

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

BETWEEN:

BANK OF SIERRA LEONE - PLAINTIFF

AND

ABDUL AZIZ SOWE - DEFENDANT

JUDGEMENT OF THE HONOURABLE JUSTICE M.P. MAMI J.

DELIVERED ON THE 30TH JULY, 2020.

COUNSEL

P. Fofanah Esq. - For the Plaintiff/Applicant

On file is an application by Ex-parte of Motion dated the 15th day of June, 2020 by Messrs Lambert & Partners; Solicitors for the Plaintiff requesting an order for the following reliefs:

- That no appearance having been filed by the Defendant/Respondent in this action for leave to be granted to the Plaintiff/Applicant to enter judgement immediate payment of the sum of Le 663,157,895/22 by the Defendant to the Plaintiff.
- Interest at the rate of 3% on the sum of Le 663,157,895/22 from 10th May, 2019 to payment.
- Alternatively in the event that the Defendant fails to repay the said amount of Le 663,157,895/22 and interest there on order that the property situate lying and being at 30 Bailey street, Freetown be sold by private treaty to recover all amounts due and owing by the Defendant to the Plaintiff
- Immediate payment of the sum of Le 137,548,109/74 by the Defendant to the Plaintiff.
- Interest on the sum of Le 137,548,109/74 to be assessed by the Court
- Immediate payment of the sum of Le 40,662,600/00 by the Defendant to the Plaintiff
- Interest at a rate of 2% on the sum of Le 40,662,600/00 from the 10th May 2019 to payment
- Costs to be taxed.
- That this Honourable Court do grant any further or other orders which may be necessary in this application

The application is supported by the affidavit of Patrick Fofanah, Solicitor of Lambert & Partners of 40 Pademba Road Freetown in the Western Area of the Republic of Sierra Leone.

The facts of this matter is as contained in paragraph 3 to paragraph 17 of the affidavit in support same of which could be summarised as follows:

The Defendant was an employee of the Plaintiff Bank from the 15th November 2010 to the 6th March, 2019.

That prior to the 1st March, 2019, the Defendant was the Director of Internal Audit Department of the Plaintiff. On the 1st March, 2019 the Defendant was redeployed to the office of Governor.

The Plaintiff operates a housing loan scheme pursuant to which it grants its employees loans for inter alia the constructing of dwelling house by its employers,

for which the Defendant as an employee of the Plaintiff utilised. He was granted a housing loan in the sum of Le 770,000,000 same of which was subject to the terms and conditions contained in the housing loan scheme.

The Defendant consequently executed a Deed of Legal mortgage dated 19th of May, 2017, and registered as No. 89/2017 at page 42 in volume 96 of the Book of Mortgages kept in the office of the Administrator & Registrar General in Freetown by which the Defendant Mortgaged the property situate lying and being at No. 3 Bailey street Brookfield, Freetown to secure the payment of the housing loan which was granted to the Defendant by the Plaintiff.

That at the request of the Defendant the Plaintiff paid fees for the professional training of the Defendant in respect of which the Defendant is owing the Plaintiff the sum of Le 137,548,109/74. The payment of fees for the training of the Defendant subject to the training policy of the Plaintiff.

The Defendant was also in August 2015 granted a vehicle loan in the sum of \$ 20,000 or its equivalent in Leones pursuant to the director's vehicle loan scheme. The defendant signed a loan agreement with the Plaintiff dated the 13th day of August 2015 in respect of the said vehicle.

Sometimes in earlier March, the Defendant purportedly resigned from his appointment with the Plaintiff, which said resignation was rejected by the Governor of the Plaintiff dated 6th March, 2019. The Defendant no whether was insistent on severing ties with the Plaintiff and never turned up for work to inter alia do a proper handing over subsequently on the 20th March, 2019, he was dismissed from the employment of the Plaintiff effective 6th March 2019 and demanded payment of his outstanding obligation in the sum of Le 1,032,115,230/71

That the Plaintiff to ensure due-diligence forwarded the Defendants last pay certificate to this Internal Audit Department and Risk Management Unit for review, following which the last pay certificate was revised and the Defendant's indebtedness reduced to Le 924,761,973/27

Despite several requests, written requests and demand from the Defendant to make his indebtedness, the Defendant has failed, neglected or refused to do so.

Writ of Summons for the recovery of the said sums dated 7th November 2019 was issued against the Defendant and same served on him by order of Court on publication in the Focus newspaper on 27th March 2020.

That a search was conducted at the Fast Track registry and no appearance was entered, an application was consequently made.

The following exhibits are attached to the affidavit in support to wit:-

Exhibit “PF 1” – A copy of the staff Housing Scheme

Exhibit “PF 2” – A copy of the Deed of Mortgage

Exhibit “PF 3” – A copy of the Training Policy of the Plaintiff

Exhibit “PF 4” – A copy of the Loan Agreement

Exhibit “PF 5” – A copy of the resignation letter of the Defendant

Exhibit “PF 6” – A copy of the rejection of the Defendant’s resignation by the Governor of the Plaintiff

Exhibit “PF 7” – A copy of the Defendant’s insistence letter that he had resigned.

Exhibit “PF 8” – A copy of the dismissal letter of the Defendant from the employment of the Plaintiff

Exhibit “PF 9” – A copy of the revised pay certificate

Exhibit “PF 10” & “11” – Copies of the Defendant’s last pay certificate as so forwarded by the Plaintiff as a reminder

Exhibit “PF 12” – Letter from Messrs Lambert & Partners requesting the Defendant to pay the outstanding balance

Exhibit “PF 13” – A copy of the Writ of Summons

Exhibit “PF 14” – A copy of the publication of Substituted service in the Focus 24/7 Newspaper

Exhibit “PF15” – A copy of the sworn affidavit by Ibrahim Fofanah

Exhibit “PF 16” – A copy of the Affidavit of search

Submissions by Counsel

In his submission P. Fofanah Esq. Counsel for the Plaintiff/Applicant submitted that the application is by Ex-parte Notice of Motion, and referred to the Motion and the affidavit in support, and submit that on the aggregate of

facts as so contained therein, the Defendant has failed to liquidate his indebtedness to the Plaintiff.

He further submitted that the application is made pursuant to Order 13 Rule 12 and Order 22 Rule 13 of the High Court Rules 2007, for ease of reference I will set out the referred Order and Rules:

Order 13 Rules 12;

In any action in which the Plaintiff claims any of the following reliefs

- (a) Payment of money's secured by a mortgage
- (b) Sale of property subject to a mortgage
- (c) Delivering of possession of Mortgage property to the Mortgagee by the Mortgagor or by any person in, or alleged to be in possession of the property
- (d) Redemption of property subject to a mortgage
- (e) Discharged of a mortgage; or
- (f) Delivering of possession of a mortgage property

The procedure to be adopted is quite clear in this regard:

“Judgement shall not be entered in default of appearance except by leave of the Court”

Various attempts at effecting service of the proceedings or bringing same to his notice has all proved futile from the papers filed herewith.

In an application for judgement in default of appearance, the Plaintiff must satisfy the Court, not only that the Defendant has defaulted in entering appearance to the action, but also that the Defendant has been duly served with the Writ of Summons, which has been demonstrably made through effectual substituted service as could be reasonably so inferred. The requirement of service is essential for fulfillment of the audi alteram partem Rule

“A Defendant not served a Writ of Summons cannot default in entering appearance”

It follows that an application for judgement in default of appearance will not succeed unless the Plaintiff satisfies the Court in supporting affidavit to the application that the Defendant was duly served with the Writ of Summons (**KUMA V. BART PUANGE GLR (1989-90) 119**)

A search was conducted at the Fast Track Commercial Court, some of which was exhibited on the affidavit in support to the Ex-parte Notice of Motion, stating the facts in support of the application.

In the determination of this application this Court has required, evidence/proof in support of the claims which by default the Default is deemed to have admitted, (see **SMITH V. BUCHAN (1888) 58 L.T 710, YOUNG V. THOMAS (1892) C2 CH 134**)

The admission would thus relieve the Plaintiff of the burden of proof (**COLLIN V. TAGOE (1997-98) 1 GLR 76**)

This phrase in Order 22 Rule 10 (2) “the Court may require the application for leave to be supported by **evidence** (emphasis mine) entitles the applicant to relief and may direct...” certainly this does not required the Plaintiff should proceed to file a reply (to what?); take out issues for trial (based on what rival contentions and proceed to trial by calling evidence to establish the Plaintiff claim? The Plaintiff cannot go any further to even the extent of filing a reply when no appearance has been entered and for the matter, a defence filed, neither can summons for direction been taken when no issues are joined

In my view the phrase ‘proceed as if such a party had appeared’ means that the Plaintiff as in the present case has lead evidence in proof of his claim (as in the affidavit in support) and supplemental affidavit with their exhibits attached thereto.

Consequent upon the satisfaction by the Plaintiff in compliance with the Rules as so provided, proof of which are as attached in the affidavit in support, and further sets out in the supplemental affidavit filed thereto, and from submissions made by Counsel for the Plaintiff/Applicant;

This Court is satisfied that the claims as endorsed in the Writ of Summons and the Motion filed therein qualifies for judgement in default of appearance. This also against the backdrop of varying steps been taken to bring same to the notice of the Defendant, this Court therefore orders as follows:-

1. Leave is granted to the Plaintiff/Applicant pursuant to Order 13 Rule 12 (1) of the High Court Rules 2007 and Order 22 Rule 10 (1) of the High Court Rules 2007 for the Following

- (a) Immediate payment of the sum of Le 663,157,895/22 by the Defendant to the Plaintiff**

- (b) Interest at a rate of 3% on the sum of Le 663,157,895/22 from 10th May, 2019 to payment**
- (c) Alternatively in the event that the Defendant fails to repay the said amount of Le 663,157,895/22 and interest thereon an order, the property, situate, lying and being at 30 Bailey street, Freetown be sold by the Plaintiff by private treaty to recover all amount due and owing by the Defendant to the Plaintiff**
- (d) Immediate payment of the sum of Le 137,548,109/74 by the Defendant to the Plaintiff**
- (e) Interest on the sum of Le 137,548,109/74 to be assessed by the Court**
- (f) Immediate payment of the sum of Le 40,662.600/00 by the Defendant to the Plaintiff**
- (g) Interest at a rate of 2% on the sum of Le 40.662.600/00 from the 10th May 2019 to payment**
- (h) Cost to be taxed.**

THE HONOURABLE JUSTICE M.P. MAMI J.