

## IN THE HIGH COURT OF SIERRA LEONE

## GENERAL CIVIL DIVISION

IN THE MATTER OF THE COMPANIES ACT, 2009

IN THE MATTER OF BANGSO FISHING COMPANY A PRIVATE COMPANY  
INCORPORATED UNDER THE LAWS OF SIERRA LEONE

BETWEEN:

BANGSO FISHING COMPANY LIMITED	- 1 <sup>ST</sup> PLAINTIFF
RUPERT DAVIES	- 2 <sup>ND</sup> PLAINTIFF

AND

ADMINISTRATOR AND REGISTRAR-GENERAL - DEFENDANT

COUNSEL:

MS W SERRY-KAMAL for the Plaintiffs

First, A H MADHI ESQ; then, L M FARMAH ESQ & MS KAINWO; and lastly,  
S K KOROMA ESQ for the DefendantBEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE  
JUSTICE OF THE SUPREME COURT  
JUDGMENT DATED THE 31 DAY OF MARCH, 2015.

PLAINTIFFS' APPLICATION DATED 17 OCTOBER, 2013.

1. By Notice of Motion dated 17 October, 2014, the Plaintiffs applied to this Court for, first, an Interim, then, an Interlocutory Injunction Restraining the Defendant and her servants or agents from entering, remaining on or removing articles from the premises of the 1<sup>st</sup> Plaintiff company situate, lying and being at Government Wharf, Wallace Johnson Street.

1<sup>ST</sup> AFFIDAVIT OF 2<sup>ND</sup> PLAINTIFF

2. The Application was supported by the affidavit of Rupert Davies deposed and sworn to that same day. Exhibited to that affidavit, are several documents. According to Mr Davies, he was Managing Director and Chairman, and the owner of 30% shares in the 1<sup>st</sup> Plaintiff company. Prior to his death in 2005, his long time partner, Mr Amara Bangura was the Managing Director of, and owner of 50% shares in the company. After his



demise, he, the 2<sup>nd</sup> Plaintiff began to play a more active role in the company. On 30 October, 2010 the Defendant in her official capacity obtained a Nil Grant, exhibit "RD1" from this Court to administer the deceased intestate's estate. She informed him that this entitled her to hold the 50% shares in the company previously held by the deceased intestate. She requested that she be consulted on matters relating to the company and she was appointed company secretary and made a signatory to the company's accounts. The resolution exhibited as "RD2" is not that making such an appointment. It is one appointing the 2<sup>nd</sup> Plaintiff, Joe Robert Pemagbi and Joe Conteh, respectively, signatories to the company's account held at First International Bank (SL) Limited. Mr Davies deposed that he kept the Defendant informed of all his dealings with the company and cooperated with her, but stopped doing so when the Defendant became dictatorial, rude and disrespectful to him, and began acting as if the company was her personal property, and that she was entitled to dispose of it as she wished. As a result of her intransigent behaviour, letters were addressed to her - not exhibited - and a writ of summons, exhibit "RD3" was issued against her on 7 October, 2013. Mr Davies was of the view that the Grant she had obtained in her official capacity did not entitle her to shares in the company, or, to a right to participate in the affairs of the company. By letter dated 12 September, 2013, exhibit "RD4", addressed to the Chairman of the company, the Defendant resigned as Company Secretary. In that letter she claimed that her position as secretary was completely voluntary, and that she had not been paid any remuneration for her services. Notwithstanding her resignation, Mr Davies said that he was informed by the Bank that she had instructed them not to allow any other person, access to the company's account held with the Bank. By letter dated 2 October, 2013, addressed to Mr Davies, the Defendant demanded payment within 2 days, of the sum of Le86,417, 692/52 being an amount she had paid to Rokel Commercial Bank (SL) Limited in settlement of the deceased's mortgage debt owed to that Bank. She threatened to apply for the winding-up of the company if the money was not paid to her. According to him, the debt owed to that Bank was not one owed by the company, but by the deceased intestate in his personal capacity, and of the amount owed, Le200m had been paid in settlement thereof.

3. He deposed further that he had to issue debt recovery proceedings against two of the company's tenants in 2012 as evidenced by a copy of



the writ of summons exhibited as "RD6(1)". By Order dated 28 January, 2013 MUSU KAMARA, J, exhibit "RD6(2)", granted recovery of possession of the company's premises occupied by Union Fishing 2007 Company Limited. The 1<sup>st</sup> Defendant company in that action agreed to an out-of-court settlement, and has in fact, made one payment to the 1<sup>st</sup> Plaintiff company, amounting to USD30,000 as evidenced by exhibit "RD7". The Defendant demanded this sum of money from 2<sup>nd</sup> Plaintiff, but he refused to hand it over to her. Just before action commenced, some part of the company's premises was damaged by stormy weather, and copies of photographs of the destruction caused are exhibited as "RD8 (1-4)". The Defendant's interference with the company's bank accounts has made it difficult for the deponent to utilise the same, for the purposes of the company's affairs. As a result, the deponent has had to use his own monies to renovate the company's premises destroyed by stormy weather. Emails to this effect are exhibited as "RD9".

4. Relations between the two antagonists deteriorated further, when, according to the deponent in paragraphs 22 - 25 of his affidavit, on 24 September, 2013, the Defendant went to the company's premises, walked around the same, informing the employees that they were wasting their time with repairing the premises as she intended to shut the company down. She went into the company's office, and took away some documents, and threatened that she would return with the Police to shut operations down. She subsequently caused some of these documents to be published in newspapers. An example of such a publication in the "Standard Times" newspaper for 27 September, 2013 is exhibited as "RD10".
5. According to an affidavit deposed and sworn to by one Momoh Samura on 17 October, 2013, the writ of summons herein, was served on the Defendant the day before, 16 October, 2013.

#### AASIGNMENT OF FILE TO THIS COURT

6. This Application dated 17 October, 2013 was assigned to this Court by the Chief Justice on 23 October, 2013 but I travelled out of the jurisdiction that day. On my return on 30 October, 2013 I minuted (as appears on the inside cover of the file) to my Registrar, as is my usual custom, that he should ask Counsel to fix a date for hearing. Thus it was that the Application first came up for hearing before me on 1 November, 2013. By then, the Plaintiffs had filed another Notice of Motion dated 31 October, 2013.



PLAINTIFFS' 2<sup>ND</sup> APPLAICATION DATED 31 OCTOBER,2013.

7. In this second Application, the Plaintiffs applied for an Order compelling the Defendant to immediately remove the police officers then occupying the company's premises and to unseal the company's offices pending the hearing and determination of the action; and for an Interlocutory Injunction restraining the Defendant from sealing, barricading any part of the premises, cold room, offices, and all properties belonging to the company pending the hearing and determination of the action.

1<sup>ST</sup> HEARING

8. Both Applications came up for hearing before me, as I have stated above, on 1 November,2013. Because of its urgency, I decided to hear the second Application first. The record of the proceedings is to be found at pages 1 -4 of my minutes. I made the Orders which appear on pages 3 and 4, respectively. I was of the view that the Defendant was wrong to make use of members of the Police Force to aid her efforts without an Order of Court. It was wrong to bring the Police into a matter which was of a civil nature, without an Order of Court. The duty of the Police, as I perceive it, is to enforce the criminal law, and to give aid to the Under-Sheriff when called upon, and not otherwise. The Defendant being a Public Officer, and a member of the Bar of England and Wales and of Sierra Leone, such action, in my view, smirked of abuse of office. The second Application was adjourned to 7<sup>th</sup> and then 8<sup>th</sup> November,2013 for hearing.

2<sup>ND</sup> HEARING

9. At the hearing on 8<sup>th</sup> November,2013 the Defendant was represented by Mr Farmah, Principal State Counsel, and Ms Kainwo, State Counsel. Ms Serry-Kamal proceeded to move the Court on the 1<sup>st</sup> Application dated 17 October,2013. That Application is supported by two affidavits, the first, deposed and sworn to by the 2<sup>nd</sup> Plaintiff on 17 October,2013 which I have dealt with above, and the other, in fact the third one (the second affidavit being the one deposed and sworn to in support of the second Application on 31 October,2013) on 7 November,2013 respectively.

2<sup>ND</sup> PLAINTIFF'S 3<sup>RD</sup> AFFIDAVIT



10. She sought the Leave of the Court to use this third affidavit, and Leave was granted by the Court. Exhibited to that affidavit are a copy of a Resolution of the company dated 19 August, 2013 addressed to the First International Bank (SL) Limited, by the company's former Managing Director, Mr Leonard Balogun Koroma, stating that the new signatories to the company's account held with that Bank were, the deponent himself, the Defendant, and Mr Junisa James respectively. Also exhibited, are copies of correspondence between the Plaintiffs' Solicitors and the Defendant. Plaintiffs' Solicitors letter dated 4 September, 2013 was a reminder that the Defendant had not responded to an earlier inquiry made by them, and was also a request for a copy of the full Grant made to the Defendant. Defendant's response dated 19 September, 2013 was rather intemperate in language and style, very combative, and contained a threat to institute criminal action against those whom, according to the author, *".....have conspired to defraud, and have defrauded the said company, and civil proceedings to recover debt owed to the said company."* Plaintiffs' Solicitors reply to that letter dated 23 September, 2013 drew the Defendant's attention to her several acts of interference with the affairs of the company, and the limitations implicit in her role as Administratrix as she had only obtained a Nil Grant.
11. Whilst arguing the Motion, Ms Serry-Kamal pointed out to the Court that the Defendant had prevented the 2<sup>nd</sup> Plaintiff from using the company's bank account. She had demanded a portion of the sum of USD30,000 paid to the company by the cheque, alluded to in paragraph 3, supra. Mr Davies had denied the request and had told Defendant that the whole of the amount paid was needed for repairs. She ended by advertng the Court's attention to the leading authority on this area of the Law: *AMERICAN CYANAMID CO. V ETHICON LTD [1975] 1 All ER 504, HL.*

#### THE LAW - AMERICAN CYANAMID

12. The principles enunciated in this case are still applicable: the Plaintiff must establish that he has a good arguable claim to the right he seeks to protect; the Court must not attempt to decide this claim on the affidavits; it is enough that the Plaintiff shows that there is a serious issue to be tried; if the Plaintiff satisfies those tests, the grant or refusal of an Injunction is a matter for the exercise of the Court's discretion on the balance of convenience. The White Book tells us also that *"where neither side is interested in monetary compensation and the*



*decision on the Application for an Injunction will be the equivalent of a final Judgment.....the Court should not grant an Interlocutory Injunction...merely because the Plaintiff is able to show a good arguable case, and the balance of convenience lies in granting an Injunction; instead, the Court should assess the relative strength of the parties' cases before deciding whether the Injunction should be granted..... where the acts of a public body are in question the public interest is an important factor and qualifies the ordinary financial considerations.....a public authority should not be restrained by an Interlocutory Injunction from exercising its statutory power unless the Plaintiff shows that there is a real prospect that he will succeed in his claim for a permanent Injunction at the trial."*

13. In deciding where the balance of convenience lies, the principles the Court should bear in mind are: first, is whether damages would be a sufficient remedy; if so an Injunction ought not to be granted. Damages may also not be sufficient if the wrong is a) irreparable, or b) outside the scope of pecuniary compensation, or c) if damages would be difficult to assess. It will be, generally, material to consider whether more harm will be done by granting or by refusing an Injunction. I must also consider whether, the granting of an Injunction is the only way the Plaintiff could seek to enforce the requirements of the provisions in the Union's Constitution, relating to the holding of elections. The Plaintiff must also give an Undertaking as to Damages.

#### ARGUMENTS OF MR FARMAH

14. Having considered the Law applicable in this respect, I shall return to the arguments of Counsel. Mr Farmah in answer said that the Plaintiffs had not shown that the Injunction prayed for could be granted against the Defendant, she being a public officer. He added that the land on which the company's premises were built was State land. There was nothing before the Court to show that the company was a tenant of the State. The Plaintiffs' action was principally, one for Trespass. At this stage, he asked for time to file an affidavit in opposition. I acceded to his request, and adjourned the hearing to Thursday 14 November, 2013. There was no Court sitting that day because of the Training Workshop organised for Judges at the Judicial Institute co-ordinated by Dame Linda Dobbs, at one-time, a Judge in the Queen's Bench Division of the High Court of Justice of England and Wales. But on my return from the workshop late



that afternoon, I indorsed the Court file. I noted that appearance had been entered by Mr Farmah for and on behalf of the Defendant on 8 November,2013 though the appearance itself was undated. I formally adjourned the hearing to Tuesday 19 November,2013.

#### DEFEANDANT'S LETTER TO THE CHIEF JUSTICE

15. Before that hearing, on Friday 15 November,2013 the Defendant had addressed a letter to the Chief Justice requesting that the case file be removed from my Court and be transferred to another Court for the reasons stated in the letter. I responded to that request in a letter bearing the same date, addressed to the Chief Justice a copy of which was extended to the Defendant. In that letter, I commented on the conduct of the Defendant which I believed exhibited disrespect for, and discourtesy to the Bench. The letter is available if Counsel wish to see it. The Defendant's request was eventually turned down by the Chief Justice and I was allowed to proceed with hearing the matter.

#### HEARING ON 19 NOVEMBER,2013 - CHALLENGE TO JURISDICTION AND RULING ON THIS ISSUE

16. To return to the proceedings, on 19 November,2013 Mr Farmah drew the attention of the Court to the affidavit in opposition purportedly deposed and sworn to by the Defendant on 14 November, 2013 but only filed the next day, 15 November,2013. He then intimated the Court that notwithstanding the filing of the affidavit in opposition, he wished to object to the hearing proceeding, on jurisdictional grounds. I heard him in argument, and also Ms Serry-Kamal in answer. On 27 November,2013 I delivered my Ruling on Mr Farmah's submissions at pages 10 -13 of my minutes. His objections were overruled. He was not in Court that day. I expressed my disapproval of his conduct as the Ruling was delivered as a result of an objection taken by him. However, Ms Kainwo appeared on behalf of the Defendant. She again drew the Court's attention to the affidavit in opposition filed on behalf of the Defendant. She said she was not in a position to proceed, and asked for a date. Her request was granted, and the hearing was a adjourned to 4 December,2013.

#### HEARING ON 4 DECEMBER,2013

17. On this day, Defendant was absent and unrepresented, though Counsel on her behalf had requested that particular date. I noted in my minutes at



page 14 that Defendant should have argued her response to the Plaintiffs' Application. This is the accepted practice. Even though a party may have filed an affidavit, Counsel for that party ought to be heard in argument, unless Counsel informs the Court that he or she will not be presenting oral arguments either in favour of, or, against granting the application under consideration. Ms Serry-Kamal thereupon applied for Ruling to be reserved. I adjourned the hearing to 12 December, 2013 to deliver the Ruling, but it was not delivered on that date, nor on the next adjourned date 17 December, 2013 as I was waiting to see whether the file would be withdrawn from me by the Chief Justice. In the result, it was not withdrawn as I have stated above, but I kept the door open in the event that the Defendant, or, Counsel on her behalf would wish to present oral arguments.

#### FILE RECALLED

18. Sometime last month, Mr Koroma approached my Registrar and informed him that he had been instructed by the Defendant. He requested that the file be re-called so that he could file the appropriate documents. My Registrar passed on the request to me, and I released the file to him for that purpose as the Ruling had not yet been written.

#### CHANGE OF SOLICITORS

19. On 17 February, 2015, Mr Koroma filed respective Notices of Appointment, and of Change of Solicitors. Early this month, he requested a hearing and the hearing was fixed for 10 March, 2015.

#### HEARING ON 10 MARCH, 2015

#### DEFENDANT'S AFFIDAVIT IN OPPOSITION

20. At the hearing on 10 March, Mr Koroma referred to the affidavit in opposition filed in November, 2013 and relied on its contents. In her affidavit, the Defendant contended that the 2<sup>nd</sup> Plaintiff had been acting without proper authority in his handling of the affairs of the Plaintiff company. She deposed that the sum of USD30,000 paid by cheque in favour of the company had been utilised by the 2<sup>nd</sup> Plaintiff for his own benefit, but she did not depose how this was done, nor, did she provide proof that this amount of money was used in any way other than that deposed to by the 2<sup>nd</sup> Plaintiff in his first affidavit and in Ms Serry-



Kamal's affidavit filed later. She argued that she was holding 50% of the shares in the Plaintiff company in her official capacity, and she could not be restrained from doing so. The letters exhibited by her to her affidavit as "MSK4, 5, 6, 7, & 7" show that she was kept fully informed of the goings-on at the company, save for those times when, it appears, from exhibit "MSK6" she was out of the jurisdiction. She deposed further that the company's premises were built on State land, and she exhibited several documents, exhibits "MSK9,10,11 and 12" respectively as proof of this. She also exhibited a letter dated 4 June,2013 as "MSK13". It was a letter from the Permanent Secretary, Ministry of Lands, terminating the Lease granted to the company in respect of the premises at Falcon Bridge. In her paragraph 18 she seems to be referring some matter involving the Police, but the whole paragraph is unintelligible. I cannot clearly make out what she was trying to say. It appears some words were left out, perhaps in haste. She ended by deposing that the writ of summons herein and all subsequent proceedings ought to be set aside. This last, this Court cannot do in the absence of a substantive application for that purpose. In his arguments in Court, Mr Koroma reinforced the Defendant's contention that she could not be restrained from performing her official functions.

21. At the end of argument, I directed that both sides should file affidavits deposing to the present status of the property because of the time which had elapsed since December,2013.
22. In his additional affidavit, deposed and sworn to on 17 March,2015 Mr Koroma has deposed that his instructions are that the Defendant has not dealt with the estate of the deceased intestate since the granting of the Injunction in November,2013. She is not aware of how the company has been run, or, how its affairs have been managed. She had been shown a copy of a writ of summons issued against her by the first wife and daughter respectively of the deceased intestate, but she was yet to be served with it.
23. Ms Serry-Kamal also deposed and swore to two additional affidavits on 16 and 20 March,2015, respectively. In the first one, she deposes to the present state of the company's finances. She has exhibited as "WSSK2" a copy of the break-down of monies disbursed out of the sum of USD30,000 paid to the company. The account stated also includes a statement of expected income from rental of the company's premises. Other correspondence relating to the loss suffered by the company



during the period of closure caused by the actions of the Defendant, and also relating to the indebtedness of Mr Thorlu Bangura, who, in his second affidavit, the 2<sup>nd</sup> Plaintiff had said was cousin to the Defendant, are also exhibited. Lastly, Ms Serry-Kamal has exhibited a copy of a writ of summons which has been issued against the Defendant by the first wife and daughter respectively, of the deceased intestate. In that action, the Plaintiffs therein are asking for the Grant made to the Defendant to be revoked, and for her to render an account in respect of her conduct of the affairs of the company and of the personal estate of the deceased intestate. In her second affidavit, Ms Serry-Kamal has deposed that the writ of summons issued by the deceased intestate's first wife and daughter, against the Defendant, was indeed served on her, contrary to the instructions given to Mr Koroma. She has exhibited proof of such service.

## FINDINGS

24. Coming to the merits of the Plaintiffs' Application herein dated 17 October, 2013 I must, I think, firstly, go back to the Orders I made on 5 November, 2013, exhibited to Ms Serry-Kamal's affidavit of 16 March, as "WSSK1". Notwithstanding the Orders applied for by the Plaintiffs, I did not grant an Injunction to the Plaintiffs. The Defendant's argument in paragraph 7 of her affidavit that an undertaking was not requested of the Plaintiffs, is therefore misconceived. What I did there was to regularise the position of the Plaintiff company, and curb the Defendant's improper use of the Police in a civil matter. I Ordered that the proper Judicial Officer, the Under-Sheriff, take control of affairs until an inter partes hearing could be had. The course the inter partes hearing took, has been set out supra and need not be repeated here. That the Orders made that day may not have been carried out, is a matter for the Plaintiffs.
25. I have also set out above, the Law relating to the granting of Injunctions. There is clearly a serious issue to be tried. The Plaintiffs have a good and arguable case. But the balance of convenience in my view lies with refusing the Injunction. It is my view that the Plaintiffs could be adequately compensated in Damages. The most serious issue in my view, apart from the opposing accounts of how each side has behaved in the matter of the company's affairs, is the position of the Defendant as a public officer. Both sides have made accusations about the other side's



improper conduct. I cannot at this stage say with any degree of certainty that at the trial of the action, the Plaintiffs will succeed. Where this is the case, the Law requires that an Injunction be refused. Much as I disapprove of the conduct of the Defendant in her attitude towards the Court, I have to give a decision based on the Law.

ORDER

26. In the premises, the Plaintiffs' Application for an Injunction, Interim or Interlocutory, is refused. In the exercise of my discretion, and so as not to over-burden an estate which already appears to be in straitened circumstances, each party shall bear its, his and her own Costs.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE