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SC. CIV. APP. 3/20

2012

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

HUAWEI TECHNOLOGIES - APPELLANT/RESPONDENT

AND

CHRISTIAN OGOO - RESPONDENTS/APPLICANTS

AND

DATATEL NETWORK GSM (SL) LTD.

CORAM

HON. MR. JUSTICE P.O. HAMILTON	-	JSC
HON. MRS. JUSTICE V.A.D. WRIGHT	-	JSC
HON. MR. JUSTICE TOLLA THOMPSON	-	JSC

E.E. SHEARS-MOSES ESQ. FOR THE RESPONDENTS/APPLICANTS  
C. MACAULEY ESQ. FOR APPELLANT/RESPONDENT

RULING DELIVERED ON THE 31<sup>st</sup> JULY 2012

This is an application by notice of motion dated 7<sup>th</sup> June 2012 on behalf of the Respondents/Applicants pursuant to Rule 6(5) of the Supreme Court Rules No. 1 of 1982 that:

1. This Court orders security for costs to be given by the Appellant/Respondent for the payment of a substantial amount into court pending the hearing and determination of the appeal.
2. That the costs of this application be costs in the cause.

The application is supported by the affidavit of Chrisian Ogoo sworn to on the 7<sup>th</sup> June 2012 together with the Exhibits filed herein. E.E. Shears-Moses Esq. Counsel for Respondents/Applicants relied on the entirety of the affidavit particularly on paragraphs 7-16. He said that the gravamen of this application was that should the appeal fail, notwithstanding the bond entered into by the Appellant/Respondent they will be deprived of their costs from the High and Supreme Court. C. Macauley Esq. in reply said that there was an affidavit in opposition. He said that Order 26 of the High Court Rules which covers security for costs makes it discretionary and the Annual Practice 1999 page 430 provides as to how it is to be exercised. He referred to the Defendants defence in Exhibit CM 5 paragraphs 1 and 2 and also Exhibit CM 6 paragraphs 4, 5, 6 and 7 where the Respondents/Applicants admitted on oath the debt. He told the court that security for costs was addressed in the Court of Appeal in Exhibit 4, and was refused. He said that the Applicant should have appealed against it under Rules, 5, 6 and 7 of the Supreme Court Rules PN 1982.

E.E. Shears-Moses Esq. replied that they admitted the debt and paid to the right person but a ~~fictions~~ person was now claiming the balance. He said that their decision not to appeal does not deny them the right to ask for security for costs since no costs was never offered after the judgment.

C. Macauley Esq. brought to the courts attention that Datatel was insolvent as contained in Exhibit CM 8.

It is observed that the Respondent/Applicant moved his motion under Rule 6(5) of the Supreme Court Rules PN No.1 of 1982 instead of order 26 of the High Court Rules 2007 and Rule 98 of the Supreme Court Rules PN. No.1 of 1982.

The matter of the courts granting security for costs is at the courts discretion. See Halsbury's Laws of England Volume 10 paragraph 1049, Tudor Furnishers Limited v. Montague & Co. and Finer Production Co. Limited (1950) Ch 113 (1950).



Having listened to the arguments on both sides we hereby exercise our discretion in favour of the Respondents/Applicants and order that the Appellant/Respondent enter into a bond to provide security for costs in the amount of  $\frac{1}{2}$  of US \$ 4,881,232/- (Four Million Eight Hundred and Eighty One Thousand Two Hundred and Thirty Two United States Dollars or its equivalent in Leones which should be issued by any local bank in Sierra Leone. The validity of the bond must be in force until the court case is completed.

It is further ordered that this Order must be implemented within 30 days.

Costs in the cause.

*W.A.*

HON. MRS. JUSTICE V.A.D. WRIGHT JSC  
JUSTICE OF THE SUPREME COURT

HON. MR. JUSTICE P.O. HAMILTON JSC.....*P.O. Hamilton*.....I AGREE

HON. MR. JUSTICE TOLLA THOMPSON JSC.....*Tolla Thompson*.....I AGREE

