



Judiciary of Sierra Leone  
Fast Track Commercial Court

CC 107/15

2015

D.

No. 9

**RULING**

*Between:*

**LANSANA DUMBUYA**

**IBRAHIM KAMARA**

**MOONLIGHT BUSINESS VENTURES**

**31 HENRY STREET**

**FREETOWN**

*And*

**LAURA KWON**

**SUNG HO KWON**

**MINA FISHING COMPANY**

**10 JOSIAH DRIVE**

**LUMLEY**

**FREETOWN**

*Representation:*

**A.B. Samura Esq.**

*- Plaintiffs/Applicants*

*- Defendants/Respondents*

*- For the Plaintiff/Applicant*

**BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.**

**RULING DELIVERED ON THE 13<sup>TH</sup> AUGUST, 2015.**

This is an application by way of Judge's Summons dated the 1<sup>st</sup> July, 2015 filed by Augustine B. Samura Esq. of counsel for the Plaintiffs/Applicants for the following Orders:-

1. That pursuant to Order 16 Rules 1 (d) of the High court rules 2007, judgement be entered by this honorable court in favour of the Plaintiffs/Applicants against the Defendants/Respondents herein for the following
  1. Immediate recovery of the sum of US \$ 20,000.00 being money owed to the Plaintiffs/Applicants by the Defendants/Respondents.
  2. Interest on the said sum of US \$ 20,000.00 at such rate and for such period as the court deems fit
  3. Any further or other relief (s)
  4. Costs.

The application is supported by the affidavit of Augustine .Samura sworn to on the 1<sup>st</sup> day of July, 2015 together with the exhibits attached thereto and filed herein.

The following documents are exhibited a) Exhibit ABS 1 Writ of Summons, b) Exhibit ABS 2 Memorandum and Notice of Appearance ABS 3 and 4 affidavits of Search and receipt of Search fees. On the 20<sup>th</sup> July, 2015 the Plaintiff appeared filed a supplemental affidavit and exhibited the following documents:-

- b) Exhibit ABS 5- loan Agreement Dated the 20<sup>th</sup> February, 2015.
- e) Exhibit ABS 6 and 7 copy of receipt of the said loan in two installments.

The Defendants/Respondents have not entered a defence to the Writ of Summons nor filed an Affidavit in Opposition to this application though they were served (there are

affidavits of service of the judge's summons and the supplemental affidavit). Indeed the Defendants entered an Appearance in the action.

Summary judgement is governed by Order 16 of the High Court Rules 2007. In certain cases because the High Court Rules 2007 do not have any explanatory note, the Supreme Court Practice 1999 of England could be used. The Supreme Court Practice, 1999 (Usually referred to as the "White Book") provides that the scope of proceedings under Order 14 (the equivalent of Order 16) is determined by the Rules and the Court has no wider powers than those conferred by the Rules nor any additional statutory power to act beyond the Rules or any residual or inherent jurisdiction to grant relief where it is just to do so. The use of the White Book, as I have earlier stated, is permitted by the High Court Rules 2007 for some purposes.

What do the Rules say about application for Summary Judgement and has the Plaintiffs/Applicants complied with them. The preliminary requirements as provided for in Order 16 of the High Court Rules 2007 are as follows:-

1. The Defendant must be served with a statement of claim and has entered appearance.
2. The Plaintiff may, on notice apply to the court for judgement against the Defendant on the ground that the Defendant has no defence to a claim outlined in the writ, or to a particular part of the claim except as to the amount of any damages claimed. (Order 16 Rules 1)

The application shall be made by summons supported by an affidavit verifying the facts on which that claim, or any part of a claim, to which the application relates is based and that in the Deponent's belief there is no defence to that claim. (Order 16 rule 2)

It should be noted however that this Rule does not confer a right upon the Plaintiffs/Applicants to pursue remedy under Order 16 in every case in which this procedure may be appropriate, but only "on the grounds that the Defendants/Respondents have no defence". This summary process, therefore, should

be used only in proper cases (per **SCOTT LJ in DOTT -V- BROWN (1936) 1 ALL E R 545**).

Have the Plaintiffs/Applicants fulfilled the requirements for the grant of a Summary Judgement to be entered in their favour? To my mind they have. A Writ of Summon was issued and served on the Defendants/Respondents. They entered appearance but failed to file a defence. The Judge's Summons was served on the said Defendants/Respondents and affidavit of service also filed. The standard procedures for such application have been fulfilled.

The Plaintiffs/Applicants have established the following by affidavit evidence to prove that the Defendants/Respondents have no defence to the action.

Exhibit ABS 5- A Business Agreement between the Plaintiffs and Defendants dated 20<sup>th</sup> February, 2015. Paragraph 7 of the said Agreement provides that "MOON LIGHT BUSINESS" shall loan this business venture the sum of \$ 20,000.00. Paragraph 8 states the purpose for which the loan was given out. More importantly, Paragraph 10 states as follows: "if the money is used and the business is for any reason unable to start then since the money would have been expended on the properties of the MINA FISHING, they would be held liable to repay such monies. If the business successfully starts operations, the loan is to be suspended as stated in Paragraph 12.

Exhibit ABS 6 - is a receipt dated 15/1/15 signed by the Proprietors of Mina Fishing, Sungsik Kyon and Jauns Kyon, the Defendants/Respondents herein acknowledging receipt of the sum of \$ 12,000.00 from the first Plaintiff/Applicant.

Exhibit ABS 7 - is another receipt signed by the said Defendants/Respondents acknowledging receipt of the said sum of \$ 8,000 from the 1<sup>st</sup> Plaintiff bringing the total sum received to US \$ 20,000; the sum claimed by the Plaintiffs/Applicants.

No evidence has been provided by the Defendants/Respondents to prove that they have either liquidated their financial obligations to the Plaintiffs/Applicants or fulfilled the terms of the agreement dated the 20<sup>th</sup> February, 2015.

In the application for the Summary Judgement, the Plaintiffs/Applicants have claimed both for a "liquidated amount" and an "un liquidated amount" – that is the interest. Has this Court got jurisdiction to award interest, in addition to liquidated claim in an application for Summary Judgement pursuant to Order 16 of the High Court Rules, 2007? To my mind it has. In GARDNER STEEL LTD -V- SHEFFIELD BROTHERS (PROFILES) (1978) 3 ALL E R 399, in the English Court of Appeal, held that indeed the Court has jurisdiction to award interest in such application for Summary Judgement – ORMIROD L. had this to say

"The practice hitherto of treating interest, on RSC Order 14 judgments, as being excluded by the terms of Section 3 of the Law Reform (miscellaneous provision) Act, 1934 seems to me, with respect, to depend on a faulty constructing of the Section. The relevant part of the Section reads:

- (1) In any proceedings tried in any Court of record for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgement is given, interest at such rate as it thinks fit"

There seems to be no logical reason at all for constructing that statutory provision in such a way as to draw a distinction between proceedings in which the Court hears oral evidence and those in which the Court gives judgement on affidavit evidence. There can be no possible reason for allowing interest in the one case and not in the other. On the construction of section 3 of the 1934 Act "tried" must mean "determined". I entirely agree with his reasoning.

I should clarify that the Section 3 in the 1934 Act hereinreferred to is Ipsissima Verba Section 4 (1) of the Law Reform (Miscellaneous Provisions) Act, Cap 19 of the Laws of Sierra Leone, 1960.

I am satisfied that all the requirements of Order 16 of the High Court Rules, 2007, Rules 1,2 and 3 thereof have been complied with. I also note that the Defendants/Respondents entered appearance. I therefore order that judgement be entered for the Plaintiffs/Applicants against the Defendants/Respondents as follows:-

1. That the Defendants/Respondents do pay to the Plaintiffs/Applicants the sum of US \$ 20,000.00 plus interest at the rate of 28 percent on the said sum from the 20<sup>th</sup> day of February, 2015 until payment in full.
2. That the cost occasioned herein assessed at Le 5,000,000.00 to be borne by the Defendants/Respondents.



**Hon Justice Sengu Koroma J.**

**13<sup>th</sup> August, 2015**