

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

BETWEEN:

DESMOND GORDON-WILLIAMS – JUDGMENT CREDITOR/APPLICANT

AND

MISBAO KAMARA – DEFENDANT DEBTOR/RESPONDENT

Counsel:

C. G. A. Green Esq. for the Plaintiff

**RULING DELIVERED THIS 7TH DAY OF OCTOBER 2022 BY HONOURABLE MRS.
JUSTICE JAMESINA E. L. KING J.A**

Introduction

1. By Writ of Summons dated 22nd June 2021, Desmond Gordon Williams as Plaintiff, instituted proceedings against the Defendant, Misbao Kamara. The Plaintiff's claim against the Defendant is for the recovery of the sum of Le40,000,000 (Forty Million Leones) being money paid by the Plaintiff to the Defendant for the purchase of land situate lying and being at Off Peninsula Circular Road, Kerry Town, in the Western Rural Area of the Republic of Sierra Leone, special damages in the sum of Le85,600,000.00 (Eighty- Five Million, Six Hundred Thousand Leones), interest on the above sum from 15th July 2017 to the date of Judgment, damages for breach of contract, any other relief and costs that the Court may deem fit and just. The said Writ was personally served on the Defendant on 20th August 2021 and an affidavit of service duly filed. Judgment in Default of Appearance dated 5th November 2021 was signed in respect of the above claim.
2. By Notice of Motion dated 10th March 2022 the Judgment Creditor/Applicant applied to this Court for the following:
 1. That this Honourable Court assesses and grants damages of Le20,000,000 for breach of contract to the Judgment Creditor/Applicant herein.
 2. That this Honourable Court assesses and grants interest of Le101,736,000 (One Hundred Million, Seven Hundred and Thirty-Six Thousand Leones) to the Judgment Creditor/Applicant herein on the principal sum of Le125,600,000.00 (One Hundred and Twenty-Five Million, Six Hundred Thousand Leones) calculated at a rate of 18% per annum from May 2017 to 5th November 2021.
 3. That this Honourable Court assesses and grants interest at a rate of 5% per annum from 5th November 2021 to the date of payment.
 4. That this Honourable Court assesses and grants costs of the application of Le20,000,000 (Twenty Million Leones) to the Judgment Creditor/Applicant herein.
 5. Any further or other order(s) that this Honourable Court may deem fit and just.

3. The application was supported by the affidavit of Christopher G. A. Greene sworn to on 10th March 2022. In this affidavit the deponent inter alia stated that the Judgment Creditor/Applicant is entitled to interest as per law and he is informed that the prevailing rate of interest was at about 18% at the date of judgment. He also exhibited a letter from Standard Chartered Bank (SL) Limited confirming the commercial interest rate at 18% from 1st July 2020 till date of the letter 22nd October 2020 marked Exhibit CG-5.23223.
4. The Notice of Motion for assessment of 10th March 2022 was served on the Judgment Debtor and an affidavit of service duly filed. For the Assessment proceedings, there is an affidavit sworn to by Desmond Gordon-Williams, the Judgment Creditor/Applicant on 8th July 2022. Attached to that affidavit are the following exhibits: a receipt for the purchase of the said property issued by the Judgment Debtor for the purchase price of Le40,000,000; Copy of a survey plan in the Judgment Creditor's name and a letter from the Judgment Debtor to the Director of Surveys and Lands recommending signing of the survey plans; proposal and budget for feasibility studies for a farm on the land at a costs of Le16,950,000.00, a financial forecast for the farm, receipts in respect of litigation in the sum of Le5,000,000 and filing fees of approximately Le1,500,000.00.
5. In addition to the exhibits, the Judgment Creditor/Applicant did state that he procured boundary pillars in the sum of Le11,000,000, had two (2) full-time farm hands each paid Le800,000 per month for a period of 6 months, totalling Le9,600,000.00; constructed a corrugated iron sheet structure at the costs of about Le10,000,000.00; cost of bore-hole or water well dug at Le22,500,000.00 and cost of brushing the land and other miscellaneous expenses in the sum of Le12,000,000.
6. He further stated that after incurring these expenses in May 2019 certain individuals in the community starting going on the land, damaged the C.I. structure and boundary pillars claiming on several occasions that the land did not belong to him. Eventually his farmhands were forced to flee while the intruders removed and took away the fittings and equipment from the land forcing himself and his farm hands to not only flee but afraid of going onto the land. The intruders have now taken possession of it. He has been deprived of his anticipated profits, and suffered disappointment, inconvenience and mental distress of not being able to proceed with his plans after investing so much time, effort and money into them which cannot be in monetary terms.
7. He prayed the court to award him substantial damages to compensate for the loss suffered as a result of the Judgment debtor's actions.
8. In addition to the affidavit and exhibits to substantiate his claims the Judgment Creditor/Applicant also testified on oath. He told the Court he knew the Judgment Debtor/Defendant Misbao Kamara when he was a deputy headman and he purchased a property from him at Kerry Town. His nephew who also had a property at Kerry Town informed him that the property was available for sale. The Defendant was the individual who issued a receipt for the transaction on behalf of the owners of the property. The owners were represented by Ronald and the Defendant was representing him. He paid for an acre of land intended to be used for agriculture. He paid over forty million Leones indicated in the Judgment taken.
9. After paying for the land he took possession, carried out a few activities: he had a farmhand and two assistants who stayed on the land; constructed a farm house where they stayed; provided them with furniture and domestic items; dug a water well; constructed pillars to demarcate the property and cultivated a few cash crops including rice. He also hired a consultant to do a market research for piggery and poultry and developed a business plan to establish a piggery enterprise at the property.

10. A year after his farm hands were living on the property there was an invasion from persons unknown and this was reported to him and he saw the effect. His employees were attacked on the farm causing serious damage to the structure he had put up and his employees had to flee to the bush to escape from these unknown persons.
11. This was reported to the headman and town elders and his understanding was that the unknown people were not targeting his property and their reasons for being there was accidental. This was what he was told by the Judgment Debtor/Defendant. The farm hands were reluctant to stay on the land. He succeeded in getting one of them to go back on the land but a few months later there was interference with unknown people, establishing beacons within his property, removing and damaging some of his pillars erected around the perimeter.
12. This interference was constant and he later got to learn that there were claims to the property by other people because the family who had agreed to sell previously to him had changed their mind subsequently. He was therefore not able to enjoy possession of the land. He has not had a presence on the land because after all the incidents. He approached the Defendant/Judgment Debtor now the headman several times both face to face and by phone, text messages, he assured him that he was trying to contact members of the family who had originally sold the land to him but that he should have his assurance that the property belonged to him and he will take all steps to ensure that the family commits to the same. Even after his assurances there was still interference in the property and it became a cat and mouse game to get in touch with the Defendant.
13. He is not able to use the land and has not been to the site for 18 months. As a result, all of his plans of establishing an agricultural business at Kerry Town are in limbo and he has suffered a lot of financial losses detailed in the claims. He has also suffered trauma with his employees and the uncertainty regarding the future of his business proposition. He has lost the entirety of his investment in that piece of land. He has not got what he bargained for in terms of the agreement with the Defendant.
14. The Judgment Creditor Desmond Gordon-Williams affidavit on 8th July 2022 with exhibits attached thereto comprising of the receipt, survey plan, financial forecast and receipts connected to litigation detailing his loss as follows:
 1. Purchase price for land - Le40,000,00
 2. Cost of survey plan -Le4,000,000
 3. Cost for feasibility study - Le16,950,000
 4. Erection of boundary pillars – Le11,000,000
 5. Hiring of 2 farmhands - Le9,600,000
 6. Constructing a C.I sheet structure –Le10,000,000
 7. Borehole dug -Le22,500,000
 8. Brushing of land & other expenses – Le12,000,000
 9. Cultivation of crops costs - Le3,500,000
 10. Filing fees, service costs and judgment tax – Le6,500,000
15. Counsel for the Judgment Creditor/Plaintiff also provided the Court with a written address on the assessment of damages herein. He submitted that Le20,000,000 will be appropriate as general damages and relied on the case of Castrol Limited and John Michael Motors Limited (unreported) S.C, Civ. App No. 1/98 at page 18. He referred to the forecast filed in respect of future earnings from the farm to the effect that he will have earned in profit for five years if the farm business had succeeded. He also made submissions on nominal damages and interest.

16. I note that the Judgment in Default of Appearance entered included damages however they were not assessed by the Court hence these assessment proceedings. That Judgment is therefore amended accordingly by deletion of sums in respect of damages. Sufficient evidence has been led for the assessment proceedings. This Court cannot award the expected sum estimated as profits the Judgment Creditor would have received over the course of five (5) years as indicated in the forecasts exhibited, based on his investment in the farm. I believe that it is reasonable that he should be entitled to at least expected profits for one year.
17. Having heard the Judgment Creditor, the Judgment Debtor not appearing and considered the submissions of Counsel for the Judgment Creditor, I find that the Judgment Creditor has proved his case during these assessment proceedings on a balance of probabilities. In the result this Court makes the following orders:
18. Following Judgment in Default of Appearance dated 5th November 2021 and after these assessment proceedings, the Judgment Creditor/Plaintiff shall recover from the Defendant the following:
- a. General Damages of Le20,000,000.00.00
 - b. Special Damages of Le136,000,000.00 itemised in paragraph 14 above
 - c. Loss of expected income for 1 year – Le295,650,000.00 as indicated in the financial forecast
 - d. Interest of 18% per annum on b and c above from May 2019 to 5th November 2021 the date of judgment in the sum of Le189,217,000
 - e. Interest of 5% per annum of the above sums from 5th November 2021 to the date of payment.
 - f. Costs in the sum of Le15,000,000.00

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