

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

BETWEEN: -

WORDSWORTH FILO JONES - PLAINTIFF/RESPONDENT
50 LIVERPOOL STREET
FREETOWN

AND
DIAMOND AIRLINES (SL) LTD -DEFENDANT/
37 WELLINGTON STREET APPLICANT
FREETOWN

ANTHONY ISIBUNDU CHINYERE -CONTEMNOR
CEO DIAMOND AIRLINES (SL) LTD
(Commonly known as CHIEF TONY)
LUMLEY BEACH ROAD
FREETOWN

W. Filo Jones Esq. Plaintiff- in- Person/Applicant
F. B. Kelfala Esq. for the Defendant/Contemnor

RULING DELIVERED THE 1st DAY OF July, 2016

This is an application by Notice of Motion dated 14th April 2016 filed on behalf of the Defendant herein seeking the following Order

That the Hon Court varies the Order dated 18th March 2016 to the effect that the Defendants/Applicants be given an extension of 3 months within which to comply with the referred Order.

In support of the application is the affidavit of Francis Ben Kaifala Esq. Solicitor sworn to on 13th April, 2016. He deposed that by Order of the High Court dated 18th March 2016, the Defendant was ordered to remove the equipments and an

hovercraft stationed at the Plaintiff's premises situate at Old Cape Road, Aberdeen, Freetown within 21 days of the date of the said Order failing which the Plaintiff is at liberty to apply for the Contemnor's committal to the State Correctional Centre, Pademba Road, Freetown. He stated that the Defendant has found it impractical to remove the said hovercraft in its present state as it is in poor physical and mechanical state and is immovable. That thieves have vandalized the hovercraft and removed some of its vital parts thereby making it impossible to move. That the Defendant is making frantic efforts to secure the vital parts from abroad and to get the experts to install same and so be able to remove the hovercraft in compliance with the Courts' Order. That the Plaintiff has been notified of these constraints encountered by the Defendant by letter addressed to him and the Defendant is therefore appealing for an extension of time within which to comply with the Court's Order. That the Contemnor is presently out of the jurisdiction trying to secure business partners and for medical purposes. That in the light of the foregoing the Defendant's craves the indulgence of the court to grant the application in the interest of justice and fairness.

The Plaintiff opposed the application and swore to an affidavit in opposition on 29th April 2016 which he filed. He deposed therein that the Defendant by its Executive Officer, the Contemnor, herein has failed to comply with the Court's said Order and continues to defy the court. He stated that it is not true that thieves vandalized the said hovercraft or any property in the premises. That the hovercraft is a scrap and should be treated as such and an Order made to cut it up in pieces in order to remove it from the premises.

That the hovercraft has been in a state of disrepair even before the court made the original Order in October 2013. That the equipment in the said premises consist of three scrapped containers and one broken down truck and that no effort has been made by the Defendant to remove even those equipments that could be easily hauled away from the premises. That it is not true that the contemnor is out of the jurisdiction as alleged in the affidavit in support. That the said Contemnor has been most evasive even during the trial period and that has always been his pattern of behaviour. He therefore urged the court not to grant the extension prayed for.

The application for extension of time to comply with the Court's Order is made pursuant to Order 3 rule 5(1) and (2) of the High Court Rules 2007. Order 3 rule 5(1) provides as follows

"The court may on such terms as it thinks just by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, order or direction to do any act in any proceedings."

It has been established in several cases that the court has a discretion to extend time to avoid injustice to the parties. See the case of **Schafer vs. Blyth** {1920} 3. K. B. 140 where it was held that the object of the rule is to give the court a discretion to extend time with a view to the avoidance of injustice to the parties. Also in the case of **Finnegan vs. Parkside Health Authority** {1998} 1 All E. R. 595 it was held that the absence of a good reason for the delay in complying was not sufficient to refuse an application for an extension of time but that the court was required to look at all the circumstances of the case and recognise the overriding principle that justice had to be done.

It is therefore necessary to look at all the circumstances of this case. The Defendant has appealed to the court for time to remove his hovercraft from the premises on the ground that it is in a state of disrepair and needs servicing to make it mobile again. He has explained that he has taken steps to acquire the vital parts for such servicing. The Plaintiff has averred in his affidavit in opposition that the hovercraft is a scrap and suggests that an Order be made for it to be cut up in pieces in order to have it removed from the premises. This averment in itself is an acknowledgement that the hovercraft cannot be removed easily from the premises. It is clear that whatever means is required to have it moved, it would not be immediate and time would be required to have it done.

In that vein the circumstances of this case would seem to require that the Defendant ought to be given more time to comply with the Court's Order. The Defendant asks for 3 month's extension. The Plaintiff seems to have lost patience with the Defendant and complains that its Executive Director has proved evasive in his previous conduct during the trial. These are all the circumstances the court has to bear in mind in the exercise of its discretion in this matter.

This application was filed in April 2016 and the request is for an extension of time of 3 months. Already almost two months have elapsed since the application was filed which ought to have given the Defendant some time to make the necessary arrangements. He therefore does not need all the period he has asked for. I would grant him an extension of time and order as follows

1. That the Order of Court dated 18th March 2016 granted in this action is hereby varied to the effect that the Defendant/Applicant herein by its Executive Director **ANTHONY ISIBUNDU CHINYERE** is hereby ordered to remove all the equipments and the hovercraft from the premises of the Plaintiff situate at Old Cape Road, Aberdeen Freetown within 2 months from the date of this Order.
2. The Plaintiff is still at liberty to apply for his committal to prison for contempt if the Defendant/Respondent fails to comply with this Order.
3. Costs of this application to the Plaintiff assessed at Le 5 million.

A. Showers

SIGNED: - A. SHOWERS

1/7/2016

JUSTICE OF THE SUPREME COURT