Plaintiffs

MISC. APP 27/23 2023 B. NO. 4

IN THE HIGH COURT OF SIERRA LEONE
(INDUSTRIAL AND SOCIAL SECURITY DIVISION)
IN THE MATTER OF THE EMPLOYMENT ACT NO.15 OF 2023
AND
IN THE MATTER OF THE APPLICATION UNDER THE INTERNATIONAL COVENANT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS
AND
IN THE APPLICATION UNDER ORDER 5 RULE 4 OF THE HIGH COURT RULES 2007, CONSTITUTIONAL INSTRUMENT NO.8 0F 2007
AND
IN THE MATTER OF AN APPLICATION FOR THE CONSTRUCTION AND DETERMINATION OF ENACTMENT, CONTRACT AND OTHER DOCUMENTS

BETWEEN:

FELIX BERETHE &OTHERS ========== PLAINTIFFS

AND

STANDARD CHATERED BANK ========= DEFENDANT
SIERRA LEONE LIMITED

COUNSELS:

O JALLOH* Esq. ------ *Plaintiffs

R. JOHNSON Esq.--------- Defendant

This ruling hinges on an application specifically for the grant of an interlocutory injunction restraining the defendant whether by itself, it's groups, shareholders, attorneys, professional advisers, servants, agents, privies and or any person or authority who shall posses direct or indirect right, power or authority or however otherwise called from taking, continuing with or proceeding with any or further steps or action that would result in the full final and complete sale and the divestiture processes of Standard Chartered Bank Sierra Leone Limited to new owners, the transfer of shares to the new owners, it's physical and or liquid assets or any other assets owned in Sierra Leone including Regulatory approval of the Central Bank of Sierra Leone, the Corporate Affairs department, the Financial Intelligence Unit or any other regulatory authority responsible for regulating, overseeing or supervising commercial banks in Sierra Leone and or for any new owner be or being recognized by the regulatory authorities in Sierra Leone without the provision of security in regard the plaintiffs claim in this action NLE 124,018,730.55 being the USD 5,536,550.47 at the exchange rate of 22.4 new leones being the Standard Chartered Bank mid- rate for 3rd August 2023 and 10% of the said sum or such sum as shall be fixed by the court pending the hearing and determination of this matter or untill the court shall otherwise order.

That further and or in the alternative, that the defendant be ordered to pay the sum of NLE 124,018,730.55 being the USD 5,536,550.47 at the exchange rate of 22.4 new leones being

the Standard Chartered Bank mid- rate for 3rd August 2023 and 10% of the said sum or such sum as shall be fixed by the court to be paid into an account to be managed and controlled by the solicitors for the parties in this matter untill the court shall otherwise order prior to the full, final completion of any sale or the divestiture processes of the defendant and or the recognition by the Central Bank of Sierra Leone or any other regulatory body in Sierra Leone of any new owners of the defendant.

Any further other order, reliefs that this Honourable court deems fit in this cause or matter.

This application is made by way of a notice of motion dated the 3rd day of August 2023.the 1st and 2nd reliefs sought in this application was inter alia granted by this court.

The application is supported by the joint affidavits of Felix Berethe, Henry Saffa, Ajibu Jalloh, and Dr. Charles M. Kaikai sworn to on the 3rd August 2023 consisting of 56 paragraphs. The court was moved on this application and an interim injunction was granted same to last for seven (7) days with an order that it be served on the defendant for inter-partes hearing on the interlocutory injunction.

The defendant then caused an appearance to be entered in its behalf by messers Lambert and partners. Then an affidavit in opposition was also filed dated 14th day of August 2023 followed by a supplemental affidavit in opposition all together with twenty- eight (28) paragraphs.

There is before this court an originating summons dated 3rd day of August 2023 an action instituted by the plaintiffs against the defendant and same exhibited and marked as exhibit 'C. The said originating summons seek the following orders:

1. Whether a redundancy occurred in accordance with the provisions of the Employment Act No.15 of 2023 due to the sale and divestiture of the Defendant's commercial banking subsidiary in Sierra Leone to Access Bank and in the light of the Defendant's failure to make appropriate provisions for the employment status of the Plaintiffs?
2. If the answer to question 1 is affirmative, does the obligation arise, pursuant to relevant provisions, including section 82 (1) (d) of the Employments Act 2023, and considering the positions of the respective Plaintiffs, being at or above supervisory level and not subject to any Collective Agreement provisions within deposit-taking institutions (banks), requiring the defendant to engage in negotiations for redundancy compensation packages favourable to the plaintiffs, exceeding the minimum threshold established by the trade group negotiating council and outlined in the trade group collective Bargaining Agreement between employers in the Commercial Banking Trade Group and the Clerical, Insurance, Banking, Accounting, Petroleum, Industrial & Commercial Employees Union (CIBAPICE Union), and subsequently, to disburse the mutually agreed upon amount to each of the plaintiffs?
3. Whether the operation of a provident fund, wherein both the defendant's obligation to fulfil the plaintiffs' end of service benefit or severance pay, as stipulated by section 80 (1) of the Employment Act No.15 of 2023?

4. Whether the provisions of inter alia section 80 (1) of the Employment Act No.15 of 2023, establish an entitlement for the plaintiff who have served the defendant either on a full time or part time basis to receive end-of-service benefits or severance pay upon the closure of the Defendant's operation in Sierra Leone, distinct and separate from their entitlement related to the internal provident fund and redundancy compensations?
5. If the answer of question 3 is affirmative, whether the defendant is legally bound to engage in negotiations for the rates of end-of-service benefits or severance pay to be disbursed to the plaintiffs, aimed at establishing a fair compensation rate exceeding the minimum requirement stipulated for employees being at or above supervisory levels?
6. Whether in cases of conflict between the standards and policies of the defendants and the laws of Sierra Leone, should the plaintiffs be entitled to more favourable provisions, and whether it is legally incumbent upon the defendant to fully comply with and implement these provisions.
7. Whether by virtue of the plaintiffs having served diligently in the employment of the defendant and the group full-time or part-time and now being rendered redundant without clear prospect of reengagement by the new owners they are entitled to receive reference letters from the defendants?

CONSEQUENT UPON THE CONSTRUCTION/DETERMINATION OF THE QUESTIONS SET OUT ABOVE THAT THIS HONORABLE COURT GRANTS THE FOLLOWING RELIEFS:

i. If the answers to question 1 and 2 are in the affirmative, that this Honourable Court grants an order declaring that a redundancy has occurred with regard to the plaintiffs.
ii. If the answer to question 1 and 2 are in the affirmative, that this Honourable Court grants an order declaring and directing that the defendant is obligated to negotiate favourable compensations with plaintiffs for redundancy payments and for the same to be paid immediately.
iii. If the answer to question 3 and 4 are in the affirmative, that this Honourable Court grants an order declaring that the plaintiffs, having served in the employment of the defendant full-time or part-time for a period of over one year, are entitled to be paid end-of-service benefits or severance pay in addition to or separate and distinct from their entitlement to provident fund and redundancy compensations.
iv. If the answers to question 3 and 4 are affirmative, this Honourable Court direct and set favourable rate of end-of-service benefits or severance pay to be paid to the plaintiffs and for the same to be paid immediately.
v. Given the nature of the matter and the imminent permanent departure of the defendant from the Jurisdiction of Sierra Leone, that this Honourable Court set the threshold for the various rate of redundancy compensation and end of service benefits to be paid to each of the plaintiffs guided by the rates set out in the affidavit in support of this application.
vi. That an injunction be granted restraining the Defendant whether by itself, it's groups, shareholders, officers, attorneys, professional advisers, servants, agents, privies and/or

any person or authority who shall possess direct or indirect rights, power or authority or howsoever otherwise called from taking, continuing with, or proceeding with any or further steps or action that would result in the full, final and complete sale and divestiture processes of Standard Chartered Bank Sierra Leone, including regulatory approval of the Central Bank of Sierra Leone, the Corporate Affairs Department, the Financial Intelligence Unit or any other regulatory authority responsible for regulating, overseeing or supervising commercial banks in Sierra Leone and/or for any new owner be, or being recognised by the regulatory authorities in Sierra Leone, without the provision of security in regard the Plaintiffs' claim in this action.

vii. If the answers to question 7 is in the affirmative, that is Honourable Court declares and directs that the Defendant issues out reference letters to the Plaintiffs.

viii. Any further order(s)/relief(s) that this Honourable Court may deem fit and just.

ix. That the costs of and incidental to the action/cause herein be provided for the same to be borne by the Defendant.

This court will as much as possible limit itself to the application made by way of a notice of motion dated the 3rd day of August 2023. I have listened to the arguments and submissions made by counsels for and on behalf of their respective cases inclusive the exhibits attached to the various affidavits in support of the application and that opposing same.

SUBMISSION BY COUNSEL FOR THE PLAINTIFFS

The crux of the application before the court on behalf of plaintiffs is for an injunction (mareva) to be granted by this court in the terms sought in orders two to five. Mr. Jalloh submits that the principles guiding the court in the grant of such orders are guided by sections 25 subsections 8 of the Judicature Act 1873 which is applicable in Sierra Leone pursuant to the Courts Act 1965.What sections 25 subsections 8 is saying is that the court is clothed with jurisdiction in matters where a claim exist and there is a danger as to the assets dissipating. There are four pillars that has to be reached by a party seeking this injunction.

1) A cause of action

2) A good arguable case

3) The existence of assets within the jurisdiction

4) The risk of dissipating those assets.

In so far as the first principle is concern, counsel refer the court to Exhibit 'K' (the originating summons) of the Affidavit in support and the papers filed by both sides in this action and this informs the court that there is a cause of action existing and that this application is premised on this cause of action.

On the second limb which talks of a good arguable case counsel refer the court to paragraphs 1 to 51 in the Affidavit in support, together with the Exhibits attached there to, the substance

of which is that the plaintiffs before the court are employees of the Defendant who are still serving the Defendant and some have been in employment for over three decades. That the said relationship vest in these employees, a terminal benefit which is not been contested by the Defendant, the only contention goes to the applicable multiplier in so far as to computation of the end of service benefit and redundancy is concern. Based on these submissions and the paragraphs referred to, the plaintiff's states that they have a good and arguable case to satisfy the first principle.

To the third limb concerning assets within the Jurisdiction, counsel also refer the court to paragraphs seven and Exhibit E and submit that it is uncontroverted that the Defendants has assets both physical/tangible assets and non-tangible assets.

On the issues of risk of the assets being dissipated, he referred to paragraphs seven (7) and Exhibit E there to which informs the court that the subsidiary of Standard Chartered had been sold to Access Bank PLC, the effect is that Standard Chatered would leave the shores of Sierra Leone after 129 years of their existence and their leaving is permanent. He also referred the court to paragraphs 34, 39 to 40, 44 to 47 of the Affidavit in support and stated that what these paragraphs suggest is that there is not just a rare risk of dissipation of the assets but that give the nature of the sale of the Sierra Leone subsidiary to Access Bank, the liabilities of Standard Chatered are not taking on board by Access Bank. As there exist no reciprocal enforcement arrangement between Sierra Leone and the headquarters where Standard Chatered is. The circumstance is, without the orders sought, a Judgment granted by this court in the substantive procedure will be a paper Judgment leaving poor Sierra Leoneans Jobless or even when in employment would have lost their benefits for which they have worked.

counsel refer the court to the case of ***SULAIMAN DAUDA LUMEH V. STANDARD CHATERED BANK CC 33/ 21 L. NO. 1 (unreported)*** a Judgment of the High Court delivered by the Hon Justice L. Taylor.

In his further submission counsel states, that in view of all what is before the court the balance of convenience lies more with the plaintiff than it was even with the Lumeh Case (pages 7 and 8 of the ruling in the said mentioned case).

counsel in addressing the court on the issue as to whether in considering this application the court should order an undertaking as to damages submit firstly, that the strength of the plaintiff's case should guide the court in this kind of application. It is not controverted that the plaintiffs are supposed to have their end of service benefit and redundancy. So the making of an undertaking as to damages should not be invoked by the court. The plaintiffs circumstance is peculiar and they do not possess the resources to be able to provide the requisite undertaking. He refer the court to paragraphs 55 of the Affidavit in support. Counsel further submit that the grant of an injunction been an equitable remedy should not be affected by the means of the person applying to the court. He relied on the case of ***ALLEN V. JOMBO***

HOLDINGS LTD AND OTHERS 1980 2ALL ER 502 the court has this to say that the status of the plaintiff should not affect the grantor an injunction.

Addressing the court on the affidavit in opposition to which a reply was also filed before counsel for the defendant filed the supplemental affidavit in opposition. Mr. Jalloh submit that all the plaintiffs had asked is for a reasonable amount to be lodged in the interest bearing account untill this matter is disposed of. I therefore pray that this court grant the orders prayed for.

SUBMISSION BY COUNSEL FOR THE DEFENDANT:

MR. Johnson is the counsel for the Defendant and in his submission in reply states that the Application is opposed and that there are two Affidavits sworn to by Mariama Kamara and also the supplemental Affidavit with two Exhibits both Affidavits having five (5) Exhibits MK 1 to MK 5.

By this action brought by the plaintiff Mr. Johnson Esq said they have requested the court to determine the issues in Exhibit K the originating summons. He stated there is no controversy as to whether or not the divestment of the majority share of the Defendant creates a redundancy of the staffs of the Defendant. secondly, whether or not they are entitle to end of service benefit or redundancy compensation as well as their entitlement to the providence fund and finally whether they are entitle to certificate of service, the answer is in the affirmative.

counsel in his submission states that the only issue of interest and concern is the level of compensation which the plaintiff's should receive from the defendant in relation to end of service benefit and redundancy benefit. The dispute lies in the quantum of money demanded by the plaintiffs for such payments.

The defendant is committed to ensuring compliance with the laws of Sierra Leone and that it was not clear as to whether the Defendant is obligated to pay end of service benefit given the historical application of the clean wage remuneration structure and the terms agreed upon in negotiations with the CIBAPICE union under the Collective Agreement Notice No.331.The allowances are generated and paid in a monthly payment,, this practice has been endorsed by both the Ministry of Labour and the CIBAPICE Union. Counsel refer to exhibit 'MK 3' and also 'MK 1' of the principal Affidavit in opposition and the evidence of these agreements are exhibit MK 2A and MK 2B, paragraphs 13 of the affidavit in opposition also emphasizes this.

In terms of redundancy I refer the court to Article 10 of exhibit 2A, the first agreement between the Defendant and the CIBAPICE Union in December 1998, when we look at 10.1 the redundancy staff receives 1.25 months' salary for each completed year of service. This is the situation now, and that the Defendant had increased the said amount to be made applicable to all staff, in line with this submission counsel I rely on paragraphs 9 and 10 of the principal Affidavit in opposition

Mr. Johnson further states that the plaintiffs have for years received benefits and allowances under these negotiated agreements, and these other benefit are the providence fund. And for these plaintiffs to say that staffs above supervisory level should not be bound by the said agreement of $MK2^A$ and 2^B is appalling. He refer to Article 9 and Exhibit $MK2^A$ and $MK2^B$ Which was the first agreement. In 2013 the contributions by the Defendant was increased from 7.5 to 10% this is pursuant to Exhibit $MK2^B$ Article 7 thereof! (Specifically 7.2) and he submitted that this was an agreement between the Defendant and the union but made applicable to all staff and the plaintiffs other benefit include cost of living allowance, lump sum payment giving to the staffs at redundancy. Giving that they have taking advantage under these agreements and for the plaintiff to now suggest that they are not bound by the said agreement because they are above supervisory positions cannot be tenable.

Further counsel state that the plaintiffs had provided a multiplier in an incremental rate which they want to use in the computation of their redundancy and end of service benefit. He submits in relation to the redundancy multiplier that it is self-defeating and refer to sections 82(1)(b) of the Employment Act there is no prescribed multiplier or formula in the redundancy calculation. Counsel also refer to Exhibit F which is the groups redundancy provision (Affidavit in support) clause 5, this was introduced into this action by the plaintiffs.

This also includes the notice period, But Exhibit F states if the local law prescribed a higher amount or a multiplier than the Defendant, the Defendant will pay the higher amount and this brings me to the original multiplier which is 1.25 months' salary gives the position that the group policy prescribes a low amount and the only available guide would be exhibit MK1.Article 18 applies to employees who have served for a period of over 10 years gets 1.5 months' pay.

The Defendant had offered to pay this highest amount to all staffs, the basis for that decision is founded on fairness and justice. Counsel submit that on the plaintiff's multipliers which they now claim they are entitle to from paragraphs 20 to 21 which they have used, are arbitrarily and are quite incremental. Counsel submit that there is no basis for such multipliers and no evidence had been introduced for these multipliers. This will therefore make Exhibit L much flood. I pray that this court distances these multipliers.

In addressing the court on the supplemental Affidavits, counsel submit that the defendant had done its calculations on redundancy, exhibit MK 5 on this, is the computation which the defendant had offered to pay just in respect of redundancy compensation 1.5-month salary for each completed year and 3 months' salary in lien of notice of redundancy. In this case this is a gift, and the parties had agreed on the redundancy compensation. The other component of the redundancy compensation is the lump sum payment. These payments are quite substantial and these goes to a billion Leones for some of the plaintiffs. what is the basis for these fixation of multipliers? The severance package of the plaintiffs varies and this will be

impacted by their monthly salary and number of years. The position from which the Defendant is coming is that of reasonability.

Another advantage which the Defendant had gain to the plaintiffs is on the clean wage policy which has existed since 1998, when the Defendant had its agreement with CIBAPICE, they have not paid End of service benefit, but by the coming into effect, the Employment Act 2023 the Defendant is mandated by law to pay End of service benefit under sections 80. This is a mandatory provision but however the Employment Act does not provide any multiplier in the payment of End of service benefit with the providence fund introduced. There is no contractual rule applicable to their position. The plaintiffs had used incremental calculations and these are not applicable to the Defendant. The only applicable law will be the collective bargaining agreement. Counsel refer to Article 21 and exhibit MK 1 the highest will receive 30 days' pay and the least is 20 days, counsel referenced exhibit MK 4 the exhibits attached to the supplemental Affidavit. This is the final agreed version to replace MK 1. What the defendant had offered as regards end of service benefit and the rates in MK 4 are higher than those in MK 1.

The position of the defendant is that these rates are reasonable in the Sierra Leonean context. As stated earlier these calculations or multipliers are quit high and will make it flood.

The defendants position is to use these multipliers to all our staffs in the spirit of fairness and equity. In line with these multipliers fourteen (14) employees will work home with over a billion Leones each. As an employer you will not offer to pay end of service benefit that will render the Defendant insolvent.

Mr. Johnson submit further that what these plaintiffs are claiming exceeds what was the profit made by the Defendant in 2022 which they themselves had submitted as Exhibit J and of that net profit the sum was retained as statutory reserve as per central Banks regulation and certain sum retained as dividend to shareholders. I wish to further submit that the bank if injuncted or asked in the alternative to pay the sum stated in an interest bearing account this will be, unreasonable. The emphasis is on the reasonability of sums asked for or sum which has been offered. I pray this court discountenance these multipliers.

In further submission counsel states that he wishes to address the court on the issue of urgency, this case before the court is not one of insolvency, the plaintiffs are still employees of the Defendant and are still paid by the Defendant. In the application for the Defendant, he submits that the precedent to be set in this matter should be reasonable.

On the issue of the payment in Leones or the equivalent in forex, counsel submit that this will be unlawful, and that there is no basis for an alternative sum to be paid in foreign currency. The Bank of sierra Leone Act sections 26 (5) 2019 amended in 2023 provides exceptions and circumstances and conditions under which other currencies may be used as a medium of exchange in Sierra Leone. This he prays that this court does not denominate, or order same on

the US Dollars. Payment of security can only be ordered in Leones into an interest bearing account.

On the issues of cost the plaintiffs Solicitors have prayed for costs to be paid into an interest bearing account. Order 57 of the High Court Rules 2007 provides the basis on which Solicitors will recover costs and the emphasis should also be on reasonability. Without conceding that counsel for the plaintiffs has to be paid cost, counsel submits that even if counsel for the plaintiffs has to be paid cost, 10% is too much as no basis has been provided for that demand of 10% and this is so improper.

On the issue of the plaintiffs not been obliged to provide an undertaking as to damages, Mr. Johnson submit that this submission is untenable as the High court Rules of 2007 order 35 Rule 9 makes undertaking a precondition to the application for injunction and same to be provided by the party applying for same. In support of this submission, he refers to volume 1 of the supreme court practice page 501 and the 8th Edition on Equitable Remedy at page 522. It behooves the plaintiffs to make an undertaking considering the fact that this application is very serious. He therefore urges the court not to grant the injunction but to order security which had been put before this court on reasonable grounds.

In dealing with the application herein which is an application sought to injunct the Defendant I have considered the following; this application seeks a mareva injunction.

According to Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice 22nd Edition the term "Mareva injunction" gets its name from the case of *MAREVA CAMPANIA NAVIERA SA VS. INTERNATIONAL BULKCARRIERS SA [1980] 1 ALL E.R. 213* where Lord Denning considered a statutory provision which seems to enable it namely section 45 of the Supreme Court of Judicature (Consolidation) Act 1925, and which repeats s 25(8) of the Judicature Act 1873:

"A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made: and any such order may be made either unconditionally or upon such terms and conditions as the court may think just and if the injunction is asked either before or at or after the hearing of the cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the court shall think fit whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise or (if out of possession),does or does not claim a right to do the act sought to be restrained under any colour of the title and whether the estate claimed by both or by either of the parties are legal and equitable."

Lord Denning held at page 215:

" In my opinion that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that

the debt is due and owing, and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets."

Subsequently Lord Denning MR in applications by a Plaintiff for a Mareva injunction against a Defendant within the jurisdiction of the court set out some guidelines for the Plaintiff to satisfy before a Mareva injunction can be granted. This was in the case of ***Third Chandris Shipping Corporation and others v Unimarine SA The Pythia, The Angelic Wings, The Genie [1979] 2 All ER 972, per Lord Denning M.R. at 984 – 985.***

The guidelines:

'In endeavouring to set out some guidelines, I have had recourse to the practice of many other countries which have been put before us. They have been most helpful. These are the points which those who apply for it should bear in mind. (i) The Plaintiff should make full and frank disclosure of all matters in his knowledge which are material for the judge to know... (ii) The Plaintiff should give particulars of his claim against the Defendant, stating the ground of his claim and the amount thereof, and fairly stating the points made against it by the Defendant. (iii) The Plaintiff should give some grounds for believing that the Defendants have assets here. ... The existence of a bank account in England is enough, whether it is in overdraft or not. (iv) The Plaintiff should give some grounds for believing that there is a risk of the assets being removed before the judgment or award is satisfied. The mere fact that the Defendant is abroad is not by itself sufficient. No one would wish any reputable foreign company to be plagued with a Mareva injunction simply because it has agreed to London arbitration. But there are some foreign companies whose structure invites comment. We often see in this court a corporation which is registered in a country where the company law is so loose that nothing is known about it, where it does no work and has no officers and no assets. Nothing can be found out about the membership, or its control, or its assets, or the charges on them. Judgment cannot be enforced against it. There is no reciprocal enforcement of judgments. It is nothing more than a name grasped from the air, as elusive as the Cheshire cat. In such cases the very fact of incorporation there gives some ground for believing there is a risk that, if judgment or an award is obtained, it may go unsatisfied. Such registration of such companies may carry many advantages to the individuals who control them, but they may suffer the disadvantage of having a Mareva injunction granted against them. The giving of security for a debt is a small price to pay for the convenience of such a registration. Security would certainly be required in New York. So also it may be in London. Other grounds may be shown for believing there is a risk. But some such should be shown. (v) The Plaintiffs must, of course, give an undertaking in damages, in case they fail in their claim or the injunction turns out to be unjustified. In a suitable case this should be supported by a bond or security: and the injunction only granted on it being given, or undertaken to be given."

The basis of the above Mareva injunction and guidelines discussed in the two cases has a similar statutory basis as our Order 35 Rule 1 of the High Court Rules 2007 which provides that:

"(1) The Court may grant injunction by an interlocutory order in all cases in which it appears to the court to be just or convenient to do so and the order may be made either unconditionally or upon such terms and conditions as the Court considers just."

Having set out the authority by which this court may or may not grant the application of the plaintiffs in this matter, I must now consider whether the plaintiffs have sufficiently made a case for the exercise or the courts discretion in its favour and I have looked at the following conditions for granting the application.

CAUSE OF ACTION, this is the first requirement that the plaintiff must have a substantive cause of action which can be brought in the jurisdiction. *(see: Siskina (owners of cargo lately laden on board) v Distos Compania Naviera S.A (1979) A.C 210)* In this case Lord Diplock considered the power of the court to grant an interlocutory injunction as follows:

'a right to obtain an interlocutory injunction is not a cause of action.it cannot stand on its own, it is dependent upon there being a pre-existing cause of action against the Defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the Defendant is amenable to the jurisdiction of the court ... '

In this case before me, the Plaintiff's had instituted an originating summons dated the 3rd August 2023 and they have also made a full and frank disclosure of all matters within their knowledge which are material for the judge to know. They are employees of the defendants, the oldest having served the defendant for over 30 years. these plaintiffs are still serving the Defendant. The relationship between the plaintiffs and the defendant vest in them an End of service benefit, redundancy compensation and providence fund which has not been contested as was made known to this court by the counsel for the Defendant. this relationship is now threatened, Secondly, by Exhibit 'E' the defendant and the Standard Chatered Group (the Group) have disposed of the Bank to ACCESS BANK hence the 'Group' will stop its operations and will cease to carry out its subsidiary business in Sierra Leone, and that there is a risk of the Defendant disposing of its assets before judgment or award in the substantive action is delivered.

On the pillar of GOOD ARGUABLE CASE:

Mustill J.in the case of Nenemia Maritime corp. v. Trave Schiffahrtsgesellschaft & co (1983) 1 WLR1412, (1984)1 All ER 398 held that the minimum threshold for the exercise of the discretion of granting a mareva injunction is the establishment of a **good arguable case**. he went on to describe a good arguable case as one which is more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50

percent chance of success. in view of the submission made by the plaintiffs' counsel and the papers filed, counsel refer the court to paragraphs 1 to 51 in the Affidavit in support, together with the Exhibits attached there to, the substance of which is that the plaintiff before the court are employees of the Defendant who are still serving the Defendant and some have been in employment for over three decades. they are entitle to end of service benefit, redundancy compensation and providence fund, which is not been contested by the Defendant, the only contention goes to the applicable multiplier in so far as to computation of the end of service benefit and redundancy is concern. Based on these submissions and the paragraphs referred to, I agree that the plaintiffs have a good and arguable case.

THE EXISTENCE OF ASSETS WITHIN THE JURISDICTION: proving that the defendant has assets within the jurisdiction is of paramount importance and this stems from the principle that 'equity will not act in vain'. the plaintiff must show that the defendant has assets within the jurisdiction and these include money, shares, securities, insurance money, bills of exchange, motor vehicles, ships aircraft, trade goods, office equipment, jewellery and paintings. This ownership must be legal or beneficial, but must be in the same capacity as the defendant is or will be a party to the claim. In this regard I have considered paragraphs 7(seven) and Exhibit E relied upon by counsel.

REAL RISK OF DISSIPATION OF ASSETS: How does one determine 'real risk of dissipation of assets? one view suggest there must be some concrete evidence that the defendant intends to evade the consequences of an adverse decree by removing his assets and that this has the effect of frustrating the plaintiff in his attempts to recover the fruits of a judgment he is likely to obtain against the defendant. In considering the submission made by counsel, paragraphs seven (7) and Exhibit E informs the court that the subsidiary of Standard Chartered had been sold to Access Bank PLC, the effect is that Standard Chatered would leave the shores of Sierra Leone after 129 years of their existence and their leaving is permanent. The court also considers paragraphs 34, 39 to 40, 44 to 47 of the Affidavit in support and has also considered the submission of counsel that there is not just a rare risk of dissipation of the assets but also the nature of the sale of the Sierra Leone subsidiary to Access Bank, the liabilities of Standard Chatered are not taking on board by Access Bank.

THE ISSUE OF THE UNDERTAKINGS BY THE PLAINTIFFS:

The courts have however over the years laid down the principles to be followed in determining an application for injunction. Central to these principles is an undertaking to pay damages. Undertaking to pay damages occupies an important place when considering an application for an injunction. An undertaking to pay damages has been described as the "price" to pay for an injunction, and if a party obtains an injunction, he must pay the price.

The purpose is to indemnify the defendant for any loss/injury caused by the injunction if the court eventually finds that the injunction ought not to have been granted in the first place. As a matter of law, no order for injunction should be made on notice unless the applicant gives

a satisfactory undertaking as to damages save in recognized exceptions. **See Kotoye v CBN & Ors (1989) 1NWLR (Pt) 419.** The rationale for the undertaking to pay damages is the same regardless of the duration or type of injunction- interim, interlocutory or even mareva. But one should note that failure to give an undertaking to pay damages in itself does not invalidate an injunction. The court has no power to compel an applicant for an injunction to give an undertaking as to damages. It can only withhold the injunction where no undertaking has been given. It is also important to mention that an undertaking to pay damages is not given to a party; it is given to the court and non-performance of it is contempt of court and not breach of contract.

The court therefore retains the discretion not to enforce the undertaking if it considers that the conduct of the defendant in relation to obtaining or continuing of the injunction or the enforcement of the undertaking makes it inequitable to do so. **See Hoffman-La Roche v Secretary of State for Trade and Industry (1974) 2 All ER 1128.**

An applicant for an injunction must not only show a willingness to give an undertaking in damages; he should also be able to depose to an affidavit to indicate (a) that he is prepared to give an undertaking in damages; and (b) the means at his disposal, or who would guarantee him to be able to meet such an undertaking but then it will be completely worthless to extract an undertaking from a person who is incapable of satisfying that undertaking. **See Ita v Nyong (1994) 1 NWLR Pt. 318 P. 56.** This must have guided the decision of the Court of Appeal in **SPDC v Saakpa & Ors** (CA/PH/481/2009). The judgement was delivered on 26 April 2012.

In arguing this point Mr. Jalloh submit that the strength of the plaintiff's case should guide the court in this kind of application. It is not controverted that the plaintiffs are supposed to have their end of service benefit and redundancy. So the making of an undertaking as to damages should not be invoked by the court. The plaintiffs circumstance is peculiar and they do not possess the resources to be able to provide the requisite undertaking. I refer the court to paragraphs 55 of the Affidavit in support. Counsel further submit that the grant of an injunction been an equitable remedy should not be affected by the means of the person applying to the court. He relied on the case of ***ALLEN V. JOMBO HOLDINGS LTD AND OTHERS 1980 2ALL ER 502,*** the court has this to say that the status of the plaintiff should not affect the granting of an injunction. In an opposing argument, counsel for the Defendant state that on the issue of the plaintiffs not been obliged to provide an undertaking as to damages, that this submission is untenable as the High court Rules of 2007 order 35 Rule 9 makes undertaking a precondition to the application for injunction and same to be provided by the party applying for same. I have considered the two arguments in line with the case of ***ALLEN V. JOMBO HOLDINGS LTD AND OTHERS 1980 2ALL ER 502*** relied upon counsel for the plaintiff's further states that 'limited financial resources should not be the scale barometer in deciding whether an injunction should be giving' however in most cases it is essential to satisfy the court that the plaintiff is 'good for the undertaking'.

DISCRETION OF THE COURT IN THE GRANT OF AN INJUNCTION:

Let me quickly note that the grant of an injunction is subject to the discretion of the court and the individual circumstances of each case and particularly the relief sought, especially when all the factors of the case are considered and weighed up against each other. However, the ultimate test for the courts exercise of the mareva relief is whether the case is one in which it appears to the court to be 'just and convenient' to grant the injunction as stated by Bokhary J.

IN VIEW OF THE ABOVE AND IN THE CIRCUMSTANCE HEREIN I MAKE THE FOLLOWING ORDERS:

1. The defendant is ordered to pay the sum of NLE 124,018,730.55 being the USD 5,536,550.47 at the exchange rate of 22.4 new leones being the Standard Chartered Bank mid- rate for 3rd August 2023 and 10% of the said sum within 7 days, same to be paid into the office of the Master and Registrar who should set up an escrow account for such purpose at the Sierra Leone Commercial Bank in Freetown untill the court shall otherwise order prior to the full, final completion of any sale or the divestiture processes of the defendant and or the recognition by the Central Bank of Sierra Leone or any other regulatory body in Sierra Leone of any new owners of the defendant.
2. The Master and Registrar should notify the defendant of the Bank Account through which such funds should be paid accordingly.
3. Cost in the cause

06/10/2023.

Hon. Justice Boi Hannah Bonnie J.