

IN THE HIGH COURT OF SIERRA LEONE**(COMMERCIAL AND ADMIRALTY DIVISION)****(TRANSFERRED TO CIVIL DIVISION by Order of the Court****dated 23rd January 2017)****BETWEEN:****SANGARE CONSTRUCTION CO.****- 1ST PLAINTIFF****SHEKU KONDEH****- 2ND PLAINTIFF****ANSUMANA CISSE****(Trading as Ansumana Cisse Enterprise)****- 3RD PLAINTIFF****AND****DAWNUS CONSTRUCTION CO.****- 1ST DEFENDANT****KARIM CONTEH****- 2ND DEFENDANT****COUNSEL****A.B. Moisia Esq. for the Plaintiffs****I. Sorie Esq. for the Defendants****RULING DELIVERED THIS 8th DAY OF JUNE 2022 BY HONOURABLE MRS. JUSTICE JAMESINA
E. L. KING J.A**

1. On 22nd March 2021, the Defendant by Notice of Motion dated 3rd February 2021 applied for a stay of proceedings in this matter pending the administration/dissolution of the 1st Defendant. This application was supported by the affidavit of Isaac D. B. John together with the exhibits attached to it. In his affidavit, Mr. John stated that the 1st Defendant is a company incorporated in the U.K and reliably informed by Ibrahim Sorie Esq. Counsel for the Defendants that the Company is currently in administration, no longer has any operations, place of business or assets in Sierra Leone and it will be in the interest of justice if the application is granted.

2. In opposition to the application was the affidavit of Alysious Brima Moisia sworn to on 23rd February 2021. In his affidavit Mr. Moisia stated that the administration of 1st Defendant does not discharge the Company of its liability to the Plaintiffs should judgment be delivered against the Defendants herein. He further stated that the 1st Defendant is seized of the proceedings and as such the joint administrators ought to have been reminded of the same and advised to make provisions for the outcome of these proceedings. He also stated that the 1st Defendant has not been dissolved and it is very likely that the administration of the company shall be extended for a further twelve months.
3. He further stated that the administrators of the 1st Defendant have already realized a total of Four Million British Pounds just from plant and machines from which provisions could be made for the Plaintiffs should judgment be given in their favour. According to him the Plaintiffs have suffered severe hardship by reason of the negligent acts of the 2nd Defendant working for the 1st Defendant, and one of the Plaintiffs have been rendered permanently handicapped. He concluded that it will be in the interest of justice if this action proceeds expeditiously and judgment delivered on the merits.
4. Both Counsel addressed the court in respect of the application. Counsel for the Defendant/Applicant referred to section 436 of the Companies Act which he submitted is applicable in this case as the Company is on its last days, as its winding up is imminent. He referred to Exhibit IDBJ 7, a joint administrators' progress report. He submitted that this was an insolvent company waiting for its dissolution certificate.
5. Counsel for the Plaintiffs/Respondent submitted that there are questions to which the Court should address itself to which are (a) Whether the 1st Defendant/Applicant has been dissolved? (b) Whether the 1st Defendant/Applicant is in the process of administration & winding up as a company and (c) whether the process of administration and winding up of the company is a dissolution of same. He submitted that the answers to (a) is no, to (b) is yes and to (c) is no. He referred to IDB J5 paragraph 3.2.7 which requires the Company to fulfil any obligation or liability it may undertake or which may become binding on it
6. He submitted that assuming without conceding that paragraph 6, 7, & 8 of the affidavit in support is anything to go by, the Company will be in violation of section 489 of the Companies Act No. 5 of 2009 which requires notice of the winding up of the Company to be sent to the Corporate Affairs Commission, as there is no evidence of such notice. He further submitted that Halsbury's Laws of England Vol. 6, 3rd Edition at page 730 under the rubric "effect of dissolution", he submitted that this can apply if the 1st Defendant has been dissolved. Counsel stated that the liquidator will have to apply to the court for a dissolution of the company and there is no such order before the court. He therefore prayed that the Court dismiss the application with costs and the matter be tried expeditiously.
7. In reply Counsel for the Applicant submitted that the 1st Defendant is in the process of being wound up which is irreversible and which will end in dissolution. He referred to the progress report which indicated no hope for salvation of any of the companies which form part of the group of companies listed, including the 1st Defendant. He

said affidavit of I.D.B. John as the Company is no longer operational, has no business in Sierra Leone and more importantly has no assets in Sierra Leone.

8. He referred to the case of *Sierra Leone Enterprises Ltd vs. Attorney-General & Minister of Justice & Another* S.C. 4/2005 dated 18th July 2008 which states that where material facts in support of an application has not been controverted, the facts in the affidavit are to be taken as true. He submitted that the Plaintiff did not controvert that there are no assets of the Defendant or that the Defendant is operational or has a place of business in Sierra Leone. He stated that if there are no assets in Sierra Leone to execute upon, if the Plaintiff is successful, the judgment would be rendered nugatory. He submitted that the Court should not make an order in vain, as there is no way the Plaintiff can satisfy a judgment in their favour in Sierra Leone. He referred to paragraph 15/23 at page 754 Halsbury's Laws of England, 3rd Edition Vol. 6 under the rubric "Staying and restraining proceedings under Voluntary Winding Up" and section 405 of the Companies Act 2009 on the consequences of voluntary winding up.
9. Counsel also referred to Order 20A Rule 3-5-3 & 20A – 354 found on page 1643 of Volume 2 of the Supreme Court Practice of 1999 and submitted that the gravamen of both paragraphs are that a court has discretion to grant a stay of proceedings even before the dissolution of a company. This applies for both winding up by the Court and Voluntary winding up, see page 1640 of Volume 2 of the White Book under rubric nature of effect of a stay of proceedings.
10. He concluded that events have progressed that the parties at the time of initiating the action did not foresee, and urged the Court to use its inherent powers to order a stay of proceedings.

Decision

1. The Court has an inherent jurisdiction to stay proceedings which are an abuse of its process, such as frivolous, vexatious or harassing proceedings or those which are manifestly groundless or in which there is clearly no cause of action in law or in equity. See Supreme Court Practice 1999 at paragraph 20A – 334. The Court always has a discretion whether or not to accede to an application to stay proceedings. See *Bettinson v Bettinson* 1965 CH 465.
11. The issue for determination is whether this Court can exercise its discretion to grant the Defendants' application to stay the proceedings for the reasons stated in the affidavit in support of the application set out above.
12. This is an action instituted by the Plaintiffs on 2nd September 2015 against the Defendants jointly and severally for negligence, special damages and costs, arising from an accident which occurred on 22nd December 2014 in Lunsar. The CAT truck vehicle which allegedly caused the accident was owned by the 1st Defendant, driven by the 2nd Defendant within the scope of his duties. As a result, the 1st Plaintiff's Renault truck was damaged, the 2nd Plaintiff who was the driver of the 1st Plaintiff's truck sustained injuries and the 3rd Plaintiff who contracted the 1st Plaintiff to transport iron ore at the material time also occasioned loss and damage. Particulars of the special damages claim of all of the Plaintiffs are set out in the Statement of Claim.

13. The Defendants entered an appearance on 10th November 2015 and filed a Defence on 2nd December 2016. In their Defence, the Defendants admitted that a collision occurred and denied the allegations of negligence set out in the Plaintiffs' Particulars of Claim. On 23rd of January 2017, by an order of court, this matter was transferred to the Civil Division of the High Court. By a notice dated 5th December 2018 the Plaintiff gave notice of their intention to proceed with the action pursuant to Order 41 Rule 9 of the High Court Rules 2007. On 13th November 2019 this Court issued directions for the trial upon the application on behalf of the Plaintiffs. Trial of the action has not commenced.
14. In the current application to the court for a stay of proceedings, the affidavit evidence is to the effect that the 1st Defendant Company is currently in administration evidenced by the administration documents relating to the Company exhibited, i.e. Form AM 19, Notice of extension of period of administration and Form AM10, Notice of administrator's progress report for the period 15th March 2020 to 14th September 2020. Looking at these documents in particular the Executive Summary in Form AM10, it is stated that the administration is due to end on 14th March 2021 and it is intended to apply for an extension for a further 12 months. This is a process and has not been concluded.
15. There is no evidence that the Company has been dissolved. In the absence of this evidence, taking into consideration that the incident giving rise to potential liability of the Company occurred in 2015 and the action was initiated immediately thereafter, when the Company was in full operations, will it be in the interest of justice to prevent the Plaintiffs from proceeding with their matter when they have manifested an intention of pursuing their claims and are willing and ready to do so?
2. In this action it is not only the Company who is the Defendant, the 2nd Defendant is also a party to this action and is alleged to have been personally liable for the negligence alleged. If the proceedings are stayed against the Company, such a stay will apply to the 2nd Defendant and no reason has been advanced why proceedings against him should be stayed.
3. The Courts attention has been drawn to the fact that the 1st Defendant no longer has any operations, place of business or assets in Sierra Leone and any judgment in favour of the Plaintiff is likely to be unenforceable due to the unavailability of assets in Sierra Leone. Whilst the issue of the enforceability of a judgment should be paramount, the fact remains that the liquidators/administrators of the Company are required by law to take into account and keep in view the claims of the Plaintiffs evidenced by the current proceedings and make the necessary provisions to ensure that should they succeed, the judgment debt should be paid. There are sufficient particulars of damage in the Writ to enable the liquidators to have an estimate of the liabilities that may arise as a result of this claim. I also take judicial notice that judgments obtained in one jurisdiction may be enforced in another jurisdiction following due process and the legal procedures applicable to enforce such judgments.
4. The 1st Defendant even though it is in administration, all debts payable on a contingency and all claims against the company, present or future, certain or contingent ascertained or sounding only in damages, should be admissible to proof

against the company in so far as the Company and its administrators have knowledge of such claims. In the instant case the fact that the Company responded to the Writ in 2015 by filing an appearance and has been defending this action evidenced by the several applications that has been made on its behalf, is sufficient proof that the Company and its administrators are fully aware of the Plaintiffs' claims.

5. Having regard to the above, I am of the view that this court does not have sufficient justification to exercise its discretion to stay these proceedings, and it is in the interest of justice that the proceedings should continue.
6. I therefore make the following orders:
 - i. The Defendants' application in Notice of Motion dated 3rd February 2021 for a stay of proceedings is refused.
 - ii. The Defendants' Counsel shall serve this order on the administrators/liquidators of the 1st Defendant Company in the U.K.
 - iii. The Plaintiffs shall ensure that the Court Bundle is properly compiled and marked.
 - iv. The trial is adjourned to 13th June 2022.
 - v. Costs in the cause.

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HON. MRS. JUSTICE JAMESINA E. L. KING J. A