



IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION
FAST TRACK COMMERCIAL COURT
OFF WALLACE JOHNSON STREET-GOVERNMENT WHARF

FTCC 078/12

THUNDERBALL LIMITED

-PLAINTIFF

AND

THE ATTORNEY-GENERAL & MINISTER OF JUSTICE & ORS	1 ST -	DEFENDANT
THE MINISTER OF MINES & MINERAL RESOURCES	2 ND	DEFENDANT
THE DIRECTOR OF MINES & MINERAL RESOURCES	3 RD	DEFENDANT
THE MINISTRY OF MINES & MINERAL RESOURCES	4 TH	DEFENDANT

REPRESENTATION:

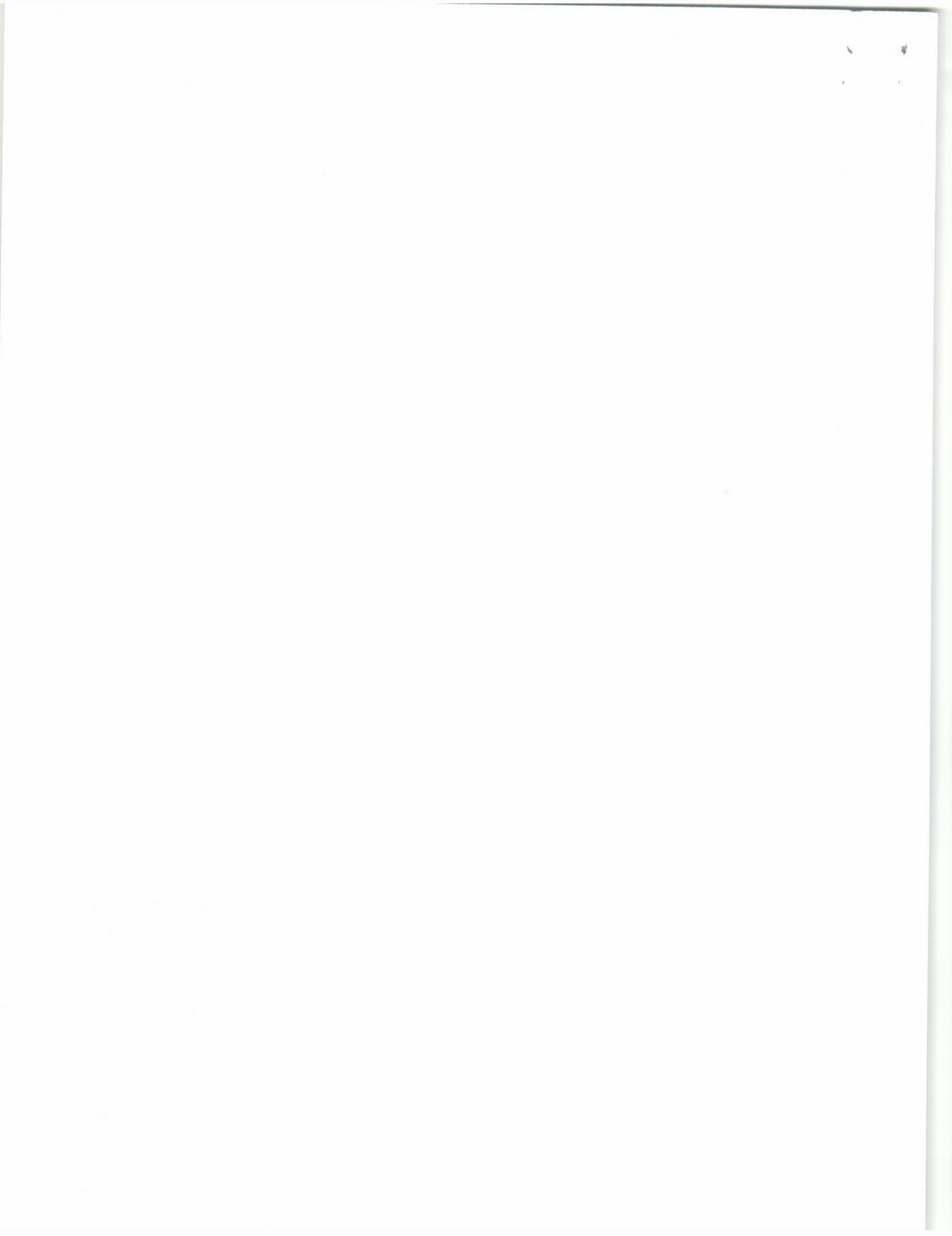
S. S. THOMAS ESQ.

COUNSEL FOR THE PLAINTIFFS

O. I. KANU ESQ.

COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA
JUDGMENT DELIVERED ON THE 29TH NOVEMBER, 2018



1. By an amended writ of summons dated the 9th day of February, 2015, the Plaintiff claimed against the Defendants herein, the Attorney - General and Minister of Justice, the Minister of Mines and Mineral Resources, and the Director of Mines seeking the following relief:

BACKGROUND

2. The Plaintiff filed a writ of summons dated 21st day of November, 2012 against the Defendants listed in the said writ of summons claiming several relief.
3. By the order of Solomon JA (as she then was), dated 4th February 2013, the Plaintiff amended the said writ of summons to include BAROMA LIMITED as fifth Defendant.
4. On the 15th day of February, 2013, an interim injunction was granted restraining the 5th Defendant whether by itself, its servants, agents, privies, patrons or assigns or anyone acting under its instructions from entering into or upon all that piece or parcel of land situate, lying and being at Fama Kamara, Gbense and Tankoro Chiefdoms Kono District measuring approximately 67.0 sq. km, the subject - matter of the action herein.
5. On the said 15th February, 2013, the firm of Basma and Macauley entered appearance for the 5th Defendant herein. Appearance had already been entered for the 1st, 2nd, 3rd and 4th Defendants on the 30th November, 2013.
6. An application for Interlocutory injunction was filed by Notice of Motion dated 11th February, 2013 which was granted by Solomon JA (as she then was) on the 7th day of June, 2013.
7. The Solicitors for the 5th Defendant by a Notice of Motion dated the 20th day of June, 2013 sought leave to appeal to the Court of Appeal against the Ruling dated 7th June, 2013, and a stay of proceedings pending the determination of the Appeal. This appeal was not heard until it was overtaken by events.
8. By a Notice of Discontinuance dated 17th day of December, 2014, the Plaintiff wholly discontinued the action against the 5th Defendant pursuant to an order of Solomon JA (as she then was) dated 19th June, 2014.

PLAINTIFF'S CLAIM

9. The authority to sue the Government of Sierra Leone by virtue of section 3 of the state proceedings Act, 2000 was complied with by the Solicitor for the Plaintiff, Sengpoh S. Thomas Esq. by letter to the Attorney - General and Minister of Justice dated 16th August, 2012. This was not controverted by Counsel for the 1st and 2nd Defendants.

10. PARTICULARS OF CLAIM

- i. The Plaintiff, a company duly registered under the Laws of Sierra Leone in 2009 applied to and received from the 4th Defendant an exploration licence pursuant to the Mines and Minerals Act, 1994 in force at the time.

- ii. Pursuant to the terms contained in the exploration licence, land situate lying and being at Faiama Kamara Chiefdom Gbense and Tankoro Chiefdoms, Kono District in the Eastern Province of the Republic of Sierra Leone measuring up to 67.10 sq. km was identified and obtained for the said exploration process.
- iii. All prescribed fees were paid and receipts issued by the 3rd Defendant to the Plaintiff and all conditions stated on the said licence were complied with.
- iv) Upon the completion of the exploration phase and acting on the recommendation of the 2nd, 3rd and 4th Defendants, sometime in 2011, the Plaintiff applied in writing to the 4th Defendant for a large scale Mining licence to which the said 4th Defendant replied in writing demanding certain documentation.
- v) The Plaintiff in December, 2011 requested for additional time to obtain the necessary documentation and in the interim requested a renewal of the exploration licence, which the Plaintiff said he will be willing to forgo upon obtaining large scale Mining licence.
- vi) At the request of the 3rd Defendant, the Plaintiff made a payment of USD \$ 26,840.00 for a renewal of the exploration licence for the period 1st December, 2011 to 30th November, 2012.
- vii) On the 16th December, 2011, the 3rd Defendant acknowledged the payment of the said \$ 26,840.00 and issued a receipt to the Plaintiff renewing the exploration licence.
- viii) By letter dated 12th January, 2012 and 26th March, 2012 respectively the Plaintiff was informed by the 3rd Defendant that the exploration licence had been revoked
- ix) Several efforts by the Plaintiff to resolve the problem were unsuccessful.
- x) Sometime in 2012, Borama Company wrongfully entered the said land without the permission of the Plaintiff
- xi) The Plaintiff had expended approximately USD \$ 7 Million on the project so far.

DEFENCE OF THE FIRST TO FOURTH DEFENDANTS:-

- I. The Defendants were not in the position to admit that the Plaintiff paid the prescribed fees and complied with the conditions stated on the licence.
- II. Under the Mines and Minerals Act, 2009 the competent authority to grant exploration licence was the Mines and Minerals Board created by the said Act and any other process outside the said Board was a nullity.

- III. The Plaintiff's licence had expired and had not been renewed and so there was no need for it to be revoked.
- IV. The Plaintiff had not complied with the Mines and Minerals Act, 2009
- V. The Defendants had no duty to respond to the Plaintiff's letters since the Plaintiff had failed to make the proper application under the Mines and Minerals Act, 2009 for the renewal of its exploration licence.
- VI. Paragraphs 24 and 25 of the particulars of claim were embarrassing and should be struck out.
- VII. That the Plaintiff had not established any valid exploration licence or interest for the Court to make a declaration on
- VIII. If there was any interest for the Plaintiff to protect the same is statute barred and this Court lack jurisdiction to entertain the process.
- IX. It was denied that the Plaintiff was entitled to damages.

xii) Testimony of Witnesses.

First Prosecution Witness – Ramez Hassan, PW1 informed the Court that he was the Managing Director of the Plaintiff Company and was aware of the transaction between his Company and the Government of Sierra Leone. He recalled making and signing a statement which he tendered as Exhibit A. He further testified as follows:-

- i. He referred to his letter of application for large – scale mining licence dated 1st December, 2011. PW1 already had an exploration licence.
- ii. PW 1 paid the fee of \$26,840.00 to renew an exploration licence for the period of 1st December, 2011 to 30th November, 2012
- iii. The renewal fee was acknowledged by letter dated 16th December, issued by the 3rd Defendant.
- iv. He was surprised to receive a letter later from the 3rd Defendant revoking the renewal licence though the payment was never refunded.
- v. An Environment Impact Assessment was carried out and a certificate issued. Payment was made for this exercise.
- vi. PW 1 and other investors had already spent to \$7,000,000/00 at the time the licence was revoked.
- vii. He was not informed of any breach by the Company of any terms of the exploration licence
- viii. That the Company tried all it could to amicably settle any misunderstanding with the relevant authorities to no avail.
- xiii) The Plaintiff additionally relied on the witness statement and all documents exhibited in the Court bundle.
- xiv) Cross-Examination

Under Cross-Examination by Osman I. Kanu Esq. Counsel for the Defendants, PW1 admitted that prior to his application for renewal of exploration licence; the original licence had expired for two days. He explained that the delay was because the Plaintiff was actively negotiating for a large-scale mining licence at the time and had already paid about \$50,000.00 and so there was no need at the time to renew the exploration of licence.

- xv) PW 1 admitted that he was aware of the role of the Mineral Advisory Board in renewal of the licenses.
- xvi) After this cross-examination, the Plaintiff closed their case. The Defendants never opened theirs and only occasionally made an appearance in Court though several notices were sent. This was the state of Affairs until the Director of Mines was invited to throw light on the issue.
- xvii) On 17th May, 2016, Mr. Peter Bangura, the Director of Mines informed the Court that the Minister of Mines had been given professional advice on the matter.
- xviii) On the 17th July, 2016, the Director informed the Court that the firm of Fornah-Sesay, Cummings and Showers had advised the Ministry that the revocation of the Plaintiff's licence was lawful. The Court was however not shown this opinion.
- xix) On the 7th November, 2016, the Plaintiff's Solicitor, Sengepoh S. Thomas Esq. informed the Court that the Defendants Counsel had informed him that they had no witnesses.
- xx) The matter was further adjourned and notices served. The Defendants did not appear again. As the Plaintiff's Counsel had informed the Court that his colleague did not intend to call witnesses (which is his right to do) I ordered that written submissions be made. The Plaintiff did after I had withdrawn the file for Judgment but the Defendants did not.

THE ISSUES

- xxi) There are several issues in this matter; the most important is whether there is a contract between the Plaintiff and the Defendants and if there is, whether it has been breached. The stating part in this investigation is the application for and grant of the exploration licence.
- xxii) Sometime in 2009, the Plaintiff applied to and received from the 2nd, 3rd and 4th Defendants an exploration licence under the Mines and Minerals Act, 1994 (in force then). The licence was signed by Alhaji A.B.S. Kanu as Minister and Umaru B. Wurie as Permanent Secretary and dated 17th September, 2009 - EXPL. 19/09.
- xxiii) The licence was for an initial period of two years pursuant to section 49 of the said Act.
- xxiv) On the 12th December, 2011, the 3rd Defendant wrote to the Plaintiff and ordered him to pay the licence Renewal fee of \$26,840.00. The Plaintiff duly complied on the same day - NRA Receipt No. 595580. This

payment was acknowledge by the 3rd Defendant by letter dated 16th December, 2011 in which he stated that the said renewal was for the period 1st December, 2011 to 30th November, 2012.

xxv) This letter notwithstanding, the 3rd Defendant by letter dated 12th January, 2012 wrote to the Plaintiff informing it that the renewal for 2011/2012 was not effective and therefore revoked the letter dated 16th December, 2012.

xxvi) The reason given for the revocation was that "All Mineral Rights Renewal should go through the Mineral Advisory Board" (MAB) and if recommended by the MAB they will then be forwarded to the Mineral for final approval before a licence is granted and your licence was due for a complete renewal instead of an ordinary renewal".

xxvii) The 3rd Defendant sought to clarify his position by another letter to the Plaintiff dated 26th March, 2012.

In doing so, he referred to the Mines and Minerals Act, 2009, section 17 8 (5) which provide that:

"No Mineral right granted prior to this Act shall be extended or renewal but where the prior grant provided a right to apply for a renewal or extension of the right, the holder of the Mineral right may apply, subject to this Act for a similar type of licence as provided basis".

xxviii) The question here is whether the revocation of the licence was proper. The 3rd Defendant relied on Section 178(5) of the MMA, 2009. It is my considered view that this provision does not give any right to the 2nd or 3rd Defendant to cancel/revoke mining licenses. This section allows the holder of a mineral right granted before the commencement of the Act (MMA, 2009) to apply for a renewal of this Mineral right if the prior Mineral Act (that is the MMA, 1994) provided for an extension or renewal. Section 53 of the MMA, 1994 this Act provided for the renewal of exploration licence. Further, Section 4 of the exploration licence also provided for renewal of the licence.

xxix) Based on the foregoing, the purported revocation of the Plaintiff's licence was misguided, irregular and highly suspicious. I say suspicious because the letter of revocation was written after a change of ministers in the Ministry and the new Minister decided to give the exploration licence in respect of the same area to another Company. All attempts by the Plaintiff to resolve the matter amicably was treated with contempt. Governments are not expected to act in this manner towards investors.

xxx) It follows that the Plaintiff had a legal right to protect up till November, 2012 but this was cut short by letter of the 3rd Defendant dated 12th January, 2012.

xxxi) The other reason given by the 3rd Defendant for revoking the licence on procedural grounds is embarrassing. The 3rd Defendant himself wrote

to the Plaintiff requesting it to renew its licence which the Plaintiff promptly did. The 3rd Defendant, as the professional, did not advise the Plaintiff on procedure but went as far as granting the renewal by letter dated 16th December, 2011. This negligent conduct instead of being punished by the authorities was later used to deprive the Plaintiff of his rights in favour of another Company.

xxxii) I strongly believe that Public Officers who behave the way the 3rd Defendants did are not fit to hold any office of responsibility. The Minister only has discretion on whether or not to renew a licence but has no power to cancel it. This right is provided for under Section 53 (1) which states the grounds under which a licence could be revoke. Section 53 (2) requires the Minister to give notice to the holder of the licence of any breach and a mandatory period of 30 days to cure any such breach. It is only if the holder fails to remedy the breach that his licence could be cancelled or suspended under Section 53 (3). None of these procedures were followed.

xxxiii) It is my conclusion that the Exploration licence of the Plaintiff was wrongly cancelled and therefore the letters of the 3rd Defendant dated 12th January, 2012 and 26th March, 2012 respectively are invalid and of no legal effect.

xxxiv) In reaching this conclusion, I bear in mind what Lord Steyn (as he later became) said in the English Court of Appeal at the beginning of his Judgment in FIRST ENERGY (UK) LTD V HUNGARIAN BANK LIMITED (BCLC) 1409 "A theme that runs through our law of contract is that the reasonable expectations of honest men must be protected. It is not a rule or principle of law. It is an objective which has been and still is the principal moulding force of our Law of Contract. It affords no licence to a Judge to depart from binding precedent. On the hand, if the prima facie solution to a problem runs counter to the reasonable expectations of honest men, this criterion sometimes requires re-examination of the problem to ascertain whether the law does indeed compel demonstrable unfairness". In ASSOCIATED JAPANESE BANK (INTERNATIONAL) V-CREDIT NORD (1988) 3 All ER 903 Lord Steyn following his earlier reasoning on the subject said, "The Defendant entered into a deal and should be held to it".

xxxv) The defence of the defendants rest solely on the point that the licence was legitimately revoked. As I have already said, the revocation was wrong and there still subsisted a contract between the 2nd - 4th Defendants and the Plaintiff. Relying on that contract, the Plaintiff undertook various expenditures which it lost as a result of that revocation. The Exploration licence imposed obligations on the Plaintiff which called for certain payments and other expenditures. The

The answer is no. The cases of HADLEY -V - BAXENDALE and BOLAG - V HUTCHINSON are authorities for the proposition that the division of damages into "special damages" and general damages" is more appropriate in the cases of Tort than in a case of contract. In this case, the Plaintiff has not specified the type of damages he was claiming. However, a claim for damages for breach of contract could be akin to a claim for general damages but such a claim would not ban a Plaintiff from claiming specific damages in respect of the Defendants breach of contract.

As the claims have fulfilled the requirements of "special" and "general damages" evidence needs to be adduced as to the measure of damages recoverable. This will make the witness available for cross-examination. Receipts have been tendered in the Court bundle but this alone, to my mind, is not sufficient. These claims need to be subjected to cross-examination.

In the circumstances, I order as follows:

1. That the Plaintiff was entitled to deal in the exploration of the land situate, lying and being at Fiamma Kamara, Gbense and Tankoro Chiefdoms, Kono District in the Eastern Province of the Republic of Sierra Leone measuring approximately 67.10 Sq Kilometers and that the letter dated 12th January, 2012 and 26th March, 2012 revoking the said Exploration licence were unlawful
2. That the Plaintiff is entitled to damages for breach of contract to be assessed.
3. Interest thereon at such rate to be assessed.
4. Costs of this action to be assessed
5. Adjourned to Monday 3rd December, 2018 for assessment.

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Hon. Mr. Justice Sengu Koroma (J.A.)

FTCC: 078/12

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NO. 88

IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL AND ADMITALTY DIVISION)

THUNDERBALL LIMITED
7, THE MAZE
WILBERFORCE OFF KING STREET
FREETOWN

- PLAINTIFF

AND

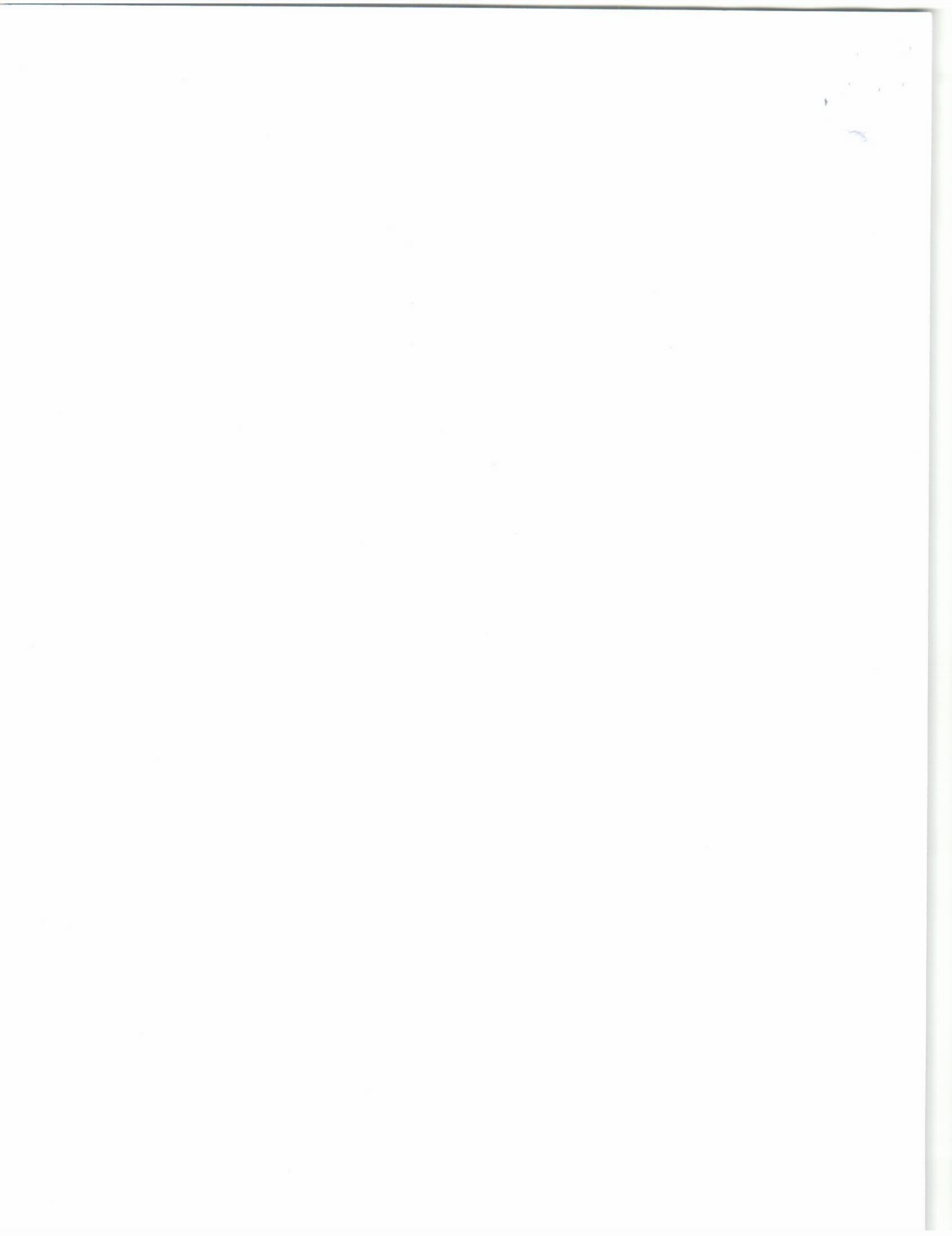
THE ATTORNEY GENERAL & MINISTER OF JUSTICE
GUMA BUIKLDING
LAMINA SANKOH STREET
FREETOWN

- 1ST DEFENDANT

THE MINISTER OF MINES & MINERAL RESOURCES
THE DIRECTOR OF MINES & MINERAL RESOURCES

- 2ND DEFENDANT
- 3RD DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA – JSC
DATED THE 11TH DAY OF APRIL, 2019



1. This is a continuation of the Judgment of this Court dated the 29th day of November, 2018. In the said Judgment, I adjudged, amongst others that the Plaintiff is entitled to damages for breach of contract to be assessed.
2. The basis of this order was that the Court had adjudged that the Plaintiff was entitled to deal in the exploration of the land situate lying and being at Fiamia Kamara, Gbensie and Tankoro Chiefdoms, Kono District in the Eastern province of the Republic of Sierra Leone measuring approximately 67.10 square kilometers and that the letters dated 12th January, 2012 and 26th March, 2012 respectively revoking the said exploration licence were unlawful.
3. The assessment of damages was carried out on the 3rd December, 2018. The Plaintiff testified regarding expenditure to the tune of \$7,227,402.00.
4. In assigning damages here, I should be mindful of the fact that the Licence that was unlawfully revoked was EXPLORATION LICENCE NUMBER 19/09. In the documents submitted by the Managing Director of the Plaintiff, there seems to be a mix-up with expenditure regarding Kimberlite Mining. However, the Writ of Summons is claiming damages for wrongful revocation of a licence already granted and renewed. In the circumstance, I shall consider only damages flowing from that revocation. There were also other expenses incurred by the Plaintiff on the advice of the 3rd Defendant which could be taken into consideration. These were for the purpose of upgrading the exploration licence to a Kimberlite Mining Licence.
 1. Salaries: The Plaintiff is claiming \$1,429,590.00 paid as Salaries for a period of 3 years. To my mind the Plaintiff cannot claim for 3 years as his licence should have expired in December, 2012 and not in 2013. I will also not allow allowances paid to Mines Officers and Paramount Chiefs. In the case of the Paramount Chiefs only the traditional hand shake could be allowed. In the circumstance, I shall allow the sum of \$760,758.00 under this head.

2. EPA Certificate, CMAT feasibility studies and CMAT additional payments - \$167,334.00. This head is allowed as there are supporting documents in respect of the payments.

3. Exploration Licences, 1/1/09, 2/9/09, 11/11/10 and 12/12/11 and Registration of large scale commercial License - \$102,840.00

This is allowed as there are supporting documents.

4. Mining equipment and Machines
I cannot award the entire sum - \$2,597,484 here as there is no evidence before this Court that the equipment were damaged as a result of the action of the Defendants in unlawfully revoking the contract.

In the in circumstance, I will allow only the cost of Machine rentals as they are receipted for - \$798,494.00

5. Rent, Generators, furniture fixtures - \$326,000/00
There is no evidence that the vehicles and generators were destroyed as a result of the revocation. The Office expenses have also not been proved and so I will grant only 50 percent of the claim taking the rent into consideration - \$130,000.00.

6. Fuel and food - \$756,000.00
There are no supporting documents in support of this though it is undisputable that fuel is used in Mining Operations. In the absence of complete evidence of this expenditure, I will grant only a third of the claim - \$252,000/00.

Medical fees and Medicine - \$25,000.00
This expenditure is not allowed.

7. Debt owed to Fadi Hamdan and Bank loan. This head is not allowed. No Loan Agreement has been tendered to prove that the loan was taken in furtherance of the Mining Operations of the Plaintiff.

8. Construction of Road to Mining site, Kimberlite washing, drilling and loss of Kimberlite gravel Total claim - \$1,753,290.00

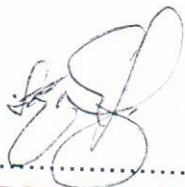
I will not allow the cost of loss of Kimberlite gravel value of \$400,000/00 but will allow the others - \$633,000.00.

9. Solicitors Costs - \$200,000.00

There are receipts in respect of payments to Solicitors. I shall therefore allow the award.

In the circumstance, I order as follows: -

1. Judgment is given in favour of the Plaintiff in the sum of US\$2,571,000.00 being assessed damages to be borne by the Defendants.
2. Interest thereon at the rate of 5 percent per annum from the 7th day of February, 2014 to date of Judgment.
3. Costs to be taxed if not agreed.



HON. MR. JUSTICE SENGU KOROMA - JSC

