

FTCC 045/2022

2022

G.

NO.10

IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL AND ADMIRALTY DIVISION)
FAST TRACK COMMERCIAL COURT.

BETWEEN:

GUARANTY TRUST BANK (SL) LTD - PLAINTIFF
Sparta Building
12 Wilberforce Street
Freetown

AND

INTERNATIONAL PROCUREMENT AND - 1ST DEFENDANT
CONSTRUCTION SERVICES COMPANY
8 Ecowas Street
Freetown

MOHAMED HIJAZI - 2ND DEFENDANT
11 Lower Pipe Line
Off Wilkinson Road
Freetown

FAYAD HIJAZY - 3RD DEFENDANT
16 Wilberforce Street
Freetown

COUNSEL:

C. F. MARGAI ESQ - for the Applicant/Defendants
F. SORIE (MRS) - for the Respondent/Plaintiff

Ruling

9th October 2023.

An application by way of Notice of Motion dated 29th November 2022 was filed on the same date praying for the following Orders:

1. That the writ of summons intituled FTCC 045/22 2022 G. No.10 Be struck out on the grounds that it discloses no reasonable cause of action against the 1st & 2nd defendants, having regard to the defence filed for and on behalf of the 3rd defendant and buttressed by a proposed settlement, albeit without prejudice regarding all matters between Fayad Hijazy and Guaranty Trust Bank (SL) Ltd (the 3rd Defendant/Respondent and the Plaintiff/Respondent herein) dated the 26th day of October 2022.
2. That the said action be struck out as amounting to an abuse of the process of the court.
3. The court to make any other Order it may deem fit in the circumstances to meet the justice of the case.
4. Costs to the 1st & 2nd defendants/applicants.

The application is supported by the affidavit of C.F. Margai Esq of C.F. Margai & Associates sworn to on the 29th day of November 2022. The court was moved on the 8th day of June 2023.

An affidavit in opposition dated 6th December 2022 was sworn to and filed on the same date by Mohamed Golfa Esq of Sorie & Bangura Solicitors. The reply in opposition to the application was conducted on the 8th of June 2023.

I have read all the documents presented in evidence and heard both counsel. Order 21 rule 17 of the High Court Rules of 2007 and Order 18,

rule 19 of the White Book of 1999 vol. 1 are quite clear on striking out pleadings. The court may at any stage of the proceedings order to be struck out.....on any pleading.....on the ground that:

- (a) It discloses no reasonable cause of action or defence, as the case may be; or
- (b) It is scandalous, frivolous, or vexatious; or
- (c) It may prejudice, embarrass, or delay the fair trial of the action; or
- (d) It is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be. Furthermore, no evidence shall be admissible on an application.

The main thrust of C. F. Margai Esq, Counsel for the defendants, argument, is that the writ of summons of the plaintiff discloses no reasonable cause of action; and that there has been an abuse of process. Lord Pearson in Drummond-Jackson v British Medical Association [1970] 1 WLR 688; [1970] 1 All E R 1094 CA said that a reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered. But in Mr. Margai's opinion, there is no reasonable cause of action.

In Moore v Lawson (1915) CA; and Wenlock v Maloney [1965] 1 WLR 1238; [1965] 2 All ER 871, CA it was stated that so long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a Judge...the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out.

In his submissions to the court, Mr. Margai did not explain what he meant by these two principles. He only described the issues raised in the Statement of Claim as having no reasonable cause of action and an abuse of process.

Order 18, r.19 (18) White Book (supra) describes an abuse of the process of the court, as a term which connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.

As mentioned earlier, I have perused the arguments and documents presented to this Court and I can say in all confidence that there is a reasonable cause of action. The case before the court is not a plain and obvious case for striking out; Williams & Humbert Ltd v W & H Trade Marks (Jersey) Ltd [1986] AC 368. This is a case that requires serious arguments when you consider that Mr. Margai has even raised issues of impugning his client's character and integrity. There are important issues around financial loss and huge debts allegedly owed. It is not a case which is suitable for striking out.

The fact that a case is weak and unlikely to succeed is no ground for striking it out. If Mr. Margai thinks that the case is weak and not likely to succeed, those are for the court to decide and not a ground for striking out an action. I certainly think that the issues raised are quite legitimate and we can only tell whether the case will succeed or is weak by testing it at trial; Nagel v Fielden [1966] 2 QB 633 at 648, 651, CA per Dankwerts and Salmon LJ. Even a serious want of particularity in a pleading may not justify striking out if (1) the defect can be remedied, and (2) the defect is not the result of a blatant disregard of court orders; British Airways Pension Trustees Ltd v Sir Robert McAlpine CA. On the submission of 'Abuse of Process', Hunter v Chief Constable of West Midlands Police [1982] AC 529, HL gave an example of where a person seeks to re-litigate a question which has already been adjudicated by a court of competent jurisdiction even though the matter is not strictly speaking res judicata. It is also an abuse of process to

raise in subsequent litigation, an issue which should have been raised against someone who was a party to earlier proceedings.

In my estimation, this is not a re-litigation, but a case of first instance. Why should the Court strike out the proceedings rather than give the parties a fair trial. Dealing with allegations of impugning one's character and integrity should be a decision for the Court. Going through a fair trial should settle the issues. It would be premature for the Court to strike out the case.

It is therefore the opinion of the Court that no ground has been proven to grant the Orders prayed for, and as such, the **Application is Refused.**

In view of the above stated, the following ORDERS are made:

1. The Application to strike out the proceedings is REFUSED.
2. Each party to these proceedings to make and serve on the other a list of all documents in or have been in their possession, custody and power relevant to the matter within 7 days of this Order.
3. Each party to serve on the other copies of all documents to be tendered and used at the trial within 14 days of this Order.
4. Each party to make and serve on the other, an affidavit verifying such facts within 14 days of this Order.
5. Each party to prepare court documents consisting of:
 - a. Copies of pleadings and any amendments thereto.
 - b. Any admissions arising out of those pleadings.
 - c. The issues in dispute.
 - d. The nature of evidence to be adduced, whether oral or documentary.
 - e. The list of witnesses to be called at the trial.
6. The Plaintiff do fix a date for trial.
7. The Costs of the Striking Out Application is Le. to be paid to the Plaintiff.



9/10/2023.

Hon. Mrs. Justice Fatmatta Bintu Alhadi J.A.
(Sitting as a High Court Judge)