

Between:

Haja Fanta Daramy

(Suing by Her Attorney Mariama Kondeh) - Plaintiff

And

Emmanuel Sanko Sawyer and

Others - Defendants

Counsel:

A.B.D Bangura Esq. for the Plaintiff

E. T. Koroma Esq. for the 1st and 2nd Defendants

E.F. Beoku-Betts for the 3rd Defendant

P. Fofana Esq. for the 5th Defendant

G. Conteh Esq. for the 7th Defendants

Ruling on an Application for an Injunctive Interlocutory Order **Delivered by the Hon. Justice Dr. Abou B. M. Binneh-Kamara, J. on Thursday 4th May 2023.**

1.1 Background and Context

A.B.D. Bangura Esq. of Dexter Bangura and Co. of 35 Lightfoot-Boston Street, Freetown in the Western Area of the Republic of Sierra Leone, filed an ex parte application, dated 3rd February 2020 for some specific orders vis-à-vis interim and interlocutory injunctions, cost and any other order that the Bench deems just, fair and reasonable in the circumstance. The file was accordingly withdrawn for a ruling; as it was not expected that the Defendants, would file affidavits in opposition, because it was an ex parte application. It could not

have been presumed that the other side would have responded to the application, because they would not have known about its existence.

Meanwhile, the Bench, sagaciously granted the interim injunction and simultaneously ordered the Plaintiff's Counsel to serve the requisite processes on the Defendants, so that they could get their respective Counsel to come argue the interlocutory injunction. On the 26th March 2020, E.T. Koroma Esq. Counsel for the 1st and 2nd Defendants, informed the Court that he was inclined to cross-examine the deponent (Mariama Kondeh) to the supporting affidavit, attached to the very application, pursuant to which the interim injunction was made. Counsel went ahead and filed the opposite papers, after he was instructed by the Bench to file his affidavit in opposition, before he could file the notice of intention to cross-examine the deponent to the affidavit, which content was now being contested.

The directions were given, pursuant to the Bench's second ruling in this matter, dated 7th December 2020. In his wisdom, Counsel complied and was thus permitted to cross-examine the deponent. Subsequently, Counsel representing some of the other Defendants, went ahead and did same. Meanwhile, the said Counsel later filed their affidavits in opposition and A.B.D. Bangura Esq. filed affidavits in reply to their affidavits in opposition, in justification of why an interlocutory injunctive relief, should be granted in favour of the Plaintiff, against the Defendants in this action.

1.2 Analytical Exposition: The Law on Injunction

The law on injunctive reliefs, has continued to evolve, with the myriad of case law that has emerged in civil litigations (in the commonwealth jurisdiction). This state of affair has generated a very reach body of knowledge on the equitable remedy of injunction in our jurisdiction. Injunctive remedies are so

versatile that they can be invoked at any stage, even before, during and after a trial. At the pre-trial and trial stages, they can be either interim or interlocutory, but they can be made perpetual at the post-trial stage. They are made perpetual at this later stage, because the courts would have heard the evidence and would have determined the outcomes of the litigations. Injunctive reliefs are thus an effective mechanism, pursuant to which the courts can enforce the rights and liberties of deserving litigants. Thus, the application that is to be determined concerns the grant or refusal of an interlocutory injunctive relief. Therefore, it will amount to an exercise in futility, should this analysis spread its tentacles, to embrace any legal authority on perpetual injunction.

Meanwhile, it should be noted that injunctive interlocutory orders are thus discretionary and temporary (see Paragraph 29/L/3 at page 565 of the English Supreme Court Annual Practice, 1999). That is, courts of competent jurisdiction, can exercise their discretion to grant or not to grant them, via statutes or statutory instruments, in the interests of justice and fairness. Moreover, such orders will never subsist beyond the trial period. 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 epistemology 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, flags the inevitable precedents in the following cases for immediate considerations: *American Cyanamid Co. Ltd. v. Ethicon Ltd.* (1975) 1 All ER, *Fellows 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 (22nd February 2007). **Watfa v. Barrie** Civ. App. 26/2005 (Unreported), **Chambers v. Kamara** (CC 798/ 06) (2009) SLCH 7 (13th February 2009) (Unreported) and **Mrs. Margaret Cozier v Ibrahim Kamara Others** CC. 165/18 2018 C. 06 (22nd January 2020), **PC Dr. Alpha Mansaray Sheriff the II v. Attorney-General and Minister of Justice and Others** (Misc. App. 6/2011) and **Alhaji Samuel Sam-Sumana v. The Attorney General and Minister of Justice of Sierra Leone and Victor Bockarie Foh** S.C 2015.

These cases are quite clear on the guiding principles that the courts have developed on injunction. Meanwhile, the American Cyanamid case, reflects the most salient precedent that has undoubtedly guided the Superior Courts of Judicature in the Commonwealth jurisdiction in handing down their decisions on decided cases on injunction. 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 injunction, 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 in maintaining the status quo or not.

These criteria have clearly influenced the development of the law on injunction in English jurisprudence. Thus, 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 monumental decision in the foregoing locus classicus, Lords Denning, Browne and Pennycuick, on the 15th, 16th April and 2nd May, 1975, replicated the criteria for the grant or refuse of an injunction, established in *American Cyanamid Co. Ltd. v. Ethicon Ltd.* (1975) 1 All ER in the other celebrated case of *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 in that case.

Meanwhile, the valence of the precedent of the latter case, which should be given prominence and salience in this ruling, is rooted in how the Court of Appeal of England, dealt with the thornily controversial issue of balance of convenience in the determination of whether an injunction 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 considered, are the main concerns, which the Court of Appeal of England, made quite prominent in the assessment of whether the Superior Court of Judicature, should or should not grant an injunction.

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. More importantly, 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 (22nd February 2007), was made in tandem with the decision in *Watfa v. Barrie* Civ. App. 26/2005 (Unreported).

Most importantly, in *Alhaji Samuel Sam-Sumana v. The Attorney General and Minister of Justice of Sierra Leone and Victor Bockarie Foh* S.C 2015, the Hon. Justices V. V. Thomas, CJ., N. C. Browne-Marke, JSC., E. E. Roberts, JSC., V. M. Solomon, JSC., and P. O. Hamilton JSC., applied the same test in the American Cyanamid case, to refuse the injunctive interlocutory order as prayed in that constitutional case. Nonetheless, The Hon. Justice Desmond B. Edwards J. (as he then was) applied the same 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. Justice Dr. 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. Significantly, the trend of thought that is discernible in the analysis, leading to the decisions in the above cases, is rationalized in Order 35 of the HCR, 2007. This argument strengthens the quintessential fact that interlocutory injunctive orders are discretionary and temporary. Therefore, it is the peculiarity of the circumstances of any case, that would determine whether a reasonable tribunal of fact, should or should not grant such injunctive reliefs. Thus, Order 35 Rule 1 of the HCR 2007, states that:

‘The Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so and the

order may be made either unconditionally or upon such terms and conditions as the Court considers just’.

The other essential point which must be made very clear in this analysis, leading to the determination of the application, is cognate with the conditionality of the applicant seeking for an injunction to make the requisite undertaking, to pay damages to the other side, should it turn out at the end of the trial that, the interlocutory injunction, ought not to have been awarded at all. Thus, Order 35 Rule 9 of the HCR 2007, makes the undertaking for damages a clearly mandatory conditionality, for the award of an interlocutory injunction.

1.2 The Critical Context: Relating the Evidence to the Law

Having analysed the law’s position on injunction, I will now proceed to apply the laudable test in the American Cyanamid Case to the facts and facts-in-issue in the instant case. The first limb of the test is that 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. The application’s supporting and opposing affidavits have clearly depicted that there is indeed a serious question of law to be tried in the instant case. The case’s principal thrust swirls around declaration of title to realty.

The Plaintiff’s Counsel exhibited the title deed, pursuant to which his client is claiming ownership. And the other Counsel representing some of the Defendants have as well produced title deeds in respect of the same realty. This raises a serious question of law to be determined by the Court. This means that there is indeed a serious question of law to be tried. Therefore, the case

on which the application is based is neither frivolous nor vexatious. It is the Plaintiff's conviction that the realty for which the action is in Court is hers. So, she believes that the Defendants are trespassers; and should hence be restrained from having anything to do with the realty, until the matter is eventually determined.

Nonetheless, it is known in our jurisdiction that the mere production of a conveyance in evidence, does not presuppose the establishment of a genuine and good title. A party that relies on a conveyance, must go further to prove a good root of title, because his conveyance may be even be worthless or useless: *Seymour Wilson v. Musa Abess* (SC Civ. App. N0. 5/79) and *Sorie Tarawallie v. Sorie Koroma* (SC Civ. App. 7/2004). So, the Court at this stage, is not concerned about whether the Plaintiff has really made a prima facie case for a declaration of title to property at this stage. It is rather concerned about the salient facts, resonating with the issue that is cognate with the test's first limb (which it has already examined): That there is a serious issue to be tried; and the application must be based on facts that are neither frivolous nor vexatious.

The test's second limb is that 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. The application of this limb of the test to the facts and facts-in-issue in the instant case appears complex, because most of the Defendants are already in occupation of the realty. The question of how they came into occupation; whether they are trespassers; whether they own legal or equitable interests; are only quite relevant to the final determination of the matter. However, their opposing affidavits have as well shown, that they are also (as the Plaintiff) claiming the realty. So, for them, the inadequacy of damages in the circumstance should prevent the Court from granting an injunction at this stage. Contrariwise, the

Plaintiff has even made an undertaking that, if the injunction is granted now, but in the end it turns out that it should not have been granted, they would pay damages to the Defendants.

The Court must finally establish whether the balance of convenience is in maintaining the status quo or not. The evidence, as depicted in the application's supporting and opposing affidavits, present very serious issues that the Court must consider at this stage. Would it be convenient to injunct the Defendants, that have averred that the realty is theirs, and had been in occupation, even before this action is instituted? Would it be convenient to deny the application for an interlocutory injunction, given the salience of the facts deposed to in the supporting affidavit? Where does the balance of convenience lie at this stage? If the Court decided to grant the application, should the order be framed in the conventional way that injunctions, are usually made by Courts of competent jurisdiction? Or should it be framed in a peculiar way, reflecting the peculiarity of the peculiar circumstances of this case?

With these intriguing questions in mind, this Honourable Court hereby orders as follows:

1. That the Defendants by themselves, their servants, privies, workmen or howsoever called, known or described, are hereby restrained by this Honourable Court from further carrying out any work by way of further construction, digging of the soil, erecting any further structure or howsoever a construction work may be known or described on the realty which ownership is in contention or any portion thereof from further letting out any structure on the said land or any portion thereof or disposing of the said land by any other means whether the same is by

further letting out to tenants, sale, mortgage, by deed of gifts or howsoever an interest in the realty is disposed of whether that interest is legal or equitable pending the eventual determination of this matter.

2. That all proceeds accruing to the realty from rents paid by tenants already in occupation be paid into an escrow account kept at the Sierra Leone Commercial Bank Limited Siaka Stevens Street Freetown and the receipts of the said payments be forwarded to the parties' respective solicitors on records and copies thereof be filed with this Honourable Court such payment shall continue until the final determination of this matter.
3. That the Defendants within 14 days of this order file with this Honourable Court a list of all tenants in occupations of portions of the said realty the nature of their tenancy and rent paid under any tenancy agreements.
4. That this Honourable Court further to these Orders, hereby Orders that the Plaintiff's Counsel shall file the apposite summons for direction four (4) days to the date of this order.

I so Order.

The Hon. Justice Dr. Abou B.M. Binneh-Kamara, J.

Justice of Sierra Leone' Superior Court of Judicature.

