

C.C. 141/09

2009

M NO. 11

IN

THE HIGH COURT OF SIERRA LEONE

BETWEEN:

MICHEALA MACKAY

- PLAINTIFF

AND

ELIE NASSER

- DEFENDANT

COUNSEL:

O JALLOH ESQ for Plaintiff

JAMES FORNA SESAY ESQ for Defendant

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF APPEAL

JUDGMENT DATED THE 1st DAY OF OCTOBER, 2012

1. This is an Application dated 20 June, 2012 filed by the Defendant. The Defendant is asking for a Stay of Execution of a Judgment in default of appearance dated 25 June, 2009 and of all subsequent proceedings; that that Judgment be set aside pursuant to Order 22 Rule 11 of the High Court Rules, 2007 - HCR, 2007; that the Defendant be granted leave to defend the action herein; and that the Costs of the Application be Costs in the Cause. As to this last, since the Defendant is not seeking the setting aside of the Default Judgment, *ex debito justitiae*, he must, whatever the result, bear the Costs of the Application.
2. The Application is supported by the affidavit of the Defendant deposed and sworn to on 20 June, 2009. To that affidavit, are exhibited several documents. "A" is a copy of a Lease dated 18 August, 2004 duly registered. This lease term is stated to be for 20 years. "B" is a copy of the writ of summons issued against him. The Plaintiff prays for Damages for breach of contract and or specific performance; forfeiture of the Lease, and for possession of the property leased. "C" is a copy of the Judgment in Default of Appearance dated 25 June, 2009 in which the Plaintiffs enters judgment for the claims in his writ of summons. "D" is a copy of the Order of this Court made the 21 day of May, 2010 relisting the action for trial. "E" is a copy of the Plaintiff's writ of fieri facias dated 10 November, 2011. It seeks to recover the total sum of Le15,130,500. "F1&2" are copies of the memorandum and notice of appearance filed on behalf of the Defendant. "G" is a copy of Defendant's proposed Defence.

3. I must state at once that the proposed defence lacks substance. No triable issues are raised. It does not speak to the facts as it where. It merely seeks to give the Defendant some more breathing space, to deprive the Plaintiff of the fruits of her judgment, and to waste the Court's time. I said as much to his Counsel during the course of argument. This is so because the Defendant has, according to Mr Jalloh, moved out of the property and has paid the Costs of the action. The outstanding issue between the parties is the cost of repairs. Of interest, is that neither side has exhibited the Order of this Court dated 1 July, 2010 in which this Court adjudged that the Plaintiff was entitled to recover from the Defendant the sum of Le202,688,048. This means that the Defendant is satisfied with that Judgment though not with the Judgment in Default which gave birth to it. It could also mean perhaps, that the Plaintiff has recovered this sum, or is prepared to forego the same, thus a writ of fieri facias demanding payment only of the sum of Le15million plus.

4. In the name of fairness, I gave the Defendant time to substantiate his claim that he had indeed carried out repairs to the Plaintiff's property as required of him under the terms of the Lease. He was unable to do this. And as such evidence is the back-bone of his proposed defence, there is really no need to prolong litigation any further. The Defendant is not entitled to any of the Orders sought by him.

5. In the premises, the Defendant's Application dated 20 June, 2012 is dismissed with Costs to the Plaintiff, such Costs to be taxed if not agreed.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE