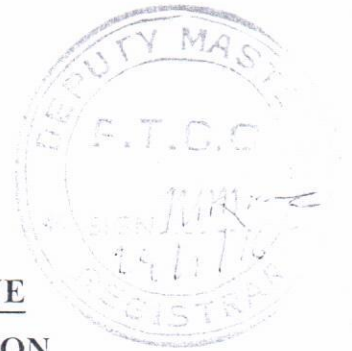




**IN THE HIGH COURT OF SIERRA LEONE**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**FAST TRACK COMMERCIAL COURT**



Case No: FTCC 125/15

**BETWEEN:**

**MOHAMED SOUFANE**

-

**PLAINTIFF**

**AND**

**MOHAMED DAINKEH**

-

**DEFENDANT**

**REPRESENTATION**

**PLAINTIFF**

-

**MACAULEY, BANGURA & CO**

**DEFENDANT**

-

**UNREPRESENTED**

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

**RULING DELIVERED ON THE 6<sup>th</sup> JANUARY, 2016.**

This is an application by way of notice of motion dated the 27<sup>th</sup> day of October, 2015 for the following orders:-

1. That this Honourable Court assesses the costs of the action herein or in the alternative grants an order for the costs to be taxed by the Master and Registrar
  2. That the costs of this application be borne by the Defendant/Respondent and be assessed by this Honourable Court
  3. Any further order(s) that this Honourable Court may deem fit and just.
1. The applicant used and relied on the affidavit of Patricia Davies (Ms.) sworn to on the 27<sup>th</sup> day of October, 2015.

**The following documents were exhibited:-**

**Exhibit P D <sup>1</sup>** Writ of Summons filed by the Plaintiff against the Defendant

**Exhibit P D <sup>2</sup>** Judgements in Default of Appearance dated the 5<sup>th</sup> of October, 2015.

**Exhibit P D <sup>3</sup>** Stamp duty on the judgment sum in the sum of 179,353.000.

**Exhibit P D <sup>4</sup>** Demand letter dated the 27<sup>th</sup> day of May, 2015.

2. The application was moved by Miss Patricia Davies of Bangura, Macauley & Co. Counsel for the Applicant on the 10<sup>th</sup> day of December, 2015. She submitted that substantial costs have been incurred in instituting the action against the Defendant. These costs were for issuance and service of the Writ of Summons, filing of affidavit of service and search and payment of stamp duty on the said judgment debt. Ms. Davies argued that her firm was entitled to substantial costs as costs should be commensurate with the work done and not on the sum due. She finally prayed this Court that cost of Le 10,000,000.00 (Ten Million Leones) in the minimum be awarded. The application was made pursuant to Order 57 Rule 2 of the High Court Rules, 2007.
3. I shall deal with the prayers herein in the order in which they appeared on the Notice of Motion.

**Cost of the Action**

4. Order 57 Rule 2 of the High Court Rules, 2007 makes provision for the assessment of costs by the court.
5. Rule 3 provides for the grounds on which the costs shall be ordinarily designed. These are as follows:
  - a) Compensate for expenses reasonably incurred and the court fees paid by the party in whose favour the award is made.
  - b) Provide reasonable remuneration for the Solicitor of that party in respect of work done by him.Rule 4 provides the matter to be taken into consideration in assessing the amount of costs to be assessed.
6. The action herein was not defended and the Plaintiff entered judgment in default of appearance. The defendant was also not present at the hearing of this application. All we are left with therefore is the application and submissions of Counsel for the Plaintiff.
7. Order 57 Rules 2, 3, 4, and 5 guide the court as to the matters to be taken into consideration in assessing costs. Quite apart from what is stated in the Rules, the court has a discretionary power to award costs. The essence of costs is clearly stated in Order 57 Rule 3. In assessing costs herein, reliance will be placed on this Rule. In her submission, Counsel for the Defendant listed the items of expenditure incurred by the Plaintiff in instituting the action to signing of judgment. No formal schedule of costs was provided. It should also be noted no trial took place and therefore no witnesses were called.

The absence of the schedule of costs incurred by the Plaintiff however, does not justify the court in depriving the Plaintiff of his costs
8. Though, as i have stated earlier Ms. Davies did not provide a summary of the costs incurred; it will be fair for this Court to exercise its discretion by awarding costs against the Defendant. As provided by Order 57 Rule 5, I shall summarily determine what costs are to be paid by the Defendant which will neglect expenses reasonably incurred.
9. In the circumstances therefore and after taking into consideration all the issues raised in this matter, I hereby order as follows:

1. That the Defendant do pay to the Plaintiff costs assessed at  
**Le 8, 000,000.00 (Eight Million Leones).**

2. That the Defendant do pay to the Plaintiff costs of this application assessed at **Le 500, 000.00 (Five Hundred Thousand Leones).**



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Hon. Mr. Justice Sengu Koroma (J.)