



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

Case No: MISC APP 493/14

UNION TRUST BANK LIMITED

-PLAINTIFF

AND

MOHAMED BAH

-DEFENDANT

REPRESENTATION

YADA WILLIAMS & ASSOCIATES -COUNSEL FOR THE PLAINTIFF

G.K. THOLLEY -COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.A
RULING DELIVERED ON THE 17th MAY, 2017

1. The Applicant filed a Notice of Motion in this Court dated the 27th day of February, 2017 praying for several Orders. The most relevant ones for our present purpose were Orders 2 and 3 sought. The first of these orders was for a stay of execution of the Judgment of this Court dated 15th January, 2016. The second was for the Applicant to be added as a party. I shall say at this point that the Applicant/Intervener has not been added as a party to the action and thus cannot apply to this Court to grant him rights only available to parties. In that regard, I shall only deal with Order 3 prayed for to wit: "that this Honorable Court grants leave to the Applicant/Intervener herein to be made a party to this action".
2. On this issue, Counsel for the Applicant, Mr. G.K. Tholley relied on paragraphs 7 and 8 of the affidavit in support sworn to on the 27th day of February, 2017.

Paragraph 7 of the said affidavit stated as follows: "*that the subject matter of this action is family property which I have invested in heavily over the years.*"
3. Paragraph 8 stated as follows "*that apart from our household, there are other tenants occupying the said property.*" In support of this, the Deponent exhibited IB4^{A-D} which were tenancy agreements. In paragraph 9 of the said Affidavit in Support, the Deponent (who happens to be the proposed Intervener) deposed that she did not have knowledge of any transaction between the bank and the 1st Defendant.
4. Counsel for the Applicant finally submitted that this part of his application was consistent with Order 18 Rule 6(2) of the High Court Rules, 2007.
5. Mr. Augustine Marah, Counsel for the Plaintiff/Respondent submitted that the Applicant had not disclosed an interest sufficient enough to

have this Court entertain the application. To prove this, Mr. Marah referred this Court to Exhibits "B" and "C" attached to the Affidavit in Opposition sworn to by Millicent Macauley-James on the 6th day of March, 2017. Exhibit "B" and "C" were separate title deeds deposited by the Defendant herein thereby creating an equitable mortgage. These were in respect of property situate lying and being at Off Main Motor Road, Juba Hill, Freetown and the subject matter of this action. He submitted that the mortgage agreement was exclusively between the bank and the Defendant in respect of Exhibit "C" which was in the sole name of the Defendant. Exhibit "D" which was in the names of the Defendant and the Intervener was returned to the Defendant. The Equitable mortgage thereby created was subsequently registered which was exhibited herein as "B" attached to the affidavit of Millicent Macauley-James. Mr. Marah argued that on the face of Exhibit "B", the propose Intervener had no interest in the matter. In support of this proposition, he referred to the English Case of LLOYD'S BANK PLC -v- ROSSETT & OR (1990) 1 ALL ER Page 1111-1120. According to Mr. Marah, this case was on all fours as the instant.

6. In conclusion, Mr. Marah submitted that what the Applicant was seeking to establish was an equitable interest and what the Bank had was a legal one and Equity follows the law.

THE LAW

7. The Law relating to the Intervener actions is governed by Order 18 Rule 6 (2) and (3) of the High Court Rules, 2007.

Order 18 Rule 6 of the High Court Rules, 2007 provides as follows:-

"subject to this Rule, at any stage of the proceedings in any case or matter the Court may, on such terms as it thinks just and either on its own motion or on an application:

8. 6 (2) (b) Order any of the following persons to be added as a party:-

(i) *“Any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that the matter in dispute in the case or matter may be effectual and completely determined or adjudicated upon”, or*

(ii) *Any person between whom and any party to the cause or matter where there may exist a question or issue arising out of or relating to or connected with the relief or remedy claimed in the matter.”*

9. The provisions under Order 18 Rule 6 are Ipsissima Verba Order 15 Rule 6 of the English Supreme Court Practice, 1999.

10. As I stated in my Ruling in the case of Union Trust Bank and Goal Sierra Leone and Sierra Wi-Fi Limited FTCC 034/15 No. 41 delivered on the 29th May, 2015,

“To entitle a person not a party to an action to be joined as a party, the rule requires that would be Interveners should have some interest which is directly related or connected with the subject matter of the action. In other words, where the property or proprietary rights of the Intervener are directly affected by the proceedings as where the Intervener may be rendered liable to satisfy any judgment either directly or indirectly. The ambit of this class has been materially widened by the decision of the English Court of Appeal in Gurtner-v-Circuit (1968) 1 ALL ER 328, the effect of which is to include any case in which the Intervener is directly affected not only in his legal right, but in his pocket.” For this dictum, I refer you to the English Supreme Court Practice, 1999, page 227 paragraph 15/16/11.

11. On this board statement of principle, I agree with Counsel for the Respondent. I also note that Counsel for the Applicant did not challenge that statement of law but rather tried to establish the interest of the

Applicant in the mortgaged property. I thank both Counsel for this time saving approach.

- 12.** This takes me to the case of *Lloyd's Bank PLC v Rossett & or* (1990) 1 ALL ER P 1111-1120 cited by Mr. Marah in support of his submission that the Applicant must establish interest in the subject matter of the action which he claimed were on all fours as in the instant case.
- 13.** The brief facts of the case were that in 1982, the husband and wife decided to buy a semi-derelict farm house for £57,000/00 using money given to the husband by Trustees of a family trust, who insisted that they buy the house in the husband's name. It was the common intention of the parties that the renovation of the house was to be a joint venture, after which it was to be the family house. The husband and wife entered the property before completion with the consent of the vendors and the builders engaged by the husband and wife started work on extensive repairs that was necessary to make the house habitable. The wife co-ordinate work and assisted in renovation and decoration. The husband without the wife's knowledge obtained a bank overdraft for £15,000/00 towards the purchase price and the costs of repairs to the property. The husband defaulted on the loan and the question arose as to whether the wife had beneficial interest in the house prior to completion. It should be noted that this case cited by Mr. Marah was decided under the Land Registration Act 1925 which is not applicable in Sierra Leone. The decision was that on the facts, the monetary value of the wife's work expressed as a contribution was de minimis and although discussions had taken place between the husband and wife, no decision had been made prior to completion that she was to have an interest in the property. It followed that the wife was not entitled to a beneficial interest in the property. With respect to learned counsel for

the Respondent, this case was not on all fours with the instant case. No evidence has been adduced to state the chronology of events leading to the completion of the subject matter of this action. Exhibit "A" attached to the Affidavit in opposition dated 6th day of March, 2017 stated the purpose of the loan as "working capital enhancement". There was no reference to the completion of the premises. The Applicant is claiming that she has an interest in the property as deposed in paragraphs "7" and "8" of the Affidavit in support. If this decision were to be applied here, the Applicant could be held not to have sufficient interest in the subject matter of the action to enable her make this application.

14. However, there is an important aspect of the law which must always be taken into consideration in determining issues of this nature, that it, the interest of justice. In other words, applications of this nature should always be entertained by the Courts as long as they do not lead to injustice.

15. It would have been useful for counsel for the Respondent to cite the earlier case of *Williams & Glyn's Bank Ltd v Brown* (1981) AC 487 (Boland) in which Boland took a loan for the purpose of his business and it required him to mortgage his matrimonial home by way of security. The house was registered solely in his name so his wife did not have to sign anything. Mr. Boland defaulted and when the bank wanted to take possession and enforce the security, Mrs. Boland claimed that she had interest in the house. She claimed that she had assisted substantially in buying and improving it so although it was registered in her husband's name, he actually held it on trust for both of them. The House of Lords upheld Mrs. Boland and would not give the bank the possession order it wanted. Lord Denning was quite explicit in his view when he said that in his view the Court 'should not give money priority over social justice' and the bank was not 'entitled to throw these

families into the street simply to get the last penny of the husband's debt.' The facts of this case are more similar to those in the instant one than those of ROSSEH to it.

16. I am at this stage confronted with two House of Lords decisions (albeit persuasive in our jurisdiction.) what should be the correct course? The correct course is to adopt the authority mere germaine to the matter before the Court. It should be noted that in the latter case, the earlier one was not overruled or even distinguished. I shall accordingly adopt the reasoning in *Glyn Bank v Boland*. The Applicant has shown that she was in occupation of the premises, did not know of the loan and had tenants there on. The said Judgment will invariably affect her interest in the property.

In the circumstances, I Order as follows:-

1. That the Applicant herein be made an Intervener in this action.
2. That the Intervener should enter an appearance within three (3) days from the date of this Order and files a Defence within ten (10) days thereafter.
3. The Plaintiff should file a reply and close all pleadings within 10 days after the expiration of the period limited for filing the Defence.
4. Matter adjourned to 14th June, 2017 at 9:30 am.


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Hon. Mr. Justice Sengu Koroma JA.