

IN THE HIGH COURT OF SIERRA LEONE(LAND AND PROPERTY DIVISION)

BETWEEN:

GLORIA ADA ROBERT-WILLIAMS - PLAINTIFF/ RESPONDENT

AND

PRINCE OLE MORGAN - DEFENDANT / APPLICANT

J. Cuffie Esq. for the Plaintiff/Respondent

C. Vandy Esq for the Defendant/Applicant

RULING DELIVERED THIS 29TH DAY OF FEBRUARY 2024 BY HONOURABLE MRS. JUSTICE
JAMESINA E. L. KING J. A.

1. By a Notice of Motion dated 10th February 2023 the Defendant/Applicant applied for the following orders:
 1. That the Honourable Court strike out the Writ of Summons intituled C.C. 187/21 R. No. 3 for an abuse of process.
 2. That the Judgment dated 17th day of November 2022 be set aside
 3. Any other Order(s) that this Honourable Court may deem fit and just.
 4. Costs.
2. In support of the application, is the affidavit of Charles Deen an Attorney for the Defendant/Applicant sworn to on 10th February 2022 and the exhibits attached thereto. These are a registered power of attorney from the Defendant to Mr. Deen, the generally indorsed writ and particulars of claim, memorandum and notice of appearance, a Court Order dated 24th March 2020 striking out an application dated 15th day of December 2020 and a Judgment in default of defence dated 17th November 2022. There is a supplemental affidavit by the same deponent sworn to on 23rd March 2023 exhibiting the Notice of Motion dated 15th December 2020 on Misc. App. 363/2020 between Prince Olu Morgan and the Administrator & Registrar-General and Gloria Ada Robert-Williams.
3. There is an affidavit in opposition to this application sworn to by Marvellous Morgan attorney of the Plaintiff herein on 11th July 2023 with several exhibits which include, power of attorney from the Plaintiff to Mr. Morgan, the Notice of Motion of 10th February 2023, the said Originating Notice of Motion dated 9th September 2020, Order of 16th

October 2020, Notice of Motion dated 20th November 2020, Court Order dated 8th December 2020, Memorandum and Notice of Appearance, Notice of Motion of 15th December 2020, court Order of 15th December 2022 and Generally Indorsed Writ and Statement of Claim issued by the Plaintiff herein.

Summary of submissions of Counsel for the parties

4. In support of the application, Mr. Vandy, Counsel for the Defendant/Applicant relied on the affidavit of Mr. Deen and submitted that the Plaintiff/Respondent had applied for the reliefs in the current Writ in a Notice of Motion dated 15th December 2020 which had been determined by the Court and orders given to that effect. He pointed out that the order was not appealed against.
5. Mr. Cuffie, Counsel for the Plaintiff/Respondent, responding to the application relied on the affidavit of Marvellous Morgan the Attorney of the Plaintiff sworn to on 11th July 2023 with the exhibits attached thereto. Specifically, he relied on paragraph 13 of the said affidavit which states as follows:
"13. I am further reliably informed by the Plaintiff/Respondent herein and verily believe that the pith and substance of the ruling of the Honourable Mrs. Justice T. Barnett – JA is that where a party to an action is seeking redress for alleged fraud perpetrated by the other party, that action must be commenced by a Writ of Summons and must go through trial rather than by Notice of Motion supported by affidavit evidence".
6. Counsel submitted that the Plaintiff/Respondent cannot appeal from that decision and therefore instituting the current action by Writ of Summons is not an abuse of process, but the right process. He also stated that the parties to the first action are not the same. In the previous action he said that the Plaintiff was not made a party initially, and had to come to the Court to be added. He maintained that the reliefs prayed for in both actions are different. In the previous action it was commenced by an Originating Summons and in this action it is commenced by a Writ. He referred to paragraph 18/19/18 at page 352 of the Supreme Court Practice 1999 that the court processes must be used bona fide and not be abused, and therefore the Plaintiff's action is not an improper use. He relied on *Castro v Murray* at page 352 and concluded that the application must be refused with substantial costs.
7. In response Mr. Vandy relied on the supplemental affidavit exhibiting the Notice of Motion to show both Motion and Writ were in respect of the property at 79 Lumley Road. He noted that the prayers in both are the same. Having been granted the application to be added as a party in the previous action the Plaintiff in the said Motion applied for several orders which was struck out. He pointed out that in both Notice of Motion and the Writ herein, one of the orders sought by the Plaintiff is to set aside an order of Justice Barnett and the said application had been determined. He therefore submitted that the Writ is an abuse of process and should be dismissed.

Analysis and Decision

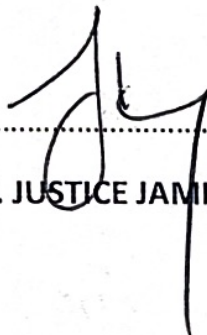
Abuse of Process

8. On the issue of abuse of process, paragraph 18/19/18 of Supreme Court Practice 1999 states that the process of the court must be used bona fide and properly, must not be abused and the court will prevent the improper use of its machinery, and in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.
9. Is the Writ issued by the Plaintiff an abuse of the process of the Court? I have reviewed the Writ numbered C.C. 187/22 2022 R. No. 3 dated 26th April 2022 instituted by the Plaintiff herein. It is a generally indorsed writ and several reliefs are claimed in connection with a property situate lying and being at 79 Lumley Road, Wilberforce, Freetown in the Western Area of the Republic of Sierra Leone.
10. One of the reliefs is for an order setting aside the order of Hon. Mrs. Justice Tonia Barnett J.A. sitting in the High Court dated 24th March 2022 which struck out a Motion praying for the setting aside of an earlier order of the same court in that it was irregularly obtained by fraud and deceit and for a revocation of the Deed of Conveyance registered pursuant to the said order.
11. The Defendant entered an appearance dated 23rd May 2022 and did not file a defence and the Plaintiff obtained Judgment in default of defence.
12. The dispute between the parties relate to title of 79 Lumley Road. The Plaintiff's case is that this property is alleged to have been bought by the Defendant, a husband on behalf of the Plaintiff, his wife. It was bought in the name of the Defendant who later conveyed it to the Plaintiff by a registered Deed of Gift dated 17th April 2020. The Plaintiff's Deed of Gift was cancelled by a Court Order of 16th October 2020 following an application of the Defendant herein by an Originating Notice of Motion (Misc. App 363/202) for that order. The Plaintiff was not a party to the said Originating Notice of Motion. It was between the Defendant herein who was the plaintiff/applicant and the Administrator & Registrar-General who was the defendant/respondent.
13. Upon discovery that her Deed had been cancelled, the Plaintiff applied to be added as a party to the said Originating Notice of Motion and the application which was granted. By Notice of Motion dated 15th December 2020 the Plaintiff applied to set aside the said Court Order of 16th October 2020 ex debito justitiae on the ground that same was irregularly and fraudulently obtained. Other orders applied for in the 15th December 2020 Motion included restoration of her Deed of Gift in the Office of the Administrator & Registrar-General, cancellation of the Conveyance of the Defendant dated 9th June 1992, recovery of possession of the said premises, mesne profits and damages for trespass. All of these were the claims of the Plaintiff in an interlocutory application in an action commenced by an Originating Notice of Motion.
14. The Plaintiff's writ in this action includes a claim for a declaration of title to the said property, restoration of the Deed the Defendant made in her favour dated 17th April 2020

- and cancellation and revocation of the Defendant's deed of 9th June 1992 as it was obtained by deceit and fraud.
15. There are serious issues in dispute between the parties that have not been resolved by any court and which must proceed to trial. The application of the Defendant to strike out the Writ is an attempt to prevent the Plaintiff from having her grievances which includes allegations of fraud and deceit looked into. The Defendant also has a right to defend the action and answer to the allegations made against him. The Judgment in Default of Defence entered by the Plaintiff dated 17th November 2022 is still subsisting.
16. Civ. App.48/2017 *Frances Smith v Abraham Smith* unreported a Court of Appeal decision delivered by Mr. Justice E. Taylor-Camara J.A. and which was referred to by both Counsel is quite instructive. I wholeheartedly adopt paragraph 27 which states as follows:
"27. From the above it seems clear that the Court had no jurisdiction to re-open the issue after final judgment had been delivered. Whilst it was open to the Respondent to have challenged the Adoption Order on the ground of fraud, such challenge ought to have been either by way of appeal or by fresh action to set aside the Adoption Order, such action to be commenced by writ of summons rather than originating motion. The Respondent should have set out in detail, the particulars of fraud relied upon, and such action ought to have been conducted as a full trial on the issues, and not, as here, by way of affidavit evidence".
17. Hon. Justice Barnett J.A. sitting in the High Court did add the Plaintiff as a party to the Originating Motion but the Learned Judge did not at any time determine the Plaintiff's claim or dispute between the parties. In striking out the Plaintiff's application by Notice of Motion on 24th March 2020, for the reliefs claimed against the Defendant which included allegations of fraud, the Learned Justice stated that the applicant who is the Plaintiff herein is entitled to commence an action to set aside the judgment on the ground of fraud and that a Notice of Motion does not avail the Plaintiff herein the opportunity to succinctly present her case on affidavit evidence.
18. In the result, the generally indorsed Writ and Particulars of Claim alleging fraud and deceit filed separately are not an abuse of the process of the court. Both parties have a right to be heard in respect of the dispute and a trial will give them the opportunity to do so and a determination made.
19. In the circumstances I make the following orders:
1. That the Defendant's application to strike out the Writ of Summons intituled C.C. 187/21 R. No. 3 for an abuse of process is refused.
 2. The Judgment in Default of Defence dated 17th November 2022 is set aside.
 3. The Defendant shall file his defence within 14 days of this order.
 4. Directions are given for the early trial of the action as follows:
 1. The Plaintiff shall set down the action for trial as soon as pleadings are closed. The length of the trial is estimated to last for 14 days.

2. Each party shall prepare and contemporaneously serve on the other witness statements of the factual witness it intends to call at the trial of this matter within 14 days from the date of this Order.
3. Within 14 days from the date the action is set down for trial the Defendants shall identify to the Plaintiff and provide those documents central to their case to be included in the court bundle.
4. The Plaintiff shall at least 7 clear days before the date fixed for trial, lodge two bundles consisting of one copy of each of the following documents:
 - a. copies of the pleadings and any amendments thereto;
 - b. a list of issues in dispute and admission of facts (if any) arising out of the issues, nature of the evidence to be relied upon (oral or documentary) and any agreed evidence;
 - c. a list of witnesses to be called at the trial by each party; and
 - d. witness statements which have been exchanged and expert reports which have been disclosed, together with an indication of whether the contents of such documents are agreed;
 - e. Summary of any propositions of law to be advanced together with a list of authorities to be cited and
 - f. A chronology of relevant events.
4. That at least 2 days before the trial the Plaintiff shall properly compile and number the pages of the court bundle.
5. At the end of the evidence adduced, each party shall submit written closing address and a list of authorities with the Registrar of the Court together with copies of authorities cited which are not available to the court.
5. Should the Defendant fail to file his defence, the matter shall proceed to trial and the Plaintiff shall file the court bundle for that purpose.
6. On 25th March 2024 these directions should have been complied with and the date will be fixed for trial to commence.
7. This matter is adjourned to 25th March 2024
8. This order should be served on the Defendant's Counsel and an affidavit of service filed to that effect.

9. Costs in the cause.



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HON. MRS. JUSTICE JAMESINA E. L. KING