

C.C 276/05 2005 C. NO. 22

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: -

CAPTAIN PATRICK CONDRON - PLAINTIFF/APPLICANT

AND

EID AHMED -DEFENDANT/RESPONDENT

Miss. B. E. T. Cummings for the Plaintiff/Applicant
No representation on behalf of the Defendant/Respondent

RULING DELIVERED THE 8th DAY OF May, 2012

The Plaintiff/Applicant herein has filed a Notice of Motion dated 18th November 2011 in which he seeks the following Orders

1. That this Hon. Court do assess interest on the sum of Le 45, 332,000 as per judgment dated 22nd February 2006 until payment is made.
2. That the Hon. Court do assess damages on the sum of Le 45, 332,000 as per judgment dated 22nd February 2006 and 29th September 2008 respectively.
3. Any further or other Orders that this Hon. Court deems fit and just in the circumstances.
4. The costs of the application.

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In support of the application is the affidavit of the Plaintiff/Applicant, **CAPTAIN PATRICK CONDRON** sworn to on 18th November 2011. The said deponent deposed to the history of the said action which resulted in his obtaining judgment against the Defendant/Respondent in the sum of Le45, 332,000. This judgment dated 22nd February 2006 was based on admissions made by the Defendant and it omitted to award interest on the said judgment sum. The Applicant went on to depose that the Defendant has failed to liquidate the judgment debt and that as a result of his failure to do so and the fact that interest was not awarded thereon has caused him undue hardship and substantial loss on his business as the Leone\$ is devaluing and also losing its value to the dollar.

The Applicant further asked for damages to be assessed for substantial loss and damage he has suffered as a result of the Respondent's failure to pay the said judgment debt.

It is evident looking at the judgment dated 22nd February 2006 that it was granted based on the admission made by the Defendant that he owed the sum of Le 45, 332, 000 due and payable to the Plaintiff.

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After the said judgment was obtained there was a trial of the balance outstanding. Interest on the judgment sum of Le45, 332,000 was not awarded.

The question therefore is, can the court correct the said judgment and award interest at this stage? As a general rule except by way of appeal, no court, judge or master has power to rehear, review, alter or vary any judgment or order after it has been entered either in an application made in the original action or matter or in a fresh action brought to review the judgment or order. The object of the rule is to bring litigation to finality, but it is subject to a number of exceptions. See **Halsbury's Laws of England** 4th ed Vol. 26 paragraph 556 under the rubric "Amendment after entry of judgment or order" Examples of the exception to the rule are given in the said paragraph. One such exception of the power to amend a judgment or order is the case where the court fails to include an award of interest in a judgment for damages to be assessed. The case of **Tak Ming Co Ltd vs. Yee Sang Metal Supplies Co** (1973) 1 All E. R. 569 refers. In that case it was held that the inclusion of an award of interest can be made in respect of a judgment under the slip rule and a judgment amended accordingly. It has also been held that the application for amendment should

be made as soon as possible after the mistake is discovered but it may be made at any time. See Order 23 rule 10 of the High Court Rules 2007 and amendment have been allowed after the lapse of a considerable number of years. In the case of **Halton vs. Harris** {1892} A. C. 547 amendment was allowed thirty three after the error was made.

In the circumstance I see no reason why the award of interest should not be included in the judgment. The application for the inclusion of the award of interest on the sum of Le45, 332, 000 in the judgment dated 22nd February 2006 is therefore granted. The interest is awarded at the rate of 35% per annum on the judgment sum from 1st January 2005 until date of judgment i.e. 22nd February 2006.

In the case of damages on the sum of Le65, 332,000 prayed for, I do not believe this can be done on the slip rule or correction of an omission. It seems to me that this is a fresh claim based on new facts.

The Plaintiff has deposed that as a result of the Defendant's failure to pay the judgment debt he has suffered loss and damage and he has proceeded to ask the

court to assess such damages and loss that he has suffered.

It is quite settled that the court has no power to amend or set aside its judgment or order where new material has come to light. The hardship suffered by the Plaintiff as a result of the Defendant's failure to pay the judgment debt is new material.

In addition the claim for damages was never pleaded. In **Halsbury's Laws of England** Vol. 26 (supra) paragraph 557 at page 281 it states as follows

"Alterations or additions to the judgment or order based upon materials not contained in the pleadings or evidence, or involving matters which were not brought to the court's attention, may not be obtained under the rules applying to accidental mistakes or omissions".

It is clear from the statement of claim in the Plaintiff's writ of summons that damages is not one of the reliefs claimed therein. The judgment was therefore not given based upon the evidence now given by the Plaintiff. The discretion to amend cannot be exercised to include a relief not originally claimed in the pleadings.

The order for the assessment of damages on the judgment sum is therefore refused.

The court therefore makes the following Orders

1. That the judgment dated 22nd February 2006 is hereby amended by the inclusion of interest on the judgment sum of Le45, 332, 000 at the rate of 35% from 1st January 2005 until date of judgment i.e. 22nd February 2006.
2. The prayer that the court assesses damages on the sum of Le65,332,000 as per judgment dated 22nd February 2006 and 29th September 2008 respectively is refused.
3. No order as costs.

A. Showers
SIGNED: - A. SHOWERS 8/5/2012
JUSTICE OF COURT OF APPEAL