

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

FACT TRACK COMMERCIAL COURT

BETWEEN:

ANSU REAL ESTATE AND CONSTRUCTION - PLAINTIFF
CO. LTD

ADONKIA, PENNISULAR
GODERICH
FREETOWN
AND

ALUSINE JANNEH - DEFENDANT
JANNEH DRIVE
HILL STATION
FREETOWN

RULING DELIVERED BY THE HONOURABLE JUSTICE M.P. MAMI J.A.

DATED THE 29TH OF MAY, 2025.

COUNSEL

YADA WILLIAMS & ASSOCIATES FOR THE PLAINTIFF

B&J PARTNERS FOR THE DEFENDANT

This matter was commenced by way of writ of summons dated 27th day of March, 2024 issued by counsel for the plaintiff herein; Ansu Real Estate & Construction Co. Ltd, claiming against Alusine Janneh; the defendant herein for the;

1. Recovery of the sum of US\$5,000.00 (Five Thousand United States Dollars) or its Leones equivalent being commission due and owing by the defendant to the plaintiff, interest pursuant to Section 4 of the law Reform (Miscellaneous Provisions) Act Cap.19 of the Laws of Sierra Leone 1960.
2. Interest pursuant to the judgment Act 1838 from the date of judgment till payment.
3. Damages for breach of contract.
4. Any further or other order(s) that this Honourable court may deem fit and just in this action
5. That the cost of this action be borne by the defendant.

An appearance and a defence was entered and filed on behalf of the defendant on 9th day of April 2024 respectively. Both the said writ of summons and the defence were accordingly frontloaded with the requisite documents stipulated in the Rule of this court. A pivotal settlement was held, both the defendant were unable to resolve the matter and same proceeded to trial.

Facts of the case

Same is as gleaned from the writ of summons filed herein to wit:

- That the plaintiff to this action is a company under the laws of Sierra Leone and engaged in the business of Real Estate and Construction, while the defendant is a client of the plaintiff.
- That a contractual agency relationship exists between the plaintiff and the defendant whereby the defendant verbally contracted the plaintiff through its representative, Ansumana Sesay to scout, search and procure a purchaser

Ansumana Sesay to scout, search and procure a purchaser for the defendant's property situate at Off Freezer Davies Drive, Off King street Freetown and to negotiate the sale of same on his behalf.

- That the plaintiff informed the defendant that the fee for the said service was 5% (Five percent) of the purchase price, which is the usual agent fee in the real estate business
- That in response to the aforesaid, the defendant undertook to the plaintiff that if then plaintiff would successfully negotiate a price for the sale of the defendants' property for any amount exceeding US\$120,000.00 (One Hundred and Twenty Thousand United States Dollars), the excess amount of the said

US\$120,000.00 (Twenty-five Thousand United States Dollars) would be given as its commission.

- That the defendant agreed to pay the said commission after conclusion of the sale
- That consequent on the above, the plaintiff through its representative scouted searched and subsequently provided a willing and able purchaser for sale of the defendant's property at Off Frazer Davies Driver, Off King street, Freetown,
- That the plaintiff through its representative facilitated the sale of the said property by transmitting messages on several occasions from the purchaser defendant with regards the position of the purchaser and her solicitor on the sale of the said property.
- That the plaintiff negotiated with the purchaser, Ms. Josephine Mansaray on the purchase price for the said property and succeeded in securing a favourable deal for and unbehalf of the defendant in the sum of US\$125,000.00 (One Hundred and Twenty Thousand United States Dollars)
- That sale of the said property was successfully concluded in January, 2024 between the defendant and the purchaser who was introduced to the defendant by the plaintiff in the sum of US\$125,000 as negotiated by the plaintiff.
- That the plaintiff through the services rendered to the defendant as stated also was the effective cause of the sale of the said property which the defendant has benefitted from.

That in addition to an earlier advance payment of US\$125,000.00 (One Hundred and Twenty Thousand United States Dollars) made by the purchaser to the defendant, the purchase in November 2023 made to the defendant an advance payment of US\$100,000 (One Hundred Thousand United States Dollars) made by the purchaser to the defendant, the purchaser in November 2023 made to the defendant an advance payment of US\$100,000 for which said sum the defendant gave to the plaintiff, the sum of US\$2,000.00 (Two Thousand United States Dollars) which in the words of the defendant was a 'token of appreciation' with the promise that the sum of US\$5,000 (Five Thousand United States Dollars) being the agreed commission would be paid upon the final payment of the remaining US\$24,000 (Twenty-four Thousand United States Dollars) being the agreed commission would be paid upon the final payment of the remaining US\$24,000 (Twenty-four Thousand United States Dollars) to the defendant in January, 2024 the defendant is yet make any payment of the said commission which he had undertaken and promised to pay.

- That by letter dated 2nd February, 2024, the former solicitor of the plaintiff demanded payment from the defendant of the said sum.
That despite the demands made by the plaintiff via its former solicitor, as stated above, and constant mobile calls and whatsapp messages made to the defendant, the defendant has failed refused and or neglected to make any such payment till date.
- That this has caused extreme hardship to the business of the plaintiff
- That unless this Honourable court grants the orders prayed for herein, the defendant has no intention to honour his financial obligations under the contract and the plaintiff will continue prayed for herein, the defendant has no intention to honour his financial obligations under the contract and the plaintiff will continue to suffer financial loss and damages.

List of Issues in Contention between the Parties

- (a) Whether an agency contract expressly or impliedly (by conduct) exists between the plaintiff and the defendant thereby making the plaintiff an agent of the defendant, while the defendant the principal of the plaintiff
- (b) Whether the plaintiff is entitled to remuneration in the sum of US\$5,000.00 (Five Thousand United States Dollars) or 5% commission of the purchase price, the purchase price being the sum of US\$120,000.00 (One Hundred and Twenty Thousand United States Dollars) as agent commission.
- (c) What other remedies in law are available to the plaintiff

Analysis and Evaluation of the Evidence

The plaintiff called only one witness; Ansumana Sesay

PW1 Introduced himself as an estate agent and that he is the chief executive officer (CEO) of the plaintiff company. PW1 was shown Exhibit A1-2, which are certificate of registration and incorporation of the plaintiff both dated 27th July, 2018

- He also further told this Honourable court, that he has been in the business of Real estate agent since 2018 and has known the defendant about fifteen (15) years.
- He also further intimated to the Honourable court, there was a cordial relationship with the defendant and have been in business of real estate and both, sales and rentals of apartments that belong to the defendant
- He also further told this Honourable court that himself and the defendant met on the 9th of October, 2023 at Circular Road where the defendant shop is

located, and that it was there he told him about his property at Frazer Davies Drive, Off King Street, with an asking price of US\$150,000.00 (One Hundred and Fifty Thousand United States Dollars)

- Also told this court that they had discussions at his shop opposite Mende Church, Circular Road.
- When he was shown exhibit A3, he informed the court that some pictures of the flat and that same was taken after visitation of the flat and he took it with
- That he then advertised the property and took but his first potential buyer, who was Haji; stays in Kono declined the offer on the grounds that the asking price was too much.
- When shown exhibit A4, he intimated to this Honourable court that it was a forwarded message between himself and the 1st potential client.
That he went back to the defendant's shop to inform him about it
- He further informed the court, that the defendant called him after the 2nd potential buyer had left, that he was ready to settle for the US\$120,000.00 (One Hundred and twenty Thousand States Dollars)
- That if the property is purchased for US\$120,000, that he was willing to give him \$2,000 as
"Thank you", apart from the commission, he will make
- That the 3rd potential buyer was a cousin, but she can buy for \$125,000 on a part-payment basis.
- That the defendant then re-affirmed to him that his initial representation of the initial position that whatever that was on top of the \$120,000 as thank you.
- That he forwarded the pictures to his sister, and an appointment was then set-up
- That the client then inspected the property thoroughly and she expresses her interest
- (When shown exhibit A5), he then gave the form to the defendant for him to read and sign
- That he wrote his name and placed his number but never signed. He then told him, that he was capable of paying the "thank you" money
- That because of his past dealings with the defendant, in similar transactions, in the past at Murray Town
- That the potential client gave him her solicitors number, lawyer Sidi Bah for facilitation and due -diligence

- That they agreed for an appointment after prayer, for the defendant to come with whatever documents he had.
- He further informed the court that exhibit A6 is a site plan of the property at Frazer Drive, Off King Street.
- That he took photo of it and forwarded it to his client.
- That the client then said to him, that she had forwarded this said plan to Lawyer Sidi Bah for the due-diligence exercise
- He further testified that on the 16th October, 2023, the defendant told him that he wants to involve his solicitor, Saffa Abdulai and that they both went to Abdulai Saffa but that he was busy.
- It was also his evidence that on the 21st October, 2023 at 5:30 p.m. they went to lawyer Sidi Bah where the defendant was given US\$1,000 (One Thousand United States Dollars). It was also his evidence that an appointment was fixed for Saturday for survey exercise and inspections.
- He also told this Honourable court that the second payment was done at lawyer Sidi Bah office and it was \$1,000,00 (One Hundred Thousand United States Dollars), and that the balance of payment of \$24,000 (Twenty-four Thousand United Dollars) was paid in his absence at lawyer Sidi Bah's office.
- PW1 also informed the court, that the defendant gave him US\$2,000 (Two Thousand United States Dollars) as "Thank you", when he received the US\$100,000 (One Hundred Thousand United States Dollars) for which he issued s receipt (Ex A8)
- It is also his evidence that the defendant never paid the US\$5,000.00 (Five Thousand United States Dollars) and that he then consulted his former solicitors to demand payment from him and that his solicitor told him he was going to give the defendant a call
That enquired about his balance and the defendant told him that he will pay him when he is paid that US\$24,000.00 (Twenty-four Thousand United States Dollars)
- He also proceeded to testify that the US\$24,000 was paid between November and December.
- It is also his evidence that he waited, but never got paid by the defendant and that he got back to his solicitor for s demand letter to be served on the defendant which said letter was dated on the 22nd of February, 2024
- He also further told this Honourable court that, the defendant in his presence told his solicitor that he will pay the US\$5,000.00 (Five Thousand United States Dollars) as the person that had the money was in Conakry.

Cross-Examination.

During cross-examination, PW1 maintained that he is an estate agent, and that it was the defendant that called him to his office. He also further maintained, that he was called to the office of the defendant, and further that he known Claudius as a real estate agent.

He also further affirmed that Claudius was involved in this transaction but that the defendant told him that Claudius was his previous estate agent and was not doing well with facilitating the sale.

He also told this court that the defendant told him to find a potential buyer

That he only saw the defendant's plan, when the client agreed for the offer of US\$125,000 which the defendant agreed for US\$120,000

That he never contracted Claudius and never saw any advert

He reiterated that, he doesn't know Claudius in this transaction

He also told this Honourable court, that he never said in evidence in chief that the property was going to be put up for US\$150,000

He affirmed that the defendant sold the property for \$125,000

When he was referred to paragraph 5 of the particulars of claim in the writ of summons.

That the defendant expressly told him that whatever amount that was on top of US\$120,000 was his commission

That it was done, at the beginning of the transaction with the first offer, that was made, and that there is a Whatsapp chat to that effect, that the defendant promised to give him commission.

That this promise of commission was done orally between himself and the defendant, and that there is a Whatsapp chat to that effect.

He refuted upon been so referred that exhibit A4, does not provide any financial arrangement between himself and the defendant, and that it was sent from himself to the defendant, that it is a screenshot in a conversation between himself and the 1st offer

That US\$150,000 was the initial asking price

When he was referred to exhibit A4¹⁵), he told this court that the text in dark color are his

He testified that he was pleading for the defendant to accept the US\$1,000 (One Thousand United States Dollars) as commitment fees.

He also further testified that he was acting for the defendant as agent and not the buyer,

The defendant gave him his site plan, and he then forwarded it to the purchaser, that the defendant gave him a conveyance in which there was a site plan.

It was also his evidence that all the payment were done through the buyers lawyer's, Sidi Bah and that he was for the 1st and 2nd payments.

He also further testified that he did not receive any monies from the lawyer Sidi Bah. PW1 was also shown Ex8, and he testified that the US\$2,000.00 (Two Thousand United States Dollars) was a "Thank you" token.

Re-examination: PW1 reiterated that the US\$150,000.00 (One Hundred and Fifty Thousand United States Dollars) was the initial asking price, and that the property was eventually sold for US\$125,000 (One Hundred and Twenty-five Thousand United States Dollars)

He also further told this court that he has never done any business with the buyer, and that his relationship with the buyer was disclosed to the defendant.

It was also his evidence that he could not bring the buyer to court, because he had no business dealings with her.

DW1

- He told this Honourable court that his full names are Alusine Janneh, and he live at Janneh Drive, Imatt.
- That he knows about the property at Frazer Drive, and that it his property and that he sold same.
- He further testified that he knows the plaintiff in this action, and it is also his evidence that he had his own agent Claudius who was heading the process.
- He testified that he had a call from PW1 of the plaintiff company, who enquired from him whether the property he had was for sale.

- He proceeded to say that PW1 further enquired where he was at the moment of which he was told that he was at Circular Road, at his office and that PW1 informed him that he coming to meet with him
- He testified that he had another agent named Yayah and that the plaintiff was not one of the agents. It was also his evidence that PW1 of the plaintiff company met him at Circular Road and enquired whether the property is for sale and he answered in the affirmation. He proceeded to testify that there were other relation who had interest in the property
- He also testified that the 1st buyer did not show up on time. It is also his evidence that PW1 pleaded with him to facilitate the sale and he responded that all he wants is money and that PW1 then told him that there was another gentleman who is interested in the property.
- He testified that it was Jojo that purchased the property, it was also his testimony that himself and PW1 never agreed on any terms and that PW1 was trying to force him into percentage terms.
- He added that the property is his and normally is the purchaser that should pay the agent for the facilitation and that PW1 acted for her, his family person

DW1 was also shown exhibit A4, and he answered that it was PW1 who was pleading with him not to turn down the buyer. He informed the court that he never told PW1 that he was going to give him anything except US\$2,000 (Two Thousand United States Dollars) he gave to him.

DW1 was shown Ex "A8" and answered that he has never seen the receipt and there was no balance. He intimated this Honourable court, that he was not pleased with the sale, because he wanted it now.

During cross-examination he told this Honourable court, the following:

- That most of the conversation between himself and PW1 of the plaintiff company was through Whatsapp.
- That he can't recall how long he has known PW1 but that, he has known him for quite a long time
- That he never knows that PW1 was running a business in the name of the plaintiff company.
- (When shown exhibit A5), he testified that he has never seen the said document, and that PW1 did not show him same when they met at his shop.
- (When shown exhibit A19, the last page) he testified that he has never seen the said document, and that PW1 did not show him same when they met at his shop

- He was also shown exhibit A19, last page, and he testified that he never saw the message on Whatsapp. It was also his testimony that he saw it but did not read
- He proceeded to testify that he never knew who the plaintiff company is except that PW1 told him that he is a law student.
- He further testified that PW1 who called him and informed him, that he heard that he has property for sale.
- When DW1 was shown exhibit A4¹ (1st page), he testified and answer that the Ansumana Sesay to scout, search and procure a purchaser for the defendant's property situate at Off Freezer Davies Drive, Off King street Freetown and to negotiate the sale of same on his behalf.
- That the plaintiff informed the defendant that the fee for the said service was 5% (Five percent) of the purchase price, which is the usual agent fee in the real estate business
- That in response to the aforesaid, the defendant undertook to the plaintiff that if then plaintiff would successfully negotiate a price for the sale of the defendants' property for any amount exceeding US\$120,000.00 (One Hundred and Twenty Thousand United States Dollars), the excess amount of the said US\$120,000.00 (Twenty-five Thousand United States Dollars) would be given as its commission.
- That the defendant agreed to pay the said commission after conclusion of the sale
- That consequent on the above, the plaintiff through its representative scouted searched and subsequently provided a willing and able purchaser for sale of the defendant's property at Off Frazer Davies Drive, Off King street, Freetown,
- That the plaintiff through its representative facilitated the sale of the said property by transmitting messages on several occasions from the purchaser defendant with regards the position of the purchaser and her solicitor on the sale of the said property.
- That the plaintiff negotiated with the purchaser, Ms. Josephine Mansaray on the purchase price for the said property and succeeded in securing a favourable deal for and unbehalf of the defendant in the sum of US\$125,000.00 (One Hundred and Twenty Thousand United States Dollars)
- That sale of the said property was successfully concluded in January, 2024 between the defendant and the purchaser who was introduced to the defendant by the plaintiff in the sum of US\$125,000 as negotiated by the plaintiff.

- That the plaintiff through the services rendered to the defendant as stated also was the effective cause of the sale of the said property which the defendant has benefitted from.

That in addition to an earlier advance payment of US\$125,000.00 (One Hundred and Twenty Thousand United States Dollars) made by the purchaser to the defendant, the purchase in November 2023 made to the defendant an advance payment of US\$100,000 (One Hundred Thousand United States Dollars) made by the purchaser to the defendant, the purchaser in November 2023 made to the defendant an advance payment of US\$100,000 for which said sum the defendant gave to the plaintiff, the sum of US\$2,000.00 (Two Thousand United States Dollars) which in the words of the defendant was a token of appreciation with the promise that the sum of US\$5,000 (Five Thousand United States Dollars) being the agreed commission would be paid upon the final payment of the remaining US\$24,000 (Twenty-four Thousand United States Dollars) being the agreed commission would be paid upon the final payment of the remaining US\$24,000 (Twenty-four Thousand United States Dollars) to the defendant in January, 2024 the defendant is yet make any payment of the said commission which he had undertaken and promised to pay.

- That by letter dated 2nd February, 2024, the former solicitor of the plaintiff demanded payment from the defendant of the said sum.

That despite the demands made by the plaintiff via its former solicitor, as stated above, and constant mobile calls and whatsapp messages made to the defendant, the defendant has failed refused and or neglected to make any such payment till date.

- That this has caused extreme hardship to the business of the plaintiff
- That unless this Honourable court grants the orders prayed for herein, the defendant has no intention to honour his financial obligations under the contract and the plaintiff will continue prayed for herein, the defendant has no intention to honour his financial obligations under the contract and the plaintiff will continue to suffer financial loss and damages.

That US\$150,000 was the initial asking price

When he was referred to exhibit A4¹⁵), he told this court that the text in dark color are his

He testified that he was pleading for the defendant to accept the US\$1,000 (One Thousand United States Dollars) as commitment fee

He also further testified that he was acting for the defendant as agent and not the buyer,

The defendant gave him his site plan, and he then forwarded it to the purchaser, that the defendant gave him a conveyance in which there was a site plan.

It was also his evidence that all the payment were done through the buyers lawyer, Sdi Bah and that he was for the 1st and 2nd payments.

He also further testified that he did not receive any monies from the lawyer Sidi Bah. PW1 was also shown Ex8, and he testified that the US\$2,000.00 (Two Thousand United States Dollars) was a "Thank you" token.

Re-examination: PW1 reiterated that the US\$150,000.00 (One Hundred and Fifty Thousand United States Dollars) was the initial asking price, and that the property was eventually sold for US\$125,000 (One Hundred and Twenty-five Thousand United States Dollars)

He also further told this court that he has never done any business with the buyer, and that his relationship with the buyer was disclosed to the defendant.

It was also his evidence that he could not bring the buyer to court, because he had no business dealings with her.

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- That he knows about the property at Frazer Drive, and that it his property and that he sold same.
- He further testified that he knows the plaintiff in this action, and it is also his evidence that he had his own agent Claudius who was heading the process.
- He testified that he had a call from PW1 of the plaintiff company, who enquired from him whether the property he had was for sale.

- He proceeded to say that PW1 further enquired where he was at the moment of which he was told that he was at Circular Road, at his office and that PW1 informed him that he carrying to meet with him
- He testified that he had another agent named Yayah and that the plaintiff was not one of the agents. It was also his evidence that PW1 of the plaintiff company met him at Circular Road and enquired whether the property is for sale and he answered in the affirmation. He proceeded to testify that there were other relation who had interest in the property
- He also testified that the 1st buyer did not show up on time. It is also his evidence that PW1 pleaded with him to facilitate the sale and he responded that all he wants is money and that PW1 then told him that there was another gentleman who is interested in the property.
- He testified that it was Jojo that purchased the property, it was also his testimony that himself and PW1 never agreed on any terms and that PW1 was trying to force him into percentage terms.
- He added that the property is his and normally is the purchaser that should pay the agent for the facilitation and that PW1 acted for her, his family person

DW1 was also shown exhibit A4, and he answered that it was PW1 who was pleading with him not to turn down the buyer. He informed the court that he never told PW1 that he was going to give him anything except US\$2,000 (Two Thousand United States Dollars) he gave to him.

DW1 was shown ExA8 and answered that he has never seen the receipt and there was no balance. He intimated this Honourable court, that he was not pleased with the sale, because he wanted now.

During cross-examination he told this Honourable court, the following:

- That most of the conversation between himself and PW1 of the plaintiff company was through Whatsapp.
- That he can't recall how long he has known PW1 but that, he has known him for quite a long time
- That he never know that PW1 was running a business in the name of the plaintiff company.
- (When shown exhibit A5), he testified that he has never seen the said document, and that PW1 did not show him same when they met at his shop.

- (When shown exhibit A19, the last page) he testified that he has never seen the said document, and that PW1 did not show him same when they met at his shop
- He was also shown exhibit A19, last page, and he testified that he never saw the message on Whatsapp. It was also his testimony that he saw it but did not read
- He proceeded to testify that he never knew who the plaintiff company is except that PW1 told him that he is a law student.
- He further testified that PW1 who called him and informed him, that he heard that he has property for sale.
- When DW1 was shown exhibit A4¹(1st page), he testified and answer that the phrase 'like I told you before' refers to oral conversation previously had with PW1.
- It was also his evidence that there were peoples who offered better price than PW1, but that he did not sell because he had received commitment fee of \$1,000 (One Thousand United States Dollars)
- It was also his evidence that the initial buyer was not able to pay the US\$150,000.00 (One Hundred and Fifty Thousand United States Dollars).
- He further testified that he negotiated the US\$125,000 (One Hundred and Twenty-five Thousand United States Dollars) with Mr. Sidi Bah, the lawyer that was what he told P.W.1 what the property was going for.
- He also further testified that the negotiation was done after he had left the office of lawyer Sidi Bah, and that it was P.W.1 that took him to the lawyer's office
- he further testified that the US\$2,000 (Two Thousand United States Dollars) He gave to P.W.1, was given to him voluntarily
- DW1 was also shown exhibit A8, and he testified in answer, that he has never seen the receipt. It was also his evidence that he never agreed to pay commission, his conversation with P.W.1 in November 2023
- DW1 was further referred to exhibit A4¹⁷. It was also his evidence that the reference to the person in Conakry was for a house at Kissy. He proceeded to testify that P.W.1 acted for the buyer.

- DW1 was also referred to exhibit A4 and answered that the "this people" was reference to Josephine (the buyer) who had paid US\$1,000.00 (One Thousand United States Dollars) as commitment fee.
- He testified that he never told PW1 to collect monies for him and he was referred to exhibit A46.
- he also agreed that counsel for the plaintiff was correct to say that money on his behalf.
- It was also his evidence that he dashed PW1 the US\$2,000.00 (Two Thousand United States Dollars)
- He confirmed that it was not Cloves and Yayah that brought Josephine, the buyer to him. he concluded that he never told PW1 that he will give him US\$5,000 (Five Thousand United States Dollars) plus US\$2,000 (Two Thousand United States Dollars)

Re-examination

DW1 testified that all the issues of US\$5,000 (Five Thousand United States Dollars) plus US\$2,000 (Two Thousand United States Dollars) came from PW1. It is evidence that he never agreed in any of these messages.

DW1 was also shown page 19 of the bundle exhibit A4³.

DW1 was also shown page 22 of the bundle of exhibit A4⁶ and he told this Honourable court that it was the potential buyer who were calling him. He testified that PW1 pleaded with him to do the business.

Evaluation of the Evidence and the Issues contained therewith and the Applicable Law.

In the evaluation of the evidence and the issues contained therewith and the applicable reference will be to the thrust of the contention before this Honourable court to wit:

Whether there a contractual relationship, and whether an agency contract expressly or impliedly (by conduct) exists between the plaintiff and the defendant establishing a principal and agency relationship.

Consequently, thereby if the aforementioned in answered in the positive, whether the plaintiff should recover the sum of \$5,000 (Five Thousand United States Dollars)

or its Leone equivalent being commission due and owing by the defendant to the plaintiff.

As both counsel may be seised, in the quest to determine whether, in any given case, it is reasonable to infer the existence of an agreement, it has long been usual to employ the language of offer and acceptance. It behoves the court to examine all the circumstances to see if the one party may be taken to have made a firm and "offer" and the other maybe likewise taken to have "accepted" that offer.

I must also re-emphase however that there are cases where the courts will certainly hold that there is a contract eventhough it is difficult or impossible to analyse the transaction in terms of offer and acceptance. Lord Wilberforce in *New Zealand Shipping Co. V. A.M. Sather Waite & Co. Ltd* (1975) AC 154 at 167 "English Law having committed itself to go rather of contract, in application takes a practical approach, often at the cost of forcing the facts to fit uneasily acceptance and consideration"

One question this Honourable court is whether there was the element of offer and acceptance with consideration furnished

Proof of an offer to enter into relations upon definite terms must be followed by the production of evidence from which the courts may infer an intention by the offeree to accept that offer.

I must re-emphasised that whether there has been an acceptance by one party of an offer made to him by the other may be collected from the words or documents that have passed between them or may be inferred from their conduct.

I must also reiterate that the task of inferring an asset and of fixing the premises moment at which it may pf difficulty, particularly when the negotiations between the parties have covered a long period of time or are contained in protracted or desultory correspondence.

DW1 in his further evidence in chief narrated to this Honourable court the number of times and meeting held with the plaintiff in the facilitation of the sale of the said property.

What is not in contention however is that the plaintiff and the defendant agreed that the plaintiff was to facilitate the plaintiff told this Honourable court that himself and the defendant held a meeting at Circular road on the 9th of October 2023 where

initial discussions were held appertaining the property at Frazer Davies, Off King Street with an asking price of US\$150,000.

It was at the shop of the defendant opposite Mende Church, Circular Road.

Infact, the plaintiff did not only took photos, but further advertised the property, with different potential clients, before the zeroed in on the actual buyer.

Infact the plaintiff referred this Honourable court to exhibit A4 which he said a forwarded message between himself and the potential client, same of which has not been controverted.

The plaintiff further told this Honourable court that the defendant told him that he will think about the payment was to be made.

The plaintiff told this Honourable court also that if the sales was upped from \$20,000 whatever comes on top of it a "commission" that the \$2,000 could still be paid as a "thank you"

That he facilitated the sale to the extent of securing a buyer, a relative of the plaintiff through negotiation and meeting with her, that this even led to the inspection of the property, consequent upon which the plaintiff told this court, that he was quite hesitant because if past dealings with the defendant, and have him a form (Exhibit A5) for his signature same of which could have contained the said payment of the commission.

The defendant was paid in installments through a meeting also facilitated through the buyer by the plaintiff.

That the plaintiff issued a receipt, when he received the US\$2,000, (exhibit A8).

That the plaintiff promised, that when the installments was paid of US\$24,000, the balance of \$5,000 will be paid, which up to this time has not been paid, notwithstanding protestation and demands.

It is without doubt that the plaintiff was empowered of facilitate the sale though the endorsement confirmation of the defendant.

The attempt by the defendant to want this Honourable court to believe that he had his estate agent Cloves, same of which has not been made tangible in this present instance.

Was an agency relationship created?

An "agency" is a comprehensive word which is used to the relationship that arises when the one man appointed to act as the representative of another.

The act to be done may vary widely in nature. It may for example be the making of a contract, the institution of an action, the conveyance of land or in the case if power of attorney, the exercise of any property right available to the employer himself.

It is also very important to state that except in one case no formality such as writing is required for the valid appointment of an agent. An oral appointment is effective this is so even though the contract which the agent is authorised to make is one that is required by law to be made in writing.

It is also without doubt that the issue of whether the plaintiff can contract though is officer/agents.

The plaintiff company can in law enter into a contact with national or other juristic persons through its officers/agents. the concept of Ansu (PW) as company is also basic principle of law that has been settled ages ago, and reference by counsel for the plaintiff to Holland V. Revenue and Customs Commission & Anor 2020) UKSC 5 (20) A AER, apt in this regard, same of which as quoted therein is germane to repeat herein.

"An examination of this issue must start with some of the basic elements of company law. A company is of course an artificial entity, and creature of statute. So it can act through human beings. Inevitably it is human beings who must take the decisions, and give effect to them by action if the company id to do anything at all: Palmer's Company Law (25th Edn. 99) Vol.2 Para 8, 101 Grower & Davies principles of Modern Company law (8th Edition, 2008) Paragraph 7..... "

PW1 has identified himself as the chief executive officer of the plaintiff company and was entitled in law to enter into contract for and unbehalf of the said plaintiff. Consequently, therefore when the PW was engaged through Whatsapp in furtherance of the intended sales, he was quite convincly constricted, with the plaintiff.

Exhibit A5, this court was seised is the vendors sales form commission agreement which does contain the name of the plaintiff company dated 3th October, 2023, unexecuted by the defendant as it is though.

As both counsel may be seised for an agreement to be entered into, it need not be in writing only, it could also be orally in which the contracting parties find themselves of the agreement is expressly in writing, the general rule is that the court will not look beyond that writing to determine what its express terms are and where orally, the ascertainment of its terms becomes a prove question of fact.

It is without doubt therefore, consequent upon the aforementioned that the court can reasonably construe that the agreement between the plaintiff and the defendant is one of a simple contract and therefore enforceable notwithstanding that same was not reduced into writing.

It is also the accepted position that the documentary evidence before this Honourable court in the form of Whatsapp communication (Exhibit A4-9) substantially grovels in favour of the oral evidence of PW1, to the extent that the defendant orally contracted the plaintiff through its agent pertinent to their conversation in this regard is the following:

‘Like I told you before if you have a serious buyer come with him I will go together with him to his lawyer, we will take it from there’

Infact, of material significance is the testimony of the defendant when led in evidence in chief to wit:

“Most of the conversation between myself and Mr. Ansu of the plaintiff company was through Whatsapp.”

Clearly this is an admission that the Whatsapp communication same tendered without no objection should also form an integral part of the analysis.

The conversation between Ansu of the plaintiff company and the defendant aforstated wherein he said “like I told you before, if you have a serious buyer come with him...” acceptably so was to go in search of a potential, willing and able buyer a follow-up to the discussion he had with PW1 on the same day of the 9th October, 2023 at the defendant’s shop at Circular Road.

This position was confirmed by the defendant himself during

It is the defendant who also told this Honourable court during the cross-examination, that “Most pf the conversation between himself and Mr. Ansu (PW1) of the plaintiff company, was through Whatsapp.”

The defendant also confirmed during cross-examination that "the chat in the pink colours is that of Mr. Ansu of the plaintiff company.

The defendant also contradicted himself during cross-examination when he intimated that he never told Ansu to collect monies for him, but later backtrack, when referred to exhibit A4 at page 6 and retorted that counsel for the plaintiff was intimated to have earlier said that he sent Mr. Ansu to collect the money.

This brings into foreplay the credibility of the defendant to be honest with this Honourable court, such inconsistencies without prejudice to the general evidence not forbear very well for the defendant to primarily a contractual dealing that was albeit informal and lax, with contractual undertones thereby the impression the defendant has tried to convey to this Honourable court, that the plaintiff and or PW1 was on the side of the purchaser and therefore ought to be reimbursed or fees paid therefrom totally inconsistent with the details of the text messages in exhibit A4. In my view, PW1 was engaged severally and intensely by the defendant with constant liasor and consultation prior to the purchase.

Both counsel can appreciate that in contractual transactions of such nature, the court primarily will lean on the references that could be reasonably garnered from the totality of the facts and upon detail review of the exhibits before this Honourable court. It is simply a complex task to perform to that a forensic examiner trying to juggle the piece together. In so doing, the exhibits, the witness statement, including the details of all that took place, specifically so as it took place in confidence between the defendant and the plaintiff, and of course the demeanor of the witness before this Honourable court.

One such inconsistencies reviewed was a review of exhibit A14. PW1 texted the defendant saying:

"For my floating amount \$5,000 plus \$2,000 you said you are going to give me, please do for God I have so much to do for my fees and my projects" The defendant in response to this demand resorted.

"If this is the way you do business I will change on you honestly because you see the tactics they come up with, you upon a detail review of this crucial piece of exhibit, it is clear that nowhere in exhibit A4¹⁴ did the defendant oppose, reject or deny having to pay the said sums to the plaintiff. It will appear to me that all the defendant indicated was to postpone the payment until such time as there would have been vacant possession with him

subsequently collecting his buyer from the buyer. This is also appeared to an oral undertaking to make do his promise.

Infact is exhibit A4¹⁷ the defendant further indicated in his willingness to live up to the promise, save for the latter underlying anger of the defendant therewith.

Upon complete review of exhibit A4, it is safe to contend that defendant deny the said promise, and owing the plaintiff the said sum.

From the foregoing and upon the earlier analysis and all facts and circumstances before this Honourable court, this court is of the considered view that a contract of agency existed between the defendant and the plaintiff, that a contract of agency existed between the defendant and the plaintiff and that based on the evidence before the court and that the defendant can be said to have led the plaintiff through its agent (PW1) to believe that a contract exists between himself and the plaintiff company.

This reminds me and I am so persuaded of the dictum of Smith V. Hughes (87) L.R. QB597 aptly cited by counsel for the plaintiff, wherein reliance of the principle quoted above was referred to in Freeman V. Cooke 2 EX at Pg.663 8 L.J (EX) at pg.9 to wit:

"It whatever a man's real intentions maybe, he so conduct's himself, that a reasonable man would be have that he was asserting to the terms proposed by the other party and that other party upon the belief enters into the contract with him, the man thus equally bound as if he had intended to agree to the other part's terms."

The impression that the defendant intended to portray that the relationship with the plaintiff was a causal and informal relationship, and that PW1 was an errand boy, that was jostled to facilitate the sale and could be merely compensated, or was overtly well compensated with the "thank you" in my view inappropriate.

In a society as lax and as informal as ours, sometimes businessmen are deep into business, before they even realised they are into business but either side have by their representation and intent held themselves out, the court should not be seen to sanction same. Infact just because the relationship has not been documented, it could act as a waiver, on the basis that it has not strictly fall into a formal offer and acceptance, and consideration has passed between the parties with the underlying intent from which it could be inferred to be so bound.

I say "lax" and "informal" dealings in a society of ours unlike a formalized straight jacketed society, where either if a sale was to be facilitated, or even a property was to be let out, will from get to start with the relationship been formalized.

But this notwithstanding the principles of the agency been created by conduct is still vital and a key principle in Commercial Transactions, that has survived since the start of times.

PW1 told this Honourable court, that the buyer was his relation, and he made it clear that he did not deal, with the buyer in a Commercial Context and very crucial so, no evidence was called by the defendant to rebut or controvert his evidence. Reliance by the defendant to rebut or controvert his evidence on exhibit A4 is not helpful.

I find also useful and so guided that the plaintiff has a duty of care in the management of the facilitation of the sale and have to ensure that the said duty is exercised with care.

This among, many reasons is that if the sale goes wrong, as in many instances, it does the tendency from the plaintiff to be disregarded as a mere facilitator and common agent, but also as a potential conspirator in whatever fraud that may be perpetrated.

If therefore behoves that such "laxness" or "informality" should be guarded against, by formality what is an important chain of the event of the transaction, as would be expected of the sensitive nature of their role.

This was expected of the plaintiff, particularly mindful that, he has indicated to this Honourable court in his evidence in chief, that he is not illiterate or semi-illiterate, but a student studying law, at the University of Sierra Leone

I also find solace and comfort in the Zimbabwean case of quoted by counsel for the plaintiff in his closing address of *Elision Kudakwashe Marko Anor V. Sto All Investments (private Ltd)* (2023) HH 270 23 HC 5262/20. His Lordship Musithu J. at page 23 observed thus:

"Legal practitioner and estate agents are supposed to play the watchdog role in the fight against property fraud, but they also fall victims and they are experts in this field, and by virtue of their experience and expertise in property management, a lot is expected of them where claim such as the present grounded on the breach of a legal duty to act reasonably, are placed before the court."

Infact, crucially at page 21, he proceeded to say

"The position of an estate agent is somewhat unique. Although he receives instructions from a prospective seller to find a buyer of an immovable property, and for which he is paid a commission, he also owes a duty pf care to the very people that he introduces to the seller. Put differently, the estate agent assumes a dual role which requires him to exercise utmost care and diligence to both the seller and the purchaser of the property."

This is because the purchaser rely on the information supplied by the estate agent in committing themselves to the transaction (sic) They only get to know the seller through the agent who for all intents and purposes is the face of the seller"

Indeed, the plaintiff was well reminded of this aspect of his duty of care, same exhibited in exhibit A15 wherein he stated

"Please accept it this way, there is no way to do sir, for my respect as a brother, and I don't want to be blame by Jojo, and the lawyer if there is a back off, you know how people/society will look at me as an agent, that I back off them for another person."

It is without doubt, that all this inclusive facilitated the sale, and recalculated his duty of care responsibility.

In my considered view, the plaintiff is entitled to remuneration and to recover his fees, albeit within this complex maze of inferences and implications this court was constrained to go through, which should have been lessened, where steps taking to formalized same.

Reference to the dictum of Templeman L.J. at page 305 of Alpha Trading Ltd V. Dunshaw- Patten Ltd (1981) QB 290 at page 305, that:

"An agent does not provide services and agree to accept and postpone payment for his services and agree to accept and postpone payment for his services restricted to the purchase price on terms that the vendor who accepts, exploits and makes use of the agent's services, is free to deprive the agent of the reward promised, for the services of the agent if the vendor thinks fit to do so.

The plaintiff from the totality of the analysis of the review of the exhibits, and the evaluation of the testimonies id entitled to 3% thereof.

Consequently, this Court orders as follows:

- The defendant is liable to the plaintiff for his contractual fees of 3%, and same to be paid within seven (7) days effective the grant of this order.
- Interest to be assessed if not agreed.
- Damages for breach of contract to be assessed if not agreed.
- The costs of this action assessed at Nle20,000 New Leones (Twenty Thousand New Leones).



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THE HON. JUSTICE M.P. MAMI J.A.