

**IN THE HIGH COURT OF SIERRA LEONE**

**(LAND, PROPERTY & ENVIRONMENTAL DIVISION)**

**BETWEEN:**

**IBRAHIM D. ANTAR**

**- PLAINTIFF**

**AND**

**MRS. SALLAY KAMARA**

**- DEFENDANT**

**COUNSEL**

O. Jalloh Esq., Z. D. Kamara (Ms) and I. Williams (Ms) for Plaintiff

B. Koroma Esq. for Defendant

**RULING DELIVERED THIS 22ND DAY OF JANUARY 2024 BY HONOURABLE MRS. JUSTICE JAMESINA E. L. KING J.A**

1. By Notice of Motion dated 6<sup>th</sup> December 2022 , the Plaintiff Mr.Ibrahim D. Antar herein, applied to this Honourable Court for inter alia, an interlocutory injunction restraining the Defendant, Mrs. Sallay Kamara by herself, her servants or agents or howsoever otherwise, from erecting or continuing to erect structures/tower or similar acts of nuisance and/or any nuisance of a like kind that interferes with the Plaintiff's comfort, interest and right to quiet enjoyment of his piece of land situated at No. 10 Ibrahim Antar Drive, Off Spur Road, Freetown pending the hearing and determination of this action, and an interim injunction in similar terms pending the hearing and determination of this application.
2. The application is supported by the affidavit of Ibrahim D. Antar sworn to on 6<sup>th</sup> December 2022 together with the exhibits attached thereto namely, photographs depicting erection of towers/structures to be used to house water tanks located in the Defendant's property, Writ of Summons commencing the proceedings and an undertaking to indemnify the Defendant for damages that may be occasioned by reason of the grant of the orders sought. The main complaint of the Plaintiff is encapsulated in paragraphs 17, 18 & 19 of the affidavit which state as follows:

*"17. That the structures/towers being constructed next to and/or almost abutted to my wall fence thereby affecting my rights to inter alia quietly enjoy my property and posing a security risk to myself and family...*

*18. That the structures/towers.....obstruct my right to light.*



*19. That the work being carried on by the Defendant affects the integrity of my wall fence bestriding myself and the property being currently occupied by the Defendant."*

3. This Court granted the interim injunction against the Defendant on 6<sup>th</sup> December 2022 pending the hearing and determination of this application.
4. The Writ against the Defendant is for inter alia a declaration that the said erection of towers or structures less than 4.6 feet on the land she occupies neighbouring the Plaintiff's land, constitutes non-reasonable use of land and a nuisance and interference with the Plaintiff's comfort and quiet enjoyment of his said land, damages, for an order to demolish the said tower/structures, an injunction and any further reliefs and costs.
5. There is an affidavit in opposition sworn to on 15<sup>th</sup> December 2022 by Emmanuel Wanna Conteh, one of the Solicitors for the Defendant together with several exhibits attached thereto. The said exhibits are a Court Order of this Court granting an interim injunction against the Defendant dated 6<sup>th</sup> December 2022, the Memorandum and Notice of Appearance entered on behalf of the Defendant, pictures of one of the structures on the property of the Plaintiff whose roof overhangs into the Defendant's property.
6. Paragraphs 10 – 12 of the said affidavit in opposition state that the said over hanged roof deprives the Defendant of her right to natural light and view, and the said structure is constructed on the Defendant's fence causing stress on it, and affecting its integrity and causing dirty water to flow into her property whenever it rains.
7. Both parties applied for a visit to the locus i.e. to both properties which was carried out on 10<sup>th</sup> January 2023 in the presence of the engineers and Counsel of both parties, the Plaintiff, the Registrar of the Court and myself. After the visit, a report was produced to the Court by the Registrar including observations and suggestions made during the visit. She was cross examined by both Counsel.
8. The position of the Defendant's tower is very close to the Plaintiff's wall giving rise to the security concerns of the Plaintiff regarding himself and his family. It was also noted that the roof of one of the structures of the Plaintiff is overhanging into the Defendant's land which Defendant complained caused water to flow into her property. There was a red line/rope below the said roof demarcating the boundaries between the properties. These facts were not in dispute.
9. There were strong disagreements between the two engineers as to the integrity of both parties' fences particularly that of the Defendant as a result of the construction work by both sides. Both sides at the time of the visit were amenable to see how their complaints can be resolved and were urged to do so by the Court which noted that both parties, had built less than 4 feet from their wall fences which was an infringement of the law.
10. In Court, both Counsel made submissions consistent with the depositions in the affidavits filed on behalf of the parties, observations during the locus visit and addressed the court on the law. Mr. Jalloh, Counsel for the Plaintiff submitted that damages will not be an adequate remedy having regard to the issue of the security threat, and that the balance of convenience lies in the Court granting the injunction. He relied on *Miller v Jackson* 1977 QB 966, *Hunter v Canary Wharf* 1997 AC 655 as well as *St Helen's Smelting Co V Tippins* 1865 on the point that



the current case of unreasonable interference satisfies the requirements of a private nuisance claim.

11. Mr. Koroma, Counsel for the Defendant challenged the merit of the security concerns of the Plaintiff, submitting that the Defendant's property was unfinished and not fully occupied for over 5 years, fully fenced even before the Plaintiff commenced his own fencing and the risk of scaling the wall is non-existent and purely presumptive. He noted that the risk facing the Defendant was greater as the Plaintiff's fence was built on top of the Defendant's fence with the risk that it can give way. He submitted that the balance of convenience was in favour of the Defendant and relied on the case of *Henneh Watfa v A. S. Barrie*.
12. In reply, Counsel for the Plaintiff referred to the affidavit of 6<sup>th</sup> January 2023 and to paragraphs 11 & 12. He referred to the effort of the Plaintiff to address the issue of his roof overhanging referring to the line ran by the Plaintiff which indicated that he is not somebody who seeks to abuse his position or come to court without clean hands

### **Analysis & Decision**

13. The issue for determination is whether or not it is just or convenient to grant an interlocutory injunction pending the hearing and determination of the action. This may be granted unconditionally or upon such terms or conditions as the Court considers just, as provided in Order 35 Rule 1 of the High Court Rules 2007.
14. The principles and guidelines to be applied in applications of this nature are set out in *American Cyanamid Co. v. Ethicon Ltd. (1975) A.C. 396*, HL adopted and followed by our courts in Sierra Leone. In sum, there must be a serious question to be tried, the Court must consider whether damages would be an adequate remedy for a party injured by the Court's grant of, or its failure to grant the injunction and where does the "balance of convenience lies"?
15. I note that one of the claim in the Writ is for a demolition of the Defendant's tower/structures constructed maintaining that it constitutes nuisance.
16. Both parties complain about inter alia security concerns, interference with light and other forms of nuisance as a result of the actions of the other party. The Defendant has complaints about structures Plaintiff has constructed threatening the integrity of her wall. These are all serious issues to be tried ideally with the aid of experts. During the trial, based on my observation at the locus, I reckon that this Court might have to hear an independent expert regarding these issues.
17. In respect of the injunction prayed for, where does the balance of convenience lie? This application is triggered by the ongoing construction by the agents of the Defendant, of towers for water tanks which according to the Plaintiff are likely to be used by intruders to access his property to harm himself and family. But for the interim injunction, erection of the towers would have continued, though the visit reveals that it is nearly completed though I am not privy to the building plan. Damages will not be an adequate remedy if the construction is allowed to continue and there is a security breach resulting in harm to the Plaintiff and or his family. On the other hand, damages will be adequate to compensate the Defendant should it



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transpire that an injunction ought not to have been granted and an undertaking to that effect has been duly filed.

18. Given the facts borne out in the affidavits of the parties and the observations at the locus visit as well as the submissions of Counsel, I am of the view that the balance of convenience lies in granting the interlocutory injunction applied for and imposing conditions to temporarily address some of the issues and concerns raised by both parties pending the resolution of the dispute. I will again urge both sides to take steps to ensure that pending the hearing of this matter great caution is taken to ensure safety and security which are the most urgent concerns.
19. This is a matter arising between owners of neighbouring properties. In the absence of progress towards an amicable resolution by the parties urged by the Court at the locus visit, and to enable the Court to make a determination of the claims of both parties in their respective pleadings, it is in the interest of justice to continue to halt construction of the tower, order a speedy trial of the issues in dispute to avoid injustice to the parties.
20. Therefore, the injunction against the Defendant must continue and be reviewed every three months and the Plaintiff must within 3 months and before the rainy season come up with a plan to address the water spill into the Defendant's property due to the overhanging roof.
21. Mindful of the Plaintiff's fear that the tower can be used to access the residence of the Plaintiff, the Defendant shall take steps to ensure that this does not happen and come up with a plan to prevent intruders into the Plaintiff's residence using the tower and the Defendant's residence. In the same vein the Plaintiff must prevent the water flow into the Defendant's property. This is not a final determination of the issues but are temporary measures.
22. Given the state of things whilst the matter is pending, both parties are urged to adopt a positive posture consistent with that of good neighbours regarding the respective concerns. This is not a condition but it is the sensible thing to do and if pursued this matter may be resolved without need to have the Court make mandatory orders for its resolution.
23. Orders 28 & 40 of the High Court Rules empowers the Court in the interest of justice and for the speedy conclusion of the matter to give directions for the trial of the action which shall be strictly adhered to by the parties failing which the action may be dismissed, or the defence and counterclaim of the Defendant struck out as the case may be and judgment entered accordingly.
24. In view of the above, I make the following orders:
  1. An Interlocutory Injunction is hereby granted against the Defendant, Mrs. Sallay Kamara by herself, her servants or agents or howsoever otherwise, from erecting or continuing to erect structures/tower or similar acts of nuisance and/or any nuisance of a like kind that interferes with the Plaintiff's comfort, interest and right to quiet enjoyment of his piece of land situated at No. 10 Ibrahim Antar Drive, Off Spur Road, Freetown pending the hearing and determination of this action.
  2. This injunction shall be subject to a review every 3 months from the date of this order on the oral application of either party.



3. Should any party fail to apply for a review as set out in Order 1 above, the said injunction will lapse.
4. The Plaintiff written undertaking to abide by any order for damages if it turns out at the end of the trial that this injunction ought not to have been granted shall stand until the determination of this action.
5. Both parties within 14 days of this order shall exchange written plans to temporarily ameliorate some of the identified concerns; the Defendant shall submit a plan to ensure intruders do not use the tower or residence of the Defendant to access the Plaintiff's property and the Plaintiff shall submit a plan to stop water flow into the Defendant's property.
6. These plans should be exchanged between the parties and submitted to the Court for approval.
7. Both plans shall be examined and approved by the Court on 15<sup>th</sup> February 2024 and the parties' engineers shall be in attendance.
8. These temporary measures to be adopted and their implementation should be monitored by the parties and the court pending the determination of the action.
9. Directions are given for the early trial of the action as follows:
  1. The Plaintiff shall set down the action for trial as soon as pleadings are closed. The length of the trial is estimated to last for 14 days.
  2. Each party shall prepare and contemporaneously serve on the other witness statements of the factual witness it intends to call at the trial of this matter within 14 days from the date of this Order.
  3. Within 14 days from the date the action is set down for trial the Defendants shall identify to the Plaintiff and provide those documents central to their case to be included in the court bundle.
  4. The Plaintiff shall at least 7 clear days before the date fixed for trial, lodge two bundles consisting of one copy of each of the following documents:
    - a. copies of the pleadings and any amendments thereto;
    - b. a list of issues in dispute and admission of facts (if any) arising out of the issues, nature of the evidence to be relied upon (oral or documentary) and any agreed evidence;
    - c. a list of witnesses to be called at the trial by each party; and
    - d. witness statements which have been exchanged and expert reports which have been disclosed, together with an indication of whether the contents of such documents are agreed;
    - e. Summary of any propositions of law to be advanced together with a list of authorities to be cited and
    - f. A chronology of relevant events.

4. That at least 2 days before the trial the Plaintiff shall properly compile and number the pages of the court bundle.

5. At the end of the evidence adduced, each party shall submit written closing address and a list of authorities with the Registrar of the Court together with copies of authorities cited which are not available to the court.

6. On 4<sup>th</sup> March 2024 these directions should have been complied with and the date will be fixed for trial to commence.

7. Matter is adjourned to 15<sup>th</sup> February 2024 to deal with matters in Order 9 above

8. Cost of the application shall be costs in the cause

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