

S.C. Civ. App. 1/2004

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

NATIONAL INSURANCE COMPANY -	APPELLANT/RESPONDENT
AND	
MOHSON TARAF	RESPONDENT/APPLICANT

CORAM:

HON. MRS. JUSTICE S. BASH-TAQI	-	J.S.C.
HON. MR. JUSTICE P.O. HAMILTON	-	J.S.C.
HON. MRS. JUSTICE V.A.D. WRIGHT	-	J.S.C.
HON. MR. JUSTICE G.B. SEMEGA-JANNEH	-	J.S.C.
HON. MR. JUSTICE S.A. ADEMOSU	-	J.A.

COUNSEL:

MR. E.E.C. SHEARS-MOSES AND MS. V. SOLOMON FOR THE
APPELLANT/RESPONDENT
MR. PATRICK LAMBERT FOR RESPONDENT/APPLICANT

RULING DELIVERED ON THE 5TH DAY OF JANUARY 2010

SEMEGA-JANNEH – J.S.C.

I had the privilege of reading in draft the ruling of my honourable brother, Justice P.O. Hamilton J.S.C., Except for his 5th Order pertaining

to the accrued interest on the sum deposited in an interest bearing account with the Bank, I disagree with the ruling.

No new argument had been advanced and I find myself unable to substantially alter my position maintained in my dissenting ruling dated the 2nd day of July, 2009 in the same application heard by this Court constituted by a panel of three justices and of which this panel of five Justices is rehearing. I adopt and repeat my said previous ruling, except for orders 3 and 4, thus:

THE PREVIOUS RULING

On the 26th October, 2007, the Supreme Court gave judgement in this suit and, therein, made the following orders:

1. *The judgement of the Court of Appeal is set aside in its entirety and affirm the judgement of the trial court in respect of paragraph A and give judgement to Mr. Tarraf in the sum of US \$ 20,000.00 payable in Leones at a rate of exchange affective as at 7th April, 2000 – the date of the judgement given by the trial court.*
2. *Paragraph B of the relief granted by the trial court is hereby set aside and the court make no order as to the interest payable on the foreign currency.*
3. *Parties shall bear their respective costs in the High Court and the court below and also in this court. If costs have been paid, same to be refunded.*

During the process of enforcement of these orders at the High Court, the parties had different understanding of their purport and effect, and when

the High Court made orders pertaining to the enforcement process, despite the protest and opposition of Mr. Lambert of counsels for Mr. Tarraf, Mr. Lambert filed on half of the Respondent/Applicant this application for clarification by this court of the effect of its said orders:

In order to have a clearer perspective of the orders of the Supreme Court it would be of help to have the orders of the High Court contained in its judgement of the 7th April, 2000, in the background, and for this purpose I hereby reproduce the High Court orders hereunder:

A: Loss suffered, US \$ 20,000-00 or its equivalent in Leones of the rate of exchange effective on the date of judgement

B: Rate of interest at 12% (twelve percent) as from 26th November 1997 to date of judgement.

*C: Defendants (NIC) to pay costs of the action, such costs to be taxed
(Bracketed initials provided)*

Mr. Shear-Moses, of counsel, for the Appellant/respondent argued that number 2 of the court's orders has the all embracing effect of setting aside every interest affecting the judgement, including the statutory interest on the judgement sums stipulated under section 17 of the Judgement Act of 1883. Mr. Shear-Moses did not offer any underpinning reasoning for his assertion. The law relating to the award of interest, in my judgement, is that the award of interest is in the discretion of the Court except in circumstances where the entitlement to interest is contractual in accordance with law or where stipulated by statute or otherwise. Ordinarily, where statute grants or provides a benefit or entitlement, and such benefit or entitlement may be forfeited, the statute usually provides the conditions upon which such

forfeiture can occur. Even on the assumption that the court has the authority to deny a beneficiary of a statutory benefit or entitlement, and in the instant case, the statutory interest, the court must have good grounds and must give cogent reasons for refusing or denying what statute gives. Mr. Shears-Moses has not buttressed his submission with cogent reasoning and I find it totally untenable.

Let us now examine the Supreme Court's judgement in relation to interest.

Under the rubric: **INTEREST ON FOREIGN AWARD** the court noted the admission by Mr. Lambert of ground 8 of the grounds of appeal filed by Mrs. Solomon, of counsel, which states:

"viii. The learned Justices erred in law in arbitrarily awarding interest at 12% without any evidence of the rate of interest applicable in the case of foreign currency having held that the interest being claimed was on foreign currency".

If the Supreme Court were to award interest on the foreign currency (US \$ 20,000-00), it would have been obliged to take evidence on the US Dollar interest rate chargeable; as it turned out Mr. Lambert urged that in the event judgement is given in foreign currency, the court might remit the matter to the High Court for it to take evidence on the interest rate on the relevant foreign currency or, alternatively, the court to strike out that part of the judgement dealing with the rate of interest on the foreign currency, in which case, Mr. Tarraf would only be entitled to the statutory interest. The court was not disposed to remit the matter to the High Court on the issue of the rate of interest on the foreign currency judgement sum and, as a consequence, was obliged not to make any "*order as to interest payable on the*

foreign currency" in its number (2) order. It is clear from the afore mentioned rubric and the discourse thereunder that the Court set aside the interest awarded by the High Court because it was wrong in law as so well pleaded by Ms. Solomon and, admirably, conceded by Mr. Lambert. Since the Supreme Court was not inclined to remit the matter to the High Court pursuant to law, for the stated reason, it declined to make any order as to the interest payable on the foreign currency judgement of US \$ 20,000-00.

The Supreme Court did not make any pronouncement as to any interest payable on the judgement sum after the date of judgement. Post judgement interest is regulated by contract or statute. In cases where in the judgement interest is given on the basis of a contractual term, such as is usual in bank loans cases, the interest is normally allowed to run until payment in compliance with the contractual term. In ordinary cases where the award of interest is at the discretion of the court, the exercise of the discretion is limited to the grant of interest up to and not beyond the date of judgement. After the date of judgement, the judgement sum attracts interest at the statutory rate pursuant to the judgement Act of 1883, a statute of general application, applicable pursuant to sub-section (1) of section 170 (3) of the Constitution of Sierra Leone, 1991, and section 74 of the Courts' Act, 1965. This statutory interest runs until payment is effected by the judgement debtor. It is this interest that the Respondent/Applicant said is recoverable from the Appellant/Respondent (the judgement debtor). Nothing cogent has been advanced in argument to warrant a refusal or denial by the Supreme Court of this right of the Respondent/Applicant (the judgement creditor). In my judgement the Respondent/Applicant is entitled to recover the statutory interest on the judgement sum of US

\$ 20,000-00 from the 7th April 2000 until the 21st January 2004 when the judgement debt was recovered by garnishee proceedings.

The second issue between the parties is the costs paid in the High Court as a result of the garnishee proceedings instituted for the purpose of recovering the judgement debt. In my view, the costs awarded for the proceedings and are for the conduct of those proceedings leading to the appeals that culminated in the appeal to the Supreme Court. The garnishee proceedings came after the judgement in the High Court dated the 7th April, 2000, has been delivered and costs awarded for the proceedings leading to the High Court judgement. The garnishee proceedings were commenced by an ex-parte Notice of Motion dated the 8th day of January, 2004, almost four years after the High Court's judgement and the proceedings involved five garnishees and the parties herein. The garnishee proceedings were never referred to the Supreme Court in the appeal to the court, and clearly order 3 is not referable to them; at no material time were the garnishee proceedings in the contemplation of the Supreme Court during the course of the appeal.

The fact is that costs are usually awarded to parties to the proceedings in question and not to their respective counsel (or solicitors) see the judgement of Semega-Janneh - J.S.C. in S.C. Civ. App No. 6/200 between the Owners of the ship "**MV Mascho Star**" and Richabs S.A. and Another dated the 3rd day of March 2009 (unreported) at pages 56 to 58. Costs in the garnishee proceedings were awarded respectively to the garnishees and not to their respective counsel (or Solicitors). Mr. Shear-Moses had complained that the same counsel represented the Respondent/Applicant and some of the Garnishees and, consequently, there was a conflict of interest. The argument or complaint may well bring into question the

ethical behaviour of counsel in the matter, and not necessarily the propriety and correctness of otherwise, of awarding costs to the garnishees counsel represented. If there has been unethical behaviour on the part of counsel, it is for the Appellant/Respondent, on the advice of their counsel, to consider an appropriate course of action. The alleged unethical or unprofessional behaviour of counsel in the garnishee proceedings is not before this court and, I understand, has been dealt with by the High Court. Further, Mr. Lambert has informed this court that the issues of the garnishee proceedings are on appeal before the Court of Appeal and this was not refuted or contested by the other side. The issues of costs arising out of the garnishee proceedings can follow its course in the courts below where all parties affected by such costs are parties.

This court could not have given an order as to the costs in the garnishee proceedings affecting parties thereby who were not parties in the appeal to the Supreme Court. In fact, the Supreme Court in its order was referring to the Appellant/Respondent and Respondent/Appellant as the parties who were before it, and no other. I have observed that in Exhibit "F" to the affidavit of Ronald Kwaku Hingston, Deputy Managing Director of the National Insurance Company Limited, dated the 5th June 2008, as part of exhibit "MD - 5" of the affidavit of Mariama Dumbuya, of counsel, dated the 20th November, 2008, costs of the garnishee proceedings were to be paid to the solicitors as solicitors of the respective garnishees. I can only conclude that the solicitors received same as agents of the respective Garnishees.

The third issue between the parties is the interest that has accrued in the sum (US\$ 40,000-00) paid into an interest bearing account by order of court which Mr. Lambert called "*the investment*". The

judgement sum awarded by the Court of Appeal was US \$ 40,000-00 and this sum was reduced by the Supreme Court in affirmation of the amount awarded by the High Court. The judgement sum of US \$ 20,000-00 awarded by the Supreme Court took effect as at the 7th April, 2000 – the date of the High Court judgement. The statutory interest on the judgement sum would therefore run from the 7th April, 2000, the 21st January, 2004, when payment was effected pursuant to the garnishee order of the 21st January 2004. The Appellant/Respondent is therefore entitled to the bank rate of interest on the US \$ 20,000-00 which began to accrue on the date the amount was paid out of the foreign account of the Appellant/Respondent to the Respondent/Appellant which date is taken as the 21st day of January, 2004. The Respondent/Applicant is entitled to the accrued interest on the balance of US \$ 20,000-00 (out of the US \$ 40,000-00) which remained theirs as at the 21st January, 2004, to withdrawal of same; and prior to the 21st January, 2004, only on the statutory interest from the 7th April, 2000, to , at the risk of being tautological, 21st January, 2004.

Before making the consequential orders, I would like to expand on the issue of statutory interest.

The Judgement Act, 1838, of England, which is made applicable in Sierra Leone by virtue of sub-section (1) of section 170 of the Constitution of Sierra Leone, 19991, and section 74 of the Courts Act, 1965, under section 17 which provides:

"17 Every Judgement debt shall carry interest at the rate of four pounds per Centrum per annum from the time of entering up the judgement until the same shall

be satisfied, and such interest may be levied under a writ of execution on such judgement"

In Halsburys Statutes of England, 2nd Edition, volume 13, at page 369, under NOTES headed: **EFFECT OF SECTION** the learned authors noted:

"This is that interest at the rate of 4 percent is a debt necessarily attached to every judgement debt and recoverable at law as a debt (Re Clagett, ex parte Lewis (1887), 36 W.R. 653 C.A.; 30 Digest 174, 426)"

(Emphasis Provided)

Clearly, from the above quotation, I am left in no doubt that Mr. Tarraf is entitled to the statutory interest stipulated in section 17 of the Judgement Act, 1838.

As regards the costs awarded in the garnishee proceedings, such costs are not solicitor's costs as there is no evidence of the solicitor's disbursements and in the jurisdiction solicitors are paid their fees and costs by the client. In this regard, I am of the firm view that the Garnishees cannot properly be deprived of their costs by the court. Counsel may have represented both the Judgement Creditor and some of the Garnishees but the Garnishee and the Judgement Creditor are separate and distinct entities. The Garnishees ought not be penalized for the alleged unethical behaviour of counsel especially in a matter they were not parties.

In the premises, I hereby declare and order as follows:

1. That the Respondent/Applicant is entitled to recover statutory interest on the judgement sum of US \$20,000-00 from the 7th

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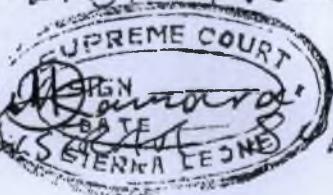
April, 2000,- the date of the High Court judgement, to the 21st January, 2004, - the date of recovery of the said judgement sum, pursuant to section 17 of the Judgement Act, 1838.

2. That the Order number 2 contained in this suit dated the 26th day of October, 2007, that parties to bear their respective costs in the courts below, does not affect or attach to the costs awarded in respect of the garnishee proceedings in the High Court.
3. That the Respondent/Applicant is entitled to the bank interest that had accrued on the Leone sum representing the judgement sum of US \$ 20,000-00 deposited in an interest bearing account payable by the Bank.
4. No order as to costs in respect of this application.



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JUSTICE G.B. SEMEGA-JANNEH – J.S.C.

CERTIFIED TRUE COPY

Aj. Regd.  SUPREME COURT
SIERRA LEONE