

C.C. 286/11 2011 K No. 32

IN THE HIGH COURT OF SIERRA LEONE
GENERAL CIVIL DIVISION

BETWEEN:

BRIMA KAMARA & 3 OTHERS - PLAINTIFFS

AND

SIERRA LEONE PORTS AUTHORITY - DEFENDANT

AND

BETWEEN:

BRIMA KAMARA & 3 OTHERS - JUDGMENT CREDITOR

AND

SIERRA LEONE PORTS AUTHORITY - JUDGMENT DEBTOR

AND

UNION TRUST BANK (SL) LTD - GARNISHEES

S.L. COMMERCIAL BANK LTD

ROKEL COMMERCIAL BANK (SL) LTD

BANK OF SIERRA LEONE

STANDARD CHARTERED BANK (SL) LTD

COUNSEL:

O JALLOH ESQ for the Plaintiff/Judgment Creditor

A S SESAY ESQ for the Defendant/Judgment Debtor

E S BEOKU-BETTS ESQ for the 1st and 3rd Garnishees

JUDGMENT

1. There are two Applications before me. The first, is a Garnishee Application brought by the Plaintiffs dated 15 June, 2012 in which they are asking the Court to attach all debts due from the Garnishees to the Defendant, in order to satisfy the Judgment in default obtained by the Plaintiff against the Defendant. The sum adjudged in favour of each Plaintiff, is Le28,431,000. The Plaintiffs also asked that the Court do Order the Garnishees to appear in Court to show cause why such sums as were adjudged in favour of the Plaintiffs, should not be paid by the Garnishees to the Plaintiffs.

2. On 27 June, 2012 I granted the Garnishee Order Nisi, and fixed today for hearing the Garnishees. Two of the Garnishees appeared, Union Trust Bank (SL) Ltd, and Rokel Commercial Bank (SL) Ltd. I did not proceed to hear them because my attention was drawn to the second Application filed on behalf of the Defendant, and dated 27 June, 2012.
3. In this Application, the Defendant is seeking a stay of execution of the Judgment in Default dated 25 January, 2012 on the ground that it has a good defence on the merits, to the Plaintiffs' claim. The proposed defence is exhibited to the affidavit deposed and sworn to on 27 June, 2012 by Mr Africanus Sesay Defendant's Counsel and a partner in the firm of Solicitors representing the Defendant. Exhibited to that affidavit as ASS5, is a copy of the proposed defence. I have studied it carefully, and as Mr Jalloh himself admits, it contains issues which ought to go to trial. The reason for the delay in filing such a defence, given by Mr Sesay in paragraphs 5 & 6 of his affidavit, is that it was only recently Defendant's Solicitors came into possession of documents supportive of that defence. I pointed out to him that at the time appearance was entered on 26 January, 2012 Defendant's Solicitors were aware, or, must have been aware, that judgment in default had been entered by the Plaintiff. Yet still, they did nothing to rectify the situation until five months later. However, the view that the Courts have taken is that a client must not be made to suffer for its Legal Adviser's indolence, inattention or indifference. So, even though I do not quite find Mr Sesay's explanation credible, I cannot punish his client because of this. And, as I have said above, the proposed defence does raise serious issues which need to be tried at a full-scale trial. As such, I am inclined to grant the Defendant's Application on terms. Such terms will take into consideration that this term ends in 2 weeks time; and that it is the fault of Defendant's Solicitors that a defence was not filed, nor an Application made many months ago, to set aside the default judgment. Consequentially, I shall have to discharge the Garnishee Order Nisi I made on the 27th instant. I shall also give Directions at once for the future conduct of the action without the necessity of either party taking out a Summons for Directions. I shall also abridge time for doing any of the things I shall direct to be done, so as to ensure that the a compliance hearing will be held on the last sitting day of the term, and that the

action will be ready for trial at the beginning of the Michaelmas term. I shall therefore make the following Orders:

GARNISHEE ORDER NISI

- (1) The Garnishee Order Nisi made by the Court on 27 June, 2012 is hereby Discharged. The Defendant shall pay Costs agreed between Counsel, in the sum of Le2million, to Counsel for 1st and 3rd Garnishees.

LEAVE TO FILE DEFENCE OUT OF TIME

- (2) The Judgment in Default of Appearance dated 25 January, 2012 entered against the Defendant is hereby set aside on the ground that the Defendant has a good defence on the merits, to the Plaintiffs' claim. Consequentially, and for the avoidance of doubt, the Appearance entered on Defendant's behalf on 26 January, 2012 shall stand for all purposes.
- (3) The Defendant is given Leave to file a Defence out of time, such Defence to be filed and served not later than Tuesday 3rd July, 2012.

DIRECTIONS

- (4) The Plaintiffs, if they so desire, shall file a Reply to the Defendant's Defence not later than Thursday 5th July, 2012.
- (5) That not later than Monday 9th July, 2012, if this has not yet been done, the Plaintiffs and the Defendant shall serve on the other or others, the following:
 - (a) List of all documents in the possession, custody or power of each party.
 - (b) List of witnesses
 - (c) Witness statements of all such witnesses
 - (d) Admissions of fact, if any
 - (e) List of Issues in Dispute
 - (f) Nature of evidence to be called.
- (6) All documents in respect of which inspection is required by either side, shall be so inspected within 2 days, (i.e. 11TH July, 2012) of the service of such lists, at such time and at such place as shall be

indicated by the party of whom inspection is required. Any party requiring copies of any document or documents in the custody and possession of the other party or parties, shall so indicate to that other party or parties at the time of inspection.

- (7) That the Plaintiffs shall set down the action for trial on 12th July, 2012 and shall state the estimated length of the trial. On the same date, i.e. 12th July, 2012, the Defendant shall indicate and identify to the Plaintiffs those documents central to its case which it wishes to be included in the Court Bundle.
- (8) This file shall be put before a Judge on Friday 13th July, 2012 for the purpose of ensuring compliance with these Directions, and for the purpose of fixing a date of trial.
- (9) At least 7 clear days before the date fixed for trial, the Plaintiffs shall Lodge two Bundles consisting of one copy each of the documents listed in order 40 Sub-Rule 9(2) paragraphs (a) to (c) inclusive of the High Court Rules, 2007.
- (10) There shall be Liberty to restore this Summons for further Directions.
- (11) The Defendant shall pay to the Plaintiffs, the Costs of this Application, such Costs agreed between Plaintiffs' Counsel and Defendant's Counsel, at Le7million.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE