

FTCC 357/2017

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No 7

IN THE HIGH COURT OF SIERRA LEONE
Commercial and Admiralty Division

Handwritten signature and date: 14/06/17

FAST TRACK COMMERCIAL COURT

JOSEPH BUNDU KOWAI
(SUING as Shareholder in the company
Allotropes Diamond Limited and
Allotropes Mining Company Limited)

- PLAINTIFF/APPLICANT

V.

The Directors of Allotropes Diamond Limited
The Directors of Allotropes Mining Company Limited
& 6 Others

- DEFENDANT

CORAM;

THE HON MR. JUSTICE REGINALD SYDNEY FYNN JA

Counsel;

IS Koroma with him KA Foh for the Plaintiff/Applicant
A Musa for the Defendant

TFH
Ruling dated June 2017

Reginald Sydney Fynn JA

1. The applicant Joseph Kowai holds out and the evidence show that he was a founding member of both Allotropes Mining Company and Allotropes Diamond Company. At some point he had medical concerns and needed to seek medical attention abroad; in Ghana and in Germany. Treatment abroad was facilitated through another company Newfield Resources Limited (the 8th defendant).
2. On the plaintiffs return from his medicals he was asked to step down from his position as managing Director of the company. He was also informed that he had sold his shares

in Allotropes Diamond Company. The plaintiff alleges that the defendants have dealt with him unjustly and seeks to be compensated for his interests in the company including his shares as well as some back pay and damages.

3. The respondents on their part in affidavits sworn to by one Mike Lynn the Company CEO argue that the plaintiff had willingly resigned from his job with the company. They also maintain that the applicant had sold off his shares in the Diamond Company to help repay the medical loan he had received through the 8th defendant. The defendants have produced an agreement to transfer shares purportedly signed by the applicant in support of the sale of shares. The plaintiff has stoutly responded "*non est factum*"- it is not my deed to this sale agreement.
4. The plaintiff on his part has argued further that the respondents presented him an inflated bill of costs with respect to his medical treatment which they paid for. That Bill of costs is JK11B.
5. The applicant now seeks an injunction to restrain the defendant from dissipating the assets of the companies and fleeing the jurisdiction whilst the matter still subsists. The applicant alleges and there's evidence before me which suggest strongly that the defendant respondents (with the exception of the 1st and 2nd which are Sierra Leonean companies) are all foreigners. Even the 1st and 2nd defendants depend upon and are principally controlled by some of the other defendant/respondents.
6. The parties have argued quite extensively. They have poured out on either side a significant flow of documentary evidence and it becomes necessary for me to remind them that whilst the court has a wide discretion in this matter it cannot however in the course of the present proceedings decide finally on the rights of the parties. The present process calls merely for an order which will preserve the subject matter or temporarily abate the wrong that is being complained about (see Skinner Co v. Irish Co 1835)
7. The principles which should guide a court in its deliberation for the granting of an interlocutory injunction are found in the American Cyanamide case. This case has been frequently cited with approval in this jurisdiction even by our Supreme Court that it can safely be relied upon in any matter touching this issue.
8. The first test that has to be satisfied is that the case in question has not been brought by the plaintiff /applicant is neither frivolous nor vexatious. This test will be satisfied if the case raises serious questions to be tried (see Fellowes & Sons v. Fisher).
9. The next test has to do with damages. Where it is established that the matter raises serious issues to be tried the court then, has to consider whether damages will compensate the asking party for the wrong which he seeks to prevent. The opposite position needs also to be considered, that is whether the defendant being successful will be adequately compensated by damages for the inconvenience and or loss an injunction wrongly ordered would have caused.

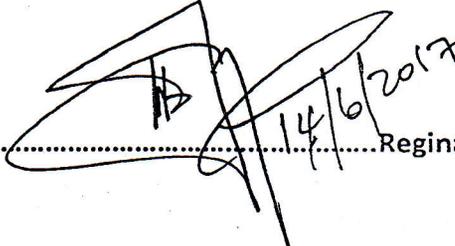
10. In the present case among the factual issues to be determined are the following: Whether the account provided in respect of the expenses made on the applicants medical treatment is faithful and true. Also it needs to be tried whether the applicant did sell his shares in the company Allotropes Diamond. Related legal issues which would have to be tried have also become apparent including whether a person's shares in a company could be transferred without that shareholder endorsing some instrument of transfer or the other. Also it would have to be decided whether a substantial receipt of shares in a company can in the circumstances of this case constitute a gift.
11. These are but a few of the issues factual and legal which in the course of submissions by the parties it has become apparent to me will need to be determined in the trial proper. These questions in my opinion provide more than sufficient meat to demonstrate that this case is neither frivolous nor vexatious. I am satisfied that the case raises very serious issues to be tried and I so hold.
12. Whilst I am satisfied that the loss which is anticipated on either side is such as could be compensated by damages my attention has stayed on two matters which the parties in their submissions on damages have both referred to. Firstly the transfer/ sale of the shares of the defendant. If the allegation is true that the applicant lost his shares in the company without his direct participation then the possibility of the whole of the shares dissipating is a real danger that should be guarded against. Especially considering that the main officers and members of the company are foreigners and what is more there are no known ties with the jurisdiction other than these two companies. Whilst damages in principle may be a suitable remedy it will be of no moment if there is nobody to pay it or to execute it upon.
13. The second matter that that has caught my attention relates to the bill of medical expenses specifically and more generally to the fact that the defendants with the plaintiff out of the company are in an advantageous position of control of the documents and information relating to the operations of the company. If the case is to make progress the defendants will have to provide the court with the information and evidence of the dealings of the company. Already there are allegations that these are being doctored. It is in the interest of the parties that the court takes steps to ensure that the evidence flow is not hindered in any way.
14. It must be noted also that the purpose of an interlocutory injunction whilst being preservative of the subject matter needs not paralyze or unduly inconvenience the party against whom it is sought if such an effect can be avoided. I have found merit in the submissions of the respondent with respect to keeping the business a going concern and protecting the livelihood of its employees from sudden shocks.

In view of the foregoing considerations I order as follows:

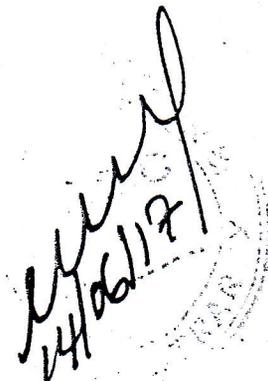


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- i. the Injunction granted on 24th February 2017 shall remain in force till the hearing and determination of this action.
- ii. The respondents shall file within a fortnight of this ruling the following:
 - a. Audited statements account for Allotropes Mining Company and for Allotropes Diamond Company for the period 1st January 2012 to the date of this Ruling
 - b. An inventory of all the assests of both companies (including assest held outside the jurisdiction)
- iii. The applicant shall have the cost of this application same to be taxed if not agreed by the parties.


14/6/2017

Reginald Sydney Fynn JA


14/06/17