



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

Case No: FTCC 091/16

JIANG XINHUA

-PLAINTIFF

AND

AO ZHANZOU

-DEFENDANT

XINGWANG BUSINESS LTD

REPRESENTATION

KELFALA, KANNEH & CO.

(I. KANNEH)

-COUNSEL FOR THE PLAINTIFF

C. F. MARGAI & ASSOCIATES

(R. B. KOWA ESQ).

-COUNSEL FOR THE Defendant

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

JUDGMENT DELIVERED ON THE 18th MAY, 2017

THE ACTION:

1. The Plaintiff through its solicitors, Kelfala, Conteh & Co. issued a writ of Summons dated 30th March, 2016 against the Defendants jointly and severally for the following:-

1. General damages for breach of contract
2. Recovery of the sum of USD250,000.00(Two Hundred and Fifty Thousand United States Dollars) and Le 101,640,000/00 (One Hundred and One Million, Six Hundred and Forty Thousand Leones) being special damages
3. Any further or other reliefs that this Honourable Court may deem fit and just.
4. Costs.

2. THE PARTIES:

The Plaintiff described himself as a businessman carrying on business of quarrying and construction and the 1st Defendant as the Managing Director and alter ego of the 2nd Defendant, a company incorporated in Sierra Leone engaged in the business of construction and quarrying.

3. THE PARTICULARS OF CLAIM:

- a. Sometime in November, 2013, the first Defendant informed the Plaintiff that he had a contract with a third party for the construction of a town square at Mabonthor Highway in Makeni for a project value of US \$ 3,410,000.00 (Three Million, Four Hundred and Ten Thousand United State Dollars). The Defendants subcontracted the Plaintiff to carry out construction works on the understanding that the proceeds of profits therefrom would be shared equally.

- b.** The Plaintiff was to provide the equipment, personnel and other materials for the project and on completion would be entitled to a refund of all expenses incurred, and would share the profits on an equal basis
- c.** Relying on this representation, the Plaintiff provided machinery, equipment and workers and paid them for 44 days
- d.** The Plaintiff provided substantial parts of the materials for construction costing over USD300,000/00(Three Hundred Thousand United States Dollars)
- e.** Upon completion of work on the town square, the 1st Defendant asked the Plaintiff to move his equipment to Makeni for further works at a rental fee of USD164,000/00(One Hundred and Forty Thousand United States Dollars). The Defendants used the machines and equipment but refused to pay the agreed sum to the Plaintiff and paid only USD68, 000/00.

The Plaintiff then itemized all expenses incurred under the heading “special damages”

4. APPEARANCE AND DEFENCE.

- a.** The Defendants Solicitors, Margai & Associates entered appearance in this action on the 14th April, 2016.
- b.** The application for amendment was heard on the 29th June, 2016. Counsel for the Defendants speaking from the Bar informed the court that his colleague on the other side had no objection to the application. The Orders prayed for were granted with consequential Orders.
- c.** The matter was adjourned to Thursday, 15th September, 2017. Both Counsel and parties were absent on this date.

d. On Wednesday, 21st September, 2016, Mr. I. Kanneh, Counsel for the Plaintiff confessed to the court that both parties had not complied with the Directions and sought a date, to enable them do so. The application for adjournment was granted and the matter was adjourned to the 28th September, 2016. The trial for some reason did not start until the 12th October, 2016.

5. THE AMENDED DEFENCE:

In the amended defence, paragraphs 5 and 6 thereof, the Defendants averred that they rented machines from one Mr. Jiang who is the Plaintiff's brother "to carry out construction work and has since paid for the use of same totaling USD33,000/00 (Thirty-Three Thousand United States Dollars). In paragraph 6, he averred that Mr. Jiang did not at any time during the transaction put himself out as acting for and on behalf of any other person but himself.

a) From the amended defence, it could be discerned that the Defendants were claiming that the Plaintiff was not the proper person to bring this action. The defence filed, I must say is very technical and do not go to challenge the issued raised in the particulars of claim. Having said this, I consider it the responsibility of this court, as a first step, to determine whether the Plaintiff had the right to bring this action. In considering this question, I shall foray into the witness statements both oral and documentary. The purpose of this exercise is to avoid waste of judicial time, since if the Plaintiff did not have the said right, a determination of the claim would be unnecessary.

The 1st Defendant insisted in both his amended defence and testimony that he never entered into a contract with the Plaintiff but dealt with his brother. This, the Plaintiff confirmed under cross-examination. In his witness statement, the Plaintiff never referred to the existence of an Agent. This was

also not pleaded in the Writ of Summons, which was a serious breach. Noting that there is no evidence that the Plaintiff was a company the failure to establish the existence of an agent greatly undermines the capacity of the plaintiff to bring this action.

6. The Plaintiff's standing in this matter was also greatly undermined by the testimony of his own witness, PW.3 – **Osman Kanu**. Mr. Kanu is a Police Officer who was called to prove that the 1st Defendant had admitted at the Police Station to have transacted business with the Plaintiff. This witness created a big hole in the Plaintiff's case by supporting the 1st Defendant's case rather than the Plaintiff's, who had called him. In reply to Counsel for the Defendants, Mr. Kanu informed the Court that at the Police Station, the 1st Defendant told him he had no business with the Plaintiff but with his brother.

7. The principle is that the Courts require that civil lawsuits be brought by "the real person in interest" which means that if the party bringing the suit cannot establish his or her legal capacity to do so, the suit will be dismissed. The situation would have been different if an application had been made at the appropriate time to substitute or add the Plaintiff's brother.

8. In conclusion, as the action has been brought in the name of the wrong Plaintiff, I do not deem it necessary to go on any further in this Judgment to consider whether there was in fact any breach of contract for which the Defendant may be liable and whether in fact they owe any money to the Plaintiff.

9. In the circumstance, the action is dismissed. No order as to costs.


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HON MR. JUSTICE SENGU KOROMA JA.