

IN THE HIGHT COURT OF SIERRA LEONE
(COMMERCCIAL AND ADMIRALTY DIVISION)
FAST TRACK COMMERCIAL COURT

BETWEEN:

ELKASS SANNOH

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PLAINIFF

AND

DAYU MINING COMPANY & ANOTHER

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DEFENDANTS

RULING OF THE HONORABLE JUSTICE LORNARD TAYLOR DELIVERED
ON THE 1ST JULY 2020

On the 1st April 2019, the Plaintiff caused the writ of summons to be issued in this matter against the defendants praying for recovery of the sum of US\$4,800 being salary and transport allowance due the Plaintiff by the Defendants. The writ of summons was served on the defendants and an appearance was entered on their behalf on the 8th of May 2019. On the 6th June 2019, solicitors for the Defendants filed a defence on behalf of the defendants. Solicitors for the Plaintiff then filed an application on the 12th November 2019 for judgment to be entered summarily against the Defendants. The defendants' counsel failed on the adjourned dates to file an affidavit in opposition nor did they appear and oppose the application. Ruling was delivered on the 19th November 2019. It is this ruling that the defendant has now come to set aside on the grounds that the defendant has a valid defence on the merits.

There is no question or doubt that the order of 12th November 2019 is within the category of judgments and orders that can be set aside. Order 16 rule 11 is clear on this point. It states;

11. Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 5 may be set aside or varied by the Court on such terms as it thinks just.

In the present instance, it is clear from the records that the Defendants neither appeared nor were they represented at the hearing of the application. As such, this court can safely conclude that it has the authority to inquire into and dispose of issues relating to its setting aside on such terms as it thinks just.

In the circumstances, the only question before this court is whether the defence of the defendants raise sufficient triable issues to warrant the setting aside of the judgment and proceeding to the trial of the matter. In this regard, I am compelled to thoroughly examine the defence filed by the defendants which said document is exhibited as Exhibit MD4 in relation to the claims of the Plaintiff as contained in the writ of summons which is marked Exhibit MD2.

The Plaintiff's claim is that he was hired as a media and communications consultant and was to be paid a Monthly salary of US\$ 1,200 and a transport allowance of US\$ 200. This claim is contained in paragraph 4 of the Plaintiff's particulars of claim as shown in Exhibit MD2. This paragraph was admitted by the defendant in the defence filed and exhibited herein as Exhibit MD4. In paragraph 5 of his particulars of claim in Exhibit MD2, the Plaintiff avers that having provided his services for the defendants, the defendants contrary to the agreement, refused to pay the Plaintiff his salaries and allowances. In answer to this assertion, the Defendant maintains that the Plaintiff was paid for all work done in line with the terms of the understanding, and that there are receipts evidencing proofs of payment.

I must state at this stage that when the Plaintiff filed the application for summary judgement pursuant to which the order sought to be set aside herein was given, these issues were raised by the Plaintiff and examined by the bench before reaching a conclusion. It would have been pretty straight forward had the defendants appeared at the hearing of that application and exhibited the said receipts which they maintain was proof of the plaintiff having been paid for his services. However this was not made available.

In the present application, this issue again has been raised by the defendants and this time, they have exhibited Exhibit MD7¹⁻⁶ which they maintain is proof that the Plaintiff was paid in full and that there is no sum outstanding or owing to the Plaintiff.

As stated above, when the Plaintiff pleaded that he was employed by the defendant to be earning a monthly salary of US\$ 1,200 and transport allowance of US\$ 200, the defendant did not deny it nor did they put the Plaintiff to strict proof thereof. They admitted that state of affairs and the court in that light would enquire into the issue no further. They admitted liability but asserted that same had been settled in full. As such the only task before this

court in determining whether this matter should go to trial is to examine the receipts stated above and presented by the defendants to know whether they are proof enough to shown that the defendants have paid the plaintiff and was not owing him the sums claimed.

Exhibit MD7¹⁻⁴ are invoices and receipts of payments made by the 1st Defendant to Global Africa Media. Exhibit MD7⁵ is a cheque for the sum of Le 5 Million paid to Global Africa Media. Exhibit MD7⁶ id another receipt from Global Africa Media acknowledging receipt of the funds therein for Media Consultancy.

Do these receipts show that payment was made to the Plaintiff by the defendants? The answer is in the negative. This action was not brought by Global Africa Media as Plaintiff and nothing in the pleadings so far show that there was any relationship between the Global Media Africa and the Defendants which is to be inquired into by the court. I cannot in the circumstances hold that the said receipts Exhibit MD7¹⁻⁶ are proof that the defendants have settled their liability with the Plaintiff.

It is trite law that the terms of an agreement must be complied with by the parties and a party who fails in this regard will attract legal consequences. These receipts as highlighted above are the bedrock of the defendants' defence. They are supposed to convince the court that the defendants serviced their liability to the Plaintiff. They have failed in that regard. There is therefore absolutely no reason to order a trial in this case as the outcome will inevitably be the same. Should the defendants strongly believe they were paying the Plaintiff when they were indeed forwarding the sums indicated in the receipts to Global Africa Media, their claim lie against Global Africa Media and not the Plaintiff. They admitted they sought the services of the Plaintiff for a fee. They did not deny that the plaintiff performed the services but rather asserted that he was paid as agreed. They cannot show that the fee was paid. They failed in discharging the burden placed on them by their assertion.

The application dated 22nd November 2019 is accordingly dismissed.

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HONORABLE JUSTICE LORNARD TAYLOR