3CC 281/17 2017 R. NO.14

In the High Court of Sierra Leone

Land and Property Division

Between:

Mr. Neilford E. W. Rose - Plaintiffs/Applicants

Mrs. Abigail E. W. Rose

NO.6 Siadu Lane

Off Peninsular

Road

Ogoo Farm

Freetown pt Defendant/Respondent

And

Mr. Peter Senesie -

Wilberforce 2nd Defendant/Respondent

Freetown

Alphonso Smiley Smith -

26 Gloucester Road

Regent Village

Counsel:

S. T. N. Navo Esq. for the Plaintiffs/Applicants

M. Kenneh for the Defendants/Respondents

Ruling on *an* Application for an Interlocutory Injunction and Cost, Delivered by the Hon. Dr. Justice Abou B. M. Binneh-Kamara, J., on Tuesday, 26th July 2022.

1.1 The Application's Background and Context

This ruling is constructed on the content of an application, pursuant to a notice of motion, filed by S.T.N. Navoa Esq., (hereinafter referred to as Counsel for the Applicants), of Navo and Associates, LA Solution Chambers, 48 Willington Street, Freetown. The application (notice of motion) is strengthened by the affidavit of Mr. Neilford E.W. Rose Mrs. Abigail E. W. Rose of NO.6 Siadu Lane, Off Peninsular Road, Ogoo Farm, Freetown, sworn to and dated 13th February 2020. The principal thrust of the inter parte application for the interim and interlocutory injunctive reliefs, are geared towards restraining the Defendants (hereinafter referred to as Respondents), whether by themselves, servants, agents, privies or howsoever called from constructing, working, entering, remaining, and/or disposing of the property of the Plaintiffs (hereinafter referred to as the Applicants), pending the hearing and determination of the application. Contrariwise, on 13th March 2020, M. Kenneh fsq. (hereinafter referred to as Counsel for the Respondents), filed an affidavit, deponed to by one Alphonso Smiley Smith, contravening the purports of the application as justified by its supporting affidavit.

1.2 The Submissions of Counsel for the Applicant

On 15th October 2020, Counsel for the Applicants make the following submissions, craving the Bench's indulgence for the application, to be granted.

1. That the bolstering affidavit speaks for itself; it contains very relevant facts and facts-in-issue and compelling exhibits, that should let this Honourable Court grant the application. Thus, Exhibit NEWR 1 is a copy of an injunctive

order, granted by Justice Dwarzack in 2017, restraining both Respondents etc. from erecting any structure on the realty (the subject matter of this litigation). Exhibit MEWR 2, is a letter from the Applicants' previous solicitor to the Chief of Defense Staff, complaining one Lt. Colonel Gogra, to whom the Respondents, allegedly sold a portion of the land, immediately after the foregoing order expired; and the subsequent default judgment awarded to the Applicants, were set aside. Exhibit NEWR 3, is a reply from the Chief of Defense Staff to the Applicants' former solicitor, Roland R. Nylander Esq.

2. The application is made, in accordance with Order 35 Rule 1 (1) of the High Court Rules, Constitutional Instrument NO.8 of 2007 (hereinafter referred to as the HCR 2007). Thus, the requisite undertaking for damages, is deponed to in paragraph fifteen of the nineteen paragraphs long affidavit, that bolsters the application.

3. The Respondents are still doing construction works on the land, even though this Honourable Court is yet to determine the orders as prayed in the writ of summons, commencing this action.

1.3 <u>The Submissions of Counsel for the Respondent</u>

On the same 15th October 2020, Counsel for the Respondents, makes the following submissions, in justification of why he thinks the application should not be granted:

1. The application's contradicting affidavit contains just one exhibit; and that is marked Exhibit ASS1, which is this Honourable Court's direction, dated 6th November 2019. Thus, the essence of this order is for this matter to proceed to a speedy trial; noting that the said affidavit (specifically paragraphs three,

four, and five), depicts very clear facts, that should convince this Honourable Court, to refuse the application.

2. Should the order be granted, that would occasion undue hardship to the Respondents; adding that paragraph two of the contravening affidavit, shows that the action commenced in 2017; and that the Applicant had a default judgment, which was subsequently set aside as of right (and not on terms) and the Court has given directions for this matter to be speedily proceeded with.

3. In fact, the Applicant has not complied with the directions, but has sought to request for injunctive relief. Thus, it would be rational for the application to be discountenanced; and for the parties to be urged to comply with the directions of this Honourable Court, so that the matter would proceed to trial.

1.4 <u>The Law on Injunction</u>

The jurispr~dence on injunction has continued to develop with case law (in the commonwealth jurisdiction). This development has culminated in a very reach literature on injunction; as an equitable remedy, which has been codified by statute in our jurisdiction. Injunctive remedies are so versatile that they can be invoked at any stage, Ejven before, during and after a trial. At the pre-trial and trial stages, injunctions can be either interim or interlocutory, subsisting for a period of either seven days (interim) or span for the entire trial period (interlocutory). However, injunctions are made perpetual at the post-trial stage. At this later stage, they can be made perpetual, because the courts would have had the opportunity to hear the evidence and would have determined the outcomes of the litigations.

Thus, injunctions are effective legal mechanisms invoked by the courts, to enforce the rights and liberties of deserving litigants. Catalytically, the application that is to be determired, concerns principally the grant or refusal of an interlocutory injunction 1nd cost. Thus, if this analysis reflected the literature on perpetual injunction, it would amount to an exercise in futility. Meanwhile, it should be noted that interlocutory injunctions are discretionary and temporary (see Paragraph 29/L/3 at page 565 of the Annual Practice of 1999). That is, courts of competent jurisdictions, can exercise their discretions, to grant or not to grant them, pursuant to statutes or statutory instruments, in the interest of justice and fairness, to deserving litigants. Moreover, such orders will never subsist beyond the trial period. Ess~ntially, the position of the law, regarding the circumstances in which injunctions should or should not be granted, is cognate with the principal sources of law in Sierra Leone. Thus, the shared body of knowledge in this area of the law is shrouded in statutes and case law.

Meanwhile, the American Cyanamid Co. Ltd. v. Ethicon Ltd. (1975) 1 All ER, Fellowes 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 and 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 etc. are some of the landmark cases, that clearly enunciate the guiding principles, which reasonable tribunals of facts, have always

considered, in granting or refusing injunctive applications. Nonetheless, the American Cyanamid case, contains the principal and most salient precedent, that has undou9tedly guided Superior Courts of Judicature in the Commonwealth jurisdiction in dealing with applications on injunctions. In tandem with Lord Diplock's reasoning, the other Law Lords (of the House of Lords) that presided over that monumental case (Lords Viscount Dilhorne, Cross of Chelsea, Salmon and Edmund Davies, held that to determine whether a court of competent jurisdiction should or s~ould 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 (upo~ which the application is based) must neither be frivolous, nor vexatjous.
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 peen granted.
3. The yourt must finally establish whether the balance of convenience is in maintaining the status quo or not.

Significantly, the foregoing criteria have influenced and shaped the development of the law on injunction in English jurisprudence. Thus, the American Cyanamid case is a we I cited authority in numerous applications for injunctions in the United Kingdom, the Caribbean and Africa. Moreover, shortly after the celebrated decision in the said locus classicus, Lords Denning, Browne and Pennycuick, on the 15th, 16th April and 2pd 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 later 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. Essentially, 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 articulated in the American Cyanamid Case) was alluded to, but the application for injunction was accordingly repudiated. More importantly, The Hon. Justice A. B. Halloway's decision in ~ussein Abess Musa (for and on behalf of the beneficiaries) **v.** Musa Abess Mousja 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, C J., 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 application of injunction in that constitutional case.

Nonetheless, The Hon. Justice Desmond B. Edwards J. (as he then was) applied the same criterta in the American Cyanamid case to the facts and facts-in-issue in Chambers ~. Kamara (referenced above), to grant an interlocutory injunction in favour of the Applicant. Furthermore, The Hon. Dr. Justice 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 ward of such orders in both the American Cyanamid and Fellowes cases. Essentially, the trend of thought that is discernible in the analysis, leading to the decisions in the above cases, is rationalized in the HCR, 2007. This argument strengthens the quintessential fact that interlocutory injunctive orders are discretionary and temporary.

Therefore, ;t is the peculiarity of the circumstances of any case, that would determine whether a reasonable tribunal of facts, should or should not grant such injunctive r~liefs. Thus, Order 35 Rulel 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 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.

1.5 The Analysis

An examina,ion of the affidavit, supporting the application, and even that opposing it, depicts trat they both contain depositions, relating to the law on injunction. However, it should be noted at this stage, that affidavits are meant to present the facts and facts-in-issue, that should convince a reasonable tribunal of facts, to grant or not to grant an application. Meanwhile, it is only facts that should be deponed to in affidavits; the law as it is, should not under any circumstance, be mentioned in an affidavit. Further, contrary to Counsel for the Respondents' submission, there is no rule of adjectival law, that says that when a court of competent jurisdiction, makes an order about how a trial should proceed (pursuant to an application for direction by summons), it cannot hear and determine an application for an interlocutory injunction, until the parties to the litigation, comply with such directions.

Nevertheless, the first limb of the threshold for the award or refusal of an injunction is that the Court must determine whether there is a serious question of law to be trifd. It cannot be denied at this stage that this action is about declaration of title to property, damages for trespass, recovery of possession etc. The Applicants and Respondents are thus laying claims to what appears to be the same realty, which is the subject matter of this litigation. The writ of summons, commencing this action and the pleadings in the defense and counterclaims, are clearly reflective of the contentions, concerning the ownership and possession of the realty being claimed by both parties. And the supporting and opposing affidavits of the application, have raised some serious and contentious facts and facts-in-issue, pointing to the need for a serious question of law to be tried. In fact,

the remedies, which both parties are requesting of this Honourable Court, cannot be made available to either, without the determination of who really owns, the realty. This points to the need for a trial. Thus, on this point, V. V. Thomas C. J., had made the following instructive comment: 'If there is no serious question to be tried, this is virtually the end of the matter in an application for an injunctive relief' (see Alhaji Samuel Sam-Sumana v. The Attorney General and Minister of Justice of Sierra Leone and \fictor Bockarie Foh S.C 2015). As it stands, the facts and facts-in-issue, germane to the application, depict that there is indeed a serious question of law to be tried in tTis case. Therefore, the first limb of the American Cyanamid threshold, regarding the award of an injunction, can be clearly seen in the present circumstance of this litigation.

Meanwhile, at this stage it would not be necessary for the Applicant to establish a prima facie case, but the claim upon which the application is based must neither be frivolous nor vexatious. Indeed, the Applicants' claims in this application are neither frivplous nor vexatious. The second limb of the American Cyanamid threshold 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. So far, the Respondents have not adduced any evidence, establishing that an award of an interlocutory injunction, in favour of the Applicant, would never be adequate, should it turn out at the end of the trial that the injunction (if granted), should not have been granted. Again, the Applicants accordingly, complied with the provision in Order 35 Rule 9 of the HCR 2007, by making the apposite undertaking for damages.

Since this fact has not been contravened in the application's opposing affidavit, it would be u~reasonable to conclude that the application, does not meet the second limb of the American Cyanamid threshold. On the third limb, the balance of convenience, is rooted in the fact that, there is absolutely every need for this Honourable Court, to prevent both parties from having anything to do with the realty, until the final determination of the reliefs, sought by both parties to this action. As it stands, to allow anyone to be in possession, will be unfair and detrimental to the other side. Conclusively, the fact that the application, meets the American C~anamid threshold, I hereby grant an interlocutory injunction (in favour of the Applicants) restraining the Respondents, whether by themselves, servants, agents, privies or howsoever called from constructing, working, entering, remaining, and/or disposing of the realty in contention, pending the hearing and determinatipn of the reliefs sought by both parties, to this action. The cost of the determination of this application, shall be cost in the cause.

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

Justice of the Sierra Leone's Superior Court of Judicature.