



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

Case No: FTCC 018/14

THE MATTER BETWEEN:

TABOD INTERNATIONAL CO

-PLAINTIFF

AND

NATIONAL REVENUE AUTHORITY

-DEFENDANT

REPRESENTATION

G. K. THOLLEY ESQ.

-COUNSEL FOR THE PLAINTIFF

BETTS & BEREWA

-COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA I.A  
JUDGEMENT DELIVERED ON THE 12<sup>TH</sup> JULY, 2016

By Judge's Summons dated the 11<sup>th</sup> November, 2015 the Plaintiff/Applicant (hereinafter referred to as the "Applicant") applied to this Court for final Judgment in this action against the Defendant/Respondent (hereinafter referred to as "the Respondent") herein follows:-

1. That the Plaintiff/Applicant recovers the sum of Le 241,430,000/00 being money owed by the Defendant/Respondent under the terms of the contract awarded to the Plaintiff/Applicant by the Defendant/Respondent on the 28<sup>th</sup> day of July, 2009 for the supply and installation of the Local Area Network infrastructure plus the installation of a 25-metre Communication Mast at the NRA Quayside Facilities situate at the Queen Elizabeth II Quay, Cline Town, Freetown in the Western Area of the Republic of Sierra Leone.
2. That the Plaintiff/Applicant recovers interest on the said sum of Le 241,430,000/00 from the Defendant/Respondent at the current bank rate from the 1<sup>st</sup> day of February, 2010 until payment pursuant to Section 4(1) of the Law Reform (Miscellaneous Provisions) Act (Cap 19 of the Laws of Sierra Leone, 1960).
3. That the Plaintiff/Applicant recovers the sum of Le 34, 490,000/00 being money paid by the Plaintiff/Applicant to secure a performance bond from its bankers at the instance of the Defendant/Respondent to guarantee the due execution of the terms of the aforesaid contract.
4. That the Plaintiff/Applicant recovers interest on the said sum of Le 34, 490, 000/00 from the Defendant/Respondent at the current bank

rate from the 1<sup>st</sup> day of February, 2010 until payment to Section 4(1) of the Law Reform (Miscellaneous Provisions Act (Cap 19 of the Laws of Sierra Leone, 1960).

5. An Order for specific performance of the terms of the aforesaid contract.
  6. Damages to the Plaintiff/Applicant for breach of the aforesaid contract.
  7. That the Plaintiff/Applicant recovers interest on the above sum adjudged to be due from the Defendant/Respondent by way of damages at the current bank rate from the date of the Judgment hereunder until payment pursuant to Section 4(1) of the Law Reform ((Miscellaneous Provisions Act (Cap 19 of the Laws of Sierra Leone, 1960).
  8. Any other or further Orders as may be deemed fit and just in the circumstances.
  9. Costs.
2. The Application was supported by the Affidavit of Michael Adekunle Cole sworn to on 11<sup>th</sup> day of November, 2015.
  3. On the 27<sup>th</sup> day of November, 2015 Counsel for the Respondent applied to this Court praying, inter-alia, that the Judge's Summons (which he inadvertently referred to as "Notice of Motion") and all subsequent proceedings be set aside for the following irregularities:



- i. That the Application is contrary to the Court Order/Ruling dated 11<sup>th</sup> March, 2015
- ii. That a similar Application has been determined by this Honorable Court
- iii. That the Application is an abuse of judicial process.

4. This Application was supported by the Affidavit of Elvis Kargbo sworn to on the 27<sup>th</sup> day of November, 2015. Mr. Elvis Kargbo exhibited a Ruling delivered by V. M. Solomon, JSC (sitting as a Judge of First Instance) as Exhibit "Ek6". This Exhibit was intended to support his contention that the matters raised in the Judge's Summons filed by the Application dated 11<sup>th</sup> November, 2015 had been disposed of in that ruling.

5. On the 16<sup>th</sup> December, 2015, this Court ordered that both applications be consolidated in the sense that the Respondent would use the Affidavit filed in support of his application to reply to the Applicant's application. As both applications stemmed from the same facts, this proved to be very useful in terms of judicial time and case management.

6. After several adjournments at the instance of the Solicitors for the Respondent, Mr. G. K. Tholley, Counsel for the Applicant was allowed to move his application on the 26<sup>th</sup> May, 2016. On that date, Mr. Kargbo replied to the application relying on the Ruling delivered by Solomon JSC that the matter should proceed to trial.

7. It was argued by Counsel for the Applicant that the Ruling of the 11<sup>th</sup> March, 2015 was one for setting aside a Judgment in default whilst his own application was for Summary Judgment.

### **RULING OF THE 11<sup>TH</sup> MARCH, 2015**

8. This Ruling came about as the result of an application filed by the Respondent herein dated 6<sup>th</sup> June, 2014, praying for a stay of execution of Judgment in default of Defence dated 6<sup>th</sup> June, 2014, that the Writ of Summons be set aside for irregularity on the grounds that time had not lapsed for filing the Defence; the action was pre-mature; and that the matter was at the time under investigation by the Anti-Corruption Commission. In the alternative that the Defendant had a good Defence on the merits.

9. In her Ruling, Her Ladyship said as follows amongst others, “there are matters raised in the Defence/counter-claim which can only be determined at trial. The Parties’ relationship was based on a contract which the Plaintiff claims had been fully complied with and which the Defendant claims was breached by non-compliance with certain terms of the contract and the Public Procurement Act, 2004. A Fortiori the Defendant has filed a counter-claim for damages; refund of the sum of Le 103,470,000/00 paid as advance to the Plaintiff, interest and costs. These are all matters which are to be determined at trial.” She concluded that “it is my view that in the

interest of justice this matter should proceed to trial for its final determination, and is to be tried speedily and having considered the averments in the Defence/counter-claim the Defendant is granted leave to defend the action and to file a Defence out of time with consequential Orders on directions and costs.” I entirely agree with the learned Justice in this respect and will adopt her reasoning.

10. I note that as stated by Solomon JSC, the Defence was filed out of time and gave leave for the Defendant to file a Defence counter-claim within 5 days of the date of her Order. As the said Defence/counter-claim were already on the file at the time of the application for Summary Judgment, the Applicant’s contention that the Respondent did not comply with the Order begs the question. Did he expect the Respondent to withdraw the said Defence and counter-claim from the Registry and re-file it?

11. The argument of the Applicant that the Ruling of 11<sup>th</sup> March, 2016 was in respect of a Judgment in default and therefore not applicable to the present application lacks merit. In some ways a Judgment in default could be likened to a Summary Judgment. The substance of the said Ruling was that the Respondent had raised matters which can only be determined at trial. It is always a major if not the most relevant evidence of a Defendant in an application for Summary Judgment that he has raised issues which ought to be tried. In other words there are “triable issues”. This is a matter of substance over form.



12. Finally, it is my view that if the Applicant was dissatisfied with the Ruling of 11<sup>th</sup> March, 2015, he should have proceeded to the Court of Appeal rather than using a different nomenclature to obtain <sup>it</sup> in the same Court but with a different Judge presiding.

In the circumstances, I Order as follows:-

1. That the Judge's Summons for Summary Judgment is hereby refused.
2. That this matter proceeds to the pre-trial settlement conference within 3 days of the date of this Order.
3. Matter adjourned to Friday, 15<sup>th</sup> July, 2016 for the pre-trial settlement conference to commence.
4. Costs in the cause.



Hon. Justice Sengu M. Koroma JA