

SC. CIV. NO.1/04

**IN THE SUPREME COURT OF SIERRA LEONE**

**BETWEEN:**

**NATIONAL INSURANCE COMPANY LIMITED - APPELLANT/RESPONDENT**

**AND**

**MOIISON TARRAF**

**- RESPONDENT/APPLICANT**

**HON. MRS. JUSTICES. BASH-TAQI**

**.JSC**

**HON MRS. JUSTICE V. A. D. WRIGHT**

**JSC**

**HON. MR. JUSTICE G. B. SEMEGA-JANNEH**

**.JSC**

**COUNSEL:**

**For E. E. C. SHEARS-MOSES AND MS. V. SOLOMON FOR THE  
APPELLANT/RESPONDENT**

**MR. P. LAMBERT FOR THE RESPONDENT/APPLICANT**

**RULING DELIVERED ON THE 30<sup>TH</sup> DAY OF JULY 2009**

**S. BASH-TAQI - .JSC:-**

I have had the pleasure and the privilege of reading the erudite judgments of my learned sister, V, A, D, Wright and brother, G, B, Semega-Janneh and would like briefly to state my views on this matter. Both Judgments have admirably traced the course of this case from the High Court to this Court therefore I do not find it necessary to do so again,

As I see it the full panel in the Supreme Court comprising five (5) Justices in their Judgment of 26<sup>th</sup> October 2007 not only set aside the Judgment of the lower Court in its entirety, but also declined to remit the case to the High Court for that Court to hear evidence on the interest rate on the relevant foreign currency, They decided to deal with this issue ~~of~~ interest themselves, and they did so by setting aside "Paragraph "B" of the Judgment of the Trial Court", That paragraph awarded interest on the amount to the Respondent/Applicant at the **'rate of interest at 12 % (Twelve Percent) as from 26<sup>th</sup> November 1997 date of Judgment'**, Their Lordships went further and declined to make any Order as to the interest payable on the foreign currency,

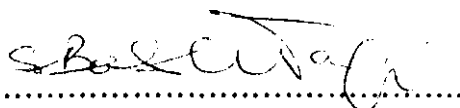
What this present application is seeking is for three (3) justices of the Supreme Court to reverse a final decision taken by five (5) justices of the Supreme Court. This Court has no

power to do so for two reasons. Firstly, under Section 126(b) of the Constitution Act No. 6 of 1991, the Supreme Court constituted by three justices in its civil jurisdiction can deliberate in interlocutory matters only. which can be reviewed, discharged or reversed by the full Court of five (5) justices. Secondly, there is no corresponding power under the Constitution available to three (3) justices to reverse a decision of five (5) justices. If the matter is brought before the full Court Sec 122(2) of the Constitution may be invoked.

I agree with the learned Justice V. A. D Wright, JSC, in her interpretation of the Supreme Court's Judgment. I agree that had their Lordships intended to award interest they would have stated so in clear terms that would have needed no clarification. It is not competent for three (3) Justices of the Supreme Court to correct or interpret a Judgment made by a panel of five (5) Justices. If the decision is flawed, or if any party is dissatisfied with the decision given by the full panel, he/she can only raise that issue in some other matter before the full Court and that Court in its wisdom may decide not to follow what the previous panel has done.

In the premises, I agree with Wright, JSC, that the only interest in this case is that awarded by Stronge, J. in the High Court under Paragraph A" of his Judgment of 26<sup>th</sup> October 2007, and that when the Supreme Court set aside the Judgment of the Court of Appeal, it upheld the High Court Judgment **only in so far as 'the amount of USDS20,000.00 with interest payable in Leones at the rate of exchange effective as at 7<sup>th</sup> April 2000 to the date of Judgment'** was concerned; there was **no order made as to the interest payable in the foreign currency (emphasis added).**

I am similarly in agreement with Wright, JSC in her conclusion on the question of the costs in the Garnishee proceedings. [ make no order as to cost of this application.

  
 .....  
 HON. MRS. JUSTICE S. BASH-TAQI  
 JUSTICE OF THE SUPREME COURT

**MOSHON TARRAF**

**- APPELLANT/RESPONDENT**

**AND**

**NATIONAL INSURANCE CO.LTD. - RESPONDENT/APPLICANT**

**E.E.C. SHEARS-MOSES ESQ.} - FOR THE APPELLANT/RESPONDENT**

**MISS. V.M. SOLOMON }**

**P. LAMBERT ESQ. } - FOR THE RESPONDENT/APPLICANT**

**CORAM:**

**HON. MRS. JUSTICES. BASH-TAQI JSC**

**HON. MRS. JUSTICE V.A.D. WRIGHT JSC**

**HON. MR. JUSTICE G.B. SEMEGA-JANNEH JSC**

**RULING DELIVERED ON THE 2-7-09**

This is an Application by Motion dated 20<sup>th</sup> day of November 2008 for the following orders -

1. *That this Honourable Court do give directions and make clarifications as to the effect of the Orders made pursuant to its judgment in the appeal herein dated 26<sup>th</sup> October 2007 to assist the High Court in the enforcement of the same.*
2. *That this Honourable Court do grant an Interim Stay of the enforcement proceedings pending before the High Court until the hearing and determination of the application*
3. *Any further or other relief*
4. *That the Cost of this Application be costs in the cause.*

The Application is supported by the affidavit of Mariama Dumbuya sworn to on the 20<sup>th</sup> November 2008 and filed herein.

Counsel for the Respondent/Applicant stated that he was asking for clarification of the Judgment of the Supreme Court and not enforcement. He said that since the Supreme Court did not make any Order on the interest to be awarded on the Judgment, it was mandatory that interest was payable on the Judgment debt in accordance with the

J( Judgments Act 1837 Section 17 at the rate of Four Pounds per centum per annum from the time of entering up the Judgment .....until the same shall be satisfied

He further submitted that that the statutory interest in Section 17 of the Judgments Act 1837 should be paid on the **\$20,000**, since this is mandatory.

On the Contention for the Garnishee proceedings he stated that the Respondent/Applicant should not refund the costs of the garnishee proceedings, since the costs of the garnishee proceedings are borne by the judgment debtor and there were other Solicitors involved in the matter.

The other contention is that that the Respondent/Applicant is entitled to ,111 interest payable on the investment as from the date of recovery that is 21<sup>st</sup> January 2004

Counsel for the Appellant/Respondent replied that they were aware of the statutory interest on all Judgment debts but since the Court had pronounced no order as to costs, the question of interest on the **\$20,000** did not arise.

On the question of the garnishee proceedings the total amount of the Costs was Eleven Million Leones but only Eight Million Leones was claimed as a refund which is in reference to the costs paid to the Respondent/Applicant's Solicitor He submitted that the Respondent/Applicant's Solicitor is to pay the costs of the Garnishee since the same Solicitors acted for both creditor and judgment debtor.

He further said that the Applicant is claiming entitlement to statutory interest on the amount awarded and also a right to keep the costs awarded to the firm of Solicitors acting for the Judgment/Creditor in their capacity as Solicitors for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Garnishees in the same action.

In the Judgment of the Supreme Court SC. Civil App No 1 2004 lat1onal Insurance Company Limited and Mashson Tarraf dated 26<sup>th</sup> October 2007 it stated as follows -

"I set aside the Judgment of the Court of Appeal in its entirety and

- (1) *Affirm the Judgment of the Trial Court in respect of paragraph 'A' and give Judgment to Mr Tarraf in the sum of **USA \$20,000.00** payable in Leones at*

*the exchange rate of exchange effective as at 7<sup>th</sup> April 200,) to the date of the judgment given by the Trial Court.*

- (2) *The matter has been in the Court for too long. This Court will not remit the case to the High Court for it to hear evidence on the interest rate on the relevant foreign currency Paragraph B of the relief granted by the Trial Court is hereby set aside and the Court makes no order as to the interest payable on the foreign currency*
- (3) *Due to the unhelpful manner in which the Parties conducted their respective cases in the High Court and the Court below, Parties shall bear their respective costs in the said Courts and also in this Court. If costs have been paid same to be refunded*

Counsel for the Respondent/Applicant argued that every judgment debt carried interest at the rate of Four Pounds per centum per annum from the time of entering up to the judgement.....until the same shall be satisfied i.e. Judgments Act 1838 Section 17 and that it therefore applied in this case.

I disagree with this since in the present matter the Judgment stated clearly that:-

"The Court makes no order as to the interest payable on the foreign currency". Had there been no pronouncement by the Court about interest on the Judgment debt then Section 17 of the Judgment Debtors Act 1838 would apply. In this Act it is stated that when judgment is signed in default of appearance on a writ of summons indorsed for a liquidated document, the rate of interest allowed (in the absence of any rate being specified) is five percent up to the date of judgment

The only interest in this case at the time was that awarded by Stronge J In the High Court as he was at the time. What the Respondent/Applicants seem to be saying is that there were two interests. that ordered by Strong J. and the statutory interest and that when the former was aside by the Supreme Court the later continued and they are entitled to it. That cannot be the case

The Respondent/Applicants are saying that if no interest had been ordered then statutory interest could be claimed. The Court cannot set aside the award of interest

and proceed to allow the applicant to claim statutory interest as an alternative. There can be no claim of statutory interest as an alternative. To my mind the Supreme Court set aside the Judgment of the Court of Appeal and upheld the Judgment of the High Court only in so far as the amount of \$20,000.00 was awarded. In relation to the question of the costs in the Garnishee proceedings, all Garnishee proceedings are done in the High Court, and it is part of the High Court costs

The Solicitors for the Respondent/Applicants in the Supreme Court when it ordered that all costs be refunded were the same who received the costs in the High Court for Judgment Creditor, i.e. the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> garnishees

When the Supreme Court ordered that all costs be refunded they cannot go round to keep those costs. They are different from the firm of Solicitors for the 2<sup>nd</sup> Garnishees who have no business with this appeal and so cannot be affected by the order of this Court.

I therefore hold that when the Supreme Court set aside the Judgment of the Court of Appeal it upheld the Judgment of the High Court only in so far as the amount of \$20,000.00 was awarded and no statutory interest could be claimed by the Respondent/ Applicant.

I also hold that the costs for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Garnishees are to be refunded by the Respondent/Applicant to the Appellant/Respondent and that both Parties are entitled to all the interest accrued on the money which was invested in the Bank'.

Every Party of bear its own Costs.

*Lqv-r*

V.A. Wright

JUSTICE OF THE SUPREME COURT

# IN THE SUPREME COURT OF SIERRA LEONE

***BETWEEN:***

NATIONAL INSURANCE COMPANY LIMITED

APPELLANT/RESPONDENT

AND

MOHSON TARRAF

RESPONDENT/ APPLICANT

***CORAM:***

HON. MRS. JUSTICE S. BASH-TAQI

J.S.C.

HON. MRS. JUSTICE V.A.D. WRIGHT

J.S.C

HON. MR. JUSTICE G.B. SEMEGA-JANNEH

J.S.C

***COUNSEL:***

MR. E.E.C. SHEARS-MOSES AND MS V. SOLOMON FOR THE  
APPELLANT/RESPONDENT

MR. P. LAMBERT FOR THE RESPONDENT/APPLICANT

**RULING (DISSENTING) DELIVERED ON THE 2<sup>ND</sup> DAY OF JULY, 2009.**

**SEMEGA-JANNEH- J.S.C.**

On the 26<sup>th</sup> October, 2007, the Supreme Court gave judgement in this suit and, therein, made the following orders:

- 1. The judgement of the Court of Appeal is set aside in its entirety and affirm the judgement of the trial court in respect of paragraph A and give judgement to Mr. Tarraf in the sum of US \$*

*20,000.00 payable in Leones at a rate of exchange effective as at 7<sup>th</sup> April, 2000 - the date of the judgement given by the trial court.*

2. *Paragraph B of the relief granted by the trial court is hereby set aside and the court makes no order as to the interest payable on the foreign currency.*
3. *Parties shall bear their respective costs in the High Court and the court below and also in this court. If costs have been paid, same to be refunded.*

During the process of enforcement of these orders at the High Court, the parties had different understanding of their purport and effect; and when the High Court made orders pertaining to the enforcement process, despite the protest and opposition of Mr. Lambert, of counsel, for Mr. Tarraf, Mr. Lambert filed on behalf of the Respondent/ Applicant this application for clarification by this court of the effect of its said orders:

In order to have a clearer perspective of the orders of the Supreme Court it would be of help to have the orders of the High Court contained in its judgement of the 7<sup>th</sup> April, 2000, in the background, and for this purpose I hereby reproduce the High Court orders hereunder:

*A: Loss suffered; US \$ 20,000-00 or its equivalent in Leones of the rate of exchange effective on the date of judgement*

*B: Rate of interest at 12% (twelve percent per annum) as from 26<sup>th</sup> November 1997 to date of this judgement.*

*C: Defendants (NIC) to pay costs of the action, such costs to be taxed (Bracketed initials provided)*



Mr. Shear-Moses, of counsel, for the Appellant/Respondent argued that number 2 of the court's orders has the all embracing effect of setting aside every interest affecting the judgement, including the statutory interest on the judgement sums stipulated under section 17 of the Judgement Act of 1883. Mr. Shear-Moses did not offer any underpinning reasoning for his assertion. The law relating to the award of interest, in my judgement, is that the award of interest is in the discretion of the Court except in circumstances where the entitlement to interest is contractual in accordance with law or where stipulated by statute or otherwise. Ordinarily, where statute grants or provides a benefit or entitlement, and such benefit or entitlement may be forfeited, the statute usually provides the conditions upon which such forfeiture can occur. Even on the assumption that court has the authority to deny a beneficiary of a statutory benefit or entitlement, and in the instant case, the statutory interest, the court must have good grounds and must give cogent reasons for refusing or denying what statute gives. Mr. Shears-Moses has not butteressed his submission with cogent reasoning and I find it totally untenable.

Let us now examine the Supreme Court's judgement in relation to interest.

Under the rubric: **INTEREST ON FOREIGN AWARD** the court noted the admission by Mr. Lambert of ground 8 of the grounds of appeal filed by Mrs. Solomon, of counsel, which states:

*"viii. The learned Justices erred in law in arbitrarily awarding interest at 12% without any evidence of the rate of interest applicable in the case of foreign currency having held that the interest being claimed was on foreign currency".*

If the Supreme Court were to award interest on the foreign currency (US \$ 20,000-00), it would have been obliged to take evidence on the US Dollar interest rate chargeable. As it turned out Mr. Lambert urged that in the event judgement is given in foreign currency, the court might remit the matter to the

High Court for it to take evidence on the interest rate on the relevant foreign currency or, alternatively, the court to strike out that part of the judgement dealing with the rate of interest on the foreign currency, in which case, Mr. Tarraf would only be entitled to the statutory interest. The court was not disposed to remit the matter to the High Court on the issue of the rate of interest on the foreign currency judgement sum and, as a consequence, was obliged not to make any *"order as to interest payable on the foreign currency"* in its number (2) order. It is clear from the aforementioned rubric and the discourse thereunder that the Court set aside the interest awarded by the High Court because it was wrong in law as so well pleaded by Ms. Solomon and admirably conceded by Mr. Lambert. Since the Supreme Court was not inclined to remit the matter to the High Court pursuant to law, for the stated reason, it declined to make any order as to the interest payable on the foreign currency judgement of US\$ 20,000-00.

The Supreme Court did not make any pronouncement as to any interest payable on the judgement sum after the date of judgement. Post judgement interest is regulated by contract or statute. In cases where in the judgement interest is given on the basis of a contractual term, such as is usual in bank loans cases, the interest is normally allowed to run until payment in compliance with the contractual term. In ordinary cases where the award of interest is at the discretion of the court, the exercise of the discretion is limited to the grant of interest up to and not beyond the date of judgement. After the date of judgement, the judgement sum attracts interest at statutory rate pursuant to the Judgement Act of 1837, a statute of general application applicable pursuant to sub-section (1) of section 170 of the Constitution of Sierra Leone, 1991, and section 74 of the Courts' Act, 1965. This statutory interest runs until payment is effected by the judgement debtor. It is this interest that the Respondent/ Applicant said is recoverable from the Appellant/Respondent (the judgement debtor). Nothing cogent has been advanced in argument to warrant a refusal or denial by the Supreme Court of this right of the Respondent/ Applicant (the judgement creditor). In my

judgement the Respondent/ Applicant is entitled to recover the statutory interest on the judgement sum of US \$ 20,000-00 from the 7<sup>th</sup> April 2000 until the 21st January 2004 when the judgement debt was recovered by garnishee proceedings.

The second issue between the parties is the costs paid in the High Court as a result of the garnishee proceedings instituted for the purpose of recovering the judgement debt. In my view, the costs were awarded for the proceedings and conduct of those proceedings leading to the appeals that culminated in the appeal to the Supreme Court. The garnishee proceedings came after the judgement in the High Court dated the 7<sup>th</sup> April, 2000, has been delivered and costs awarded for the proceedings leading to the High Court judgement. The garnishee proceedings were commenced by an ex-parte Notice of Motion dated the 8<sup>th</sup> day of January, 2004 almost four years after the High Court's judgement and the proceedings involved five garnishees and the parties herein. The garnishee proceedings were never referred to the Supreme Court in the appeal to the court, and clearly order 3 is not referable to them; at no material time were the garnishee proceedings in the contemplation of the Supreme Court during the course of the appeal.

The fact is that costs are usually awarded to parties to the proceedings in question and not to their respective counsel (or solicitors). See the judgement of Semega-Janneh - J.S.C. in S.C. Civ. App No. 6/2000 between the Owners of the ship "**MV Mascho Star**" and Richabs S.A. and Another dated the 3<sup>rd</sup> day of March 2009 (unreported) at pages 56 to 58. Costs in the garnishee proceedings were awarded respectively to the garnishees and not to their respective counsel (or Solicitors) Mr. Shear-Moses had complained that the same counsel represented the Respondent/ Applicant and some of the Garnishees and, consequently, there was a conflict of interest. The argument or complaint may well bring into question the ethical behaviour of counsel in the matter, and not necessarily the propriety and correctness, or otherwise, of awarding costs to the garnishees that counsel represented. If there has been

unethical behaviour on the part of counsel, it is for the Appellant/ Respondent, on the advice of their counsel, to consider an appropriate course of action. The alleged unethical or unprofessional behaviour of counsel in the garnishee proceedings is not before this court and, I understand, has been dealt with by the High Court. Further, Mr. Lambert has informed this court that the issues of the garnishee proceedings are on appeal before the Court of Appeal and this was not refuted or contested by the other side. The issues of costs arising out of the garnishee proceedings can follow its course in the courts below where all parties affected by such costs are parties.

This court could not have given an order as to the costs in the garnishee proceedings affecting parties thereby who were not parties in the appeal to the Supreme Court. In fact, the Supreme Court in its order was referring to the Appellant/ Respondent and Respondent/ Appellant as the parties who were before it, and no other. I have observed that in Exhibit "*F*" to the affidavit of Ronald Kwaku Hingston, Deputy Managing Director of the National Insurance Company Limited, dated the 5<sup>th</sup> June 2008, as part of exhibit "*MD - 5*" of the affidavit of Mariama Dumbuya, of counsel, dated the 20<sup>th</sup> November, 2008, costs of the garnishee proceedings were to be paid to the solicitors as solicitors of the respective garnishees. I can only conclude that the solicitors received same as agents of the respective Garnishees.


The third issue between the parties is the interest that has accrued on the sum (US\$ 40,000-00) paid into an interest bearing account by order of court which Mr. Lambert called "*the investment*". The judgement sum awarded by the Court of Appeal was US \$ 40,000-00 and this sum was reduced by the Supreme Court in affirmation of the amount awarded by the High Court. The judgement sum of US \$ 20,000-00 awarded by the Supreme Court took effect as at the 7<sup>th</sup> April, 2000 - the date of the High Court judgement. The statutory interest on the judgement sum would therefore run from the 7<sup>th</sup> April, 2000, to the 2<sup>nd</sup> January, 2004, when payment was effected pursuant to the garnishee order of the 21<sup>st</sup> January 2004. The Appellant/ Respondent is therefore entitled

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to the bank rate of interest on the US \$ 20,000-00 which began to accrue on the date the amount was paid out of the foreign account of the Appellant/ Respondent to the Respondent/ Applicant which date is taken as 21<sup>st</sup> day of January, 2004. The Respondent/Applicant is entitled to the accrued interest on the balance of US\$ 20,000-00 (out of the US\$ 40,000-00) which remained theirs as at the 21<sup>st</sup> January, 2004 to withdrawal of same; and prior to the 21<sup>st</sup> January, 2004, only on the statutory interest from the 7<sup>th</sup> April, 2000, to , at the risk of being tautological, 21<sup>st</sup> January, 2004.

In the premises, I hereby declare and order as follows:

1. *That the Respondent/ Applicant is entitled to recover the statutory interest on the judgement sum of US\$ 20, 000-00 from the 7th April, 2000, - the date of the High Court judgement, to the 21<sup>st</sup> January, 2004, the date of recovery of the said judgement sum, pursuant to the judgement Act, 1837.*
2. *That the order number 2 contained in the Supreme Court judgement in this suit dated the 26<sup>th</sup> day of October, 2007 that parties bear their respective costs in the courts below does not affect or attach to the costs awarded in respect of the garnishee proceedings in the High Court.*
3. *That the Appellant/ Respondent is only entitled to the US \$ 20, 000-00 of the sum deposited in an interest bearing account and the accrued interest on the said sum from the 21<sup>st</sup> January, 2004 - the date the Appellant/ Respondent paid the said sum to the Respondent/ Applicant to the date the said sum was withdrawn from the deposit account.*
4. *The Respondent/ Applicant to receive the balance of US \$ 20, 000-00 of the sum deposited in the interest bearing account, and accrued interest thereon from the 21<sup>st</sup> January, 2004, to date of withdrawal.*
5. *No order as to costs in respect of this application.*



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HON. MR. JU TICE G.B. SEMEGA-JANNEH

*REF: G.S.J/JS*