

FTCC: 141/2018

2018

S.

NO.6

IN THE HIGH COURT OF SIERRA LEONE

(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN:

ALHAJI ALPHA SESAY -PLAINTIFF/APPLICANT

9 JALLOH DRIVE

OFF SESAY DRIVE

BAHOMAH, GODERICH

FREETOWN

AND

AMBROSE LAHOOD -1STDEFENDANT/RESPONDENT

SALCOST, MILLICENT DRIVE

FREETOWN

MR. DAVID BANGURA -2NDDEFENDANT/RESPONDENT

SALCOST, MILLICENT DRIVE

FREETOWN

M. S. BANGURA for the Plaintiff/Applicant

A. B. BANGURA for the Defendants/Respondents

RULING DELIVERED THE 16TH DAY OF JANUARY 2019

THE APPLICATION

1. This is an application by the plaintiff/applicant praying for the orders set out hereunder. To wit:
 - I. That this Honourable Court do grant an interim injunction to restrain the defendants by themselves, their servant, workmen, contractors, privies, agents or otherwise from entering, carrying out building operations, or in any way interfering with the property situate, lying and being at Sussex Village, Freetown, pending the hearing and determination of this action pursuant to order 35 Rule 1 of the High Court Rules, 2007.
 - II. That this Honourable Court do grant an interlocutory injunction to restrain the defendants by themselves, their servant, workmen, contractors, privies, agents or otherwise from entering, carrying out building operations, or in any way interfering with the property situate, lying and being at Sussex Village, Freetown, pending the hearing and determination of this action pursuant to order 35 Rule 1 of the High Court Rules, 2007.
 - III. Any order(s) that this Honourable Court may deem fit and just.
 - IV. That the cost of this application be borne by the defendants.

2. The application is supported by the affidavit of Alhaji Alpha Sesay, the plaintiff/applicant herein and sworn on the 13th November, 2018. The plaintiff/applicant deposed in the said affidavit that he entered a sale agreement with the defendants herein for the purchase of an unfinished property, the subject matter of the action herein. The purchase price was USD\$75, 000 and on the 2nd February 2018, he made two part payments in two different currencies which amounted to a total of USD\$28, 900/00. The deponent deposed that he made several demands for the defendants to produce their title deed which they refused. He therefore made a condition precedent that he could only pay the balance of USD\$46, 000/00 to the defendants when they produced their title deeds.
3. The plaintiff/applicant also deposed that he gave the defendants options to either complete the sale agreement or refund the part payment in full plus interest but the defendants declined. The plaintiff/applicant went on to depose that the defendants rather unilaterally terminated the agreement and were in the process of selling the said property to a third party. The defendants had undertaken a massive construction work on the property aiming at changing its structure. He the plaintiff/applicant had initiated an action by a writ of summons in the High Court of Sierra Leone. It is in paragraphs 11 and 12 of the affidavit in support that the plaintiff/applicant deposed to the reasons why he had filed this notice of motion.

4. Paragraph 11 reads: "that the plaintiff would suffer considerable hardship if an injunction is not granted because he would not be able to recover from the defendants the said amount expended to purchase the property neither would the defendants produce the title deed of the property"; and paragraph 12 reads: "that the plaintiff might not be able to gain possession of the property if it is sold to a third party". In summary the plaintiff/applicant is requesting this court to preserve the status quo ante this application until the writ of summons issued on the 12th of November 2018, the action herein is determined. I shall come back to this later in this judgment.

AFFIDAVIT IN OPPOSITION

5. The defendants/respondents opposed the application and filed an affidavit in opposition thereto. The said affidavit is sworn to by Ambrose Lahood, the 1st defendant/respondent herein, on 29th November, 2018. Mr. Lahood deposed therein that he was the attorney and agent for the 2nd defendant herein. He confirmed that there was an agreement for the sale of property in the action herein. He also confirmed the purchase price. He further deposed that the 2nd defendant insisted that the agreement should be recorded in writing. This he deposed the plaintiff/applicant kicked against. He continued and deposed that the 2nd defendant accepted to proceed with the transaction on the condition that the 2nd defendant would not give the plaintiff/applicant the conveyance for the property, and that the plaintiff would not make any development or completion work on the property until payment had been received in full within the agreed six months period.

6. Mr. Lahood further deposed that the plaintiff/applicant breached a term of the contract when the plaintiff/applicant paid the sum of USD\$28, 900/00 instead of USD\$30, 000/00 as per the agreement. Mr. Lahood deposed that notwithstanding the said breach the 2nd defendant accepted to proceed with the contract. Mr. Lahood denied that the plaintiff/applicant ever pleaded for the 2nd defendant's title deed. Rather it was the 2nd defendant who made a copy of same available to the plaintiff/applicant. The plaintiff/applicant used the said copy to verify the title of the 2nd defendant with the help of the plaintiff's/applicant's solicitor. And thereafter, the plaintiff/applicant commenced negotiation and agreed through his own solicitor to purchase the property on the agreed amount. I find this deposition very strange. Mr. Lahood deposed in paragraph 7 that the plaintiff/applicant refused to have the transaction recorded in write so he (the plaintiff/applicant) may reduce cost by not paying a solicitor transaction fees. I also find it disturbing to reconcile this with the deposition that the 2nd defendant would only produce the conveyance upon the full payment of the purchase price.

7. Continuing with the affidavit in opposition Mr. Lahood deposed that the plaintiff/applicant was also in a material breach. He deposed that the plaintiff/applicant failed to pay the balance purchase price six months after the 2nd February 2016, the date of the first payment. Rather the plaintiff/applicant embarked on making excuses until January 2018 when he learnt that the plaintiff/applicant had disappeared and was in Belgium. The 2nd

defendant then gave the plaintiff/applicant an ultimatum to complete payment against the end of January 2018, failure which the 2nd defendant would rescind the agreement. Mr. Lahood deposed that by January 2018 the property had been abandoned for two years and suffered gradual dilapidation. In the following month, February 2018, the plaintiff/applicant communicated via SMS text message that he (plaintiff/applicant) was no longer interested in proceeding with the transaction.

8. Mr. Lahood deposed further that he learnt that the plaintiff/applicant had deposited some money for another property elsewhere. The plaintiff/applicant was under pressure to complete that transaction which had led him to demand an immediate and full refund of his initial payment for the property herein. The 2nd defendant then gave the plaintiff/applicant two options which: either to wait for the property herein to be sold or made a proposed payment plan of 24 monthly payment. The plaintiff/applicant refused to any of the options but demanded immediate and full payment. Mr. Lahood deposed that it was the plaintiff/applicant who unilaterally terminated the agreement. The defendants by paragraphs 16 and 17 urge this court to not grant the application but to allow the defendants to undertake repairs to save the property, which had developed cracks and crevices, from collapsing. Mr. Lahood ended by deposing that the plaintiff/applicant would not incur any suffering if the application is refused.

CONSIDERATION OF THE COURT

9. I shall now turn to the issue for the consideration of the Court. The plaintiff/applicant made the application pursuant to Order 35 Rule 1 of the High Court Rules, 2007 (CI No.8 of 2007) hereinafter referred as the Rules. Order 35 Rule 1(1) of the rules reads: "*the Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so and the order may be made either unconditionally or upon such terms and conditions as the Court considers just.*" This provision gives wide discretionary powers to the Court in granting or not granting an injunction. However, there has been plethora of authorities both local and international which have laid down guiding principles which the Court should follow in the exercise of its discretion. In the well-known case of *American Cyanamid Company vs. Ethicon Limited* (1975) 111 (AC) 396 Lord Diplock had this to say at pages 539-540.

"My Lords when an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when *ex hypothesi* the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action. It was to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction; but since the middle of the nineteenth century this has been made subject to his

undertaking to pay damages to the defendant for any loss sustained by reason of the injunction if it should be held at the trial that the plaintiff had not been entitled to restrain the defendant from doing what he was threatening to do.

“The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff’s need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the plaintiff’s undertaking in damages if the uncertainty were resolved in the defendant’s favour at the trial. The court must weigh one need against another and determine where the “balance of convenience lies”.

10. This case set the issues for the consideration of the court in three stages. First, the court should consider whether there is a serious case to be tried. In this respect it is without doubt that the present application has serious issues to be tried. And these issues would remain uncertain until the final determination of this action. These issues are: whether the terms of the agreement contain time limit within which the purchase price should have been paid; whether the defendants unilaterally terminated the agreement; or whether it was the plaintiff who called off the agreement. This court cannot venture into answering those queries for the evidence before

the Court is incomplete without being tested under the white light of cross-examination.

11. The second issue or the next stage for the court to look into is whether the plaintiff will be adequately compensated in damages if the injunction were refused. The plaintiff/applicant is seeking primarily for a refund or recovery of his advance purchase price paid to the defendants and in the alternative for specific performance in his substantive action. This means, if the plaintiff/applicant succeeds at the trial of the substantive action there will be order directing the defendants/respondents to execute a deed of conveyance in the plaintiff's/applicant's favour. And damages may also be ordered for breach of contract and such damages will be adequate as it is measure recoverable. However, notwithstanding that damages are measurable yet the plaintiff/applicant has shown that he will suffer considerable hardship if an injunction is not granted. In that he would not be able to recover from the defendants the purchase price before this Court determines the substantive action.

12. Evidence is abound before this court which compels this court to accept the legitimate fear of the plaintiff/applicant. The defendants in their affidavit in opposition deposed in paragraph 14 and I quote " still in answer to paragraph 7 the 2nd defendant gave the plaintiff two options. The first option was for the plaintiff to wait until the property is sold and his initial payment be refunded to him. The second option was a proposed payment plan of 24 monthly payment. The plaintiff refused both options and vehemently insisted that his money be paid immediately and fully

as a lump sum.” There is also evidence before this court that the 2nd defendant is not a sole owner to the property in question. There is a third party by the name of Mrs. Claudia Bangura. See exhibit AL3 of the affidavit in opposition. There is no evidence before me that the other joint owner, Mrs Claudia Bangura has given her consent or otherwise to the defendants disposing of the property.

13. Furthermore, the 1st defendant deposed in the said affidavit in opposition that he is agent and attorney only for the 2nd defendant. This goes on to support the plaintiff’s/applicant’s fear that he might not be able to gain possession of the property if it is sold to a third party. Upon this conclusion, I do find it necessary to deal with the availability or non-availability and /or adequacy or sufficiency of an undertaking in damages by the plaintiff/applicant. But I do not find the need to move to the third stage, that is, where the balance of convenience lies. My position is supported by what Lord Diplock said at page 541 of the Cyanamid case *supra*. He said: “it is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises”.

14. I dare say that having read the plaintiff/applicant’s affidavit in support and the defendants/respondents affidavit in opposition there is abundant evidence before the court which addresses the issue of the inadequacy of damages to the plaintiff/applicant by the defendants in the event the plaintiff/applicant succeeds in the action. It was the plaintiff/applicant’s responsibility to adduce such evidence. And it is the opinion of this court that the plaintiff/applicant has discharged same. Before I conclude in this

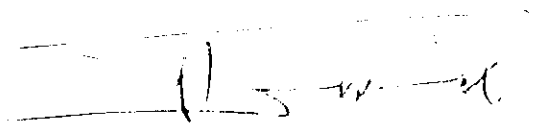
my ruling I wish to refer to the affidavit in support of the plaintiff/applicant at paragraph 14 which reads: that it will be fair and justice for the orders prayed for to be granted. The ordinary reading of this paragraph is this. The plaintiff/applicant is seeking this court to injunct the defendants from interfering with the property.

15. What the plaintiff/applicant is asking of this Court is to maintain the status quo. As regard this issue I shall call in aid Fidelis Nwadiabo's Civil Procedure in Nigeria, 2nd Edition, under the rubric: Interlocutory and Interim Injunction. The author had this to say at page 224: "the status quo which the court, by granting of interlocutory injunction, can maintain is the restoration of the parties to the position they were before the commencement of the dispute between them. The status quo means the position prevailing when the defendant embarked upon the activity sought to be restored. Where the act has been completed and carried out, an interlocutory injunction cannot be a remedy for it because the status quo to be maintained is the situation as it existed at the time of filing an action that is at a stage when no further activity can be restrained".

16. If the above position is correct appreciation of the interpretation of Status quo then this Court is compel to grant an interlocutory injunction against the defendant/respondent herein. The reason being that the violation complained of has not yet been done or completed. In fact from the available evidence it can be infer that the construction is about to commence; or if commenced is not substantial. So maintaining the status quo means the state

of the unfinished property before the action herein is initiated until the hearing and determination of this action. For the reasons above stated I am of the strong view and it is my opinion that the injunction sought in the plaintiff's/applicant's motion dated 13th November, 2018 ought to be granted. I therefore make the following orders:-

- i. That this Honourable Court grants an interlocutory injunction restraining the defendants/respondents by themselves, their servants, workmen, contractors, privies, agents or otherwise from entering, carrying out building operations, or in any way interfering with the property situate, lying and being at Sussex Village, Freetown, pending the hearing and determination of this action.
- ii. That the plaintiff/applicant shall undertake, in writing and same filed forthwith in this Court, to indemnify the defendants/respondents if it turned out that Order i supra ought not to have been granted.
- iii. That the costs of this application shall be cost in the cause.



HONOURABLE MR. JUSTICE

ABDUL RAHMAN MANSARAY J. .