accepted by him both in his affidavit in opposition, and having commenced a matter in this court for wrongful termination cannot continue to indefinitely hold unto property of the Plaintiff which to be used solely by serving members and/or future members of staff. This court is informed by affidavit that expatriate lecturers from Nigeria have been allocated the demised premises presently occupied by the Defendant. These lecturers are to arrive in Sierra Leone to render their services to the Plaintiff

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Ccllege. This court is a court not only of law but of equity. The student population of the Plaintiff will be deprived of the education to be instilled by these lecturers if they cannot be given accomodation on campus. In the interest of the public and justice this Defendant is to deliver up immediate possession of the demised premises so it can be used as housing for these expatriate lecturers.

In the premises therefore the application is upheld and judgment delivered for the Plaintiff and I hereby order as follows to wit:

1. The Plaintiff is entitled to immediate recovery of possession of the premises that is, staff quarters situate at Milton Margai College of Education & Technology presently occupied by the Defendant.
2. The Defendant is to bear the costs of this action such costs to be taxed if not agreed upon.



HON JUSTICE V. M. SOLOMON J. A.