



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

CASE NO: 127/15

VINOD KUMAR SOOD

-PLAINTIFF

AND

MR. JOSEPH SAAD MICHAEL

-DEFENDANT

REPRESENTATION

SHEARS-MOSES & CO

-COUNSEL FOR THE PLAINTIFF

YADA WILLIAMS & ASSOCIATES

-COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.A
RULING DELIVERED ON THE 16TH JUNE, 2016

1. This is an Application by way of Notice of Motion dated the 10th May, 2016 for the following Orders:-

- 1) That the Plaintiff/Respondent be ordered to give bail or security, by deposit or otherwise, to the satisfaction of this Honorable Court for his appearance at any time when called upon while the above suit is pending, and until execution or satisfaction of any Judgment that may be passed therein against him or alternatively that the Plaintiff/Respondent's passport with no. Z1806173 currently in the possession of the Court be kept by the Master & Registrar until further ordered by this Honorable Court.
- 2) That the Master & Registrar be granted possession and custody of the Plaintiff's passport no. Z1806173 given to the Defendant as security for the sum of US \$ 28,500.00 owed by the Plaintiff to the Defendant.
- 3) That the costs of this Application be costs in the cause.

2. The Application is supported by the Affidavit of Joseph Saad Michael sworn to on the 10th May, 2016 together with the exhibits attached thereto.
3. In the said Affidavit, Joseph Saad Michael swore that the Plaintiff herein instituted proceedings against him for the sum of \$173,660.00 and interest thereon but denied owing the Plaintiff the said amount or any other sum. Rather he swore that the Plaintiff owed him the sum of \$28,500.00 which was acknowledged in an agreement dated 21st July, 2015. He has counter-claimed the Plaintiff for the said \$28,500.00.
4. In paragraphs 6-9 of the Affidavit in Support, the Defendant deposed that the Plaintiff was an Indian National who had handed over his passport to him as guarantee for the repayment of the loan of US\$ 28,500.00. He also deposed therein that the Plaintiff is a foreigner with no fixed assets in Sierra Leone and had on numerous occasions indicated his intention to leave Sierra Leone.
5. The Defendant also relied on the Affidavit of Ronn Baronn sworn to on the 10th May, 2016. The thrust of this Affidavit was that the Defendant

was not indebted to the Plaintiff rather it was the Plaintiff who owed the Defendant \$ 28,500.00. Further, that the Plaintiff handed over his passport to the Defendant voluntarily.

6. The Plaintiff opposed the Application and relied on the Affidavit of Vinod Kumar Sood. In the said Affidavit, the deponent swore that he instituted proceedings against the Defendant herein for the recovery of certain sums of money and since that time, he had been subjected to various harassments by the Defendant. He also swore that he cannot leave the jurisdiction of Sierra Leone while his claim against the Defendant was pending as the outcome thereof was very vital to the growth of his business. The Deponent deposed that the Defendant had withheld payment of US \$ 30,000 to the Plaintiff's suppliers as security for the amount of US \$ 28,500.00. In paragraphs 7-9 of the Affidavit in Opposition, the Deponent swore as follows:-

a) That he would not be able to provide any bail or security whether by deposit or otherwise without his passport.

- b) That the amount claimed by him was higher than that claimed by the Defendant for which the said Defendant had already taken various forms of security.
- c) That his passport had expired and needed to be renewed.

SUMISSIONS

7. Counsel for the Defendant relied on the entirety of the Affidavit in Support and emphasized on the fact that as a foreigner, the Plaintiff was likely to leave the jurisdiction of Sierra Leone leaving no assets to fall on should Judgment be given against him.
8. Counsel for the Defendant vehemently denied that his client owes the Plaintiff any sum of money and that the claim was a make-up-action to deflect his liability to the Defendant.
9. Counsel relied on Order 35 Rule 6 of the High Court Rules, 2007 and the Debtor's Act.

10. In her submission on behalf of the Plaintiff, Miss A. Williams clarified that her client had never alluded to the fact that he was coerced to surrender his passport but that he was forced to sign the Agreement-Exhibit "C". She relied on the entirety of the Affidavit in Opposition and submitted that her client would not leave the jurisdiction as the Defendant owed him US \$ 173,660.00.

THE LAW

11. Counsel for the Defendant relied on Order 35 Rule 6 of the High Court Rules, 2007 and the Debtor's Act, Cap 24 of the Laws of Sierra Leone, 1960.
12. I have looked at Order 35(6) and its equivalent provision in the English Supreme Court Practice, 1999-Order 29 Rule 6. This provision relates to the recovery of personal property subject to lieu etc. The following are the requirements:-

- a) Where the Plaintiff (or counter-claiming Defendant) claims the recovery of specific property (other than land); and
- b) The Defendant does not dispute the Plaintiff's title; but
- c) Claims to be entitled to retain the property as security for any sum of money (e.g. by virtue of a lien).

Under this provision, the Defendant's claim does not ^{reklte} to property but to money. If the Plaintiff (counter-claiming Defendant) is to have the benefit of an Order under the Rule he must pay into the Court the whole of the amount claimed by the Defendant as security, notwithstanding that it exceeds the value of the specific property.

13. In the instant case, the Defendant is counter-claiming for the sum of \$ 28,500/00 from the Plaintiff for which the Plaintiff's passport is held as security. The Plaintiff ~~is~~ in his Writ of Summons is claiming for the possession of Indian National Passport No, 21806173, among others.

14. Applying the provisions of Order 35 Rule 6 of the High Court Rules, 2007, the Plaintiff is claiming the recovery of specific property-his passport which the Defendant has not denied holding but claims that he

is entitled to retain the passport as a lien or otherwise as security for the sum of \$ 28,500. So if the said amount (with interest and costs) is paid into Court to abide the event of the action, the passport will be given up to the Plaintiff. I note that the passport is currently not in the actual possession of the Defendant but with the Deputy Master and Registrar, Fast Track Commercial Court. The Defendant has prayed in the alternative that the said passport currently in the possession of the Court be kept by the Master and Registrar until further ordered by this Honorable Court. The Court prefers the alternative prayer.

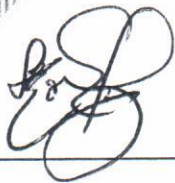
15. For an example of the Application of the Rule see RE GALLANI (1885) 31 CH. D 296 C A (Solicitor's ^{action} for costs on his clients). I also refer you to the English Supreme Court Practice 1999 paragraph 29/8A/17. I must add that the provisions of Order 35 Rule 6 is also open to the Plaintiff based on his statement of claim but as he is not in possession of any property of the Defendant he cannot properly avail himself of it.

As I have already indicated that the Court prefers invoking the provisions of Order 35 Rule 6, there will be no need to rule on the prayer

for the Defendant to be ordered to give bail or security for his appearance as the effect will be to prevent the Plaintiff from fleeing the jurisdiction which will be served by keeping his passport in the custody of the Court.

16. In the circumstance, I Order as follows:-

1. That the passport No. Z1806173 currently in the possession of the Deputy Master & Registrar Fast Track Commercial Court be kept by him until further ordered by the Court. However, the Plaintiff shall be at liberty under the supervision of the Deputy Master and Registrar of the Fast Track Commercial Court to use the said passport to access his bank accounts with a view to paying the sum of \$ 28,500.00 into Court to abide the event of the action.
2. That the matter is adjourned to Tuesday, 21st June, 2016 for trial of the substantive action to commence.
3. That the costs of this Application be costs in the cause.



Hon. Justice Sengu M. Koroma JA.