CC 10/ 19 2019 C. NO.2

Between:

Prince Conteh Williams

Suing Through His Attorney

Theresa Conteh Williams - **Plaintiff/Applicant**

Mile 13 Guma Quarters

Freetown

And

Cecil Forde

9 Peninsular Road Sussex - **1st Defendant/Respondent**

Charm Coker

Main Peninsular Road Sussex - **2nd Defendant/Respondent**

Abu Soso

Main Peninsular Road Sussex- **3rd Defendant/Respondent**

Counsels: c. Sawyer Esq., for the Applicant

A. Sheriff Esq., for the Respondents

Ruling on an Application for an Injunctive Relief, Pursuant to a Notice of Motion, dated 15th January, 2019, delivered by Hon. Dr. Justice A. Binneh- kamara, J. on Thursday, 23rd January, 2020

This is a ruling, consequent on an application made before this Honourable Court by C. Sawyer Esq. for a plethora of orders, including interlocutory injunction and cost. As required by Sub rule (4) of Rule 1 of Order 35 of the High Court Rules, Constitutional Instrument N0. 25 of 2007 (hereinafter referred to as the High Court Rules, 2007), the application is made by a Notice of Motion, dated 15th January 2019, supported by the requisite affidavit, sworn to and dated 15th January, 2019. The affiant to the affidavit is Theresa Conteh Williams, who happens to be the Attorney of Prince Conteh Williams, on whose behalf the action is instituted.

Consequently, as required by Sub rule (6) of Rule 1 of Order 35 of the High Court Rules 2007, the aforementioned application is contested and opposed by A. Sherriff Esq., pursuant to an affidavit in opposition sworn to by Cecil Forde as an affiant and dated 17th March, 2019. Essentially, no issue of procedural irregularity was raised when both counsels came to argue the application on the 14th day of May, 2019. And my reading of

the papers, confirmed the extent to which they both strove to comply with the appropriate provisions of the High Court Rules, 2007.

Meanwhile, what is absolutely certain is that the conflicting affidavits contain a plethora of controversial issues that are crucial to the determination of whether the application should or should not be granted. By way of a synopsis, the argumentations which Counsel for the Applicant canvassed in justification of why he thinks this Honourable Court is obliged to grant the orders prayed for are presented herein with the appropriate lucidity:

1. That the plaintiff is the fee simple owner of all that piece and parcel of land situate and lying and being at Peninsular Road, Sussex Village, in the Western Area of the Republic of Sierra Leone and delineated by a statutory declaration dated the 8th May, 2007 and registered as N0.44/2007 at page 145 in volume 50 of the Record Books of Conveyances kept in the Office of the Administrator and Registrar General in Freetown.
2. That the Applicant is in compliance with the provisions of Sub rules (1) and (2) of Rule 9 of Order 35, which makes it mandatory for an Applicant to make an undertaking for damages in circumstances wherein a court of competent jurisdiction is inclined to make an injunctive order.

3. That the Respondent is laying claim to the very realty, which the Applicant believes is his.
4. That this Honourable Court should discountenance the submission that the Respondents are currently erecting a perimeter fence on the realty which is in dispute. This Honourable Court is yet to determine who the fee simple owner of the property is. Counsel also noted that exhibit CF5 does not factually or really established that a perimeter fence is being constructed on the land. And should therefore be relegated to the doldrums and backwaters.
5. Exhibit CF1, contains an attachment which is the survey plan, depicting the acreage of the property to which the Respondents are laying claims. However, the acreage of the property to which the Applicant is laying claim is in actuality lesser than that which the Respondents are claiming.
6. The Respondents are on the verge of selling the property, when this Honourable Court has not yet determined who the owner of the fee simple absolute in possession is.

Nevertheless, Counsel for the Respondents, in contravention of the foregoing argumentations, raised the following protestations with a degree of seriousness, though he appeared uncharacteristically acerbic in doing so:

1. The Respondents are the fee simple owner of the property in dispute; and that they have been in possession of the property since 1979. Counsel also noted that in the circumstance the Respondents cannot be dubbed trespassers; as they are legally entitled to both possessory and proprietary right to occupy and remain on the said land.
2. The Respondents are not hell bent on selling the property. Counsel contended that contrary to what is deposed to in paragraph eight (8) of the affidavit in support of the application, there is no evidence before this Honourable Court to justify that convoluted assertion that the Respondents are in the process of selling the property, when the process of litigation is far from being complete. That can best be described as a figment of the Applicant's imagination.
3. The allusion to Exhibits C4 and 5 that they do not substantiate the submission that a perimeter fence is being constructed is a misnomer that should be relegated to the backwaters by this Honourable; as both Exhibits clearly depict the status quo of the property.
4. The Applicant has not complied with the specificities of Sub rules (1) and (2) of Rule 9 of Order 35, by making an undertaking for damages.

Nevertheless, in this legal analysis, I will first adopt an elliptical approach by juxtaposing the argumentations of both counsels to address their individual legal concerns; regarding the reasons why the injunctive order, which is the principal thrust of this application, should or should not be granted. Secondly, I shall review the existing legal literature, alongside the requisite statutory provisions, as a guide, to assess how the Superior Court of Judicature has been exercising its discretionary and temporary jurisdiction in making what is judicially and judiciously dubbed interlocutory injunctive relieves. Thirdly, I will eventually determine whether in the context of this application, it is legally and rationally expedient to grant or not to grant the injunctive relief as it is prayed for on the face of the motion.

Essentially, it should be noted that the award of an interlocutory relief by the Superior Court of Judicature is both discretionary and temporary. Thus, it is discretionary because it can only be granted subject to the unfettered statutory discretion of the Courts in the interests of reasonableness, fairness and justice. And it is temporary, because in every circumstance in which it is awarded, it cannot continue to subsist beyond the period for which the trial must subsist.

Meanwhile, I am compelled to clarify the uncertainty and dispel the misconception about the determination of the actual owner of the fee simple absolute in possession at this stage. Counsel for the Applicant in his submissions to this Honourable Court, alluded to paragraph 4 of the affidavit in support of the application, in which he claimed that the interlocutory injunctive order should be granted because the Applicant is the holder of the fee simple absolute in possession. This submission is at this stage a misnomer and does not have anything to do with whether the interlocutory injunctive order should or should not be granted.

Moreover, it should be reiterated that at this stage, I am only faced with the determination of a pre-trial motion that does not have anything to do with the declaration of who the actual fee simple owner is, in respect of the realty, for which this matter is in Court. However, an in depth analysis of the notice of motion dated 15th January, 2019 and the requisite affidavit in support thereof, alongside the receipts that are attached to the Court's records, reveals that it is quite misleading for Counsel for the Respondents to represent to this Honourable Court that the Applicant's Counsel has not complied with the provisions of Sub rules (1) and (2) of Rule 9 of Order 35 of the High Court Rules, 2007, by making an undertaking for damages.

Alas! The undertaking for damages is clearly exhibited in compliance of the aforementioned provisions. Significantly and circumspectly, it should be noted that the essentiality of an undertaking for damages contemplated in the foregoing provisions is to guarantee the persons against whom interlocutory injunctive relieves are ordered that should it turn out that the orders ought not to have been granted, they can be accordingly compensated for the inconveniences which such orders might have caused them. However, even though the wordings of the aforesaid provisions appear to be quite mandatory (not directory), there are a plethora of decided cases in and out of our jurisdiction, pursuant to which interlocutory injunctive orders have been made in circumstances in which Applicants have not made undertakings for damages.

So, the Courts can, even in circumstances wherein such undertakings are not made, grant such interlocutory injunctive relieves, should the justice, fairness and reasonableness of the circumstances so dictate or warrant. But in such circumstances, the Courts are obliged, when making such orders to direct that such undertakings be accordingly made. Meanwhile, another contentious issue of note which I think I must examine in this analysis, leading to my ruling on the application, is the belief which is deposed to in paragraph eight (8) of the affidavit in support of the application, that the Respondents are in the process of disposing of the

realty in dispute when this Honourable Court is yet to determine who the actual fee simple owner is. This reasonable tribunal of facts will unequivocally state that the actual trial, leading to the determination of who the real fee simple owner is, has not even begun yet; directions for the trial are yet to be given; let alone to talk about the marking of the exhibits that are yet to be presented, or the setting down of this matter for trial. However, what is of essence, is whether it is legally right or justifiable for the Applicant to depose to a reasonable belief in an affidavit, when the essence of an affidavit is to present every fact in issue or every other fact that is relevant to the facts in issue that must guide and guard the Courts in making its judicious decisions in the interests of reasonableness, fairness and justice, when applications are made.

Every affidavit that supports or opposes any application that is to be determined by a court of competent jurisdiction is of evidential value or significance. The evidential values of affidavits are seemingly unambiguously cataloqued in Order 31 of the High Court Rules, 2007. Significantly, nothing precludes parties against whom facts are deposed to in an affidavit to cross examine their deponents (affiants) if they are disillusioned or disenchanted by and with such facts. The essence of this is to ascertain the veracity of such facts to place the reasonable tribunal of facts in a better position to make informed decisions that are influenced by the facts that are to be applied to the law, devoid of the

tribunal's prejudices, idiosyncrasies or any other extraneous considerations. Moreover, there is a peculiarity about affidavits that support applications for interlocutory injunctive relieves that must be singled out and brought to the fore in this analysis, leading to the decision of this Honourable Court on this application. This peculiarity about affidavits is rooted in Sub rule (2) of Rule 5 of Order 31 of the High Court Rules, 2007.

The provision in this Sub rule articulates the extent to which even a reasonable belief that is not factual, can be deposed to in an affidavit, as long as, the source of the information and the grounds of the belief is effectively communicated to the Courts. In the circumstance, the Applicant's reasonable belief that the realty in dispute is about to be sold, when this Honourable Court has not determined, who the fee simple owner is, is unsupported by neither the source of this information, nor does it appear convincing that the ground of that reasonable belief deposed to, should form a serious weight upon which this Honourable Court, should determine why the injunctive relief as prayed for should or should not be granted.

Further, the submission that Exhibits CF4 and 5, do not depict that a perimeter fence is being constructed cannot be of help to this Honourable Court in reaching a decision about whether the application

should or should not be granted. Contrariwise, a critical analysis of the pictorial contents of Exhibits C4 and 5, depict to a dispassionate- minded person, that some pieces of work are on-going on the realty in dispute; but this consideration is also unhelpful in the evaluation of whether the interlocutory injunctive relief should or should not be granted.

Meanwhile, having sequentially addressed the contentious individual legal issues, which underscored the argumentations of both counsels, in a bid to sway the Court's decision on this application, I will now proceed to synoptically or rather elliptically review the subsisting literature on the award of interlocutory injunctive relieves, to ascertain the shared-body of knowledge in this area of the law, rationalised in statutes and a plethora of decided cases in and out of the jurisdiction.

To accomplish this task, I shall restrict the review to the cases of American Cyanamid Co v Ethicon Ltd 1 All ER (1975), Watfa v Barrie Civ. App. 26/2005 (Unreported), Chambers v Kamara (CC 798/06) {2009} SLCH 7 (13 February, 2009) (Unreported) and Mrs. Margaret Cozier v Ibrahim Kamara and Others CC.165/18 2018 C. NO. 06 (22th January, 2020). The American Cyanamid case is a renowned British authority that is said to be the locus classicus on the area of the law in which the application that is to be ruled on is based. Essentially, in support of Lord Diplock, Lords Viscount Dilhorne, Cross of Chelsea, Salmon and Edmund

Davies, held (in the aforementioned case) that the fundamental criteria/conditions (catalogued below) that every reasonable tribunal of facts must allude to in evaluating the circumstances in which it should or should not grant an interlocutory injunction:

1. The Courts must establish whether there is a serious question of law to be tried; and it would not be necessary for the Applicant to establish a prima facie case at the stage when the application is made, but the claim (upon which the application is based) must neither be frivolous, nor vexatious.
2. The Courts must also establish the adequacy of damages as a remedy, should it turn out at the end of the trial that, the injunction (if granted) should not have been granted.
3. They Courts must finally determine whether the balance of convenience is located in maintaining the status quo or not.

The foregoing pontifications on this area of the law has undoubtedly influenced the evolution of the decisions of Judges of the Superior Courts of Judicature, across the commonwealth jurisdiction, in the determination of the award of interlocutory injunctive relieves. Purposefully, Desmond B. Edwards J. (as he then was), adopted the aforementioned criteria and accordingly applied them to the facts in Chambers v Kamara (referenced above), to incisively grant an

interlocutory injunctive order in favour of the Applicant, in the aforesaid case. Again, adoptively, the interlocutory injunctive relief was not granted in the case of Watfa v Barrie (referenced above) after the criteria in the American Cyanamid case, were accordingly applied to the specificities of the facts of that case.

However, Binneh-Kamara, J., circumspectly and adoptively, applied the aforementioned criteria of the said locus classicus to the facts in Mrs. Margaret Cozier v Ibrahim Kamara (referenced above), to grant the order in favour of the Applicant. The trend of thought that is clearly discernible in the analysis, leading to the decisions in the aforesaid cases, is that the High Court Rules, 2007, incisively confirm the quintessential fact that interlocutory injunctive orders are indeed discretionary and temporary. So, it is the circumstances of every case that would determine whether a reasonable tribunal of facts should or should not grant an injunctive relief as prayed for.

Nevertheless, my final task is to evaluate the peculiarity of the facts deposed to in both affidavits (in support and in opposition) to establish whether the order should or should not be granted. Essentially, my reading of the affidavits and the exhibits attached thereto, makes it compelling to me that there is indeed a serious question to be tried; and even the Respondents' Counsel has not denied that the ownership of the

realty for which they are in court is in dispute; it is the same property to which the Applicant is also laying claim. The question that is to be raised here is whether it is fear, reasonable and just, for a realty that is being claimed by two parties, to be reserved for the peaceful and quite enjoyment of one of the parties that is laying claims to it, even when the actual owner of the fee simple absolute in possession of that realty is yet to be determined? This question cannot be fairly answered in the affirmative; and it would not be necessary for the Applicant to establish a prima facie case at this very stage, but the Court is bound to determine that the claim is neither frivolous, nor vexatious. Circumspectly, my reading of the Applicant's affidavit, depicts that this action is neither frivolous, nor vexatious.

Meanwhile, in the circumstance, the question of whether the award of damages (the second criterion) can be considered an adequate remedy, should the injunctive relief, be granted to the Applicant at this stage, can be answered in the affirmative. And finally, consonant with the third criterion, I will say the balance of convenience (for purposes of the application) does not lie in the maintenance of the status quo, because the Respondents are currently constructing a structure on the same piece and parcel of land that is also being claimed by the Applicant. Alas! The balance of convenience is accordingly located in that sphere which

prevents either of the parties, from having unhindered access to the realty until this matter is determined.

Against this backdrop, I shall make the following orders:

1. An interlocutory injunction is hereby granted restraining the Defendants/Respondents herein whether by themselves, servants, workmen or employees or howsoever called from entering, remaining upon, selling, leasing, mortgaging or renting any portion or the value of all that piece and parcel of land and hereditaments situates, lying and being at Peninsular Road, Sussex Village, in the Western Area of the Republic of Sierra Leone.
2. That the cost of this application shall be cost in the cause.

Hon. Dr. Justice A. Binneh- Kamara, J.