FTCC 31/21 2021 G. NO.3

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION

BETWEEN

GLOBAL GROUP OF COMPANIES -PLAINTIFF

AND

MKD JASS DISTRIBUTION & CONSTRUCTION CO. LTD -DEFENDANT

RULING DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR ON THE 11th MAY 2022

A. MARAH -COUNSEL FOR THE DEFENDANT/APPLICANT

I. KAMARA -COUNSEL FOR THE PLAINTIFF/RESPONDENT

On the 9th March 2022, on an application by the defendant, this court made the following orders in this matter;

1. The judgment in default of appearance in this matter dated 28th December 2021 and all subsequent proceedings are accordingly set aside.
2. The Defendant is at liberty to file its defence and counter-claim within 14 days from the date of this order.
3. The Defendant shall refund to the Plaintiff the sum of Le 435,324,294.77 being the sum paid by the Plaintiff in compliance with the Stamp Duty Act Cap 274 of the Laws of Sierra Leone 1960.
4. The Plaintiff shall withhold such sum as have been received by it from the garnishees as part payment of the refund of stamp duty.
5. The defendant shall pay the sum remaining from the refund of the stamp duty within 14 days from the date of this order and prior to filing its defence and counter-claim.
6. The cost of this application is assessed at Le 25 Million to be paid by the defendant to counsel for the Plaintiff.

On the 16th March 2021 by the present application, the defendant approached this court again praying for the following orders;

1. That this Honourable court varies paragraph 5 of the Court Order dated 9th March 2022 pursuant to the inherent jurisdiction of the court.
2. That this honourable court orders the refund of the stamp duty in the sum of Le 435,324,294.77 paid by the Plaintiff to the National Revenue Authority in respect of the default judgment dated 28th December 2022.
3. Any further or other order(s) that this court may deem fit and just.
4. Cost in the cause.

In addressing the court, Counsel for the Defendant first canvassed the position that this court had the inherent jurisdiction to vary certain portions of its own orders. Much need not be said on this issue. The law itself is clear and unambiguous. There is absolutely no inherent jurisdiction by which this court can vary its own judgment. Where a party is dissatisfied with the judgment of the court, its available option is to appeal against same. In the case of **Vitafoam (SL) Limited v Leone Construction and General Engineering Services Civ. App 10/2020** the court of appeal laid down several principles with respect to the scope of authority of the court after a matter had been decided.

Firstly, the court held that parties to an action are at liberty to approach the court for a clarification of its orders subsequent to their delivery. This is not a request for the court to vary or reverse itself. Secondly, the court could give further orders subsequent to its final and perfected order only in the following limited circumstances;

1. *"To amend a previous order to reflect the original intention of the court.*
2. *To make clerical or typographical amendments under the 'slip rule'.*
3. *Under the 'liberty to apply provision' whereby clarification, supplementation or amendment of a previous order is required to give effect to such an order. Under this provision, in every order of the court, liberty to apply is impliedly reserved;*
4. *A consequential order would not be made in want of jurisdiction; as such the order would not transgress the doctrine of functus officio. The court retains inherent jurisdiction, especially under the liberty to apply exception to grant consequential relief to ensure that final judgments are not rendered nugatory."*

What the defendant seeks from this court in the present application is not for this court to amend its orders to reflect its original intention. Nor is it for clarification of the orders or the amendment of typographical errors. This application as is expressed is asking that this court varies its own orders, and this the court cannot do. In the words of Eldred Taylor-Camara JA in the matter of **Frances Smith v Adam Smith Civ. App. 48/2017**

"It is pretty much settled law that the court does not have jurisdiction to revisit or review its own final judgment or order".

The first prayer on the face of this application cannot in the circumstances be entertained.

This in effect means the other prayers on the face of the motion will also have to be refused considering the fact that they have the effect of varying the orders of 9th March 2022. All further obiter in this ruling is therefore purely academic.

Counsel prayed that this honourable court orders the refund of the stamp duty in the sum of Le 435,324,294.77 paid by the Plaintiff to the National Revenue Authority in respect of the default judgment dated 28th December 2022. In support of this argument counsel relied on the case of **MangantiSuryanarayana v The Board of Revenue Government AIR 1976 AP 150.** Counsel stated that he relied particularly on paragraph 34 of the said judgment.

I have taken the liberty to extensively study the said authority cited by counsel. I noted firstly that the legal question in the said matter was with respect to the issue of whether the court can order a refund of excess stamp duty paid to the Revenue Authority. The said question as contained in the said authority is framed thus;

""Whether the petitioner (vendee) is entitled to refund the excess stamp duty paid on the deed dated 12-6-1962 registered as document No. 2014 of 1962 in the Sub Registrar's Office, Kaikalur under the provisions of the Indian Stamp (Act II of 1899) or otherwise?"

After due consideration of the matter, the court in that matter in paragraph 34 of the judgment made the following pronouncement;

"Assuming that the above view is not correct, the next question is whether the petitioner is entitled to the refund otherwise? Elaborate arguments have been addressed on the question that the Chief Controlling Revenue Authority, that is the Board of Revenue in this case, has got ample powers to order refund of excess stamp duty paid in this case, which was not really due on a document executed as an agreement of sale in the first instance. A lot of case-law has been cited and elaborate arguments were addressed on the question as to whether the Revenue Board is a Court or tribunal and consequently if it is a Tribunal, whether it has got inherent powers to order refund of the excess stamp duty paid in this case."

Counsel would want this court to hold that the persuasive authority cited above shows that this court is cloaked with the inherent jurisdiction to order

a refund of the stamp duty paid by the Plaintiff ~~him~~ considering the fact that the judgment for which same was paid have been set aside. This court does not share that view.

Firstly, the said judgment is based on the Indian Stamp Act (Act II of 1899) which said law is not applicable law in this jurisdiction. Secondly, the question before this court with respect to this application is not with respect to the refund of excess stamp duty paid. It is whether this court can in any event grant an order for the refund of regular stamp duty paid. Clearly, this court is not persuaded in any way whatsoever to applythe said principles of law in the present application considering the gulf between the law and the facts of the respective matters.

Counsel also relied on the case of **Terrence Byrne v Revenue Commissioners (1935) IR 664.** In addressing the court on this authority, counsel submitted that the question in the said matter was ~~where~~ wherein an instrument under which Stamp Duty was paid and was subsequently held to be wrongly paid, would compel the Commissioner of Inland Revenue to make a refund. I also took the liberty to carefully study the said authority and again find that it cannot be applied in this matter. Like the **Manganti**matter cited above, this matter is based on a statue that is not applicable in this jurisdiction. Secondly, the question adjudicated in the said matter is materially different from that raised in the present application. This application as I understand it does not revolve around the question of whether the question of whether the stamp duty was wrongly paid. The Plaintiff paid the stamp duty in this matter as a requirement of our laws before it could proceed to take judgment. The payment was not wrong or irregular as in the **Terrence Byrne** matter. It was made in full compliance with our statutes. Therefore it follows that in this circumstance, this court cannot even if it wants to, apply these principles of law.

Counsel submitted that the purpose of payment of stamp duty in so far as judgment is concerned is to enable the Plaintiff enjoy certain benefits which were the terms of the judgment. That in view of the setting aside of that judgment, the Plaintiff is no longer entitled to the benefit and fruit thereof. In that circumstance, the stamp duty and its intended purpose would have failed. For this postulation, counsel relied on the case of **Rajeev Nohwar v Chief Controlling Revenue Authority Civ. App 5970/2021.** I have also taken the liberty to go through this authority and like the others mentioned above, the judgment of the court was based on a statute which is not applicable in this jurisdiction nor do we have a corresponding statue that has the characteristics of the **Maharashtra Stamp Act 1958** based on which this judgment was made. I also cannot apply same.

Regardless of the above, this court is not persuaded by the submission of counsel to the effect that the setting aside of the judgment must result in an

automatic refund of the stamp duty paid as there is no longer any benefit left to be derived. The payment of stamp duty before taking judgment is a requirement of law. It is not as if the Plaintiff was buying the judgment and was therefore entitled to a refund because it has been set aside. It is more like person obtaining a driver's licence because it is a requirement. Where the holder of the licence is barred from driving by the state for whatever reason, there is no longer any benefit left to be derived from being a licence holder. Is he then entitled to demand a refund of licence fees paid? The answer is certainly in the negative. The licence fees paid was not a purchase of permission to drive. It is a requirement of the law he must fulfil before he is permitted to drive.

In view of the above, I make the following orders.

1. The Notice of Motion dated 16th March 2022 is accordingly dismissed.
2. That cost of this application is assessed at Le 5 Million to be paid by the Defendant to Solicitors for the Plaintiff.

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HONORABLE JUSTICE LORNARD TAYLOR