



IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL COURT DIVISION

IC37/14

AHMED ALIE SESAY & ANO.

PLAINTIFF

AND

THE GENERAL MANAGER
AFRICAN MINERAL (SL) LTD & ORS.

DEFENDANT

REPRESENTATION:

TANNER LEGAL ADVISORY.

FOR THE PLAINTIFFS

B.M.T. LAW CHAMBERS

FOR THE DEFENDANTS

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT RULING DELIVERED
ON THE 16TH DAY OF MAY, 2018

1. This matter was referred to the Industrial Court by a Memorandum from the Commissioner of Labour dated the 14th day of October 2014
2. The allegations against the Defendant are contained in a letter from the Solicitors for the Plaintiffs- Tanner Legal Advisory dated 13th August, 2013 and pre-action letter dated 5th February, 2014
3. The matter came for hearing before the Hon. Justice P.O. Hamilton JSC President of the Industrial Court, (as he then was) on the 28th day of October, 2014 and Judgment was delivered on the 16th day of December, 2015 as follows:
4. "Having considered the evidence led in this matter, I shall give Judgment for the Plaintiffs and Order that the following be paid to them as end of Service benefits;
 - a) 1st Plaintiff the sum of Le109,357,852.13 ~~put~~ ^{plus} an interest of 25percent on this amount and cost of Le5,000,000.00
 - b) 2nd Defendant the sum of Le38,679,577 82 plus an interest of 25 percent on this amount and cost of Le5,000,000.00
5. I note that Justice Hamilton P. withdrew the file for Judgment on the 2nd November, 2015 when he discovered that the Defendant was causing considerable delay in defending the matter by his frequent absence.
6. By Order of the Industrial Court dated the 19th December, 2015, Hamilton P. granted the application by the Plaintiffs for Shang dong Steel (SL) Ltd to be added as 3rd Garnishee.
7. By a Notice of Motion dated the 31st day of July, 2017, the Solicitors for the 3rd Garnishee, applied to this Court seeking the following Orders:-
 - i. That the Judgment dated the 16th day of December, 2018 and or Court Order dated 15th December, 2016 be set aside on the following grounds:
 - ii. That the Defendant Company described as African Minerals (SL) Limited in the Judgment dated the 16th day of December, 2015 has not been

liquidated, or wound up and as such is still in existence, and cannot in the circumstances be deemed to be another company.

iii. That the said African Minerals (SL) Limited is not and cannot in the premises be sued or executed against through the said Shang dong Steel (SL) Ltd as purportedly described in the Order of the Court dated the 19th December, 2016.

iv. That the purported Shang dong Steel (SL) Ltd has no connection whatsoever with the Defendant in fact and in law, as evidenced by the Order of Court dated 14th March, 2016.

(2) That the execution of the Judgment dated the 16th December, 2015 and or Court Order dated 19th December, 2016 and all subsequent proceedings be stayed pending the hearing and determination of this application

(3) Further and/or in the alternative, that this Honourable Court sets aside the said Judgment dated 16th December, 2016 for reasons of irregularity on the grounds that:-

i. That Shandong Steel (SL) Ltd was never a party to the action nor was it ever joined as a party to the action. That the order contravenes the rule of "audi alterem partem" (let the other side be heard)

ii. That the liability for the Judgment sum was imposed on Shandong Steel (SL) Ltd in place of or in substitution for the Defendant/Judgment Debtor (African Minerals (SL) Limited) by way of Garnishee proceedings after a first Garnishee proceedings had been brought and duly dismissed on the grounds that Shandong Steel (SL) Ltd held no accounts for the Defendant/Judgment Debtor; and notwithstanding that Shandong Steel (SL) Ltd was not a party to the trial.

iii. That the Court wrongly converted the Garnishee proceedings as though same was an application for joinder of parties under Order

18 of the High Court Rules of 2007 and substituted Shang dong Steel (SL) Ltd for the Defendant when Shandong was never properly brought before the Court so that it be given an opportunity to put in a defence and properly defend the action.

8. In support of the application, the 3rd Garnishee/Application, relies on the affidavit of Radcliffe Jones sworn to on the 3st July, 2017 together with the exhibits attached thereto. The thrust of the various averments therein is that the African Minerals (SL) Limited is still a legal entity independent of the 3rd Garnishee and so cannot be deemed in law and fact as holding the assets of African Minerals (SL) Limited. As a result, the 3rd Garnishee cannot be sued in place of AML nor can Judgment against AML be executed against the 3rd Garnishee.
9. The Plaintiffs/Respondents opposes the application and relies on the affidavit of Sadia Bakarr sworn to on the 14th day of July, 2017 and the exhibits attached thereto.
10. I have read the various affidavits and listened to Counsel. Without wasting any further time, I will say that the averments by the 3rd Garnishee in the affidavit in support have been debunked by a recent Sierra Leone Court of Appeal decision in the case of SHANG DONG STEEL (SL) LTD –V- MUSTAPHA JOSEPH KAMARA –CIV.APP30/16 delivered on the 1st March, 2018. In this case, the 3rd Garnishee herein, then appellant appealed against a decision of M.M. Samba J, in which the Trial Judge held Shandong Steel (SL) Ltd liable for African Minerals (SL) Limited's obligations to its former employees. In the unanimous decision of the Court of Appeal delivered by Sengu Koroma JA, His Lordship after determining that Shandong Steel took over the shares of AML with its legal implications had this to say "In a share purchase, the Employees remain with the entity and purchaser." Apart from the possible provisions in the sale and purchase agreement that may provide for redundancy of specific staff or specific benefits to be paid upon change of

control of the business, "the Legal identity of the employer remains the same" I continued "Based on the description of the various types of purchase, it will be easy to discern that Shandong Steel (SL) acquired all of the shares of AML and its subsidiaries thus not only gaining the assets but also its liabilities ...I hold that based on the principle of company acquisition through shares, the Appellant (Shandong Steel (SL) Ltd) had taken over the Legal identity of AML as regards its employees ..."

11. Based on the doctrine of stare decision, a decision of the Court of Appeal is binding on itself and all other inferior Court. As I am presiding in this case as a High Court Judge, my decision in the Court of Appeal is binding on me. In the circumstances, it will be per in curiam to determine otherwise.

I therefore Order as follows:-

1. That the application dated the 13th day of July, 2017 to set aside the Judgment of this Court dated 15th day of December, 2015 is hereby refused
2. That interim stay of Execution granted by this Court on the 12th July, 2017 in the matter herein is hereby vacated.
3. That the application to set aside the Order of this Court dated 19th day of December, 2016 including the 3rd Garnishee herein, Shandong Steel (SL) Ltd as Garnishee is hereby refused
4. Costs of Le10, 000,000.00 to be borne by the Applicant to the Respondents.



.....
HON. MR. JUSTICE SENGU KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT