

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

**BETWEEN:**

**SIERRA LEONE ENTERPRISES LIMITED - PLAINTIFF**  
6B HENESSY STREET  
FREETOWN

**AND**

**MILLA GROUP (SL) LIMITED - DEFENDANT**  
2 BAI BUREH ROAD  
FISHER LANE  
KISSY  
FREETOWN

**BEFORE THE HONOURABLE JUSTICE MIATTA M. SAMBA, J.**  
**DATED THIS 24<sup>th</sup> DAY OF NOVEMBER 2016.**

**Counsel:**

**Sulaiman Kabba Koroma Esq for the Defendant/Applicant**  
**Ernest Beoku-Betts Esq for the Plaintiff/Respondent**

1. Before this Court is an application by way of Notice of Motion dated 7<sup>th</sup> day of June 2016 for the following Orders:

- a. That the Minister of Lands, Country Planning and the Environment be joined as a Defendant in this action before this Honourable Court.
- b. That the Attorney General and Minister of Justice be made a party to this action before this Honourable Court.
- c. Any other Order as the Court may deem fit.

2. In support of the application hereinbefore referred is an affidavit sworn to by Sulaiman Kabba Koroma Esq on the 7<sup>th</sup> day of June 2016, with 6 exhibits attached.

Exhibits SKK1 is the Writ of Summons commencing this action, from the Plaintiff's Solicitors to the Defendant.

Exhibit SKK2 is a Memorandum and Notice of Appearance filed on behalf of the Defendant herein.

Exhibit SKK3 is a Defence filed on behalf of the Defendant herein.

Exhibit SKK4 is a Reply to the Defence hereinbefore referred filed on behalf of the Plaintiff herein.

Exhibit SKK5 is a Conveyance dated 11<sup>th</sup> day of July 2013 made between the Government of Sierra Leone and Milla Group (SL) Limited, the Defendant herein,

registered as No. 123/2013 at Volume 119 Page 68 kept in the Records Books of Conveyances at the Registrar-General's Office, Sierra Leone.

3. On file is an affidavit in opposition by Berthan Macauley Jnr Esq sworn to on the 10<sup>th</sup> day of June 2016 to which is attached certain exhibits.

Exhibit BMJ1 is a Deed of Conveyance dated 15<sup>th</sup> day of March 2000 expressed to be made between the Government of Sierra Leone and Sierra Leone Enterprises, the Plaintiff herein.

Exhibit BMJ2A & B are copies of a Supreme Court Judgment and Certificate of a Court Order in respect of the matter, The Sierra Leone Enterprises Ltd, the Plaintiff/Respondent herein, therein described as the Appellant and the Attorney-General and Minister of Justice and the Minister of Lands Housing and Country Planning, the proposed parties herein, therein described as the Defendants.

Exhibit BMJ3 is a copy of a letter dated 14<sup>th</sup> day of August from the law offices of Basma and Macauley addressed to the Attorney-General and the Minister of Lands with Exhibits BMJ2A & B respectively enclosed.

Exhibit BMJ4 is a copy of a letter dated 23<sup>rd</sup> day of June 2014 from the law offices of Basma & Macauley to Milla Group (SL) Ltd, the Defendant herein in respect of property, the subject-matter herein informing the Defendant that a Supreme Court judgment was on the 18<sup>th</sup> day of July 2008 delivered in favour of the Plaintiff herein in respect of the subject-matter herein.

4. On the 7<sup>th</sup> day of July 2016, Sulaiman Kabba-Koroma Esq Counsel for the Defendant moved the application above in respect of joinder of parties pursuant to Order 18 R6 SR2 (b)(ii) of the High Court Rules of Sierra Leone, 2007, to which Ernest Beoku-Betts Esq, Counsel for the Plaintiff responded accordingly.

5. Counsel referred to Exhibits SKK5 and 6 respectively and informed the Court that the Defendant/Applicant exchanged a piece of land he owned at Hamilton, for a piece of land now the subject-matter of this application conveyed to him by the Government of Sierra Leone. Counsel argued that the Defendant bought the land from the Government of Sierra Leone without notice there had been a decision by the Supreme Court in favour of the Plaintiff. Basically, the Defendant sees himself as a third party purchaser for value without notice. Counsel therefore asked the Court to join the Government of Sierra Leone through the Attorney-General and the Ministry of Lands as parties to the matter herein.

6. Counsel referred to the Writ of Summons filed on behalf of the Plaintiff/Respondent herein by which Counsel for the Plaintiff claims damages, recovery of possession and injunction, which according to Counsel for the Defendant will affect the Government of Sierra Leone because it is the vendor which put the Defendant in possession of the land, now the subject-matter herein. For his submission, Counsel referred and relied on the case, The *SLPP &*

*Oths Vs. APC* (Unreported) 2008 which held that the Court can not make any judgment or Order that will affect a person whose election victory is challenged.

7. In opposition to the application herein, Counsel for the Plaintiff/Respondent in reliance on the affidavit in opposition by Berthan Macauley Jnr Esq sworn to on the 10<sup>th</sup> day of June 2016 argued that the proposed Defendants have no interest or right over the Plaintiff's land. He submitted that as a matter of law, the Order for joinder of the proposed Defendants cannot be granted by the Court. He argued that there could be no further cause of action against the proposed Defendants because the Plaintiff had already brought an action against them. He considered enjoining the proposed Defendants against whom an action had been brought in respect of the same subject matter, an abuse of process.

8. As to who can be added as a party to an action, Counsel for the Plaintiff referred to the case of *Dollfus Miez Et Co SA Vs. Bank of England* p 38. He referred to the 3<sup>rd</sup> paragraph wherein is stated "... It seems to me to be correctly argued that those words clearly imply that the defendant to be added must be a defendant against whom the Plaintiff has some cause of complaint which ought to be determined in the action, and that it was never intended to apply where the person to be added as defendant is a person against whom the Plaintiff has no claim and does not desire to prosecute...."

9. I must however add the concluding sentence of Counsel's referred quotation where Denman J. said "I am quite clear however that the court ought not to bring in any person as defendant against whom the Plaintiff does not desire to proceed, unless a very strong case is made out, showing that in the particular case justice cannot be done without his being brought in." I note that the evidence before this Court is that both parties have a common vendor.

10. Counsel argued that the applicant has no proprietary right and therefore, the Plaintiff has no cause of action against them; he notes that the cause of action was granted by the Supreme Court as in Exhibits BMJ2A & B and that whether or not the Government of Sierra Leone had any land to convey to the Defendant is not an issue in dispute. He referred to Order 19 R1 (C) of the High Court Rules of Sierra Leone 2007 and argued that the Plaintiff ought to have come by way of third party notice and urged this Court to refuse the application made by Counsel on behalf of the Defendant.

11. By way of reply, Counsel for the Defendant disagreed that 3<sup>rd</sup> party notice is an appropriate way to come before the Court at this stage in respect of the matter herein. Counsel for the Defendant argued that the Defendant has not accepted the Plaintiff's claim against him. Counsel disagreed that adding the proposed Defendants to this action will be an abuse of process and argued that the Plaintiff needs not have a cause of action against a proposed Defendant for such Defendant to be added to an action. He asked the Court to add the proposed Defendants for possible counter-claim against the said Defendants which said counter-claim can only be made if the proposed Defendants are made parties to the action herein.

12. Order 6 R2(b)(ii) of the High Court Rules of Sierra Leone provides that:

*Subject to this rule, at any stage of the proceedings in any cause or matter the Court may, on such terms as it thinks just and either on its own motion or an application order any of the following persons to be added as party:-*

*Any person between whom and any person to the cause or matter where there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.*

13. I refer to Exhibit MBJ2A, that is the Supreme Court judgment in the case of *The Sierra Leone Enterprise Ltd (the Plaintiff herein, therein described as the Appellant ) Vs. The Attorney General and Minister of Justice, (the Proposed 2<sup>nd</sup> Defendant, therein described as the 1<sup>st</sup> Defendant) and The Minister of Lands Housing & The Environment (The Proposed 1<sup>st</sup> Defendant, therein described as the 2<sup>nd</sup> Defendant).*

14. In the just referred case, the Minister of Lands Country Planning and Environment who had on 15<sup>th</sup> day of March 2000 conveyed a piece of property to the Plaintiff herein, on the 5<sup>th</sup> day of October 2004, wrote to the Plaintiff and informed the said Plaintiff that the GoSL had instructed it to repossess the said conveyed piece of property.

15. Berthan Macauley (Jnr) Esq argued and it was accepted by the State Counsel L.M Farmer that the provision of Cap 116 of the Laws of Sierra Leone 1960 was not complied with in compulsorily acquiring the said piece of land. My understanding of that portion of the said case is that the State Counsel conceded to Macauley's submissions because the manner of acquisition of the land by the Government of Sierra Leone was not proper. It appears to me that the GoSL has a direct interest in the said piece of property, now the subject matter herein, just that the proper provisions of the law for compliance were not followed otherwise, I do not see how and why the Government would have conveyed the same piece of land to the Defendant even after the Supreme Court action.

16. Whether the GoSL followed the proper procedures or whether the State acquired the subject-matter in question from the Plaintiff after the Supreme Court Judgment as in Exhibit BMJ2A that resulted in the State's disposition of the same piece of property to the Defendant's herein is information that can only be given to this Court by the proposed Defendants. Whether the Government of Sierra Leone had land to convey to the Defendant as in Exhibit SKK5 remains an issue in dispute as acknowledged by Counsel for the Plaintiff in their reply. The Court notes that the Government of Sierra Leone conveyed property, the same subject matter of this application to the Defendant as in Exhibit SKK5 and as referred in Exhibit BMJ2A.

**17. Generally,** a Defendant against whom no relief is sought by the Plaintiff will not be added against the wish of the Plaintiff. The above general position not

withstanding, the Court is empowered on the application of a Defendant to add or substitute a Defendant against the wish of the Plaintiff, or by the intervention of the intended party or by the Court on its own motion.

18. In the case of *Dollfus Mieg et Compagnie S.A v Bank of England* (1951) Ch. 33 referred and relied on by Counsel for the Plaintiff, the United States and France applied to be joined as defendants in an action in order to make an independent presentation of their case before the House. It was held that there was jurisdiction to make the order prayed as the Applicants had a direct interest in the subject-matter of the action and a right nearly akin to a proprietary right therein and as the true test was what would be the result on the subject-matter if the Applicant's right could be established. It was further held that "it will be right exercise of the Court's discretion to make the order, as ... the applicants could properly be considered to be parties whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter ...."

19. The principles of law in *Vavasseur Vs. Krupp* (1878) 9 Ch. D. 351 where a foreign sovereign was allowed to intervene in order to protect his property which was in the hands of a bailee within the jurisdiction was applied in the case against the Bank of England referred to in the preceding paragraph.

20. It seems to me therefore, that though the Court ought not to bring in any person as defendant against whom the Plaintiff does not desire to proceed, it could add such persons as defendants where a very strong case is made out, as in the instant case, showing that in the particular case justice cannot be done without his being brought in.

21. The Court is informed that both parties to this action possessed the subject matter from the same vendor; the Applicant has, through Counsel informed the Court that there may be a counterclaim against the intended Defendants with whom they had negotiations that led to Exhibit SKK5. The said intended Defendants may very well be liable to both the Plaintiff and Defendant herein or they may have an explanation for this Court as to acquisition or otherwise of the subject matter by the Defendant herein. The document of title conveying the subject matter to the Defendant was signed by the then Minister of Lands and the Law Officer of the Attorney General's Office and there is on file another Conveyance executed by the government authority.

22. In *Montgomery Vs. Foy* (1895) 2 QB. 321, persons were added as Defendants to enable them to make counterclaims. In *Kalsi Vs Kalsi* (1992) Fam. Law 333, CA, it was held that an order against non-parties, even though expressed to be made against being 'heard' and 'consented to' ought not to have been made without their being added as parties.

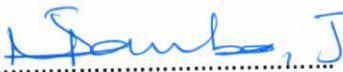
23. This Court considers the presence of the Proposed Defendants, the said Minister of Lands Country Planning and the Environment and the Attorney General and Minister of Justice, before this Court necessary in order to ensure that all matters in dispute in this cause or matter before this Court is "effectually

and completely determined and adjudicated upon." I do not consider this as an abuse of process as learned Counsel for the Plaintiff considers it to be.

24. The provisions of Order 18 Rule 6 (2)(ii) of the High Court Rules of Sierra Leone, 2007 is quite clear. It gives this Court discretion to join parties as it thinks fit and I find nothing in the authorities cited herein to prevent my taking this view having regard to all the circumstances to bring in the Proposed Defendants in order that the questions involved in the action may be completely adjudicated upon and settled.

25. In consequence whereof, considering Order 18 R6 SR2 (b)(ii) of the High Court Rules of Sierra Leone and based on my discretion, **IT IS THIS DAY ORDERED AS FOLLOWS:**

- i. That the Minister of Lands Country Planning and Environment be made a Defendant to the action herein.
- ii. That the Attorney-General and Minister of Justice be made a Defendant to the action herein.
- iii. Cost of this application be cost in the cause.

  
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Delivered on: 24/11/16

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