CC. 428/2020 2020 S. N0.35

In the High Court of Sierra Leone

(Land and Property Division)

Between:

Hawa Sillah - Plaintiffs/Applicants

(Suing as Administratrix of

the Estate of Shiek S. Sillah

(Deceased Intestate) and Others

And

Mr. Lamin Jah - Defendant/Respondent

Counsel:

Sahid Mohamed Sesay Esq. for the Plaintiffs/Applicants

Fatmata Sorie for the Defendant/Respondent

Ruling on an Application for an Injunction, Pursuant to a Notice of Motion, dated 10th December, 2020, Delivered by The Hon. Dr. Abou B. M. Binneh-Kamara, on Friday, 2nd June, 2023.

Context

S. M. Sesay Esq. of Sahid Sesay and Partners (Barristers and Solicitors), Koya Chambers, had filed a notice of motion, dated 10th December 2020, for and on behalf of the Plaintiffs/Applicants (hereinafter referred to as the Applicants) for interim injunction, interlocutory injunction and cost. The application is strengthened by the affidavit of Pa Alhaji Abdul Rahman Kamara and Sahid

Mohamed Sesay, both affidavits sworn to and dated the 8th December, 2020. Contrariwise, Fatmata Sorie of Sorie and Bangura Chambers (Barristers and Solicitors), filed an affidavit on behalf of the Defendant/Respondent (hereinafter referred to as Respondent), sworn to by Amara Bangura, of N0. 8 Adonkia Road, Goderich, Freetown, in the Western Area of the Republic of Sierra Leone, challenging the facts deposed to in both affidavits. Indeed, the affidavits deposed to, in respect of the case of both parties, contain salient facts about this matter and the justifications of why the application, should or should not be granted.

1.2 The Submission of the Applicant's Counsel

Sahid Sesay Esq. made the following submissions, which he said should influence the decisions of reasonable tribunals of competent jurisdictions in making injunctive orders, when the circumstances so demand:

1.There are ten exhibits attached to the first affidavit and they are marked AKA1-10. And the second contains six exhibits marked SMS1-6. Counsel relies on Order 38 of the High Court Rules 2007, Constitutional Instrument N0.8 of 2007 (hereinafter referred to as The HCR 2007).

2.The application dovetails with the criteria for the award of injunctive reliefs, espoused in American Cyanamid Co. Ltd. **v.** Ethicon Ltd. (1975) 1 All ER and Fellowes and another **v.** Fisher (1975) C A 829-843. First, there is a serious question of law to be tried or determined in this case. So, the Court must address the question of whether the Respondent's vendor had any title to pass as at 2019, when the realty was conveyed to him.

3. Amara Bangura deposed to the application's opposing affidavit. That affidavit contains many exhibits. Exhibit AB3 is a photocopy of a very big

house. And that house is referred to in paragraph nine (9) of the said affidavit. That house was erected, pursuant to the Respondent conveyance executed on 18 June 2019. Whereas the Applicants' conveyance had been executed as far back as 2003.

4.There is nothing in that affidavit exhibiting the defence and counterclaim. Exhibit AB8 contains Letters of Administration issued by the Probate Division of the High Court of Justice in respect of Sheik Sahid Mohamed Sillah, who died on the 19 September 2019. He is supposedly the common vendor of the 2nd and 3rd Applicants. Exhibit AB7 was practically executed two months after his death. And it was the same Sheik Sillah that executed a conveyance in respect of this litigation's same subject matter to the 2nd and 3rd Applicants.

5.That the 2003 conveyance was the subject of litigation of an action, commenced in 2017. That action was dismissed, because the conveyance upon which it was anchored was defective. Notwithstanding the dismissal of that action, it behoves the Bench to grant the injunctive relief on the strength of the evidence before the Court.

6. Paragraph nineteen (19) of the statement of claim, embedded in the writ of summons commencing this action, clearly articulates the nature of the claims in this action: That the 1st Applicant had taken out Letters of Administration in respect of the Estate of Sheik Sahid Sillah. She claimed that the corrected conveyance cannot stand the test for it to be litigation upon. So it must form part of the Estate of Shiek Ahmed Sillah.

7. Exhibit AB7 is the Respondent's conveyance executed on the 18 June 2019. Exhibit AB3 to the same affidavit is the copy of the structure constructed by the Respondent on the realty. Paragraph nine (9) confirms that by 2015, Exhibit AB3 had been erected on the realty. The question is: On what basis

Exhibit AB3 was constructed on the realty in 2015, when the conveyance on which he now relies was only executed in 2019?

8. Again there is an affidavit exhibit in the affidavit in opposition, Exhibit AB4, which was sworn to and dated 1st January 2017. This exhibit is evidence of the fact that as far back as 2015, rents had been collected from tenants in respect of portions of the property referenced in Exhibit AB3, but the affidavit did not mention the names of the persons to whom the rents were paid. This necessitates the need for the Court to make an order for the rents being collected to be paid into Court until this matter is determined: See the Supreme Court decision of Aiah Momoh **v.** Sahr Samuel Nyandamoh {S.C Civ. App 6/2006}.

9. Exhibits AB (1a-c) are receipts indicating that the Respondent had negotiated with the 2nd Applicant for the purchase of the realty. The Respondent has pointed to negotiation between himself, one Sidiki Jah and the 2nd Applicant. Exhibit AB7 is also evidence of a contract between the Respondent and the vendor of the 2nd and 3rd Applicants. Exhibit AKB1-3 (the affidavit supporting the application) is also alluded to. The evidence herein points to the fact that it is the same realty that is being referred to in both affidavits. The pleadings have also confirmed this. In fact, Exhibit AK1-3 was executed in 2003 by the same vendor that executed another conveyance for the same realty in 2019.

1.3 The Submissions of the Respondent's Counsel

Fatmata Sorie opposed the application and negated the aforementioned submissions of Sahid Sesay Esq. She rather canvassed the following arguments to dissuade the Court from granting the application:

1.She referenced the affidavit in opposition to the application, sworn to and dated 10th February 2021, together with the Exhibits attached thereto; noting the significance of the Judgment of the Hon. Justice Komba Kamanda, J. (as he then was), dated 12th January 2018 attached to Sahid Mohamed Sesay's affidavit.

2. Order 3 of that Judgment required the Applicants to pay a cost of three million (Le 3, 000, 000: old currency) to the Respondents, but they have not yet complied with that Order. And Courts orders are bound to be honoured, noting that it appears that, that was an unless order. This would mean that, they should not have initiated this action, without paying that cost to the other side. The question is, if they cannot meet that initial cost, can they pay damages, should this Court grant an injunction, but eventually discover that it should not have granted it in the first place?

3. The second order is that the Applicants should not institute any further action against the Respondent in respect of the realty, using their flawed conveyance. That is, the Court was very clear about that conveyance, which is marked Exhibit SMS 1. That is the very conveyance, which the Court said cannot be relied on to institute further actions against the Respondent. But the Applicants have instituted a fresh action, relying on that conveyance. The correct procedure ought to have been for another conveyance to be either issued; or they could have appealed the Court's decision. Rather, they have chosen to rely on that very conveyance, which the Court had condemned and a supplemental conveyance, dated 27th October 2017.

4.The Court's attention is drawn to the dates on Exhibits SMS 5 and 6. The application was filed on 25th September 2017 and its supporting affidavit was dated 27th October 2017. And the supplemental conveyance is dated 27th

March 2017, pre-dating the application for dismissal and the affidavit in opposition in the matter that was dismissed. And same was never before the Court of Justice Kamanda.

5.There is an order attached to the supplemental conveyance, which gives the Applicant the opportunity to register their conveyance out of time; and that such registration is considered to have taken effect on 27th March 2017. This pre-dated the order of Justice Kamanda. Thus, the Court's attention is drawn to the submission that, the Applicant cannot therefore institute this action in respect of the orders as prayed in Exhibit SMS 4, which is the specially endorsed writ by which the initial action was initiated.

6.The orders prayed for in SMS 4 is the same as those in the court action: Declaration of title, injunction and possession. Should this Court grant the injunction, it would appear that the Court is overturning the orders of another Court of concurrent jurisdiction, which should have been appealed against had they considered it unsatisfactory.

1.4 Analytical Exposition: The Law on Injunction

The law on injunctive reliefs, has continued to evolve, with the myriad of case law that has emerged in civil litigations (in the commonwealth jurisdiction). This state of affair has generated a very rich body of knowledge on the equitable remedy of injunction in our jurisdiction. Injunctive remedies are so versatile that they can be invoked at any stage, even before, during and after a trial. At the pre-trial and trial stages, they can be either interim or interlocutory, but they can be made perpetual at the post-trial stage. They are made perpetual at this later stage, because the courts would have heard the evidence and would have determined the outcomes of the litigations.

Injunctive reliefs are thus an effective mechanism, pursuant to which the courts can enforce the rights and liberties of deserving litigants.

Thus, the application that is to be determined concerns an interlocutory injunctive relief. Therefore, it would amount to an exercise in futility, should this analysis spread its tentacles, to embrace any legal authority on perpetual injunction. Meanwhile, it should be noted that injunctive interlocutory orders are thus discretionary and temporary (see Paragraph 29/L/3 at page 565 of the English Supreme Court Annual Practice, 1999). That is, courts of competent jurisdiction, can exercise their discretion to grant or not to grant them, via statutes or constitutional instruments, in the interests of justice and fairness. Moreover, such orders will never subsist beyond the trial period. Essentially, the position of the law regarding the circumstances in which an injunction should or should not be granted is well articulated in the numerous legal authorities that dovetailed with the principal sources of law in Sierra Leone.

The shared epistemology in this area of the law is embedded in statutes and a host of decided cases (legal doctrines) in and out of our jurisdiction. A trenchant perusal and analysis of the cases in this province of the civil law, flags the inevitable precedents in the following cases for immediate considerations: 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 N0. 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 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.

These cases are quite clear on the guiding principles that the courts have developed on injunction. Meanwhile, the American Cyanamid case, reflects the most salient precedent that has undoubtedly guided and guarded the Superior Courts of Judicature in the Commonwealth jurisdiction in handing down their decisions on injunctive orders. In tandem with Lord Diplock's reasoning, the other Law Lords (of the House of Lords) that presided over this case (Lords Viscount Dilhorne, Cross of Chelsea, Salmon and Edmund Davies, held that to determine whether a court of competent jurisdiction should or should 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 (upon which the application is based) must neither be frivolous, nor vexatious.
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 been granted.
3. The Court must finally establish whether the balance of convenience is in maintaining the status quo or not.

These criteria have clearly influenced the development of the law on injunction in English jurisprudence. Thus, the American Cyanamid case is a well cited authority in innumerable applications for injunctive reliefs in the United Kingdom, the Caribbean and Africa. Meanwhile, shortly after the monumental decision in the foregoing locus classicus, Lords Denning, Browne and

Pennycuick, on the 15 and 16 of April and 2 May1975, replicated the criteria for 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 the application for injunction, which was the principal thrust of the appeal in that 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. Significantly, 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 pontificated in the American Cyanamid Case, was incisively reviewed, but the application for the injunctive order, was accordingly repudiated. More importantly, The Hon. Justice A. B. Halloway's injunctive order in Hussein Abess Musa (for and on behalf of the beneficiaries) **v.** Musa Abess Mousa and Others (C.C 745/06 S 2006 M N0. 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, CJ., 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 injunctive interlocutory order as prayed in that constitutional case. Nonetheless, The Hon. Justice Desmond B. Edwards J. (as he then was) applied the same criteria in the American Cyanamid case to the facts in Chambers **v.** Kamara (referenced above), to grant an injunction in favour of the Applicant.

Furthermore, The Hon. Justice Dr. 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 award of such orders in both the American Cyanamid and Fellowes cases. Significantly, the trend of thought that is discernible in the analysis, leading to the decisions in the above cases, is rationalised in Order 35 of The HCR, 2007. This argument strengthens the quintessential fact that injunctive orders are discretionary and temporary. Therefore, it is the peculiarity of the circumstances of any case, that would determine whether a reasonable tribunal of fact, should or should not grant such injunctive reliefs. Thus, Order 35 Rule1 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 that the Applicant requesting for an injunctive order, is bound to make the requisite undertaking, to pay damages to the other side, should it turn out at the end of the trial that, the injunction ought not to 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 Critical Context: Relating the Affidavits' Evidence to the Law

Having analysed the law's position on injunction, I will now proceed to apply the laudable test in the American Cyanamid Case to the facts and facts-in-issue in the instant case. The first limb of the test is that 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 (upon which the application is based) must neither be frivolous, nor vexatious. The application's supporting and opposing affidavits have clearly depicted that there is indeed a serious question of law to be tried in the instant case. The case's principal thrust swirls around declaration of title to realty, perpetual injunction, recovery of possession, damages (special and general) and cost.

The Applicants' Counsel exhibited the title deed, pursuant to which his clients are claiming ownership. And Counsel for the Respondent has as well produced a title deed in respect of the same realty. This raises a serious question of law as to who really owns the realty. There had been an action instituted in respect of the realty which was dismissed by Justice Kamanda, because the conveyance on which the Applicants predicated that action was defective. Subsequently, attempts were made to remedy the defects in that conveyance and a supplemental conveyance was prepared and sent for registration in the appropriate record books of conveyances in the Office of the Administrator and Registrar-General, pursuant to a Court order, but the supplemental conveyance was never registered.

Again, that Court order for registration, pre-dated the Judgment of Justice Kamanda, which inter alia, precluded the Applicants from instituting any action, relying on their defective conveyance. However, in the instant case, the Applicants have not only relied on that defective conveyance.

They have relied on their supplemental unregistered conveyance and the Letters of Administration taken out by the 1st Applicant, in respect of her father's estates, including the subject matter of this litigation. These facts, indubitably strengthened this Court's resolve that there is indeed a serious question of law to be determined, concerning the actual owner of the realty in dispute. And this determination, can only be satisfactorily done, after an expeditious conduct of a full-blown trial. Therefore, the case on which the application is based is neither frivolous nor vexatious. It is the Applicants' conviction that the realty for which the action is in Court is theirs. So, they believe that the Respondent is a trespasser; and should hence be restrained from having anything to do with the realty, until the matter is eventually determined. But the Respondent, does not see himself as such, based on the above facts.

Nonetheless, it is known in our jurisdiction that the mere production of a conveyance in evidence, does not presuppose the establishment of a genuine and good title. A party that relies on a conveyance, must go further to prove a good root of title, because his conveyance may be even worthless or useless: Seymour Wilson **v.** Musa Abess (SC Civ. App. N0. 5/79) and Sorie Tarawallie **v.** Sorie Koroma (SC Civ. App. 7/2004). So, the Court at this stage, is not concerned about whether the Applicant has really made a prima facie case for a declaration of title to property. It is rather concerned about the salient facts, resonating with the issues that are cognate with the test's first limb (which it

has already examined): That there is a serious issue to be tried; and the application must be based on facts that are neither frivolous nor vexatious.

The second limb of the test 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. The issue of damages is cognate with the seriousness of applications for injunction. Thus, 35 Rule 9 of The HCR 2007, deals with damages regarding injunction. The rule makes it clear that an undertaking for damages is a pre-condition for the award of any interlocutory injunctive relief. The evidence has shown that the Applicants have made an undertaking for damage, should it turn out that the injunction, if granted, should not have been granted. This possibility can only be ascertained at the end of the trial.

As it is, the peculiarity of the facts of this case, does not point to anything, that would convince this Court that damages might not be adequate, should it turn out that the injunction, if granted, should not have been granted. The final consideration of the test is that the Court must establish, whether the balance of convenience is in maintaining the status quo or not. The Applicants' Counsel believes, that the balance of convenience is in the Applicants' favour. The Respondent's Counsel however confutes this. But from the Applicants' perspective, since the matter is yet to be determined, the Respondent is a trespasser.

Conversely, the Respondent's position is that again, since the matter has not been finally determined, he is not a trespasser, because he is in possession of the realty and the very conveyance upon which this action is constructed had been declared defective and that the Applicants had been proscribed from relying on it in respect of their claim of the realty in dispute. So, the issue that

is to be determined at this stage, resonates with the last limb of the test in the American Cyanamid Case: The Court must determine the balance of convenience is in maintaining the status quo or not. In the instant case, maintaining the status quo presupposes that the Respondent should be allowed to proceed with the construction works that the Applicant has complained of and upon which the instant application that is yet to determined is based.

Thus, if the Respondent is allowed to continue working on a realty, which ownership is contentious, and which is yet to be determined, the Applicant would confute that reasoning, but would be bound by the Court's decision. Contrariwise, should the Court conclude that the balance of convenience**,** is nuanced towards preventing the Respondent from being in possession of the realty, which he says is his, and has thus been in possession of, long before this action is instituted, and which ownership is being contended, the Respondent would repudiate this, but would be bound by the Court's decision. The balance of convenience is therefore located in the 'Golden Mean' (The Mid-Point).

With this in mind I thus hold as follows:

1. That the Respondent by himself, his servants, privies, workmen or howsoever called, known or described, is hereby restrained by this Honourable Court from further carrying out any work by way of further construction, digging of the soil, erecting any further structure or howsoever a construction work may be known or described on the realty which ownership is in contention or any portion thereof from further letting out any structure on the said land or any portion thereof or disposing of the said land by any other means whether the same is by further letting out to tenants, sale, mortgage, by deed of gifts or

howsoever an interest in the realty is disposed of whether that interest is legal or equitable pending the eventual determination of this matter.

2. That all proceeds accruing to the realty from rents paid by tenants already in occupation be paid into an escrow account kept at the Sierra Leone Commercial Bank Limited Siaka Stevens Street Freetown and the receipts of the said payments be forwarded to the parties' respective solicitors on records and copies thereof be filed with this Honourable Court such payment shall continue until the final determination of this matter.
3. That the cost of this application shall be cost in the cause.
4. That the action shall be immediately set down for a speedy trial, to inter alia, determine the realty's ownership.

I so order.

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

Justice of Sierra Leone's Superior Court of Judicature