

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

STANDARD CHARTERED BANK PLC (THE GROUP) - APPELLANT/APPLICANT
AND

IBRAHIM JUBAIRU BAH

-

RESPONDENT/RESPONDENT

CORAM:

HON. MRS. JUSTICE JAMESINA E L KING – JA (PRESIDNG)

HON. MR. JUSTICE SULAIMAN A. BAH – JA

HON. MR. JUSTICE MICHEAL P MAMI – JA

COUNSEL:

RANSFORD JOHNSON ESQ., FOR THE APPELLANT/APPLICANT.

OSMAN JALLOH ESQ., FOR THE RESPONDENT/RESPONDENT.

RULING DELIVERED ON THE 15TH DAY OF DECEMBER 2022.

The Application

- 1 It should be stated at the outset that, like it was before this Court sitting with a single Justice panel, ‘there are two separate files with similar applications before the court each involving the same’ Appellant/Applicant and a different Respondent/Respondent – a former employee (Ibrahim Jubairu Bah in this case, and Sulaiman Dauda Lumeh in the other). The same counsel is appearing for the Appellant/Applicant in both cases. Likewise, the same counsel is appearing for the former employees. And, both counsel have agreed that the ruling on this application will apply to the other.
- 2 By a Notice of Motion dated the 27th day of September 2022, the Appellant/Applicant is seeking for Three (3) Orders, stated thereon as follows:

“1. That *this Honourable Court varies Order numbered (iv) contained in the Ruling of the Court of Appeal dated the 16th September 2022 by either:*

- (a) removing the condition that the Appellant/Applicant pays the sum of US\$500,000/00 into an interest bearing account; or
(b) alternatively and without prejudice to the Appellant/Applicant's primary request in paragraph (a) above, reducing the sum of US\$500,000/00 being the amount ordered to be paid into the interest bearing account at either Ecobank (Sierra Leone) Limited or United Bank for Africa (SL) Limited on the grounds that same is excessive, disproportionate and unsupported by existing judicial precedents. (Emphasis added).

2. That this Honourable Court makes any further or other orders that it may deem fit in this application.

3. That the costs of this application be costs in the cause.”

2. The Motion is supported by the Affidavits of Ransford Johnson Esq. sworn to on the 30th day of September 2022 and the 12th day of October 2022, and together with the exhibits referred to in both Affidavits, filed herein; as well as the Affidavit in Reply.

Submissions of Counsel for the Appellants/ Applicants

3. Counsel for the Appellant/Applicant, Ransford Johnson Esq., commenced his submissions by stating that he relied on the entirety of the Affidavits filed. He then went on to submit that the application is made pursuant to section 130 of the Constitution of Sierra Leone 1991 (Act No 6 of 1991) (hereinafter referred to as ‘The Constitution’).
4. Further, Counsel submitted that:
- the Court has unfettered discretion to grant a stay of proceedings on terms; and, such terms may either be monetary or non-monetary or both;
 - the discretion of the Learned Judge (hereinafter referred to as ‘LJ’) should be based on law;
 - the preliminary relief being sought is for the condition to be removed or in the alternative that the sums to be paid, be reduced on the grounds that sums ordered are excessive, and there is no precedent for such an order;
 - the terms imposed by the court should not be onerous;
 - the figure imposed stems from the sum requested by Counsel for the Respondent to be paid as a term and referred to para 5 of his affidavit in support;
 - he disagrees with the Respondent’s claim for General Damages appearing in the Writ of Summons (Exhibit B-RJ7);
 - the claim relates to employment and damages for wrongful dismissal against both Defendants;
 - the Appellant/Applicant is not the Employer;

- in an employment action, the remedies for breach of contract are damages and such damages are either General or Special;
- damages are always a sum assessed by the Court and relied on SC CIV APP 7/79 JESSIE ROWLAND GITTEN-STRONGE V SIERRA LEONE BREWERY LIMITED (hereinafter referred to as “the GITTEN-STRONGE’S CASE”);
- the Respondent has not provided any legal basis for his claim and, in support of this submission, Counsel referred to para 4 of his affidavit in support and Clause 10 of the Letter of Appointment.

Finally, Counsel submitted that the court should, most respectfully, remove the term or reduce the amount to a sum of not more than seven (7) months salaries – a proportionate sum, that would allow the Applicant to prosecute the appeal.

Submissions of Counsel for the Respondent/Respondent

5. Counsel for the Respondent, O. Jalloh Esq., filed an Affidavit in Opposition deposed to by the Respondent on the 11th day of October 2022 and relied on the entirety of the affidavit but more particularly on paragraphs 17 – 36, 53, 55 and 62.
6. Counsel commenced by submitting that the thresholds for an application of this nature to vary, revise or alter the ruling of this court sitting with a single Justice panel, has not been met. He then went on to submit that:
 - this issue has severally been considered by the Supreme Court of Sierra Leone;
 - there is a long line of authorities setting the threshold that the Appellant/Applicant must show that the LJ erred in law and that there are good and substantial reasons for the variation; and,
 - the good and substantial reasons must be set out in the Affidavit; and,
 - both requirements have not been satisfied in this application and that the LJ did not err when he ordered the term now sought to be varied.

Counsel referred to paras. 21 and 22 of the case SC MISC. APP 1/2015–INTERNATIONAL CONSTRUCTION CO LTD AND ZAKHEM CONSTRUCTION COMPANY LIMITED (hereinafter the referred to as INTERNATIONAL CONSTRUCTION CO LTD CASE) in support of his submissions.

Counsel for the Respondent referred the court to para 53 of the Affidavit in Opposition and to para 5 - 7 of exhibit W thereof and then submitted that:

- he had requested for 50% of what was claimed for in the Writ as a term for staying the proceedings in the High Court; and
- the said Writ sets out the Respondent’s claim against the Appellant/Applicant for damages for breach of contract culminating in loss of employment, damages for

breach in duty and ill-treatment, and, damages for conspiracy to cause injury to the Respondent.

Counsel referred to page 16 of Exhibit W – paras 70 of the Writ – detailing the breakdown and the Leone equivalent of what was claimed amounting to Le59,828,518,816.93, an equivalent to USD5,842,297.88 in support of his submissions.

Furthermore, Counsel submitted that the GITTEN-STRONGE'S CASE relate to contract and not a tort action. In that vein, he submitted that:

- the ratio in the GITTEN-STRONGE'S CASE does not support the argument canvassed by counsel for the Appellant/Applicant;
- the fact pattern and the factual matrix in the GITTEN-STRONGE'S CASE are completely different from the instant case; and,
- whilst Gitten-Stronge, a brewer, could go to Liberia and get a job, a banker dismissed on a pretext of gross misconduct, and more particularly, when his entire career has been banking for close to two decades, is ruined, as he must clear 'the fit and proper person test' to gain employment in the banking sector.

Counsel referred to para.62 of the Affidavit in Opposition in support of his submissions.

Also, Counsel submitted that the LJ was right in granting the order now sought to be varied on the grounds that:

- the action is grounded on several limbs - contract and tort;
- the Appellant/Applicant before the Court is a company resident outside the jurisdiction;
- based on Exhibits R, S, T, U and V of the Affidavit in Opposition, the Appellant/Applicant is the principal and ultimate owner of Standard Chartered in Sierra Leone and is about to leave Sierra Leone forever;
- there exist no Reciprocal Enforcement of Judgment between Sierra Leone and the United Kingdom of Great Britain and Northern Ireland. He referred to Cap 21 of Laws of Sierra Leone 1960 in support of this submission, and thereafter asked a rhetorical: Is this not justification for the order of Justice Fynn? and,
- the LJ neither erred in law, nor was good and substantial reasons preferred to vary the order of the Judge.

In conclusion, Counsel submitted that the papers and arguments/submissions put forward before the LJ and those before this Court are the same and as such that is tantamount to forum shopping. He referred to the opinion of Justice Joko-Smart in the case SC MISC. APP. 1/2000 MOHAMED JUMAH JALLOH V T KRISHNAKUMAR (hereinafter the JALLOH v KRISHNAKUMAR CASE) in support of his submission.

The Law, Issues and Findings

7. The application is for the variation of the order dated the 30th day of September 2022 of the LJ sitting as a single Justice of the Court of Appeal, by either removing the condition of paying the sum of US\$500,000 into an interest bearing account, or, reducing the said sum ordered to be paid into an interest bearing account. Counsel for the Appellant/Applicant relied on section 130 of The Constitution in support of the Application. The said section states:

“A single Justice of the Court of Appeal may exercise any power vested in the Court of Appeal not involving the decision of any cause or matter before the Court of Appeal save that –

(a) ...

(b) In civil matters, any order, direction or decision made or given in pursuance of the power conferred by this section may be varied, discharged or reversed by the Court of Appeal as duly constituted.”

8. It is a must for an Appellant/Applicant invoking section 130 of the Constitution to show this Court, that the LJ was wrong or erred in law and that there are good and substantial reasons for granting the relief sought. Additionally, “[t]hese good and substantial reasons must be set forth in the Affidavit of the applicant.” This principle of law was unanimously affirmed by the Supreme Court of Sierra Leone in the INTERNATIONAL CONSTRUCTION COMPANY LTD CASE delivered on the 14th May 2015. At page 8 of the said judgement, Justice N C Browne-Marke JSC, quotes with approval that “... for an application against the order of [a single Judge] to succeed, the applicant must show that [the Judge] erred in law or otherwise ...” (per Justice H M Joko-Smart in the JALLOH v KRISHNAKUMAR CASE). Further, at pages 8-9 of the said judgement, Justice Browne-Marke went on to quote with approval that “[i]n order to apply ... [for a variation of the order of the LJ dated the 30th day of September 2022], the grounds for the relief sought must be good and substantial reasons. These good and substantial reasons must be set forth in the affidavit of the applicant.” (per Warne JSC in the case SC MISC APP 8/99 KORA SESAY & 2 OTHERS V ALLIE KAMARA & 2 OTHERS).
9. The cases referred to above are decisions of the Supreme Court of Sierra Leone, where section 126 of The Constitution was invoked and determined. That section, both in form and in substance, is akin to section 130 under review. Worthy of noting, is that, this Court and all others courts subordinate to it are bound to follow the decision of the Supreme Court on questions of law.
10. Additionally, in the case CIV/APP75/2018 DAVID CHAMBERS V YADA HASIM WILLIAMS Ruling delivered on the 11th day of February 2021, this Court, sitting as a full panel varied the order of a single Judge panel where the applicant established that the Judge erred in law and that there were good and substantial reasons deposed to in the affidavit.

11. Consequently, the Appellant/Applicant in this case is duty bound to establish or show this full panel, that the LJ's order of the 30th day of September 2022, whilst sitting as a single Judge panel of the Court of Appeal did not only err in law, but that there are good and substantial reasons deposed to in his Affidavit in Support, in order for this Court to vary the said order of the LJ as prayed for.
12. That said, the questions for determination now are: Has the Appellant/Applicant established or shown this Court that the LJ erred in law or otherwise, when he ordered that:

"iv. The group shall pay into an interest bearing account opened for this purpose at ECOBANK or UBA (option selected by the parties) the sum of \$500,000 (\$700,000 – Lumeh). ..." ? And,

has the Appellant/Applicant shown good and substantial reasons in his affidavits for the variation?

13. Considering the first prayer in the motion, paragraphs 3 – 5 of the Affidavit in Support and the submissions of Counsel for the Appellant/Applicant, it is appropriate to state that the pith and substance of the case before this Court is that, the sum ordered to be deposited into an interest bearing account *"... is excessive, unsupported by existing judicial precedents and disproportionate to any amount which the Plaintiff would ever be awarded if he is successful in his claims."* And it is on this basis that Counsel canvassed this Court for a variation. For ease of reference, paragraphs 3 – 5 of the said affidavit in support state:

"3. That I am shown a copy of the Notice of Appeal filed on behalf of the Appellant/Applicant in this application. The same is Exhibit "RJ 2".

That the Appellant/Applicant has instructed the Firm of Lambert & Partners to apply for a variation of order numbered (iv) contained in the Ruling of this Honourable Court dated 16th September 2022 by a removal of the order numbered (iv) on the basis that such an amount is excessive, unsupported by existing judicial precedents and disproportionate to any amount which the Plaintiff would ever be awarded if he is successful in his claims.

4. In relation to the application to reduce the amount to be paid, I am informed by Mariam Kamara the Head of Human Resources of the 1st Defendant and verily believe that at the date of termination of the Respondent by the 1st Defendant his monthly earnings were as follows:

(i)	salary	-	Le 24,659,826/09
(ii)	car allowances	-	Le
	4,275,428/57		
(iii)	security allowance	-	Le 5,347,500/00
(iv)	fuel allowance	-	Le 5,163,750/00
(v)	medical insurance	-	Le 1,666,666/67

(vi)	telephone post-paid limit	-	Le 1,200,000/00
(vii)	WIFI	-	Le 1,620,000/00
(viii)	DSTV	-	Le 1,064,250/00
Total		=	Le 44,997,421/33

5. *That in opposing the application for leave to appeal and a stay of proceedings In the High Court the Respondent deposed that if this Honourable Court is minded to grant leave to appeal and stay of proceedings the Applicant be ordered to pay into an interest bearing account the sum of US\$2,921,148/94 representing 50% of his claim. No legal basis was given by the Respondent for the payment of this magnitude into an interest bearing account as a term of stay of proceedings.*”

14. Counsel for the Appellant/Applicant relied on the above cited paragraphs and the GITTEN-STRONGE’S CASE, and forcefully argued that the sum ordered is excessive. He pointed to the Respondent’s monthly earnings, a total of Le44,997,421/33 and submitted that the damages claimed in the Writ of Summons is Le59,828,518,816.93, the equivalent of USD5,842,297.88 were figures plucked in the air and had no legal basis, as damages will have to be assessed based on the Respondent’s earnings.

15. It is but timely to state at this moment that this Court is in agreement with the LJ ‘s opinion at paragraph 33 of his Ruling where he stated that:

“... the precedent set in Gittens-Stronge ... should not go to work at this stage for if they do it would appear that I have assessed the plaintiffs claim. I am not equipped to do any such thing nor do I think it appropriate to be done at this stage, especially considering that the value (if at all) of the plaintiff’s claim being one of the key issues in dispute in the action. When or If the plaintiff successfully establishes he has been wronged then it would be time to assess his claim using Gittens-Stronge or any other appropriate tool. I will avoid Gittens-Stronge.”

This position is strengthened by the fact that the Respondent’s claims are not only limited to damages for breach of contract culminating in loss of employment, but includes claim for damages for breach in duty and ill-treatment as well as damages for conspiracy to cause injury to the Respondent.

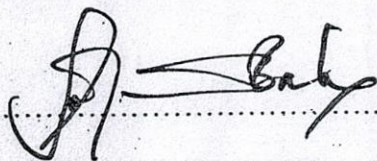
16. It could be recalled that Counsel for the Appellant/Applicant did submit that the Court has unfettered discretion to grant a stay of proceedings on terms; and, such terms may be either in monetary or non-monetary, or both. This submission is undoubtedly a correct principle of law. In fact, at paragraph 20 of his Ruling, the LJ re-stated the law by stating that: “[i]n circumstances like this one, where leave to appeal is given and a stay of proceedings below is granted it is usually done on terms.”

17. To that end, it is worth appreciating, that the imposition of a term or a condition where proceedings are stayed, would depend squarely on the circumstances of the case, and certainly, these circumstances vary from case to case. And, in the words of the LJ, *"... terms should not be onerous so as to make them impossible to attain. The term must nonetheless be meaningful and cater in part for the risks which would arise and which the respondent now has to endure because of the stay of proceedings which we will now order."*
18. In support of his opinion, the LJ cited the Ruling of Gelaga-King JA in MISC APP 16/93 *S M SACCOH v IBRAHIM A H DAKLALAH & SONS*, delivered on the 17th June 1993, where this Court of Appeal, stayed proceedings and ordered the sum of Le1,500,000/00 - the amount in dispute - be paid into the Judicial Sub-Treasury.
19. Furthermore, in the *INTERNATIONAL CONSTRUCTION COMPANY LTD* case, the full panel of the Supreme Court upheld the order of the 3 Justices' panel, where they had ordered sums – Le157,180,726/55 and US\$177,058/76, "be refunded forthwith by the Applicant and the said total sums paid into an interest bearing Leone account (for the Leone component of the funds) and into an interest US Dollar account (for the US Dollar component of the funds) ...", involving a claim "for the respective sums of US\$360,199/53 and US\$595,673/82, plus Damages for Detinue and/or conversion, and for breach of contract and the Costs of the action." The sums ordered to be paid into an interest bearing account represent about 20% of the sums claimed.
21. In the instant case, the sum of USD500,000/00 ordered to be paid into an interest bearing account, indeed, represent only a fraction of Le59,828,518,816.93, the equivalent of USD5,842,297.88 of what the Respondent is claiming.
22. Having considered all the Affidavits filed, the Exhibits attached thereto, the submissions of both Counsel on the Law and the Ruling of the LJ, this Court is of the view that the Appellant/Applicant fell short in establishing that the LJ erred in law or otherwise as well as in proffering good and substantial reason for the variation.
23. In the circumstances therefore, it is ordered that:
- (a) the application for variation - either by removing the condition of paying the sum of US\$500,000 into an interest bearing account or reducing the said sum ordered to be paid into an interest bearing account, is refused;
 - (b) the Appellant/Applicant shall pay into an interest bearing account opened for this purpose at ECOBANK or UBA (options selected by the parties) the sum of \$500,000 (**\$700,000 - Lumeh**), **not later than Friday, the 30th December 2022**. The Counsel for the Appellant/Applicant and counsel for Bah (Lumeh) shall be

joint signatories to the account(s) and they can only make court sanctioned withdrawals from same; and,

(c) Costs in the cause.

Signed:



HON. MR. JUSTICE SULAIMAN A. BAH, JA

I AGREE:

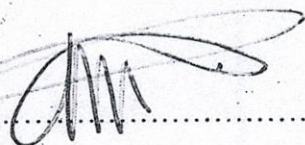
Signed:



HON. MRS. JUSTICE JAMESINA E.L. KING, JA (Presiding)

I AGREE:

Signed:



HON. MR. JUSTICE MICHAEL P MAMI, JA