



**IN THE HIGH COURT OF SIERRA LEONE**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**FAST TRACK COMMERCIAL COURT**

CASE NO: FTCC090 /15

KOIDU NEW SEMBEHUN CITY COUNCIL      - PLAINTIFF/RESPONDENT  
BONA STREET  
KOIDU TOWN

AND

THE MANAGER  
OCTEA MINING COMPANY                      - 1<sup>ST</sup> DEFENDANT/APPLICANT  
KOIDU CITY  
KONO DISTRICT

OCTEA MINING COMPANY                      - 2<sup>ND</sup> DEFENDANT/APPLICANT  
KOIDU CITY  
KONO DISTRICT

**REPRESENTATION**

MR. E. S. ABDULAI ESQ.   -COUNSEL FOR THE PLAINTIFF/RESPONDENT

MR. B. MACAULEY ESQ.    -COUNSEL FOR THE DEFENDANT/APPLICANT

**BEFORE THE HON. MS. JUSTICE F. BINTU ALHADI J.**  
**RULING DELIVERED THIS    DAY OF                      2016**

The Plaintiff's action commenced by Originating Summons filed on 9<sup>th</sup> October, 2015 against the Defendants for the following Orders to wit:-

1. An Order that Octea Mining Company do pay property tax in the sum of Le 2,700,000,000 (Two Billion Seven Hundred Million Leones) owing and due to Koidu New Sembehun City Council.
2. Interest rates at 17% per annum since 2012 till the final determination of the matter.
3. An Order that the Defendants allow the Plaintiff to enter or have cause for an order to enter and assess the ratable value on its property.
4. Any other Order(s) as the Court may deem fit.
5. The costs of the action.

The present application is by Notice of Motion dated 26<sup>th</sup> day of October 2015 on behalf of the 2<sup>nd</sup> Defendant/Applicant for the following Orders to wit:-

1. That the Court makes an Order striking out the Originating Summons filed on 8<sup>th</sup> October 2015 on the grounds that it is an abuse of the process of the Court in that the Plaintiff/Respondent is seeking an Order that the 2<sup>nd</sup> Defendant/Applicant pays to it property "tax" (rates) in the sum of Le 2,700,000,000 (Two Billion Seven Hundred Million Leones) having regard to the fact that the 2<sup>nd</sup> Defendant/Applicant is neither the owner nor the occupier of any assessed building within the Koidu New Sembehun City Council locality.
2. Further and/or in the alternative that the Court makes an Order striking out the Originating Summons filed herein dated the 8<sup>th</sup> day of October, 2015 on the grounds that it does not disclose a reasonable cause of action against the 2<sup>nd</sup> Defendant/Applicant and that the action be dismissed.

3. That the Court makes an Order granting a stay of all further proceedings, except this application, in the action herein pending the hearing and determination of this application.
4. Any other Order as the Court may deem fit and just.
5. That the costs of the application be borne by the 2<sup>nd</sup> Defendant/Applicant.

The Affidavit in support was deposed to by the Chief Financial Officer of Koidu Limited and the Affidavit in Opposition was deposed to by the Mayor of the Plaintiff/Respondent on the 7<sup>th</sup> day of January 2016.

### **SUBMISSION BY COUNSEL FOR THE DEFENDANTS/APPLICANTS**

1. Mr. Berthan Macaulay, Counsel for the Defendant submitted that the said Notice of Motion was made pursuant to Order 21, Rule 17 (1) (2) and (3). He referred to Exhibit AS6, which is the Originating Summons filed by the Plaintiff/Respondent and the Affidavit in Support. He directed the Court's attention to section 69 of the Local Government Act of 2004 which deals with 'Property Rates'; but most significantly subsection (2) which states that "the rates provided for in the estimates approved by a local council -..... shall be imposed and levied by the local council and shall, subject to this Act be payable by the "OWNER" to the council....." In other words, that the Originating Summons was directed to the 2<sup>nd</sup> Defendant allegedly due by way of rates payable under the Local Government Act. Counsel contended that the 2<sup>nd</sup> Defendant was a separate legal entity from Koidu Limited, a corporate body previously known as Koidu Holdings S.A.
2. Mr. Macaulay referred the Court to the Affidavit in Opposition (mistakenly labelled as an Affidavit in Support) sworn to on the 8<sup>th</sup> day of October, 2015 by the Mayor of Koidu New Sembehun City Council, Saa Emerson Lamina. He pointed out that paragraph 6 of the said Affidavit made reference to a letter

dated 16<sup>th</sup> February 2012 exhibited as “SEL3” and specifically addressed to The Manager, Koidu Holdings S.A. That paragraph 7 of the said Affidavit validated the property of the 1<sup>st</sup> Defendant as that of the Manager of Ocea Mining Company. Paragraph 9 of the said Affidavit referred to the Mining Lease Agreement between the Government of Sierra Leone and Koidu Holdings S.A.; whilst paragraph 8 of the same affidavit referred to, exhibited a correspondence from Koidu Holdings S.A. to the Plaintiff. In all of this, Counsel highlighted to the Court the fact that, the correspondences up to that time were all clearly between Koidu Holdings S.A. and the City Council.

3. Mr Macaulay also invited the Court to take note of paragraph 13 of the said affidavit and exhibit “SEL6” showing a letter from the Plaintiff to the General Manager, Ocea Mining Company dated 15<sup>th</sup> August, 2014 requesting another validation of the property. The General Manager, Koidu Limited then wrote another letter dated 16<sup>th</sup> November, 2014 exhibited as “SEL7” reiterating the company’s non-liability in respect of payment of property rate tax as governed by the Mining Lease Agreement between Koidu Limited (formerly Koidu Holdings S.A.) and the Government of Sierra Leone.
4. Furthermore, he argued that a perusal of exhibits “SEL6” and “SEL7”, show that exhibit “SEL6” was addressed to the General Manager, Ocea Mining Company whilst “SEL7” was from the General Manager, Koidu Limited addressed to the Plaintiff. He referred the Court to exhibit “SEL11” which is a letter before action from the Plaintiff’s Solicitors, Abdulai and Associates, dated 15<sup>th</sup> September, 2015 addressed to the Manager, Ocea Mining Company. Exhibit “SEL12” is a reply to the said letter by the Defendants’ Solicitor, Basma and Macaulay, dated 25<sup>th</sup> September, 2015. It is instructive to note that, Counsel for the Applicant, Basma and Macaulay, responded by saying that “we have been instructed to act for and on behalf of Koidu Limited

(formerly known as Koidu Holdings S.A.), our clients, in respect of the above-mentioned matter who have handed to us a copy of your letter dated the 15<sup>th</sup> instant addressed to 'The Manager, OCTEA Mining Company.'

5. The Court's attention was drawn to Sections 69 to 80 of the Local Government Act No.1 of 2004 where it is stated that if you are an occupier within the locality, you are liable to pay rate and that the process by which rates are assessed and the preparation of a valuation list that could be inspected; and sets out the assessment of buildings and the objections to be raised. In other words, for Octea Mining Company to be liable to pay property tax, it had to be shown that it is either the owner or the occupier of the property within the locality of Koidu New Sembehun City Council that has been assessed as prescribed by the Act.

#### **1<sup>st</sup> AFFIDAVIT OF ALAIN SULTAN**

6. The Court's attention was drawn to the Affidavit of Alain Sultan, the Chief Financial Officer of Koidu Limited, sworn to on the 26<sup>th</sup> day of October, 2015 together with its exhibits attached thereon. Exhibits "AS1A to E" comprised of the company's Certificate of Incorporation, Certificate of Registration under The Companies Act of 1960, CAP. 249 of the Laws of Sierra Leone, Certificate of Registration under the Business Registration Act No. 17 of 1972, Certificate of Change of Name in the British Virgin Island and the Certificate of Change of Name under the Companies Act of 1960, CAP 249 aforesaid. This is to show that the company had changed its name from Koidu Holdings S.A. to Koidu Limited.
7. Mr. Macaulay referred the Court to exhibits "AS2" which is the Certificate of Incorporation of Octea Mining Limited in the British Virgin Islands and "AS3" – the organogram of the Octea group of companies. This is to show also that,

Koidu Limited formerly known as Koidu Holdings S.A. is a separate and distinct company from Ocea Mining Limited.

8. Paragraph 4 of the said Affidavit deposed to by Alain Sultan reads, “that Koidu Limited is registered in the Republic of Sierra Leone with its offices at No. 84 Wilkinson Road, Freetown, Sierra Leone. That the Koidu Kimberlite Project (referred to in the Mining Lease Agreement, Exhibit SEL 5 to the affidavit in support of the Originating Summons herein) is carried out by Koidu Limited in the Mining Lease Area, as described in the Mining Lease Agreement within the Tankoro Chiefdom, Kono District in the Eastern Province of the Republic of Sierra Leone. That the Koidu Kimberlite Project is not carried out by Ocea Mining Limited and that Ocea Mining Limited does not own or occupy any building within the Mining Lease Area (as defined in the Mining Lease Agreement) nor in the Kono District”.
9. Paragraph 5 of the said Affidavit reads, “that Ocea Mining Limited is neither registered under the Companies Act 2009 as a company incorporated outside the Republic of Sierra Leone nor under the Registration of Business Act 2007. That Ocea Mining Limited has not established a place of business in the Republic of Sierra Leone and does not carry on any business in the Republic of Sierra Leone neither at No. 84 Wilkinson Road, Freetown, Sierra Leone or anywhere else within the Republic of Sierra Leone. That the 2<sup>nd</sup> Defendant/Applicant does not hold the position of ‘The Manager, Ocea Mining Company’ in the Republic of Sierra Leone nor any person holding or acting in that position in Sierra Leone. That I am shown a copy of a lease agreement between Koidu Limited (then known as Koidu Holdings S.A.) and its Lessor in respect of premises at No. 84 Wilkinson Road, Freetown which is exhibited hereto and marked ‘AS5’ “.

10. According to Mr. Macaulay, when you peruse the Originating Summons, there is nothing in it, including the affidavit, to show that Octea Mining Limited own or occupies buildings within the Plaintiff's locality, in respect of which there has been an assessment, as provided for in the Local Government Act of 2004 and contained in any valuation list to warrant a claim in this manner.
11. Also, he submitted that if the 2<sup>nd</sup> Defendant is not liable to pay property rates under the Local Government Act of 2004, then the issue of the Originating Summons herein against the 2<sup>nd</sup> Defendant is an abuse of the Court's process.
12. Further and/or in the alternative, he adopted the same argument in Order 2 of the Originating Summons and drew the Court's attention to the 1<sup>st</sup> Order prayed for. He maintained that other than this reference, there is nothing to show that an assessment had been made and the amount due was Le 2,700,000,000 (Two Billion Seven Hundred Million Leones) by way of property rates; and there is nothing in the affidavit to show that the property belonged to Ooctea Mining Company Limited and that it had been assessed and that this was the amount owed.
13. Counsel relied on the authority of Joseph Johnny and Total (Sierra Leone) Limited [2014] presided over by the Honourable Mr. Justice N.C. Browne-Marke JA which dealt with the law relating to striking out of pleadings for abuse of process; and more particularly to paragraphs 50 to 54 of the said judgment. He relied on the entirety of his application/motion.

**SUBMISSIONS OF MR ABDULAI ON THE AFFIDAVIT IN OPPOSITION OF SAA  
EMMERSON LAMINA**

14. The Plaintiff/Respondent filed an Affidavit in Opposition sworn to on the 7<sup>th</sup> of January 2016 by Saa Emmerson Lamina, Mayor of Koidu New Sembehun City Council with exhibits attached thereto. Exhibit "SEL1" is a letter dated 24<sup>th</sup> September, 2013 by the Chief Executive Officer of Ocea Limited to the Executive Chairman of the Environmental Protection Agency of Sierra Leone pertaining to a discussion on the Environmental Impact Assessment Licence for the year 2013/2014. Exhibit "SEL 2" is a confidential memorandum to Ibrahim Kamara, regarding his appointment and remuneration as President, Ocea Mining dated 22<sup>nd</sup> February 2013 and written by Brett Richards, the Chief Executive Officer of Ocea Limited. Exhibit "SEL 3" is a Letter of Appointment and Remuneration to the said Ibrahim Kamara from Dag Cramer of Ocea Limited Board of Directors. Exhibit "SEL 4" is a letter from Ocea Limited written by the Chief Executive Officer of Ocea Limited, Brett Richards to the Executive Chairman of the Environmental Protection Agency of Sierra Leone as exhibited in Alain Sultan's 1<sup>st</sup> Affidavit. Exhibit "SEL 5" is a letter dated 11<sup>th</sup> October 2012 by Mr. Ibrahim Sorie Kamara as Chief Communications Officer of Ocea Mining to the Commissioner of Labour, Ministry of Labour and Social Security in respect of skills development/transfer programme for Sierra Leonean staff.
15. Exhibit "SEL 6" is a letter in reply from the Minister/Chairman Work Permit, Matthew Teambo, Ministry of Labour and Social Security dated 8<sup>th</sup> July 2013 addressed to the Human Resource Manager, Ocea Mining Company at 84 Wilkinson Road, Freetown. Mr. Abdulai submitted that of particular note was the 'addressee' which was 'Ocea Mining Company.' Exhibit "SEL 7" is a letter to the Director General, Ministry of Foreign Affairs and International



Cooperation dated 18<sup>th</sup> October 2012 regarding a 'Request for Attestation – Octea Mining' in respect of staff recruitment, from Ibrahim Sorie Kamara the Chief Communications Officer of Octea Mining.

16. Exhibit "SEL 8" is an Out of Court Settlement between the Union Services and Trading Company Limited and Octea Mining Limited (formerly trading as Diamond Works Limited". Mr Abdulai submitted that the said settlement was entered into as a result of the 2<sup>nd</sup> Defendant's default. Exhibit "SEL 9" is the Organogram of the 2<sup>nd</sup> Defendant/Applicant which indicate the 2<sup>nd</sup> Defendant/Applicant as a parent company with subsidiary companies engaged in specialized activities. Exhibits "SEL 10 A-E" are photos of vehicles parked in the compound used by the 2<sup>nd</sup> Defendant/Applicant in Koidu City each with a clear emblem named 'Octea'. Exhibit "SEL 11" is a photocopy of an identity card of an alleged employee of the 2<sup>nd</sup> Defendant/Applicant.
17. Attached to the said Affidavit is also exhibit "SEL 12 A" which is a news report from the Guardian Newspaper in the United Kingdom; whilst "SEL 12 B" is another news report from Africa Confidential 2015. Counsel submitted that the articles portrayed the 2<sup>nd</sup> Defendant as holding itself out to the Government of Sierra Leone and Standard Chartered Bank in the United Kingdom as being in charge of the running of Koidu Mines based in Koidu City; but refusing to undertake the obligations emanating from the mining activities being conducted in Koidu. This includes liability to pay property tax to Koidu City Council. He argued that the reports comprehensively expose Octea as being debt ridden and therefore need the assistance of Standard Chartered Bank.
18. Mr. Macaulay objected to the notion that Standard Chartered Bank was a Guarantor and that there was no evidence before the Court to substantiate

the position. Mr. Abdulai referred again to “SEL B” and pointed out that Standard Chartered Bank was the biggest lender to Ocea and not guarantor as earlier posited.

19. The Affidavit of Saa Emerson Lamina also exhibited “SEL 13” which is a letter dated 26<sup>th</sup> July 2011 and addressed to The Manager, Koidu Holdings S.A. Ltd; requesting a validation of its properties in a bid to assess the property tax. Mr. Abdulai submitted that the purpose of the exhibit is to show that a clear line of attempts and requests had been made for permission to enter the premises. Exhibit “SEL 14 A to L” show photos taken by the Council’s Valuers of items found in the compound.

#### **SUPPLEMENTAL AFFIDAVIT IN OPPOSITION OF SAA EMERSON LAMINA**

20. On 15<sup>th</sup> January 2016 the Plaintiff/Respondent filed a Supplemental Affidavit deposed to by Saa Emerson Lamina sworn to on the 15<sup>th</sup> of January 2016 together with exhibits attached. Counsel submitted that exhibit “SEL 1” is a map of Koidu City with the location “Ocea Mining Road” where Ocea is allegedly located within the boundary of Koidu City Council and is therefore entitled to pay property rate/tax to Koidu City Council as stipulated in the Local Government Act 2004. He exhibited the form used by the Plaintiff/Respondent to register taxes, the Guidelines, Explanatory Notes and the Category of the Companies. These characteristics he argued were used to assess the property taxes. Counsel relied on the entirety of the Affidavits in Opposition including the Supplemental and more particularly paragraphs 3 to 43.

21. Furthermore, Mr. Abdulai submitted that letters were sent to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants at the address at Wilkinson Road, since that address was their established place of “business”. He argued that the operation of the business was from 84 Wilkinson Road. Counsel relied on the authority of South India Fishing

Company Limited and Export/Import Bank of Korea [1985] 2 All ER; in which it was decided that ‘a place of business’ within the meaning of Section 412 of the 1948 Companies Act of Great Britain ... “a company established a place of business within Great Britain if it carried on part of its business activities within the jurisdiction and it was not necessary for those activities to be either a substantial part of or more than incidental to the main object of the company.” Based on this he concluded that the Defendants were doing business in Sierra Leone. He pointed out that the said authority supports the view that the Defendants/Applicants do occupy the compound.

22. Counsel maintained that apart from the President, the 2<sup>nd</sup> Defendant hired over 700 staff members and that a letter to the Ministry of Labour about skills of Sierra Leone workers. He pointed out that the 2<sup>nd</sup> Defendant’s failure to fulfil the legal requirement for registration in Sierra Leone, did not mean that it was not present and carrying on mining business in Koidu City, Sierra Leone. Such administrative lapses such as not to formally register in Sierra Leone before carrying out business, has its punishment in the Companies Act. He said that “SEL 4” proved that Ocea, the 2<sup>nd</sup> Defendant continuously held itself out as a legal entity operating in Sierra Leone. That by their own letter, they have shown themselves to be the parent company, the subsidiary and they are running their own mines.

23. In addition, he said that Exhibits “SEL 5 and SEL 7” are conclusive on the fact that, whilst they may have failed to do the right thing, they held themselves out to be doing mining in Sierra Leone; and that they had therefore not excluded themselves from liability. He referred the Court to Part 18, Section 60 of the Companies Act 2014.

24. On the application by Counsel for the Defendants/Applicants of showing ‘no reasonable cause of action’, Mr. Abdulai submitted that the Court should disregard

it. He opined that the action of the Plaintiff/Respondent was not only based on a reasonable cause of action, but on substantial issues for the Court to determine.

25. On the application by the said Counsel for the Defendants/Applicants of 'an abuse of process', Mr. Abdulai submitted that the Plaintiff/Respondent had filed an originating process asking the Court for a determination and Orders for property tax to be collected. He argued that the Court's procedure had not been used in an improper way nor was it vexatious to warrant a dismissal.

26. On the questions surrounding the ownership of the mining activities and properties located in Koidu, Counsel argued that the Defendant/Applicant would want the Court to believe that the company, Koidu Limited, was the rightful owner. He however posited that there was substantial evidence before the Court to show that mining was being carried out by two Defendants/Applicants; and that the question was: whether the Court should lift the corporate veil of Koidu Limited (formerly known as Koidu S.A.) to determine who the shareholders are.

27. Mr. Abdulai referred the Court to: Re Edelsten Ex parte Donnolly and submitted that the Court could lift the corporate veil when there was a fact or in law, a partnership between companies in a group or there was a mere sham or façade by which that company was playing a role just assigned to it or where the use of the company was designed to enable a legal or fiduciary obligation to be evaded or a fraud to be perpetuated. He highlighted the fact that there was a mining lease agreement of 1995 between Koidu Holding S.A. and the Government of Sierra Leone; and that the said Koidu Holding S.A. later changed its name to Koidu Limited but had all the mining rights and facilities under the 1995 agreement enjoyed by Ocea Company Limited.

28. The said Ocea Company Limited he argued, was not a legal entity in Sierra Leone yet it was operating fully within the jurisdiction of Sierra Leone. He submitted that the only conclusion that could be drawn from it was that Koidu Limited was in

existence to enable legal and fiduciary obligations to be evaded or fraud to be perpetuated; Re: Edelsten Ex parte Donnolly.

29. He submitted that the second instance where the corporate veil can be lifted was when the issue of agency comes into play. Counsel referred to the case of: Burrows v CIS Limited, where the Courts found out that the parent company was responsible for the action of a subsidiary in relation to an employee; and did not hesitate to lift the veil. Counsel submitted that Koidu Limited was merely a front for Ocea Limited as a majority shareholder.

30. Furthermore, he submitted that Koidu Limited was the 'alter-ego' of Ocea. He questioned for whose benefit was the mining being conducted; whether it was not just a front and why Ocea was not registered in Sierra Leone? He questioned whether Ocea was not committing a fraud and why was it not meeting its obligations? He finally asked the Court to lift the corporate veil of Ocea.

#### **MR. B. MACAULAY'S REPLY**

31. Mr. Macaulay submitted that Counsel for the Plaintiff/Respondent had not showed any evidence to prove fraud or illegality. He asserted that Counsel's Originating Summons as exhibited in Exhibit "AS 6" of the Affidavit in Support did not contain any matter, which warranted the lifting of the corporate veil. That nothing had been shown to support the view that Koidu Limited was a sham or a fraud. Mr. Macaulay respectfully submitted that Counsel for the Plaintiff/Respondent's assertions were an after-thought that had not been canvassed nor put in the alternative. He proposed that if the contention was that it was the 2<sup>nd</sup> Defendant who was carrying out mining activities at the mining site, and therefore liable, then there was no question of lifting the corporate veil. This he argued was because if the Court refers to the organogram, then it was not Ocea Mining Company that ought to have been sued but Ocea Limited. Counsel directed

the Court's attention to the top of Exhibit "SEL 9" showing "Octea Diamond Group" and exhibit "AS 9 A" at paragraph 4.

32. In addressing the Court on exhibit "SEL 7" Mr. Macaulay reported that it was a letter from Koidu Limited dated 16<sup>th</sup> November 2014 to Koidu New Sembehun City Council. He said that the General Manager was contending that under the Mining Lease Agreement with the Government of Sierra Leone, Koidu Limited was exempt from payment of "Minor Taxes" and impositions of any kind payable to the "central, Regional or Local Government Authorities" and that this was implicit in the Originating Summons for the Court to determine. He explained that on the payment for work permits, exhibits "AS 11 A" and "AS 11 B", this was to avert the assertion that there was some ploy to avoid payments. He went further to explain that the payments shown in exhibits "AS 8 D" and "AS 8 E" were to show that they were meeting their obligations.

33. The principal issue before the Court according to Mr. Macaulay, is to determine whether Octea Mining Limited is the owner or occupier of the mine site where the Koidu Kimberlite project is being undertaken; and whether its property thereon has been duly assessed in the manner provided by law in the sum of Le 2.7 Billion.

34. He also said that, what the Court is being called upon to determine, is to look at certain facts or allegations and based on them, to come to a conclusion that Octea Mining Limited is the owner or occupier of the buildings in the mine site.

35. He submitted that there were certain matters which could not be seriously disputed. These were: firstly, that mining activity was being carried out at the mine site. Secondly, that Koidu Limited holds a mining lease agreement in their corporate name. Thirdly, that there was no evidence before the Court that the mining lease agreement had been assigned to Octea Mining Company, even though there was provision for an assignment under clause 21 of the Mining Lease Agreement.

36. He averred that the Plaintiff/Respondent had not produced to the Court, any license in the name of Ocea Mining Limited authorizing it to mine at the mine site. He also admitted that it was indisputable that Koidu Limited held a mining lease in its name and a land lease in its name as exhibited in Exhibit "AS 7". Additionally, he said that it was indisputable that Koidu Limited was the holder of licenses issued under the Environment Protection Act as exhibited in "AS 8 A to E"; since certain mining activities need approval from the Environmental Protection Agency (EPA).

37. Mr. Macaulay maintained that there was no evidence before the Court to show that any license was issued by the EPA in favour of Ocea. It was also not in dispute that Koidu Limited had executed a debenture and a supplemental debenture in favour of Standard Chartered PLC as exhibited in "AS14" and "AS16". It was also evident that Koidu Limited had granted security to Standard Chartered PLC over the mining lease agreement.

38. Furthermore, it was not disputable that Ocea Mining Limited has 3 subsidiaries which were Koidu Limited, Tonguma Limited and Boruma Limited, all of which were registered in Sierra Leone and were the holders of mineral rights and had their registered place of business at 84 Wilkinson Road, Freetown.

39. It was therefore the contention of the Defendant/Applicant that, in evaluating the material that Mr. Abdulai had presented to Court, the Court ought not to ignore the fact that these 3 companies were subsidiaries of Ocea Mining Limited and they held mineral rights. In assessing the organograms, Ocea Mining Company is seen as the sole shareholder of these 3 companies. Exhibit "AS 9 C" at paragraphs 4, 5 and 6 explained that the management of the companies/the management functions of the subsidiaries did not change. Ocea Mining was carrying out executive functions. Mr. Macaulay referred to paragraph 16 of the Affidavit in Opposition in which it was pointed out that the Defendant/Applicant's vehicles were registered with the Sierra Leone Road Transport Authority. On presentation of the life cards to the Court, it

was clear that the vehicles were registered in the name of Koidu Holdings, which was incorporated in Sierra Leone. It was submitted by Counsel for the Defendant/Applicant that, the fact that the compound was used as a car park did not mean that Octea was the owner/occupier of the buildings.

40. In addressing the issues of news reports in “Africa Confidential” and the “Independent Newspaper” in the United Kingdom raised in the Affidavit of Opposition at paragraphs 21 and 22, Counsel for the Defendant/Applicant maintained that exhibits “AS 13A – E” made no secret of the fact that the Government of Sierra Leone was dealing with Koidu Limited and that the Mining Lease Agreement was the subject of a debenture granted by Koidu Limited in favour of Standard Chartered PLC. The documents exhibited also show that the National Minerals Agency (NMA) was also aware and thus clearly the Government of Sierra Leone was not in any doubt about who was carrying on mining.

### **ISSUES TO BE DECIDED**

The following issues need to be addressed to assist the Court in granting the Orders prayed for in the Notice of Motion to be granted:

#### **Is Octea Mining Company a separate legal entity from Koidu Limited (formerly Koidu Holdings S.A.)?**

41. The separate personality of a company and its entity as distinct from its shareholders was established by the House of Lords in Salomon v Salomon & Co [1897] AC 22 where it was held that however large the proportion of the shares and debentures owned by one man, even if the other shares were held in trust for him, the company's acts were not his acts, nor were its liabilities his liabilities; nor is it otherwise if he has sole control of its affairs as governing director; Inland Revenue Commissioners v Sansom [1921] 2 KB 492.



42. There is overwhelming evidence before this Court to show that Ocea Mining Company is a separate and distinct company from Koidu Limited having been incorporated and registered in the British Virgin Islands (BVI) and having a hundred percent share ownership in Koidu Limited. Both parties have exhibited the organogram of the Ocea Group thus displaying its governance structure. The organogram shows Ocea Limited (The Group Head) at the pinnacle and as the parent company owning four subsidiary companies namely: Ocea Mining Company, Ocea Diamonds, Ocea Services Limited and Ocea Foundation. Each of these subsidiaries are companies in their own right incorporated and registered separately mainly in the BVI and not in Sierra Leone. Ocea Mining Limited is the parent company owning 100% stake in Koidu Limited (formally Koidu Holdings S.A.) It is also the parent company to Toguma Limited and Boroma Limited.

43. Therefore, there is no doubt that legally, Ocea Mining Company has a corporate personality of its own, separate from Koidu Limited (formally called Koidu Holdings S.A.) with a share-ownership stake of a hundred percent in Koidu Limited. No evidence has been submitted to the Court to show that Ocea Mining Company has a mining licence or an exploration licence, which are mandatory in order to carry out any mining activity in Sierra Leone.

44. Mr. Abdulai in his submissions to the Court, also pointed out that exhibit "SEL 12 A" which constitutes news report from the Guardian Newspaper in the United Kingdom and Africa Confidential, show that the 2<sup>nd</sup> Defendant/Applicant held itself out to the Government of Sierra Leone, Standard Chartered Bank and the world-at-large to be in charge of the Koidu Mines, but refuses to undertake the obligations that emanate from the mining activities of Kono.

45. This is an argument which I can fully understand but will not attach extreme weight to, since there is no evidence of actual mining activity by the 2<sup>nd</sup> Defendant/Applicant as I have emphasized earlier. What Mr. Abdulai relies on are

what I will consider to be mere statements of no legal significance. Articles in newspapers or news report do not constitute legal documents.

### **Parent and Subsidiary Companies**

46. Section 736 (1), (2), (3), (4) and (5) of the Companies Act 1985 of England defines a holding/parent company as a business that holds a majority of the voting rights in another company (i.e. a subsidiary). The parent/subsidiary relationship will exist if the holding /parent company is a member of the subsidiary and has a right to appoint or remove directors holding a majority of the voting rights at meetings of the board. Also, has the right to exercise a dominant influence by virtue either of provisions in its memorandum or articles or a control contract; Birds, J et al 'Boyle & Birds Company Law' (2004, 5<sup>th</sup> edition) Jordan Publishing Limited at page 426.

47. The Companies Act No 5 of 2009 of Sierra Leone does not define parent and subsidiary companies; but it recognises group financial statements.

48. The evidence attested to in this Court by Alan Sultan in his affidavit sworn to on the 11<sup>th</sup> day of January 2016 in exhibit "AS 9 B" attached thereto, was the organisational structure of the Ocea Group. It showed that Ocea Mining Company being a subsidiary of Ocea Diamond Group (the Group/Parent Company), is the parent company of Koidu Limited (formerly Koidu Holdings S.A.), on the basis that Ocea Mining Company owns one hundred per cent of the shares in Koidu Limited. It also revealed that both Ocea Mining Company and Koidu Limited belong to the Ocea Group of companies.

49. It is also no secret, since in the letter of 10<sup>th</sup> July, 2012 sent to the Minister of Mineral Resources from Koidu Limited, "that the management structure has the strategic and executive management teams sitting at Ocea Group or Ocea Mining level. It also showed that each mining company is being managed by a General

Manager. Furthermore, that each mining asset is ring-fenced within a limited liability company; whilst the 'Octea' brand is being promoted. I take it that reference to each mining company means: Koidu Limited, Tonguma Limited and Boroma Limited.

50. In exhibit "AS 9 B" it was also made categorically clear that "the Octea brand is being promoted to protect the integrity of the lease agreements between the Government of Sierra Leone and Octea mining subsidiaries (ring-fenced arrangement)." This exhibit went on to explain that "all correspondences that may have material bearing on a specific asset, will be communicated by the relevant entity, that is, Koidu Limited, Tonguma Limited and Boroma Limited. General matters on Group level will be communicated through Octea Mining Limited." Throughout the exhibit one could see the structure of the group and how it operates.

51. The role of each separate entity is clearly spelt out. Those that have mining licences to mine are clear; those that are responsible for placing management and strategic staff are clear. The exhibit went on to explain that "Octea Limited (The Group) is therefore able to maintain control of the entire chain of custody from the mining source to the diamond parcel sale, guaranteeing that all Octea diamonds sold to manufacturers comply with the Kimberley process certification scheme.

52. Throughout the entire proceedings, Mr. Abdulai argued vehemently that from the operations of Octea, it could be seen that Octea Mining Limited is operating in Sierra Leone.

53. To my mind, I can understand Mr. Abdulai's proposition and perspective; even though I do not agree with the notion that Octea Mining is in the business of mining in Sierra Leone, because it does not have a mining licence, which as I have stated earlier is mandatory. What I think Mr. Abdulai is referring to and I can understand it in some respects, is the way the wholly-owned subsidiary Koidu Limited is seen as an extension of the parent company and in many respects not treated as an

individual company. In other words, the subsidiary governance is disproportionately controlled by Ocea Mining Limited and the Group Office.

54. I agree with him in some respect because when you take into consideration: (a) exhibit SEL 1 of the Affidavit in Opposition deposed to on the 7<sup>th</sup> day of January 2016 by the Mayor, Saa Lamina, which is a letter dated 24<sup>th</sup> of September 2013, that letter was written directly by the Chief Executive Officer of Ocea Group Office to the Executive Chairperson of the Environmental Protection Agency of Sierra Leone. The contents of that letter discussed matters pertaining an environmental impact assessment licence for the year 2013/14. Such a letter should have been written by the General Manager of Koidu Limited since Koidu Limited is registered and licenced to do business in Sierra Leone and not Ocea Limited.

55. Also, Exhibit 'SEL 4' is a letter from the Chief Executive Officer of Ocea Group Office, Brett Richards, written directly to the Environmental Protection Agency of Sierra Leone and not from Koidu Limited. Exhibit 'SEL 5' is a letter from the Chief Communications Officer of Ocea Mining Limited, Ibrahim Sorie Kamara, written directly to the Commissioner of Labour, Ministry of Labour and Social Security of Sierra Leone in respect of skills development/transfer programme of Sierra Leonean staff. Also, in a letter dated 8<sup>th</sup> day of July, 2013, exhibit 'SEL 6' the Minister /Chairman of Work Permits, Ministry of Labour and Social Security, Mr. Matthew Timbo directed a letter to the Human Resources Manager, Ocea Mining Company at 84 Wilkinson Road. Furthermore, in exhibit 'SEL 7' in a letter to the Director-General of the Ministry of Foreign Affairs and International Cooperation dated 18<sup>th</sup> October, 2012, the Chief Communications Officer of Ocea Mining Limited, Ibrahim Sorie Kamara, directly requested attestation of Ocea Mining Limited for recruitment of staff.

56. All of these actions in my estimation amount to some form of meddling in the affairs of the subsidiary company; and affairs that the subsidiary, i.e. Koidu Limited, should be competent to perform as an independent and separate entity.

57. However, what the Plaintiff/Respondent has failed to see is the overarching powers that holding/parent companies can have on their subsidiaries. This is because as discussed earlier, they are defined by their share holding majority, their right to appoint and remove directors and their right to exercise dominant influence on their subsidiaries. The directors appointed by the parent company are and can be considered to be shadow directors who are expected exercise their powers in accordance with the instructions of the parent company. Shadow directors are recognised by Section 210 of the Companies Act of 2009.

58. A lot has been highlighted above as to how the functions of the Group are divided. What has not been made clear is whether the executives that have been writing these letters directly to authorities in Sierra Leone, are in fact directors of the Board of Koidu Limited. If they are, then they should have been appointed by the parent company/holding company. If their actions have been directed on the instructions of the parent company, they would have been considered to be shadow directors; a role which is recognized by Section 210 of the Companies Act of 2009.

59. Whether they are directors of the board however, have not been made clear. Shadow directors of a subsidiary essentially have the same obligations and liabilities as a director of a subsidiary. It may appear that Octea Mining may seek to reduce the risk of liabilities arising in relation to the subsidiary and its assets through careful control and direction of the activities of the subsidiary.

60. In these circumstances, Octea Mining or the group company need to know that the corporate veil could be "pierced"; in other words, the parent company itself could be considered a shadow director with the same obligations and liabilities as a director of the subsidiary. Therefore, as a parent company/holding company, Octea

Mining Limited or the Octea Group Company will have to carefully consider what degree of control it wishes to exercise over its wholly-owned subsidiary. Since a subsidiary could be seen to have been established, with the specific aim of supporting a parent company to rely on the 'corporate veil' to distance itself from potential legal liabilities that may arise in respect of a subsidiary company.

61. It is imperative therefore, that a parent company shows that the directors of its subsidiary operate independently and at arm's length from the parent company. The significance of actualizing an effective subsidiary governance structure should not be overlooked. Haddon, T 'The Control of Corporate Groups' [1983] University of London Institute of Advanced Legal Studies (June 1983).

62. Having said all this, I maintain that based on the evidence before the Court, Octea Mining Company is not liable to pay property tax to Koidu New Sembahun City Council, since Koidu Limited was not liable in any case based on the Koidu Kimberlite Project Mining Lease Agreement (Ratification Act 2010) signed between the Government of Sierra Leone and Koidu Limited (formerly called Koidu Holdings S.A.), which I will discuss later.

### **Is Ooctea Mining Company the Occupier of the Building in Koidu City?**

63. Firstly, the building is clearly within the jurisdiction of Koidu New Sembahun City Council as is evident from exhibit "SEL 2". Secondly, 'Occupier/Occupation' is defined as one who exercises the physical control or possession of land; one who has the actual use of land; Bird R, 'Osborn's Concise Law Dictionary'(1983, 7<sup>th</sup> edition) Sweet and Maxwell. One that takes possession of a dwelling, piece of land or premises as owner, tenant or trespasser; a trespasser or occupier may become a lawful tenant if the owner accepts the rent offered or an owner by adverse possession.

64. The evidence before the Court at exhibit “AS 7” attached to the affidavit of Alain Sultan sworn to on the 11<sup>th</sup> day of January 2016, shows that the property in question is the subject of a lease agreement between Paramount Chief F. J. M. Saquee IV, E. T. T. Nyadebo and A. B. Josaiah as Lessors to Koidu Holdings S. A. (now Koidu Limited) as the Lessee. It is a valid lease dated 19<sup>th</sup> day of January, 2004 and was registered in the Record Book of Leases at the Administrator and Registrar-General’s Office at page 59 of volume 96 in 2004. The registered lease of land is situated at Tankoro Chiefdom, Kono District in the Eastern Area of Sierra Leone. It is therefore clear to my mind that the building in question is occupied by Koidu Limited, a separate legal corporate entity from Octea Mining Company.

65. Mr. Abdulai submitted to the Court that the presence of vehicles in the compound/property labeled ‘OCTEA’ was sufficient evidence to show that ‘OCTEA’ was operating from that building. It is my considered opinion that using the brand name on the assets of the company does not amount to ‘operating or doing business’ in Sierra Leone. I am convinced that the brand name is being used to lend credibility to the ‘OCTEA GROUP’.

### **BRAND NAME**

66. What is a brand name? In a letter written to the Minister of Mineral Resources by Koidu Limited dated 10<sup>th</sup> July 2012 in exhibit “AS 9 B” it was highlighted that “the ‘OCTEA’ brand is being promoted to protect the integrity of the lease agreements between the Government of Sierra Leone and Octea Mining subsidiaries (ring-fenced arrangements.) This idea is in line with the thinking of corporate bodies globally. In his scholarly article “Leveraging the Corporate Brand” in California Management Review vol 46 no 3 Spring 2004 at p 6, David A. Asker explains that ‘the corporate brand defines the firm that will deliver and stand behind the offering that the customer will buy and use. It plays an endorser role as in for example, Courtyard (by Marriot) MSN (by Microsoft) or Lion King (by Disney). As such it

provides credibility that can reassure the new buyer. Even when it represents a holding company, it can play a shadow endorser role in that some customers realize that there is a substantial firm behind the offering even if it is not visible.

67. I firmly believe that, what has been described in the immediate paragraph above, is the role that the emblem (as Mr. Abdulai referred to it as) is playing. I do not think it is purporting that 'OCTEA' or 'Octea Mining' has a mining licence and is carrying on mining in Sierra Leone.

**Is the 2<sup>nd</sup> Defendant doing Business in Sierra Leone?**

68. Mr. Abdulai opined that exhibits "SEL 5 and SEL 7" were conclusive evidence that the 2<sup>nd</sup> Defendant was doing business in Sierra Leone and that it held itself out to be mining in Sierra Leone. He relied on the case of *South India Shipping v Export-Import Bank CA [1985] 2 All ER at 220*; where it was held that '*.....a company established a place of business....if it carried on part of its business activities within the jurisdiction and it was not necessary for those activities to be either a substantial part of or more than incidental to the main objects of the company.*'

69. In my judgment, the 2<sup>nd</sup> Defendant is not carrying out the activity of mining. It has no mining licence to do so nor does it have a licence from the Environmental Protection Agency, based on the evidence before this Court.

70. However, both the 2<sup>nd</sup> Defendant and its parent company OCTEA Limited take an active part in the strategic and executive functions of the business of Koidu Limited. The address at 84 Wilkinson Road is the address for service of any correspondences. These are roles that I will consider to be incidental and supportive to the main objects of the company. Octea Mining and OCTEA Limited do have a presence in Sierra Leone.

71. Correspondences have been exhibited showing direct communications between Octea Mining and OCTEA Limited with the Ministry of Foreign Affairs and



International Cooperation, the Environmental Protection Agency and the Ministry of Mineral Resources from 84 Wilkinson Road; the same address that Koidu Limited has been responding to letters sent to OCTEA and Ocea Mining from.

72. Given the active involvement in the affairs of their subsidiary, Koidu Limited, I am of the view that the OCTEA Group (Ocea Limited) and Ocea Mining Company should consider registration in Sierra Leone under Part XVIII, Sections 484 and 485 of the Companies Act No 5 of 2009 with the Corporate Affairs Commission companies incorporated outside Sierra Leone and carrying on business within Sierra Leone.

73. This does not however make them liable to pay the property tax of Le2.7 Billion because they do not have mining licences to mine and they do not mine diamonds. They are separate and distinct entities in that respect. Koidu Limited is licenced to carry on mining at the site in Kono and it has a mining lease agreement, as discussed above, with the Government of Sierra Leone, in which it has been exempt from paying any tax to any regional or local authority inter alia.

### **The 'Alter-Ego' of OCTEA**

74. In the parent/subsidiary context, courts will disregard corporate separateness when three factors have been met: (a) the subsidiary is not operated as a separate corporate entity but rather as the "alter ego" or "instrumentality" of the parent; (b) the defendant parent's conduct in using the subsidiary was somehow unjust, fraudulent or wrongful towards the plaintiff; and (c) the plaintiff had actually suffered harm as a result of the conduct of the defendant parent; Powell, 'Parent and Subsidiary Corporations: Liability of a Parent Corporation for the Obligations of its Subsidiary' (1931) Callahan and Company Publishers.

75. I have no evidence before me to conclude and use the 'alter ego' treatment in this case. Nothing has been proven to show that Ocea Mining Company has been using

Koidu Limited to advance its own purposes or has no separate existence of its own. I have seen no evidence of fraud, unjust or wrongful conduct towards Koidu New Sembehun City Council by Ocea Mining Company. The agreement between the Government of Sierra Leone and Koidu Limited imposes no liability on Koidu Limited to pay property rate/tax and if Koidu Limited is not obligated, I cannot see how Ocea Mining can become obligated. The 'alter ego' concept is therefore not relevant to this case.

## **LAW RELATING TO STRIKING OUT OF PLEADINGS**

### **ORDER 21 RULE 17**

76. I shall now consider the Law relating to striking out pleadings and endorsements. The applicable Rule is Order 21 Rule 17 of the High Court Rules 2007. The Defendant's Application has been brought pursuant to paragraphs (a) and (d) of Sub-Rule 1 of Rule 17. The provision is as follows: *"The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that: - (a) it discloses no reasonable cause of action.... (d) it is otherwise an abuse of the process of the Court – and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be. (2) An application under this rule shall be deemed to invoke the inherent jurisdiction though not mentioned as well as that given by this rule. (3) This rule shall, so far as applicable, apply to an originating summons.....as if the summons.....were a pleading."*

77. The Defendant/Applicant's first prayer in his application dated 26<sup>th</sup> of October 2015, is for an Order to strike out the Originating Summons on the ground that it is an abuse of the process of the Court in that, the Plaintiff/Respondent is seeking an Order that the 2<sup>nd</sup> Defendant/Applicant pays to it property tax (rates) in the sum of Le 2,700,000,000 (Two Billion Seven Hundred Million Leones) having regard to the

fact that the 2<sup>nd</sup> Defendant/Applicant is neither the owner nor the occupier of any assessed building within the Koidu New Sembehun City Council locality.

78. The question that arises here is this. What is an abuse of process? Striking out for abuse of process is a power “which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people” Lord Diplock in: Hunter v Chief Constable of the West Midlands Police [1982] AC 529 at page 536.

79. In: Barton Henderson Rosen v Merrett [1993] 1 Lloyd’s Rep 540, Justice Saville said that it is an abuse of the court’s process to issue a writ with no intention of following it up with a Statement of Claim. In contentious matters the courts exist for the purpose of determining claims. Therefore, to start an action with no intention of pursuing it, is not using the court’s processes for the purposes for which they were designed.

80. From all the evidence that has been brought before this Court, there is nothing in my estimation that points to an abuse of the process of the Court. Clearly, the Defendant/Applicant is neither the Occupier nor the Owner of the building within the Koidu New Sembehun City Council locality. However, this is the first time that the Plaintiff/Respondent has litigated this action; and where a party seeks clarification on an issue that it is unsure about, then it is the duty of the court to apply its procedural rules. I see no reason why utilizing the court’s process in this way should bring the administration of justice into disrepute.

81. I also do not see any lack of intention in pursuing the claim started by Originating Summons; and the Plaintiff has properly used the court’s process for what it was designed for. I do not think that, this is a clear and obvious case for me to use my summary powers of striking out.

82. 'On the issue of whether the Originating Summons discloses a reasonable cause of action, the question is: what is a reasonable cause of action? So long as a pleading raises some questions fit to be tried, it does not matter that the case is weak or is unlikely to succeed; Wenlock v Moloney [1965] 1 WLR 1238 CA.

83. In the matter of Joseph Johnny and Total (Sierra Leone) Limited, the Honourable Justice Browne-Marke JA, referred to the case of Fidelis Nwadialo's Civil Procedure in Nigeria 2<sup>nd</sup> edition at page 426. where the Learned author explained that " a pleading discloses a reasonable cause of action or defence if, on the facts alleged in it, the claim or defence has some chance of success.....for a pleading to be said to disclose no cause of action, it must be such as nobody can understand what claim he is required to meet. The case stated on it must be unsustainable or unarguable or cause of action is 'uncontestably' bad.

84. When considering the issue of disclosure of cause of action, it is irrelevant to consider the weakness of the plaintiff's claim; what is important is to examine the averments in the pleadings and see if they disclose cause of action or raise some questions fit to be decided by a Judge. At page 427 of the said text, it is stated that: "The procedure is only appropriate to cases which are plain and obvious so that the Court can say at once that the statement of claim, as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks."

85. On close examination of the Originating Summons, I cannot justifiably say that, prima facie, no triable issues have been raised. In my mind, even though the Plaintiff/Respondent has not been successful in establishing any liability on the side of Octea Mining Company, it still does not make the issues brought before this Court unarguable. I think Counsel for the Plaintiff/Respondent has put up a robust contest with some very important questions and points that the Court has carefully considered.

**Did the mining lease agreement exempt Koidu Limited from paying property tax?**

86. The Mining Lease Agreement (MLA) is at the crux of this matter. The MLA is called "The Koidu Kimberlite Project Mining Lease Agreement (Ratification Act 1995) entered into between the Sierra Leone Government and Koidu Holdings S.A. in 1995. It was subsequently amended in September 2010 and ratified by Parliament in October 2010. Koidu Holdings S.A was the original 'Lessee.' Koidu Holdings S.A then changed its name to Koidu Limited. In other words, Koidu Limited is the present 'Lessee' enjoying all the rights under the agreement. This agreement relates to the mining and commercial exploitation of the Koidu Kimberlites. The operative and relevant clause to the issue before this Court is Clause 16.1. This is because it is this clause that establishes whether Koidu Limited (not Octea Mining Company since I have already concluded, that they are two separate corporate entities), is liable to pay property tax to Koidu New Sembehun City Council.

87. Clause 16.1 reads "*for the duration of this Agreement, no taxes (including, but without limitation, income tax, additional profits tax, surtax, Minor Taxes, profits tax, turnover tax, sales tax, export tax, import tax, value added tax, withholding tax and employment related tax) royalties, duties, excise, charges, levies, fees, dues, contribution, payments or imposition of any kind whatsoever payable to the Central, regional or local Governments authorities or agents or to any Chiefdom or Tribal Authority or to any other Agency of the Lessor shall apply to the Lessee or any affiliate company or Agent of the Lessee or the employees of the Lessee or any affiliate company of the Lessee.....*"

88. The highlighted clause above says it all. Under normal circumstances a company occupying a building within a locality, will pay property tax in accordance with the Local Government Act of 2004. However, this is a different type of agreement signed between the Government of Sierra Leone and Koidu Limited; and an agreement that

was ratified by Parliament in 1995 in the first instance and in October 2010 in the second instance.

89. The agreement is very clear that Koidu is not liable to pay any tax of any kind to any regional or local Government authorities. It is a mining concession that was made by an Act of Parliament. Based on this Agreement and ratified by Parliament, Koidu Limited is exempt from paying any property tax. It is not liable to pay Le 2.7 Billion in property tax to Koidu New Sembehun City Council claimed by the Council under sections 69 to 80 of the Local Government Act of 2004. Furthermore, the duration of the Agreement is until the 22<sup>nd</sup> of July 2030.

90. In the circumstances therefore, I Order the following:-

1. The Originating Summons filed on 8<sup>th</sup> October 2015 is hereby dismissed on the ground that no evidence has been established to hold the 1<sup>st</sup> and 2<sup>nd</sup> Defendants liable to pay property rate of Le 2.7 Billion neither as the owners nor the occupiers of any assessed building within the Koidu New Sembehun City Council locality.
2. That even if it had been established that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were alter-egos or controllers of Koidu Limited, this company is exempt from all forms of Taxes inclusive of local taxes and therefore the 1<sup>st</sup> and 2<sup>nd</sup> Defendants could not be liable to pay such.
3. Costs to be borne by the 2<sup>nd</sup> Defendant/Applicant.

Signed:-  \_\_\_\_\_

**Hon. Justice F. Bintu Alhadi J.**  
**High Court Judge**