

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION
FAST TRACK COMMERCIAL COURT

BETWEEN:

SIKO HOLDINGS (SL) LTD
MOTHAM REGENT HIGH WAY
FREETOWN

-PLAINTIFF/APPLICANT

AND

KASHO J. HOLLAN COLE
CHAIRMAN- WESTERN AREA DISTRICT
COUNCIL
FREETOWN

-DEFENDANT/RESPONDENT

JUDGEMENT DELIVERED BY THE HONOURABLE JUSTICE M.P. MAMI J.A
DATED 24TH DAY OF APRIL, 2024.

COUNSEL

SORIE & BANGURA - SOLICITOR FOR THE PLAINTIFF/APPLICANT

A.R. KAMARA & CO. - SOLICITORS FOR THE DEFENDANT/RESPONDENT

There is an application by Judges summons dated 7th March, 2024 filed by Messrs. Sorie & Bangura Solicitors for the plaintiff/applicant praying for the following orders: -

1. That this Honourable court grant liberty to the plaintiff/applicant to enter final judgement against the defendant/respondent herein pursuant to Order 16 Rule 1 of the High Court Rules 2007 and Rule 15(1) of the Commercial and Admiralty Court Rules of 2020 in respect of orders as prayed for in the writ of summons.
2. That the court assesses the costs of this application.
3. Any further or other order (s) that this Honourable court may deem fit and just
4. costs.

The application is supported by the affidavit of Hyun Sook Sun, the chief executive officer of Siko Holdings (SL) Ltd, with the following exhibits attached thereto:

Exhibit "HS1^{a-e}" – A photostat copy of the writ of summons

Exhibit "HS2" – A photostat copy of the agreement

Exhibit "HS3" - A photostat copy of the vehicle service invoices.

Exhibit "HS4^{a-e and 5}" – A photostat copy of the appearance and defence and counterclaim

Exhibit "HS6" – Photostat copy of the reply and defence to the counterclaim

Exhibit "HS7" – A photostat copies of the vehicles registration and insurance

As Mr. John was about to make his submissions, Mr. Sesay counsel for the defendant/respondent interjects with the following objections.

- That based on Rule 30 of No.2 of 2020 (hereinafter referred to as the Commercial and Admiralty Court Rules.)
 - That Mr. John, counsel for the plaintiff/applicant has placed heavy reliance on documents tendered during pre-trial proceedings before this court, which he submit goes against the grain and spirit of the referred rules, as it ought to be "without prejudice"

In response Mr. John intimate that he has not and will even ignore exhibits SH7^{A-1} and all averments therein and request this court not to rely on the said exhibits and all and any averments contained therewith.

He continued with his submissions that he relies on the entirety of the affidavit excluding paragraph 11 thereof.

He also refers to the defence and counterclaim filed by Mr. Sesay, which he said is littered with admissions to the amount owed, in that his clients owed the plaintiff the sum of \$10,000, and that where the disagreement is, is that they owe the plaintiff an outstanding balance of Le12,000 (Twelve Thousand New Leones), that the said amount is \$1,019.

That according to the affidavit in support they established that the legal status of the four (4) vehicles was done on the instructions of the defendant that it should be registered to one Ishmael Clerk, that the other vehicle was registered by the defendant himself.

He further submit that the life card of the vehicle is normally issued in the name of the person who first registered the vehicle.

He also submit that these vehicles have been in the defendant's possession and custody and has been using them to run public transport and making monies prior to this time.

He refers this court to the invoices (exhibit HS3), which he said shows that the defendant has been taken these vehicles for maintenance to the plaintiff's garage and at the time, he took the vehicles they were registered.

He also further submit that you can't do a repairs on a stationery vehicle contrary to paragraphs 6,7, and 8 of the affidavit in opposition. That a letter dated 12th June, 2022 which the plaintiff never received as considered as an afterthought, and he brought these issues to the plaintiff.

That if at all the allegation is true as contained in the said letter how is it that they took take the vehicle for maintenance to the plaintiff's garage?

That the agreement for the other vehicle which they claimed they should pay the outstanding balance of Le12,000 (Twelve Thousand New Leones) and that they have already paid Le40,000, the position of the plaintiff is that the Le40,000 was the equivalent at the material time \$2,909 and the outstanding balance should be \$1,091.

That this agreement was not reduced into writing, and it is clear from this agreement that the plaintiff was selling the vehicles in US Dollars, and not Leones.

That these issues raised by the defendant are to waste this court's time and to cause delay in the amount owed to the plaintiff which he has admitted in his defence and counterclaim and affidavit in opposition.

That this delay has led to serious financial loss, that the defendant's defence is not Bona fide's and that the matter is summarily settled in favour of the plaintiff.

That Order 16 Rule 1 of the High Court Rules 2007 is apt, as it gives the court authority to issue a summary judgement against the defendant if it determines that the defendant has no realistic chances of success and the defendant has no chances of successfully raising triable issues.

That the counterclaim is also full of admissions (paragraph 2 thereof) and that it does not even amount to counterclaim and is just an admission.

That the Nle2,600 was given for registration of the vehicle to Ishmael clerk.

In response Mr. Sesay refers to the affidavit in opposition sworn to on the 19th March 2024 by Kasho Cole, the defendant/respondent herein

That there are three (3) exhibits attached to the affidavit in opposition.

Exhibit "KJCH2- is a Memorandum and Notice of Appearance

Exhibit "KJHC3- is a copy of a defence and counterclaim filed for and unbehalf of the defendant/respondent herein.

He relies on the entirety of the affidavit and its contents herein and specifically refers to paragraphs 4 to 12. He submit thus:

- Referencing this court to Order 16 Rule 4(3) of the High Court Rules 2007 in tandem with Rule 15 of the Commercial and Admiralty Court Rules that at the stage their responsibility is to show to this court not only that they have defence, but there are issues of facts and law which this court ought to look at.
- That his colleague (counsel for the plaintiff/applicant) in addressing this court mention that fact of the plaintiff's claim, and refers this court to exhibits "KJH3" (the 2nd paragraph thereof), and issues that cannot be resolved by affidavit evidence.
- that the issue of the letter which was served on them could also be resolved at the trial.
- That this letter goes to the root of the contract between the parties
- That the thrust of the defendant's case is whether there was a breach of the contract, whether counsel for the defendant/respondent believe that their defence is Bonafides and the issues could not be determined by affidavit evidence.

Analysis of the Issues and the Applicable Law

Counsel for the plaintiff/applicant is before this Honourable for the relief as contained on the face of the judges summons in matter intituled F.T.C.C 107/22 S. No.30 to wit:

1. That this Honourable court grant liberty to the plaintiff/applicant to enter final judgement against the defendant/respondent herein pursuant to Order 16 Rule 1 of the High Court Rules 2007 and Rule 15(1) of the Commercial and Admiralty Court Rules of 2020 in respect of Orders as prayed for in the writ of summons.
2. That the court assesses the costs of this application
3. Any further or other order (s) that this Honourable court may deem fit and just
4. Costs

Before proceeding with this analysis I realise counsel has referred to Rule 15(1) of the Commercial and Admiralty Court Rules of 2020 for which this Honourable Court should grant liberty to the plaintiff/applicant to enter final judgement against the defendant in tandem with Order 16 Rule 1 of the High Court Rules 2007.

The referred Rule 15(1) of the Commercial Court Rules 2020 No.2 of 2020 provides:-

“Notwithstanding Order 16 of the High Court Rules summary judgement shall not be made before Alternative Dispute Resolution pre-trial settlement”

What the aforesaid provision is saying, is the timing within which an application for order 16 ought to be made. The phrase “Notwithstanding Order 16 of the High Court Rules” does not without more provides that Rules 15 of the said Commercial Court Rules incontrovertibly does not wish to derogate from the provisions of the powers of Order 16 of the High Court Rules, 2007.

The question this court will ask itself then is what are the explicit provisos of Order 16 of the High Court Rules 2007?

The apt provision in this regard is Order 16(1) and (3). Order 16(1) which from its, marginal notes provides for application for summary judgement, and the procedure relied therewith, whilst 16(3) of same provides for circumstances where the plaintiff/applicant has to satisfy on the hearing of an application under subrule (1) of 16 thereof. So consequently for subrule (3) to come into play the requirement in subrule 1 has to be satisfied first.

Whilst Rule 15 mentioned interalia of the Commercial and Admiralty Court Rules 2020 No.2 of 2020, clearly only provides the ‘Timing’ (emphasis mine) for such summary judgement under 16(1) of the High Court Rules.

Rules ought to be made. It provides “an application for summary judgement shall not be made before the Alternative Dispute Resolution pre-trial settlement.

Consequently, therefore for 16(1) of the High Court Rules to be invoked, 15(1) of the Commercial Court Rules must have been satisfied, with the mandatory “shall” therein.

This in essence means, it becomes a procedural issue either of defect or otherwise, if it has not been complied with but in my view not a provision pursuant to which an application of such a nature ought to be made.

This notwithstanding does not render relief 1 contained in the summons as invalid.

It is also important to state that the ADR proceedings was conducted by this court, but terminated thereof and with the consent of both solicitors that I proceed with the trial subsequent to which the said judges summons was filed.

I shall now proceed with whether the plaintiff/applicant has on the face of the summon and the exhibits attach to the affidavit in support satisfied the requirement for application of such a nature.

Order 16(1) of the High Court Rules 2007 provides:

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

The purpose of Order 16 is to enable a plaintiff to obtain summary judgement without trial if he can prove his claim clearly and if the defendant is unable to set up a bonafide defence or raise a genuine issue against the claim which ought in all fairness to be tried.

Order 16 of the High Court Rules 2007 is in my view is for clear cases, that is cases where there is no serious material on a factual dispute and if a legal issue, then no more than a crisp legal question as well decided summarily or otherwise.

The contentions of both counsel have been clearly laid out in their submissions before this court and as contained in their pleading/papers filed therewith. It behoves this court, therefore; to delve into the brief facts of this case, and the antecedents therewith.

Brief Facts

This is as contained in the writ of summons contained in exhibit HS1^{a-e} to wit:

That the plaintiff is a limited liability company carrying on business as vehicles services and maintenance garage, with its registered address at Mothaim regent High way, Freetown in the Western Area of the Republic of Sierra Leone, whilst the defendant is a customer of the plaintiff and chairman of the Western Area District Council.

That pursuant to a sales agreement executed on the 4th of February, 2022 the defendant contracted and obtained a King Long Bus from the plaintiff that costs \$10,000 (Ten Thousand United States Dollars).

That further thereto as per the terms of the aid sale agreement, it was agreed between the plaintiff and the defendant, that payment of the agreed purchase price for the sale of the king long bus was to be made in two (2) instalments, part-payment of the \$5,000 (Five Thousand United States Dollars) was to be effected on or before the 4th of February, 2022, and the final payment of \$5,000 (Five Thousand United States Dollars) was to be made on or before the 30th day of April, 2022, that to date the defendant has not made payment for the King Long Bus.

Subsequently, the defendant further obtained from the plaintiff of Toyota Echo car for the sum of \$4,000 (Four Thousand United States Dollars) and made part-payment of \$2,909.00 (Two Thousand Nine Hundred and Nine United States Dollars) with an outstanding balance of \$1,091.00 (One Thousand and Ninety-one Dollars).

That in addition to the above, the defendant brought the above mentioned King Long Bus to the plaintiff's garage and requested that the plaintiff do the maintenance of the bus. The plaintiff did maintenance on the King Long Bus and the total cost for the maintenance of the said bus is Le2,600,000 (Two Million Six Hundred Thousand Leones) being the equivalent of Nle2,600 is still due and owing to the plaintiff.

That the plaintiff has made several efforts to get the defendant to effect full payment of the debt past due and owing to the plaintiff, but all such efforts have failed to yield any position outcome.

That the defendant is using the bus to run public transport; the plaintiff and his staff are seeing the bus plighting the Regent-Grafton route everyday with passengers and loads of goods in the bus, sometimes, the bus can stop in front of the plaintiff's car center to pick-up and drop-off passengers.

Wherefore the plaintiff claims;

- Immediate recovery of the sum of \$11,091.00 (Eleven Thousand and Ninety-one United States Dollars) as payment for one King Long bus and a balance for one Toyota Echo and Le2,600,000 (Two Million Six Hundred Thousand Leones) being the equivalent of Nle2,600 (Two

Thousand Six Hundred Leones) due and owing to the plaintiff for maintenance of the King Long Bus.

- Interest on the said sum at the rate of 35% per annum in line with the prevailing money market conditions
- damages for breach of contract
- any other or further reliefs that this Honourable court may deem fit and just
- costs

An appearance was entered and filed on the 30th day of November, 2022, with a defence and counterclaim filed therewith.

The defence filed herein contain 13 paragraphs.

The defendant admits paragraphs 1,2 and 3 of the plaintiff's particulars of claim

Paragraph 4 of the defence contains:

“The defendant admits paragraph 5 of the plaintiff's particulars to the extent that he refused to complete payment pending the resolution of the issues with the legal status of the vehicle, their capacity for use and fitness for the specific purpose for which the defendant was meant to purchase the vehicle.”

In paragraph 5 the defendant avers “That the defendant admits paragraph 6 and avers further that he paid the sum of Forty Million Old Leones (Le40,000,000) for a “Siko Vehicle” with an outstanding balance of twelve Million Old Leones (Le12,000,000) respectively.

the defendant also denies taking the long king bus to the plaintiff's garage for maintenance of the bus, and that the costs for such maintenance of the said bus is Le2,600 as still pending, they rather aver, that it was amount paid by him for the number plate, licence and insurance of the Siko car.

There is a counterclaim; for the recovery of the sum of Forty Million Old Leones (Le40,000,000) that the claims he has parked for several months.

That the vehicle licence, number plate and insurance provided by the plaintiff has been the subject of numerous (amongst other claims) that licence, number plate and insurances were fake, as same was meant for private vehicles and not for commercial.

That the plaintiff has refused and or neglected to produce the documents of the said vehicle upon the request of the defendant for proper registration.

That the defendant has suffered serious financial hardship as a result of the conduct of the plaintiff.

Wherefore the defendant counterclaims against the plaintiff as follows:

1. Immediate recovery of the sum of Forty Million Old Leones (Le40,000,000.00) being payment for "new" siko vehicle and two Million Six Hundred Thousand Leones (Le2,600,000.00) due and owing the defendant for the licence and insurance of the said vehicle
2. interest on the said sum at the rate of 35% per annum
3. damages for breach of contract
4. any further order (s) that this Honourable court may deem fit in the circumstances.
5. costs

There is a reply and defence to counterclaim filed on the 13th day of December, 2023

In reply the plaintiff avers as material thereof to the following:

1. they join issues with the defendant on his defence
2. in answer to paragraph 4 of the defence, the plaintiff avers that both the king long bus and the Toyota echo car were brand new vehicles delivered to the plaintiff in good working condition together with their title documents which were properly and lawfully obtained whilst noting that the defendant diligently examined both vehicles and same were confirmed to be of merchantable quality and good for purpose before accepting delivery, the said vehicles are still in the defendant's possession and have been seen by the plaintiff subsequently plying the Regent to Grafton route on commercial basis
3. The defendant also labelled the Bus as 'ABIGHAM' and registered it as 'ATK 011' the said bus was registered for commercial purposes, and the defendant has been using the bus for the required purpose.
4. The plaintiff deny paragraph 6 of the defendant's defence and aver that she received the total sum of Le2,200.00 (Two Thousand Two Hundred New Leones) from the defendant for services and registration fees for the Toyota Eco Car, which the defendant instructed through whatsapp

conversation that the said car be registered in the name of Ishmael Clerk, who lived at No.13 William Street, the said bus was registered for commercial purposes, and the defendant has been using the bus for the registered purposes.

5. The plaintiff deny paragraph 6 of the defendant's defence and avers that she received the total sums of Le2,200.00 (Two Thousand Two Hundred New Leones) for the defendant for services and registration fees for the Toyota Echo car, which the defendant instructed through whatsapp conversation that the said car be registered in the name of one Ishmael Clerk who lived at No.13 William street Waterloo. The defendant further told the plaintiff that Ishmael would be during the said car commercially
6. That in reply to paragraphs 8&9 of the defendant's defence, the plaintiff avers that there has been no complaint/concerns from the defendant relating to numerous arrest being effected on the vehicles on claims of the vehicle's licence, number plates and insurance being fake or improper whilst indicating that such averment by the defendant is a ploy/strategy to deceive this court and thus continue to deprive the plaintiff of monies due and owing to it in respect of a sale transaction, which the defendant continue to benefit significantly from.
7. That further to the above, the plaintiff states that she has never received a letter of complaint from the defendant about the king long bus or the Toyota Echo Car, before this matter was instituted, the plaintiff only saw the letter the defendant was referring to when he file a motion for the court top set aside the default judgement obtained against the defendant.

DEFENCE TO COUNTERCLAIM

8. The plaintiff repeats paragraph 1-6 of the reply
9. the plaintiff admits to receiving the sum stated in paragraph 2 of the particulars of counterclaim as part of the Toyota Echo Car payment the sum was equivalent of \$2,909.00 (Two Thousand Nine Hundred and Nine United States Dollars) with an outstanding balance of \$1,091.00 (One Thousand and Nine Hundred United States Dollars) with an

outstanding balance of \$1,091.00 (One Thousand and Ninety-one United States Dollars). The said balance is due and owed by the defendant.

10. The plaintiff denies paragraphs 3&4 of the particulars of counterclaim and would aver that the vehicles' licenses, number plates and insurance were properly and lawfully obtained and same were handed over to the defendant, who accepted delivery of same as well and the defendant is the one instructed the plaintiff through a whatsapp conversation that the said car be registered in the name of one Ishmael Clerk, who lived at No.13 William street, Waterloo, the defendant further told the plaintiff that Ishmael would be driving the said car commercially for him.
11. The plaintiff denies that, it refused and neglected to produce the vehicle documents. He would be unable to use it over the year to generate income for himself or license them.
12. The said vehicle has been in the defendant's custody and has been using it as a taxi in town since he took it from the plaintiff, the defendant driver has been bringing the car for routine minor maintenance at the plaintiff's garage on numerous occasions.
13. That the plaintiff denies that the defendant has suffered any loss as a result of the conduct of the plaintiff as alleged in paragraph 5 of the particulars of counterclaim, the defendant has been using the plaintiff's vehicles for his use and benefit deriving profit from the commercial use of the plaintiff's vehicles whilst he continues to deprive the plaintiff of the timely payment of monies due and owing to the plaintiff.
14. The plaintiff denies each and every allegation in the counterclaim as if the same has herein set out and traversed seriatim

All the contentions set out hereinbefore in the defence is as contained in paragraphs 4, and 5 of the defence and paragraphs 2-4 of the counterclaim. EXH.S. 5^{a-e}. The defendant contention for non-payment of the sums are as follows:

- (a) the defendant refused to complete the payment of the vehicle pending, the legal status of the vehicle being settled
- (b) The defendant admitted and that he has paid Le40,000.00 (Forty Thousand Leones) for the SIKO vehicle, with an outstanding balance of Le12,000

Infact in Air **Cote D'ivoire V. Ibeachust Okechukwu** in the Court of Sspeal of Sierra Leone Civ. App.89/17 in a Coram of Hon. Mr. Justice Reginald S. Fynn JA, Hon. Mr. Justice D.B. Edwards J.A, Hon. Mr. Justice Eldred Taylor-Camara J.A.

The Court of Appeal cited with deference to the case of Aminata Conteh Vs. A.P.C 4/2004 unreported, where the rung of the court from the High Court has followed the much stronger test adopted in the Supreme Court. Wherein it was held that the test with respect to application of this sort is to examine the issues if law and fact raised and to determine whether the defendant has a good chance of succeeding.

It is not sufficient to show that there are triable issues, but there must be a prospect of success.

Infact also juggled with this is another question this court will ask at this stage, which is whether the defendant had shown in this instance any cause so as to warrant leave to defend been given?

There is the sales agreement (brief though as it might be), but some of which constitutes an agreement between the parties, dated 4th February, 2022 signed by Siko Holdings CEO and the defendant herein Kasho Holland Cole.

The agreement provides as follows:

Vehicle" King Long

Vehicle value: \$10,000 USD

King Long bus will be sold to Mr. Holland-Cole at the price of \$10,000.00 USD
Mr. Kasho J. Holland Cole- will pay \$5,000 USD on February 28th, 2022 and \$5,000 USD on April 30th, 2022

We understand this agreement and sign below.

Date: February 4th, 2022

The defendant has also not denied the agreement and payment for the Siko vehicle with an outstanding balance of 12,000 respectively, save that the defendant has claimed that the Le2,600 paid to the plaintiff was sums paid for number plate, license and insurance for the vehicles, which the plaintiff has strongly contended in the reply and defence to counterclaim for service and registration fees for the Toyota Eco car, which the defendant has instructed

through whatsapp conversation that the said vehicle can be registered in the name of one Ishmael Clerk, who lived at No.13 William street, Waterloo, same of which is exhibited as "8" in the list of additional documents.

This court cannot ignore the defence filed and should is heretofore considered the merit of the defence filed.

The defendant should convince the court that he has a good defence on its merits, but has he done that in this instance?

Principally however, the defendant has not denied the amount outstanding, and same has been acknowledged in his defence and counterclaim, and it is also without doubt, that the defendant has been taking the said vehicles only for routine "maintenance."

The defence is littered with admissions against the backdrop of a clear written agreement, which has not been materially controverted by the defendant, vehicles of which have all been in their possession.

The defendant in the considered view of this court has not made a clear compelling case for a trial to be held save for the clarification of issues appertaining to the maintenance and cost associated therewith, which in the estimation of this court is quite incongruous with same amounting to a defence in law or facts.

The rules governing application for summary judgement, apply to application for summary for a counterclaim, a reference in the rules to a plaintiff is construed in such situations as a reference to a defendant vice versa.

However, a defendant must convince that the plaintiff's claim in the statement of claim is wholly unconnected to the counterclaim, or if connected is unsustainable or not bonafide. An applicant for summary judgement on a counterclaim thus carries the onerous burden of establishing with clarity that there is no defence to the counterclaim or part of it. The defendant has in the estimation of this court, upon analysis of all the exhibits and the averments in the pleadings failed to satisfy same. Consequently, it is dismissed.

The defence filed and other pleadings appertaining thereto is shadowy, sham and weak and one that ought to be discountenanced by this court. It will also be inexpedient to allow the defendant to defend, as this will lead to mere delay with undue increase on our already over bloated docket of cases.

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However, a defendant must convince that the plaintiff's claim in the statement of claim is wholly unconnected to the counterclaim, or if connected is unsustainable or not bonafide. An applicant for summary judgement on a counterclaim thus carries the onerous burden of establishing with clarity that there is no defence to the counterclaim or part of it. The defendant has in the estimation of this court, upon analysis of all the exhibits and the averments in the pleadings failed to satisfy same. Consequently, it is dismissed.

The defence filed and other pleadings appertaining thereto is shadowy, sham and weak and one that ought to be discountenanced by this court. It will also be inexpedient to allow the defendant to defend, as this will lead to mere delay with undue increase on our already over bloated docket of cases.

Consequently, this court orders as follows:

1. **That there is a breach of contract, and leave is hereby granted to the plaintiff to enter judgement on the following:**
 - **That judgement is entered for the plaintiff/applicant for the immediate recovery of the sum of \$11,091.00 (Eleven Thousand and Ninety-one United States Dollars) as payment for one King Long Bus and a balance for one Toyota Echo and Le2,600,000 (Two Million Six Hundred Thousand Leones) being the equivalent of Nle2,600 (Two Thousand Six Hundred Leones) due and owing to the plaintiff for the maintenance of the King Long Bus. Same to be paid within fourteen (14) days of effective this order.**
 - **Interest on the said sum at the rate of 18% per annum in line with prevailing money market rate**
 - **Damages for breach of contract to be assessed**
 - **Solicitor's costs of Nle30,000 (Thirty Thousand New Leones)**
 - **Costs of the action at Nle20,000 (Twenty Thousand New Leones)**



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THE HON. JUSTICE M.P. MAMI J.A.