IN THE HIGH COURT OF SIERRA LEONE

COMMERCIAL AND ADMIRALTY DIVISION

FAST TRACK COMMERCIAL COURT

THE MATTER BETWEEN:

Case No: FTCC 003/16

ISSA GBASSAY KAMARA -PLAINTIFF

AND

PATRICK N. BANI & ANOR -DEFENDANT

REPRESENTATION:

I KANU ESQ -COUNSEL FOR THE PLAINTIFF

C. F. MARGAI & ASSOC -COUNSEL FOR THE DEFENDANT

**BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.**

**JUDGMENT DELIVERED ON THE APRIL, 2016**

1) This is an Application by way of Judge's Summons dated the 25th day of January, 2016 for the following Orders:

   1. An interim injunction restraining the Defendants/Respondents whether by themselves, agents, servants and/or privies, shipping agents and companies from exporting timber logs or howsoever called out of the jurisdiction pending the hearing and determination of this application.
   2. That **SUMMARY JUDGMENT** be entered in favour of the Plaintiff/Applicant against the Defendants/Respondents for the reliefs claimed in the Writ of Summons dated 6th day of January, 2016.
   3. Further and in the alternative, that this Action be set down for motion for Judgment on the reliefs prayed for in the Writ of Summons dated 6th day of January, 2016.
   4. Any Order (s) as this Honourable Court seems fit.
   5. Costs.

2) The Application is supported by the Affidavit of Issa Gbassay Kamara sworn to on the 25th day of January, 2015. He deposes as follows:-

   i. That prior to entering into a business venture, the Applicant and the 2nd Respondent signed a Memorandum of Understanding dated 17th December, 2013 wherein the Applicant signed as Agent and the Respondent on behalf of a Company-the 1st Respondent.

   ii. The Applicant as Agent of the 2nd Respondent accomplished the following tasks:

      a) Secured a Timber Export License for the 2nd Respondent
      b) Secured an Environmental Impact Assessment Licence
      c) Entered into agreement with a 3rd party for the exportation of timber

iii. That the Government of Sierra Leone granted a Timber Export Licence to the 2nd Respondent dated 4th December, 2015-Exhibit J 1 - 3.

iv. That immediately after Exhibit J 1 - 3 was granted; the 1st Respondent stopped dealing with the Applicant and dealt with 3rd parties instead.

v. That the 1st Respondent entered into an agreement and received the sum of Le 280m from the Chinese Community without the knowledge of the Applicant.

Let me pause and ask this question: if the payment was made without the knowledge of the Applicant, how did he get to know about it? An Affidavit for this purpose should contain knowledge, information and belief. This has not been established as paragraph 11 of the said Affidavit merely referred to "knowledge and ability". Order 16(2) "unless the Court otherwise directs an Affidavit for this purpose may contain statements of information or belief with the sources and grounds thereof."

vi. That by the conduct of the 1st Respondent, he intends to deprive the Applicant of the fruits of his labour.

## SUBMISSIONS OF COUNSEL

3) The Application came for hearing on the 4th February, 2016. However, before Counsel for Applicant could move the application, Counsel for the Respondent raised a preliminary objection on legal grounds to writ: that there has not been compliance with Order 35 of the High Court Rules, 2007. Furthermore, there is doubt as to which other provision in the Rules Counsel for the Applicant is relying on as he made his application under Order 16 Rules 1 and 2 of the High Court Rules, 2007. Before I could rule on the

objection, I Kanu Esq. Counsel for the Applicant abandoned Order 22 Rules 2 and 5 {the third Order prayed for}. He also abandoned the prayer for an interim injunction and instead made his application under Order 16 for Summary Judgment.

My only comment here is that the entire spectacle was a messy procedural grave digging.

4) In his submission for Judgment under Order 16 of the High Court Rules, 2007 Mr. Kanu for the Applicant argues that the contract provides that the Plaintiff is entitled to 40 percent of the profit for the exportation of timbers and since the Timber Export License provides that the Respondent were entitled to 1,500 container of timber, the Applicant is entitled to 40 percent of same. He submits that the Applicant is entitled to the said 40 percent of the sale of the timber without need for a trial.

5) Mr. R. B Kowa for the Respondent submits that the Applicant has not made out a case for summary Judgment. He argues that there are ownership issues in the case which will warrant a trial, e.g. the status of the 2nd Respondent legal status of a Memorandum of Understanding. Mr. Kowa submits that a Defence has been filed which shows that there are triable issues in the matter.

## ISSUE FOR DETERMINATION

6) The only issue for determination in this matter is whether the Applicant has laid sufficient foundation to enable this Honourable Court give in his favour. The following principles should apply in any application for Summary Judgment.

I. Order 16 Rule 1 of the High Court Rules, 2007 is clear on the point that an application for Summary Judgment can only be made on the ground that the Defendant has no defence to be claim included in the Writ, or in any particular part of the claim except as to the amount of any damages claimed.

II. An Application for Summary Judgment must be supported by an affidavit which complies with the requirement of Order 16 Rule 2- {i} it must verify the fact {ii} if must contain a statement of the dependent's belief that there is no defence to a claim or part thereof in respect of which the application is made, except as to the amount of damages claimed.

III. Summary Judgment is a discretionary remedy and although detailed argument may be necessary to determine the helplessness of the Respondent's case, the more complex and arguable the legal point, or the more dependent it may be on debatable factual premises, the less likely that summary disposal will be appropriate- see NRMA Issuance Limited – V-AW Edwards Pty Ltd {1955} 11 BCL 200.

IV. An Application for Summary Judgment is particularly useful in cases where irrelevant and extravagant claims are made in pleadings by a party and the other may be put to considerable expense in providing evidence to refute such irrelevant and extravagant allegation. On the other hand, where there can be no dispute on the facts, there is often little point in an application for summary disposal and the preferable course is to proceed expeditiously to a trial hearing.

V. In a situation where the Respondent has filed the defence, the Applicant should have shown that the defence is untenable and cannot possibly

succeed. It is not enough as the Deponent in the Supplemental Affidavit swore "the Defendant has no defence."

VI. In practice, the test applied to Summary Judgment is that " the jurisdiction summarily to terminate an action should be sparingly employed and should not be used except in a clear case where the Court is satisfied that it has the requisite material and necessary assistance from the parties to reach a definite and certain conclusion. The test has been variously expressed "so obviously untenable that it cannot possible succeed," "manifestly groundless".

See GENERAL STEEL INDUSTRIES INC. V COMMISSIONER FOR RAILWAYS (NSW) (1964) 112 GLR 125, 128-129.

VII. It should be noted that Order 16 does not confer a right upon a Plaintiff to apply for Summary Judgment in every case in which this procedure may be appropriate but only on the ground that "the Defendant has no defence" to a claim or part thereof of this summary process, should therefore be used in proper cases, and should not be employed for tactical purposes {Per Scott L.J in DOTT- v- BROWN {1936} I ALL ER 545- White Book Paragraph 14/1/18.

-If before the issue of the summons the Applicant knows that the Respondent has an arguable defence, he cannot properly invoke the Jurisdiction of the Court under Order 16 to give Summary Judgment, for neither he nor any one on his behalf can make the Affidavit stating that "in his belief, there is no ~~claim~~ defence to the claim to which the Application relates {White Book Paragraph 14 A/ 7/4.} It is not a matter of if the defence is good or otherwise but that "there is no defence to the action."

## CONCLUSION

The Applicant has not availed himself of the principles stated herein which would have assisted him in deciding on which procedure to adopt in this case. This is clearly not a matter for Summary Judgment as there is between the Plaintiff and the Respondent real issues which are reasonable for the Court to try.

It is my conclusion that this Application is misconceived and counsel for the Applicant should have avoid wasting everybody's time and by allowing the matter to take its natural course. The Respondent has entered appearance and filed a defence. The affidavit in support is frivolous as the Dependent did not allude to the fact that the Respondent has no defence. Of course he could not properly have done so since as I have already stated a defence has been filed. In order to succeed on this ground, the requisite belief must be established opinion as opposed to belief is insufficient. As I stated earlier in this Ruling, the Affidavit filed in support of the application.

Furthermore, there are issues relating to the legal status of a Memorandum of Understanding which makes it unenforceable by Summary Judgment, the nature of the agency relationship between the Applicant and the Respondent. All of these issues require a full trial to resolve fairly.

## DECISION

In the circumstance, I Order as follows:-

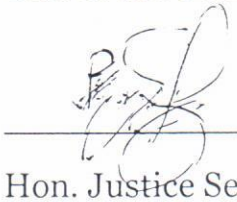
a) The Application for Summary Judgment is hereby refused,

b) That there shall be speedy trial of this matter,

c) That the parties close all pleadings within 3 clear days from that date of this Order,

d) That the matter immediately proceeds to Pre-Trial Settlement.

e) Cost in the Cause.



Hon. Justice Sengu M. Koroma J.