

MISC.APP 010/18 2018 H. No.20
IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL AND ADMIRALTY DIVISION)
IN THE MATTER OF THE CONVEYANCING ACT 1881

AND

IN THE MATTER OF THE HOME FINANCE MORTGAGE ACT NO. 4 OF 2009

AND

IN THE MATTER OF A LEGAL MORTGAGE BETWEEN COMMERCE & MORTGAGE BANK
(SL) PLC AND FODAY KOROMA

AND

IN THE MATTER OF AN APPLICATION UNDER ORDER VIII OF THE HIGH COURT RULES
2007

BETWEEN:

COMMERCE & MORTGAGE BANK (SL) PLC

(Formerly HFC MORTGAGE & SAVINGS (SL) LTD

AND

FODAY KOROMA

PLAINTIFF

DEFENDANT

BEFORE THE HONOURABLE MS. JUSTICE M. M SAMBA J.

DATED THE 6th DAY OF DECEMBER 2018.

UPON READING the ex-parte Notice of Motion dated the 22nd day of March 2018 and the Affidavit sworn to on the 22nd day of March 2018 together with Exhibits attached thereto AND UPON hearing M.N Bittar Esq., of Counsel for the Plaintiff, it is this day Ordered:

1. That the Plaintiff be granted possession of the mortgaged property situate lying and being at 5 and 7 Waima Lay Out, Tikonko Chiefdom, Bo District under the Deed of Mortgage dated the 10th day of February 2014 and duly registered as No. 535/2014 in Volume 91 at Page 91 of the Record Book of Mortgages kept in the office of the Registrar-General, Freetown.
2. That Costs of Le 10,000,000.00 (Ten Million Leones) is hereby awarded.

BY THE COURT

MASTER AND REGISTRAR

IN THE HIGH COURT OF SIERRA LEONE
(FAST TRACK COMMERCIAL COURT)

BETWEEN:

GODFRED DANGUCHI

PLAINTIFF

T/A TRADE MARKETING VENTURES

30 SMALL WATERLOO STREET

FREETOWN

AND

QING BAO OLD CAPTAIN SHIPPING

COMPANY PEPEL

1ST DEFENDANT

THE CHIEF EXECUTIVE OFFICER

QING BAO OLD CAPTAIN SHIPPING COMPANY PEPEL

2ND DEFENDANT

MR. JUNG

QING BAO OLD CAPTAIN SHIPPING COMPANY PEPEL

3RD DEFENDANT

Counsel:

R.B Kowa Esq for the Plaintiff/Respondent

LS Yillah Esq for the 1st and 2nd Defendants/Applicants

L. Taylor Esq for the 3rd Defendant/Respondent

Ruling:

1. On file is an application made by way of Notice of Motion dated the 26th day of October 2017 for and on behalf of the Applicants basically asking that the Court dismiss the claim against the Applicant on the basis that the Plaintiffs Particulars of Claim disclose no cause of action against the Applicants being that there was no contractual relationship between the Plaintiff and the Applicants.

2. The application is supported by the Affidavit of Victor I Lansana Esq, sworn to on the 26th day of October 2018 with the following Exhibits attached.

Exhibit VII.1 is a copy of a Writ of Summons which commenced this action.

Exhibits VII.2 & 3 are copies of a Memorandum and Notice of Appearance filed for and on behalf of the 1st and 2nd Defendants/Applicants.

Exhibit VII.4 is a copy of the Defence filed on behalf of the Applicants.

Exhibit VII.5(1-10) are copies of receipts of payment made by the Applicants to the 3rd Defendant.

Exhibit VII.6 is a copy of the witness statement of the 3rd Defendant.

3. On Wednesday, the 16th day of May 2018, Counsel for the Applicants moved the application for and on behalf of the Applicant pursuant to Order 17 Rules 1 and 2 of the High Court Rules 2007 (hereinafter referred to as the 'Rules') for the Court to make a determination on the dispute between the parties based on

points of law. Counsel relied on a filed written submission dated the 15th day of May 2018.

4. Counsel submitted that the application raises a fundamental issue germane to the law of contract, which is to say, privity of contract. Counsel submits that the Plaintiff has not established any contract between himself and the 1st and 2nd Defendants/Applicants and that in fact, there was and is no contract between the Plaintiff and the Defendants, including the 1st and 2nd Defendants/Applicants. Counsel argues that the Applicants contract was with the 3rd Defendant whose services they, the Applicants, fully paid for by Exhibits VII5(1-10) as confirmed by the 3rd Defendant by Exhibit VII6, both exhibited in the Plaintiff's Supporting Affidavit.

5. Counsel has asked this Court to dismiss the action against the 1st and 2nd Defendants/Applicants with cost and for this Court to make a Declaration that the Applicants are not privy to the contract between the Plaintiff and the 3rd Defendant and that by Exhibit VII5(1-10), the Applicants did pay the 3rd Defendant for services complained of by the Plaintiff.

6. On file is an Affidavit in Opposition sworn to by Lornard Taylor Esq on the 30th day of May 2018 filed for and on behalf of the 3rd Defendant in which he exhibited Exhibit LT1 which is a copy of the witness statement of the 3rd Defendant as in Exhibit VII6 hereinbefore referred. Counsel referred to the second paragraph of Exhibit LT1 where the 3rd witness stated that the Plaintiff did some work personally for the 1st and 2nd Defendants without his consent and which he only got to know about later. Counsel submitted that the fact that the receipts tendered by the Applicants as Exhibits VII5(1-5) and VII5(10) were receipts issued by the Applicants to the 3rd Defendant for work done for the Applicants through the 3rd Defendant is a reason why this matter must go to trial and not be determined on points of law.

7. Counsel referred to the Statement of claim which he submitted are claims allegedly done by the Plaintiff for the 1st and 2nd Defendants without the consent of the 3rd Defendant. Counsel asked that the Court discountenances the application made pursuant to Order 17(1) and (2) of the Rules and admit the matter to trial.

8. Order 17 Rules 1 and 2 of the High Court Rules, 2007 provide as follows:

(1). The Court may on the application of a party or on its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that:-

a. The question is suitable for determination without a full trial of the action; and

b. The determination will finally determine subject only to any possible appeal, the entire cause or matter or any claim or issue in the cause or matter.

(2). Upon the determination, the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

9. The Court refers to the Court records of 10th day of October 2017 when Yillah Esq., Counsel for the Applicants informed the Court in the presence of Counsel for the Plaintiff that he intends to file papers and make an application that this Court dispose of this matter on points of law to which Counsel for the Plaintiff said he had no objection. The Court notes that as stated above, that the Notice of Motion dated 26th day of October 2017 and an Affidavit in Opposition dated the 30th day of May 2018 were filed and served on Counsel for the Plaintiff. On the 5th day of December 2017, the Court record shows that Mr. Kowa referred to the application by way of Notice of Motion on file for the Applicants herein. He indicated he will file an Affidavit in Opposition. No such Affidavit was filed.

10. On the 8th day of January 2018, R.B Kowa informed the Court that he had received certain receipts sent him by Counsel for the Applicants and indicated that all parties may be able to negotiate and possibly settle. This matter was mentioned on the 22nd, 29th January 2018, 5th February and 22nd February 2018, 5th March, 12th March, 19th March, 12th April, 26th April, and 3rd May 2018 when upon the application of Counsel for the 3rd Defendant, L. Taylor Esq, this Court issued an unless order because on all adjourned dates referred, Counsel for the Plaintiff did not avail himself in Court nor did he file any Affidavit in Opposition to the Notice of Motion of 26th October 2017 which he knew about.

11. This matter was again mentioned on the 10th May 2018 and again Counsel for the Plaintiff, R.B Kowa Esq was absent. As stated above, on the 16th day of May 2018, (again, Mr. Kowa was absent), Mr. Yillah moved the application herein. On the 24th day of May 2018, Mr. Kowa informed the Court that he did receive the Applicants' synopsis of arguments and submissions. On the 31st day of May 2018, in the presence of Mr. R.B Kowa in Court, Counsel for the 3rd Defendant informed the Court that he has filed an Affidavit in Opposition to the Notice of Motion filed on behalf of the 3rd Defendant/Respondent. Again, Mr. Kowa did not see it necessary to file any Affidavit in Opposition on behalf of the Plaintiff even though he had informed the Court on the 24th day of May 2018 that he will be filing one. On the 11th day of June 2018, again while Mr. Kowa was absent from Court, Counsel for the 3rd Defendant moved his application.

12. This file was mentioned further on the 12th, 19th and 26th day of June and 10th day of July 2018 during which Mr. Kowa was absent from Court with no excuse. The Court file shows that Notices for each of the many adjourned dates were served on the Law Offices of C.F Margai and Associates to which Mr. Kowa belong. On the 10th day of June 2018, upon an application made by Mr. L. Taylor, Counsel for the 3rd Defendant/Respondent for the file to be withdrawn for ruling, one more adjournment was given for Mr. Kowa to appear in Court and make the case of his clients. He made no show on the 18th day of September and the 15th day of October 2018 so the file was withdrawn for ruling.

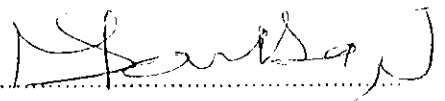
13. I am satisfied that I have afforded an opportunity to Counsel for both the Plaintiff/Respondent and the 1st and 2nd Defendants/Applicants and the 3rd Defendant/Respondent to be heard on the points of law to be determined by this Court. I have read the claim herein and listened to the arguments and submissions made by both Counsel for the Defendants. The Court notes the

several adjournments made to afford Counsel for the Plaintiff an opportunity to file an Affidavit in opposition to the application herein and for Counsel to address the Court on points of law. No such filing or appearance was made by Counsel.

14. I have read the Particulars of claim, especially Clause 1 thereof, which refers to some sort of Agreement, partly oral, written and by conduct between the Plaintiff and the Defendants for services which, it is the Court's understanding, ought to have been performed by the Plaintiff through the 3rd Defendant. It is the evidence before the Court, which has not been contested, that apart from the contract referred to above, the Plaintiff personally contracted with the 1st and 2nd Defendants to perform services for which receipts were issued as in Exhibits VII.5(1-5) and VII.5(10).

15. The Court refers to Order 17 Rule 2 of the Rules and state that Counsel for the Plaintiff/Respondent having failed to oppose the application herein and having failed to show the contract, oral, written or otherwise between Plaintiff and the Defendants and in consideration of the receipts tendered as in Exhibit VII.5(1-10) for services complained of by the Plaintiff as submitted by the Applicants and the 3rd Defendant, **IT IS ORDERED AS FOLLOWS:**

1. That the Plaintiff's claim do not disclose any cause of action against the 1st and 2nd Defendants/Applicants because it fails to show any contractual relationship because of lack of any contractual relationship.
2. That all payments in respect of the 1st and 2nd Defendants were fully discharged by payment to the 3rd Defendant for the Plaintiff.
3. That the action against the 1st, 2nd and 3rd Defendants are accordingly dismissed.
4. No order as to costs.


Hon. Jst. M.M Samba, J