

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. Mr. 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 5<sup>th</sup> DAY OF Jan 2010  
HAMILTON J.S.C.

This is an application by Notice of Motion dated 27<sup>th</sup> July, 2009 for the following Orders:

1. That this Honourable Court do grant an interim stay of the Order made by the panel of three Justices thereof on the 2<sup>nd</sup> day of July, 2009 pending the hearing and determination of the application herein.
2. That the majority decision and Order of the said panel of three Justices of this Honourable Court be set aside for irregularity on the following grounds:-

- (a) That the Learned Presiding Judge having correctly opined that the Court consisting of three judges did not have the jurisdiction to interpret the decision of the full court of five justices of the Supreme Court, given in the substantive matter, the said panel consisting of three justices could not properly adjudicate upon the said application and make the said Order as it did.
  - (b) That the said panel of three justices was not properly constituted as the Learned Presiding Justice failed to disclose that there were grounds for recusing herself therefrom as she had at one time been employed by the Appellant/Respondent herein in a Senior Legal Managerial capacity.
3. That the full Court proceeds to give a proper interpretation of the Orders contained in the Judgment of the Court dated 26<sup>th</sup> of October, 2007.
4. Any further or other orders as to the Court may seem just.
5. That the Court makes provision for the costs of this application.

This application was supported by the affidavit of Mariama Dumbuya sworn to on 27<sup>th</sup> July, 2009 and filed herein.

Counsel for the Respondent/Applicant raised the issue as to whether or not the Supreme Court or any Court of law has the jurisdiction to oust interest imposed on Judgment debts by virtue of Section 17 of the Judgment Act, 1837 and submitted that there is nothing in the words of Section 17 which refers to "the Court" and that there is no discretion in the matter since it applies by force of law. Counsel therefore submitted that the statutory interest in Section 17 of the Judgments Act, 1837 is mandatory and should be paid on the \$20,000.00.

On the issue of the Garnishee proceedings he stated that the Applicant/Respondent should not refund cost of the Garnishee proceedings since the garnishee proceedings are borne by the judgment debtor since other Solicitors were involved in the matter. Counsel further submitted that

the garnishee proceedings are a subject of a pending appeal before the Court of Appeal. He submitted further that when the Supreme Court made its order on cost it never related it to the Garnishee Order therefore the Applicant/Respondent has no responsibility to refund cost paid to the solicitor for the garnishee.

Another contention of Counsel is that the Applicant/Respondent is entitled to all interest on the investment as from the date of recovery which is 21<sup>st</sup> January, 2004.

Counsel for the Appellant/Respondent E.E.C. Shears-Moses Esq. replied that they were aware of statutory interest on all judgment debts but since the Court had made a pronouncement the question of interest on the \$20,000.00 did not arise. Counsel submitted that the Court has jurisdiction to decide that no interest is to be paid and where it is a judgment in default statutory interest cannot be dispensed with. He further submitted that the Applicant/Respondent is claiming entitlement to statutory interest on the amount awarded and also a right to keep the costs awarded to the firm of Solicitors acting for the Judgment/Creditor in their capacity as Solicitors for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> garnishees.

On the question of the Garnishee proceedings Counsel submitted that the Applicant/Respondent solicitor is to pay the cost of the Garnishee since the same solicitors acted for both Creditor and judgment debtor and that garnishee proceedings are all part of the proceedings and is not separate since it is a continuous process arising from the same transaction.

In the Judgment of the Supreme Court S.C. Civ. App.No.1/2004: National Insurance Co. Ltd v. Mohson Tarraf dated 26<sup>th</sup> October, 2007 it was therein stated as follows:

*"I set aside the Judgment of the Court of Appeal in its entirety and*

- (1) Affirm the Judgment of the Trial Court in respect of paragraph 'A' and give Judgment in the sum of USA \$20,000.00 payable in Leones at the exchange rate effective as at 7<sup>th</sup> April, 2000 to the date of the Judgment given by the Trial Court.*

- (2) *The matter has been in the Court for too long. This Court will not remit the case to the High Court for it to hear evidence on the interest rate on the relevant foreign currency. Paragraph 'B' of the relief granted by the Trial Court is hereby set aside and the Court makes no order as to the interest payable on the foreign currency.*
- (3) *Due to the unhelpful manner in which the Parties conducted their cases in the High Court below, Parties shall bear their respective costs in the said Courts and also in this Court. If costs have been paid same to be refunded.*

Counsel for the Applicant/Respondent did submit that every judgment debt carries an interest from the time of entering up to the judgment and that Section 17 of the Judgment Act 1838 applies.

With due respect to Counsel, I do not agree with this submission. It is clearly stated in the Judgment dated 26<sup>th</sup> October, 2007 thus:

*"..... The Court makes no order as to the interest payable on the foreign currency."*

In my opinion if there was no pronouncement by the Court about interest on the judgment debt then Section 17 of the Judgment Act, 1838 applies. The Act clearly states that when Judgment is signed in default of appearance on a Writ of Summon indorsed for a liquidated amount, the rate of interest allowed in the absence of any rate being specified is 5% up to the date of Judgment. The only interest is that awarded by Stronge J. (as he then was). I do not agree with Counsel for the Applicant/Respondent that there were two interests thus one ordered by Stronge J. and the other Statutory interest and that whilst the former was set aside by the Supreme Court the Statutory interest continued as such they are entitled to it.

The Supreme Court in its Judgment did set aside the Judgment of the Court of Appeal and upheld the Judgment of the High Court – delivered by Stronge J. (as he then was) in so far as the amount of USD \$20,000.00 with interest payable in Leones at the rate of exchange effective as at 7<sup>th</sup> April 2000 to the date of Judgment. There was absolutely no order made as to the interest payable in the foreign currency.

The issue of cost paid in the High Court as a result of the garnishee proceedings instituted in order to recover the judgment debt, in my humble opinion garnishee proceedings are basically High Court proceedings as such cost incurred are High Court costs.

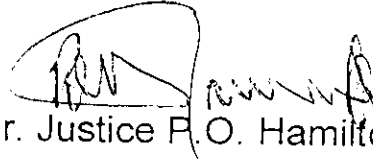
The cost which was ordered by the Supreme Court must be refunded. It is clear that the Solicitors for the Applicant/Respondent are one and the same that did receive the costs in the High Court in respect of the Judgment Creditors who were the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> garnishees.

The Supreme Court did order that all costs be refunded. This does not affect the solicitors for the 2nd garnishee who are not connected to this appeal. It is clear from exhibit "F" attached to the affidavit of Ronald Kwaku Hingston, Deputy Managing Director of the National Insurance Company (the Appellant/Respondent) sworn to on 5th June, 2008 being part of exhibit "MD5" of the affidavit of Mariama Dumbuya, of Counsel sworn to on 20<sup>th</sup> November, 2008 that the costs of the garnishee proceedings were to be paid to the Solicitors as Solicitors of the various garnishees. In my opinion the conclusion is that the Solicitors did receive the costs as agents of the respective garnishees.

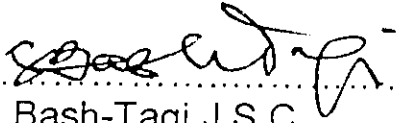
In all the circumstances therefore, I hereby declare and order as follows:-

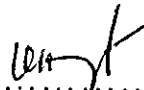
1. That the majority decision and order of the panel of three of this Honourable Court be set aside.
2. The Applicant/Respondent could not claim statutory interest on the \$20,000.
3. The costs in respect of 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> garnishees must be refunded by the Applicant/Respondent to the Appellant/Respondent.
4. The Bank interest that accrued on the Judgment sum of \$20,000 or its equivalent in Leones which was deposited in the bank be paid to the Respondent Applicant and any balance of interest accrued on the entire sum of \$40,000 deposited be paid to the Appellant/Respondent.

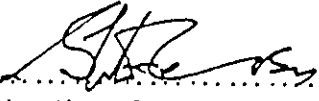
5. No order as to cost in this application.



Hon. Mr. Justice P. O. Hamilton J.S.C.

I agree.....  
Hon. Mrs. S. Bash-Taqi J.S.C.

I agree.....  
Hon. Mrs. Justice V.A.D. Wright J.S.C.

I agree.....  
Hon. Mr. Justice S.A. Ademosu J.A.

5. No order as to cost in this application.

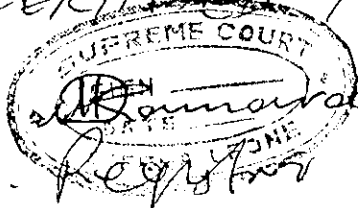
Hon. Mr. Justice P.O. Hamilton J.S.C.

I agree..... .....  
Hon. Mrs. S. Bash-Taqi J.S.C.

I agree..... .....  
Hon. Mrs. Justice V.A.D. Wright J.S.C.

I agree..... .....  
Hon. Mr. Justice S.A. Ademosu J.A.

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