

**IN THE HIGH COURT OF SIERRA LEONE**  
**COMMERCIAL AND ADMIRALTY DIVISION**

BETWEEN

NIMO-LUPP INTERNATIONAL

-PLAINTIFF/APPLICANT

HOLDING JOINT VENTURE

AND

BANK OF SIERRA LEONE

-DEFENDANT/RESPONDENT

**RULING OF THE HONORABLE JUSTICE LORNARD TAYLOR DELIVERED**  
**ON THE 5<sup>TH</sup> OCTOBER 2023**

**COUNSEL FOR THE PLAINTIFF/APPLICANT****-I.S. YILLAH****COUNSEL FOR THE DEFENDANT/RESPONDENT****-J. BENJAMIN**

On the 19<sup>th</sup> March 2015, the parties herein entered into an agreement for the rehabilitation of the main bank building in Freetown and for which consideration was agreed. A Photostat copy of this document and the agreement supplemental to same are before this court as Exhibit AT4. According to the deponent of the affidavit in support of the application the Plaintiff executed its part of the contract and presented its invoice on the 24<sup>th</sup> September 2020 in the sum of US\$ 693,839.01 and Le 3,006,478,704. This document is also before this court as Exhibit AT5. The defendant made some payment leaving a balance of US\$ 525,981.59 and Le 1,365,744,731.21 still outstanding, due and owing. It is this sum that the plaintiff sues for and have approached this court on an application for summary judgment dated 12<sup>th</sup> December 2022.

An application for summary judgment is authorised by Order 16 rule 1 of the High Court Rules 2007. It states;

"Where in an action to which this rule applies a defendant has been served with a statement of claim and has entered appearance, the plaintiff may, on notice apply to the Court for judgment against the defendant on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of the claim except as to the amount of any damages claimed"



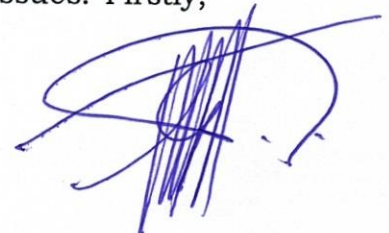
This rule has as its purpose, the speedy disposal of the matter where the defendant has no defence to any particular claim of the Plaintiff. It gives the court the authority to finally determine a matter in favour of the plaintiff without going through the process of a full blown trial. This is because on the face of the papers before the court, it has been made abundantly clear that the outcome of the matter even if a trial is conducted, will only serve to delay the inevitable outcome. Draconian as it may seem, the rule is the embodiment of the principle, justice delayed is justice denied. However, the application of this rule comes with extraordinary caution. The court can only exercise its powers when and only when it is satisfied that the defendant has no defence to the claim of the Plaintiff. This was aptly expressed by the supreme court in the case of **Aminata Conteh v All People's Congress SC Civ. App 4/2004** where the court stated;

*"The object of the order is to ensure a speedy conclusion of the matters or cases where the Plaintiff can establish clearly that the defendant has no defence or triable issues. This draconian power of the court must be used judiciously. A judge must be satisfied that there are no triable issues before exercising his discretion to grant leave to enter a summary judgment. The judge is also entitled to examine the defence in detail to ensure that there are no triable issues."*

In the present matter, the plaintiff maintains that it has performed its responsibilities under its contract with the defendant and the defendant have defaulted in its responsibility to pay for the plaintiff's services thus resulting in a breach. When the writ of summons was issued and served on the defendant, it neglected, failed and or refused to file a defence to same. Nonetheless, this court granted leave to the defendant to file its defence out of time on the 19<sup>th</sup> October 2022. In spite of this, the defendant the defendant neglected, failed and or refused to file its defence within the extended period as ordered by this court. However, when the Plaintiff filed the present application, the defendant exhibited a proposed defence to its affidavit in opposition to same.

This court notes the blatant disregard of its order of 19<sup>th</sup> October 2022, but I hold that this is not sufficient reason to turn away from the contents of the proposed defence exhibited in opposition to this application. Must it sufficiently raise issues to warrant a trial of the matter, it would be most unjust for this court to disregard them and grant leave for judgment to be entered for the plaintiff.

The Plaintiff's case is quite simple. It has performed pursuant to its contract with the defendant and the defendant have refused to pay. I took the liberty to examine the proposed defence exhibited in opposition to the application. The defendant filed and relied on an affidavit in opposition deposed to by Jamila Benjamin on the 14<sup>th</sup> December 2022. This affidavit and the proposed defence exhibited thereto does raise a number of issues. Firstly,





the defendant avers that pursuant to its agreement with the Plaintiff, the defendant was to appoint a Project Manager who would be responsible for supervising the execution of the work by the Plaintiff. This court does not see how this fact raise a triable issue. If appointing a Project Manager was the responsibility of the defendant, I do not see how issues with respect to the said appointment should be a ground pursuant to which the Plaintiff should be deprived of its claim for payment for work done.

The defendant also relies on the fact that the Plaintiff's invoice was submitted 7 months after the date stipulated for the completion of the project. Is this delay sufficient reason for the defendant to refuse to pay for the services rendered by the Plaintiff? There is no law and neither is it contained in the agreement as exhibited that the Plaintiff was to forfeit payment for services rendered because the invoice was delayed.

In paragraph 5 of the proposed defence, the defendant alleges thus;

"In answer to paragraph 8 of the Plaintiff's particulars of claim, the defendant avers that the plaintiff basically left the site without due procedures and some outstanding jobs and initially refused to honour several invitations by the project manager to conduct a joint site inspection to determine whether a practical completion had been achieved and to identify outstanding defects. A joint inspection was eventually conducted after a time lapse between the plaintiff's application in September 2020 and the 30<sup>th</sup> June 2021 when the joint inspection was carried out."

In this paragraph, the defendant is alleging that the work was incomplete and that the plaintiff left the site without due process. Could this be considered a triable issue? The Plaintiff's claim is that it has performed in full and therefore needs to be paid. The defendant by this assertion denies this claim of the plaintiff. This can only be resolved by evidence as it is factual. Such evidence is not before this court and cannot be reasonably brought and tested at this stage. If the evidence shows that the defendant is right that the Plaintiff did not discharge its responsibility as agreed, the Plaintiff would not be entitled to judgment in its favour. This makes it a triable issue.

I see no reason to further consider the other issues raised by the defendant at this stage as the doing so would be in futility. The defendant has shown that its defence does raise triable issues and therefore this court can only order that the parties prepare for trial.

However, I hold that this application is precipitated by the defendant's delay in filing its defence out of time as ordered by the court. There is a reasonable possibility that the Plaintiff would not have filed this application had the defendant filed its defence as ordered by this court. It is therefore only fair



that the defendant must bear its costs. In the circumstances, I make the following orders;

1. This application is accordingly refused
2. The defendant is at liberty to file its defence out of time within 3 days from the date of this order failing which the leave of this court needs to be sought before filing of same.
3. The cost of this application is assessed at Le 50,000 to be paid by the defendant to solicitors for the Plaintiff



.....  
HONORABLE JUSTICE LORNARD TAYLOR

