

**Between:**

**Masjid As' Salam &**

**Others -- Plaintiffs.**

**And**

**Haja Isata Daramy &**

**Others -- Defendants.**

**Counsel:**

**Yada H. Williams Esq. for the Plaintiffs.**

**Alhaji M. Kamara Esq. for the Defendants.**

**Ruling on an Application for an Injunctive Relief, Pursuant to an Application Via a Notice of Motion, dated 11<sup>th</sup> May 2021, Delivered by The Hon. Dr. Justice A.B.M. Binneh-Kamara, on Tuesday 5<sup>th</sup> April, 2022.**

**1.1 Introduction.**

This is a ruling, based on an application made to this Honourable Court by Alhaji M. Kamara Esq. in respect of a number of orders, encompassing a specific interlocutory injunctive relief and cost. As required by Sub rule (4) of Rule 1 of Order 35 of the High Court Rules 2007, Constitutional Instrument NO.8 of 2007 (hereinafter referred to as The HCR 2007), the application is made by a Notice of Motion, dated 11<sup>th</sup> May 2021, supported by the requisite affidavit, sworn to and dated 11<sup>th</sup> May 2021. The affiant to the said affidavit is the 1<sup>st</sup>

Defendant/Applicant (hereinafter referred as the Applicant), who is a business woman, residing at NO.48 Off Beach Road, Aberdeen, Freetown. However, in accordance with Sub rule (6) of Rule 1 of Order 35 of The HCR, 2007, the aforementioned application is seriously contested by Yada H. Williams Esq., pursuant to an affidavit in opposition, sworn to by Sheku Kabba Samura, a Trustee of the 3<sup>rd</sup> Plaintiff/Respondent (hereinafter referred as the Respondent), of NO.34 Off Beach Road, Freetown, in the Western Area of the Republic of Sierra Leone. Nonetheless, procedural issues of irregularity were not raised or detected, when the application was argued on Monday, 2<sup>nd</sup> November, 2021. Further, my reading of the contents of the application, confirms the fact that Counsel complies with the appropriate provisions of the HCR 2007. However, what is certain, is that both affidavits contain a plethora of facts that are contradictory of each other. And considering the fact that both affidavits are of the appropriate evidential value, it is legally expedient for this Honourable Court, to accordingly scrutinize and compare their contents, to determine whether the application should or should not be granted.

## **1.2 The Arguments of Counsel for the Applicant.**

Essentially, by way of a synopsis, the arguments canvassed by Counsel for the Applicant in justification of why he thinks the application should be granted, are thus presented herein:

1. The affidavit supporting the application, contains three (3) attachments, marked Exhibit HID1-3. Exhibit HID1 is the writ of summons, commencing this action. Exhibit HID2 is the registered title deed (conveyance) of the Applicant. Exhibit HID3 is a correspondence from the Directorate of the

Ministry of Lands, addressed to investigators of the Criminal Investigations Department (CID), on issues relating to land grabbing.

2. That the Applicant came to be entitled to all that piece and parcel of property situate, lying and being at Off Beach Road, Lumley, Freetown in the Western Area of the Republic of Sierra Leone, by virtue of a deed of conveyance dated 15<sup>th</sup> July 1991, registered as number 874/91 in Volume 451 at page 34 in the Record Books of Conveyance, kept in the Office of the Administrator and Registrar-General (see Exhibit HID2).
3. That in a report dated 2<sup>nd</sup> August, 2016 from the Office of the Director of Surveys and Lands, the Ministry of Lands concluded that the land in dispute is the bonafide property of the Applicant (see Exhibit HID3).
4. That the Respondents have erected a concrete structure on the land and have continued to construct structures on the land and depositing sand, stones and other building materials therein at the expense of the fee simple absolute in possession of the Applicant.
5. That the Respondents have continued with their illegal activities and operations in spite the fact that they have been constantly warned to desist from doing so.
6. That the balance of convenience clearly lies in favour of the grant of the orders as prayed; as that is what the justice of the case demands.
7. That the Applicant is prepared to make the appropriate undertaking for damages, pursuant to Sub rules (1), (2) and (3) of Rule 9 of Order 35 of The HCR, 2007; noting that Counsel relies on the entirety of the affidavit and the Exhibits attached thereto.

8. That there are indeed very serious contentious issues that should undoubtedly warrant a full-blown trial, because the parties to this litigation are claiming the same realty.
9. The land mark decision on injunction in American Cyanamid Co. Ltd. v Ethicon Ltd. All ER (1975) Exhibit HID1 is accordingly referenced in confirmation of the foregoing submission that there are triable issues, which this court must determine. This reiterates Counsel's argumentation that the balance of convenience favours the basic fact that the status quo must not be maintained; adding that the peculiarity of the circumstances of this case frowns at the adequacy of damages.

### **1.3 The Arguments of Counsel for the Respondent.**

Meanwhile, contrary to the aforementioned arguments, Counsel for the Respondent, rationalised his arguments on why he thinks the application should not be granted on the following points, which he believes are quite sufficient enough, to convince any reasonable tribunal of facts, for the application to be denied and relegated to the backwaters:

1. The affidavit in opposition, containing six (6) attachments, articulates the salient facts of the Respondent's case in sixteen (16) elaborate, but unequivocal paragraphs. The attachments are marked as Exhibits A-F. Exhibits A is the site plan signed by the Director of Surveys and Lands, in respect of the realty, which is in the Respondent's possession. Exhibit B is a letter of offer for the lease of a state land at Lumley Beach, Aberdeen, Freetown, signed by the Director of Surveys and Lands. Exhibit C is a correspondence, from the Task Force Against Land Grabbing Reg-Pol West,

Lumley Police Station, addressed to the Respondent. Exhibit D, E and F, are photographs of a mosque that is still in construction.

2. That the 3<sup>rd</sup> Respondent herein is and was at all material times the lessee entitled to possession of that piece and parcel of land delineated on survey plan dated 1<sup>st</sup> November, 2012 with LOA NO.9538 measuring 0.4504 acre, situate lying and being at off Beach Road, Lumley, Freetown, with the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs being the trustees of the 3<sup>rd</sup> Respondent (Plaintiff) (see Exhibit A).
3. That by a letter of offer for the lease of state land, dated 13<sup>th</sup> November 2012, the Ministry of Lands, Country Planning and the Environment (the Lessor) granted the 3<sup>rd</sup> Respondent (the Lessee) a lease of property delineated on survey plan dated 1<sup>st</sup> November 2012, for a ground rent of Le 2,000,000 per month.
4. That the 3<sup>rd</sup> Respondent became possessed of the aforesaid piece of land immediately thereafter (see Exhibit B). That it was against this backdrop that the Plaintiffs thought it necessary to commence the construction of their place of worship on the land.
5. That between 2007 and 2008, the Plaintiffs and the Applicant, started having issues about the ownership of the land. Subsequently, negotiations were held between the parties and a portion of the land was then made available to the Applicant for the construction of a septic tank.
6. That the Applicant got the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants to construct dwelling houses on the land. This action, prompted the Plaintiffs, to make several reports, against the Applicant and the other Defendants to the Task Force Against Anti-Land Grabbing Unit of the Sierra Leone Police and the

Applicant and Defendants were accordingly warned to stop the constructions of their illegal structures.

7. That by a stop notice dated 3<sup>rd</sup> March 2020, from the said Unit of the Sierra Leone Police, the Respondent were ordered to stop all construction works on the land, pending the completion of the investigations of the title to the realty in question. The Respondent has since then seized the construction works and has only been allowing prayers to be done in the precinct of the unfinished mosque (see Exhibit D, E and F).
8. That the mosque, which was being constructed on the land is almost completed and is in daily use, but will require regular maintenance to meet the challenges of particularly the raining season. The fact deposed to in paragraph 5 of the affidavit, supporting the application is not true, because sand, stones and building materials, have not been taken to the land, since the Police issued the stop notice.
9. That the Applicant by making this application is to disrupt and preclude hundreds of Muslims that worship and pray in the mosque, from complying with their daily religious obligations. This will certainly result in protestations and uprisings that will have very serious consequences for law and order in that community.
10. On the basis of the principles of *American Cyanamid Co. Ltd. v Ethicon Ltd.* All ER (1975), an injunction should not be granted, should the Applicant be adequately compensated with damages at the end of the day.

### **1.3 The Approach Guiding the Determination of the Application.**

Having presented the submissions of Counsel, I will thus proceed to examine their individual arguments, albeit comparatively, against the backdrop of the apposite statutory instrument (The HCR 2007) and the requisite case law, embedded in the subsisting literature on injunctive reliefs, to determine whether the application should or should not be granted. Moreover, in the circumstances, the significance of reviewing the subsisting literature, pursuant to which a court of competent jurisdiction, can grant or refuse to grant an injunction, is rooted in the fact that, such a review will guide this Honourable Court, to assess how the Superior Courts of Judicature in the Commonwealth jurisdiction, have been exercising their discretionary and temporary jurisdiction in making injunctive orders. Meanwhile, the words 'discretionary' and 'temporary', as used in the above paragraph, presuppose that those injunctive interlocutory orders can only be made in circumstances, wherein the Superior Courts of Judicature, are discretionally authorised, via statutes or statutory instruments, to exercise such power, in the interests of justice, fairness and reasonableness; and such orders shall never subsist beyond the trial period.

#### **1.1 Analytical Exposition.**

Essentially, the position of the law regarding the circumstances in which an injunction should or should not be granted is well articulated in the numerous legal authorities that dovetail with the principal sources of law in Sierra Leone. The shared-body of knowledge in this area of the law is embedded in statutes and a host of decided cases in and out of our jurisdiction. A trenchant perusal and analysis of the cases in this province of the civil law, leads me to put the following

cases into context: *American Cyanamid Co. Ltd. v Ethicon Ltd.* (1975) 1 All ER, *Fellowes and another v Fisher* (1975) C A 829-843, *Hussein Abess Musa (for and on Behalf of the Beneficiaries) v. Musa Abess Mousa and Others* (C.C 745/06 S 2006 M NO. 3) {2007} SLHC (22<sup>nd</sup> February, 2007). *Watfa v. Barrie* Civ. App. 26/2005 (Unreported), *Chambers v Kamara* (CC 798/ 06) (2009) SLCH 7 (13<sup>th</sup> February, 2009) (Unreported) and *Mrs. Margaret Cozier v. Ibrahim Kamara and Others* CC. 165/18 2018 C. 06 (22<sup>nd</sup> January, 2020).

Significantly, the *American Cyanamid Case* (the only case law alluded to by Counsel for the Applicant) is a monumental precedent that has undoubtedly guided the Superior Courts of Judicature in the commonwealth jurisdiction in handing down their landmark decisions on a plethora of decided cases on injunctive reliefs. In tandem with Lord Diplock's reasoning, the other Law Lords (of the House of Lords) that presided over this case (Lords Viscount Dilhorne, Cross of Chelsea, Salmon and Edmund Davies, held that to determine whether a court of competent jurisdiction should or should not grant an injunctive relief, the following threshold must be met:

1. The Court must determine whether there is a serious question of law to be tried. And at this stage, it would not be necessary for the Applicant to establish a prima facie case, when the application is made, but the claim (upon which the application is based) must neither be frivolous, nor vexatious.
2. The Court must also establish the adequacy of damages; as a remedy, should it turn out at the end of the trial that, the injunction (if granted) should not have been granted.



3. The Court must finally establish whether the balance of convenience is located in maintaining the status quo or not.

These criteria have clearly influenced the evolution of the jurisprudence in this province of the civil law in the Commonwealth jurisdiction, because the American Cyanamid Case is a well cited authority in innumerable applications for injunctive reliefs in the United Kingdom, the Caribbean and Africa. Meanwhile, shortly after the clinical decision in the foregoing locus classicus, Lords Denning, Browne and Pennycuick, on the 15<sup>th</sup>, 16<sup>th</sup> April and 2<sup>nd</sup> May, 1975, replicated the aforementioned criteria in *Cyanamid Co. Ltd. v Ethicon Ltd.* (1975) 1 All ER in *Fellowes and another v Fisher* (1975) C A 829-843; and refused to grant the interlocutory injunction, which was the principal thrust of the appeal. Meanwhile, the salience of the precedent of the latter case, which should be given valence and prominence in this ruling, is rooted in how the Court of Appeal of England, dealt with the legally and thornily controversial issue of balance of convenience in the determination of whether an injunctive relief, should or should not be granted.

Significantly, the issues that are cognate with the relative strength of each party's case and the circumstances in which their relative strength should be taken into account, are the main considerations, which the Court of Appeal of England, made quite salient in the assessment of whether the Superior Court of Judicature, should or should not be inclined to grant or refuse specific injunctive reliefs, as prayed. Analytically, in our jurisdiction, in the celebrated case of *Watfa v. Barrie* (referenced above); the threshold for the grant of an injunction as pontificated in the American Cyanamid Case, was incisively reviewed, but the application for the

injunctive order, was accordingly repudiated. Moreover, The Hon. Justice A. B. Halloway's decision in Hussein Abess Musa (for and on behalf of the Beneficiaries) v. Musa Abess Mousa and Others (C.C 745/06 S 2006 M NO. 3) {2007} SLHC (22<sup>nd</sup> February, 2007), was made in tandem with the decision in Watfa v. Barrie Civ. App. 26/2005 (Unreported).

Nonetheless, The Hon. Justice Desmond B. Edwards J. (as he then was) applied the foregoing criteria in the American Cyanamid Case to the facts in Chambers v Kamara (referenced above), to grant an interlocutory injunctive order in favour of the Applicant. Furthermore, The Hon. Dr. Justice A. Binneh-Kamara, J. in Mrs. Margaret Cozier v. Ibrahim Kamara (referenced above), granted the application for an interlocutory injunction; after an introspective reflection of the threshold established for the award of such orders in both the American Cyanamid and Fellowes Cases. Meanwhile, the trend of thought that is discernible in the analysis, leading to the decisions in the aforementioned cases, is that The HCR 2007, strengthened the quintessential fact that interlocutory injunctive orders are discretionary and temporary. Therefore, it is the peculiarity of the circumstances of any case that would and should determine whether a reasonable tribunal of fact should or should not grant injunctive reliefs.

## **1.2 The Critical Context.**

Significantly, the issues that are cognate with the relative strength of each party's case and the circumstances in which their relative strength should be taken into account, are the main considerations, which the Court of Appeal of England, made quite salient in the assessment of whether the Superior Court of Judicature, should or should not grant specific injunctive reliefs. I will commence this bit of

the analysis by saying that I am compelled to clarify the uncertainty and dispel the misconception about the determination of the actual owner of the fee simple absolute in possession at this stage. Meanwhile, citing the contents of Paragraphs 2 to 7 of the affidavit in support of the application, Counsel for the Applicant, emphasizes that the Applicant is the person, entitled to the fee simple absolute in possession. This same claim is as well made by Counsel for the 3<sup>rd</sup> Respondent in the contents between Paragraphs 7 and 15 of the affidavit in opposition. These submissions are of little or no weight at this stage and they do really have less to do with whether the injunction should or should not be granted. And of course, these submissions fall outside the frameworks for injunctive orders; established in particularly the American Cyanamid Case.

Nonetheless, it should be noted that I am only faced with the determination of a pre-trial motion at this stage. And that does not have anything to do with the determination and declaration of who the actual fee simple owner is, in respect of the realty, for which this matter is actually in Court. However, an in-depth analysis of Exhibits HID 2 and A and B, reveals that such Exhibits are clearly justifying the claims of ownership of the same realty, on the basis of a conveyance, which site plan was signed by the Director of Surveys and Lands; and a leasehold interest, which the said ministry contractually made out in respect of the same realty, supported by a site plan, which is as well signed by the same ministry.

However, both Counsel should appreciate the fact that it is only the High Court of Justice of the Republic of Sierra Leone, which has the unfettered original exclusive jurisdiction to determine titles and true ownerships of realties in the Western Area. Furthermore, the issue of possession has been raised by both Counsel on

behalf of their clients. Whereas the Applicant wants this Honourable Court to impose an injunction on the Respondent; the Respondent denies the desirability of imposing any injunction at this stage. Also, whereas the Applicant's Counsel has canvassed the inadequacy of damages, should the injunction be refused, Counsel for the Respondent has argued for the injunction not to be granted, because he considers damages as adequate remedy, which can be awarded to the Applicant, should the matter be finally determined in her favour. Interestingly, the issue of the adequacy and/or inadequacy of damages is a criterion, which the court considers in granting an injunction. Thus, in this instant application, the Applicant has not proven the case for the inadequacy of damages, should the injunction be denied.

The other criterion is whether there is indeed a question of law to be tried. The relevance of this criterion to the instant case is that both parties, are laying claims to the same realty, which ownership is yet to be determined. And they are both relying on their respective documents of title. Thus, the strength of each other's title, which is the basis for the determination of ownership is held in abeyance in this ruling. What matters at this stage is that they are both holding on to something in respect of ownership. Thus, there is no need to enquire about whether the Applicant has a prima facie case at this stage or whether the application is frivolous and vexatious. What really matters now is the fact that, there are issues, manifesting the necessity for a trial; as both parties are laying claims to the said realty. Finally, this Honourable Court does not think the balance of convenience, lies in favour of the grant of an injunction, considering the peculiarity of the facts that the 3<sup>rd</sup> Respondent is in the meantime, allowing worshippers to exercise their constitutional rights to freedom of conscience and

assembly in the precinct of a mosque, which ownership of title is yet to be determined.

Thus, having sequentially unraveled the contentious individual issues, underpinning the arguments of both Counsel, in a bid to sway the decision of this Honourable Court on this application, I will now proceed with my final task, which is geared towards the determination of the application. Against this backdrop, it should be reiterated that it is the peculiarity of the circumstances of every case that would determine whether a reasonable tribunal of fact, should or should not grant injunctive reliefs. Therefore, in the instant case I will refuse the application for the grant of an interlocutory injunction. Further, I will urge the parties to comply with the Court's directions for the matter to be set down for trial. Finally, I will make no order as to cost; for each party is expected to bear the cost in respect of this application. I So order.

The Hon. Dr. Justice A. Binneh-Kamara, J.

Justice of the Superior Court of Judicature of

Sierra Leone.