

28

IN THE PRIVY COUNCIL

No. 14 of 1969

ON APPEAL FROM THE COURT OF APPEAL FOR SIERRA LEONE

B E T W E E N

NABIEU S. AMADU (Defendant) Appellant

- and -

AIAH SIDIKI (Plaintiff) Respondent

AND BETWEEN

AIAH SIDIKI (Plaintiff) Appellant

- and -

NABIEU S. AMADU (Defendant) Respondent

(Consolidated Appeals)

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
 INSTITUTE OF ADVANCED
 LEGAL STUDIES
 28 MAY 1974
 25 RUSSELL SQUARE
 LONDON W.C.1

~~T. I. WILSON & CO.~~, FREEMAN
 6, Westminster Palace Gardens,
 London,
 S.W.1

Solicitors for Nabieu S. Amadu

HOWLETT & CLARKE, CREE & CO.,
 13, Gray's Inn Square,
 London,
 W.C. 1R 5JU

Solicitors for Aiah Sidiki

ON APPEAL FROM THE COURT OF APPEAL FOR SIERRA LEONE

B E T W E E N

NABIEU S. AMADU (Defendant) Appellant

- and -

AIAH SIDIKI (Plaintiff) Respondent

AND BETWEEN

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- and -

NABIEU S. AMADU (Defendant) Respondent

(Consolidated Appeals)

R E C O R D O F P R O C E E D I N G S

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IN THE PRIVY COUNCIL

No. 14 of 1969

ON APPEAL FROM THE COURT OF APPEAL FOR SIERRA LEONE

B E T W E E N

NABIEU S. AMADU (Defendant) Appellant

- and -

AIAH SIDIKI (Plaintiff) Respondent

AND BETWEEN

AIAH SIDIKI (Plaintiff) Appellant

- and -

NABIEU S. AMADU (Defendant) Respondent

(Consolidated Appeals)

10

R E C O R D O F P R O C E E D I N G S

NO. 1

WRIT OF SUMMONS WITH STATEMENT OF CLAIM.

In the
Supreme Court

No.1

SIERRA LEONE CC.322 1966 S. No. 32.
(To Wit)

Writ of
Summons with
Statement of
Claim

12th October
1966

IN THE SUPREME COURT OF SIERRA LEONE

Between AIAH SIDIKI Plaintiff

AND

NAMIEU S. AMADU Defendant

ALIAS NABIEU MUSA

ALIAS AIAH NABIEU

20

Elizabeth the Sedond Queen of Sierra Leone
and of her other realms and territories,
Head of the Commonwealth.

To: Nabieu S. Amadu, Alias Nabieu Musa, alias Aiah
Nabieu of No. 5, Hill Station, Koidu Town, Kono
District.

In the
Supreme Court

No.1

Writ of
Summons with
Statement of
Claim

12th October
1966

(continued)

We command you that within Eight (8) days after the Service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court of Sierra Leone in an Action at the Suit of

Aiah Sidiki

and take notice that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

Witness the Honourable Christopher Okoro
Elnathan Cole, Esq., O.B.E. Acting Chief Justice of
Sierra Leone at Freetown, the 12th day of October in
the year of our Lord 1966.

10

(Sgd) A. Nithianandan.
Master & Registrar.

N.B. - This Writ is to be served within twelve calendar months from the date, thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

20

The Defendant, may appear hereto by entering an Appearance either personally or by Solicitor at the Master's Office Supreme Court of Sierra Leone.

11th October
1966

STATEMENT OF CLAIM

1. On or about the 11th February, 1966, the Plaintiff entrusted to the Defendant, in the presence of witnesses, a piece of gem stone, the property of the Plaintiff, for safe keeping.
2. On or about the 15th February, 1966, the Plaintiff verbally demanded the said gem stone of the Defendant, in the presence of witnesses, but the Defendant refused to deliver up to the Plaintiff and thereby converted the same to his own use, and wrongfully deprived the Plaintiff of the same.
3. By reason of the premises the Plaintiff has suffered damage.

30

And the Plaintiff Claims:-

In the
Supreme Court

No.2

Notice of
Motion for
Interim
Order of
Attachment

11th October
1966

(continued)

of all monies in the INTRA BANK, Koidu Branch, Kono District, and also in the BANK OF WEST AFRICA LIMITED, Koidu Branch, Kono District aforesaid, standing in the name of the above-named defendant, up to the value of the sum of Le.88,000, to be held by the said BANKS until further Order by this Court.

AND further Take Notice that Counsel will use the affidavit of Aiah Sidiki sworn the 12th Day of October, 1966 and filed herein.

Dated the 11th day of October, 1966.

10

E. J. McCormack.
PLAINTIFF'S SOLICITOR.

To The Master and Registrar,
Supreme Court,
Freetown.

This Notice is issued by Edward Jackson McCormack of No. 11, Regent Road, Freetown, Solicitor for the Plaintiff herein.

No.3

Affidavit of
Plaintiff

12th October
1966

No. 3

AFFIDAVIT OF PLAINTIFF

20

C.C.322/66

1966

S. No.32

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN

AIAH SIDIKI

PLAINTIFF

and

NABIEU S. AMADU

alias Nabieu Musa

DEFENDANT

alias AIAH NABIEU

I, Aiah Sidiki of No. 7, Guard Street, Freetown, in the Western Area of Sierra Leone, make oath and say as follows:-

30

1. I am the Plaintiff in the above action which is now pending before this Honourable Court.
2. That the subject of the said Action is for Conversion and the wrongful detention of chattels.

3. That the value of the said chattels is to the best of my knowledge information and belief, worth the sum of Le. 88,000 or £44,000.

In the
Supreme Court

4. That I am informed and I verily believe that the defendant has sold the said chattels, the subject of this action, and has deposited the proceeds thereof in his name, at the INTRA BANK, Koidu Branch, Kono District, and also at the BANK OF WEST AFRICA LTD, Koidu Branch, Kono District aforesaid, and that the said defendant is about to withdraw or remove the same from the said Banks with intent to obstruct or delay the execution of any Judgment that may be obtained against him herein.

No. 3
Affidavit of
Plaintiff
12th October
1966

10
20
5. I make this affidavit in support of an application for an Interim Order for attachment of all monies in the said Banks standing in the name of the defendant up to the value of the sum of Le.88,000 or £44,000, to be held by the said banks until further Order by this Court.

(continued)

Aiah Sidiki
(His Mark.)

30
SWORN at Freetown, at the Law Courts Building, Westmoreland Street, this 12th day of October, 1966 at 10.55. o'clock in the forenoon, foregoing having been first read over by me and explained to the deponent in creole, and he seemed perfectly to understand the same before making his mark hereto in my presence.

(Sgd) Ralph Woode
A Commissioner for Oaths.

This affidavit is filed on behalf of the Plaintiff herein.

In the
Supreme Court

No. 4
PROCEEDINGS.

No. 4
Proceedings
14th October
1966

Friday 14th
October, 1966. Before the Hon. Mr. Justice
N.E.B. Marke, P.J.

Mr. E.J. McCormack for Plaintiff/Applicant.

Ex parte application.

Adjourned to Monday 17th October, 1966

Adjourned to Thursday 20th October, 1966.

(Sgd) N.E. Browne-Marke.
14/10/66

20th October
1966

Thursday 20th
October, 1966. Before the Hon. Mr. Justice
N.E.B. Marke, P.J.

10

Mr. E.J. McCormack for Plaintiff/Applicant

Mr. Cyrus Rogers-Wright for Defendant.

Mr. ROGERS-WRIGHT takes preliminary objection.
Grounds. (1) Motion purports to be made under the
Debtors Act. Order sought affects property rights of
the defendant. He was therefore entitled to be
heard. Jurisdictional Section is Section 4. Submits
affidavit does not say that defendant has disposed of
property or removed the property from territory.
Order sought outside jurisdiction of section 4. It is
not the property in dispute and property has not been
identified. Sections 12 and 13 Mr. M'Cormack
states under section 11 Court has power to make
interim order for attachment for property. Section 4
is when it concerns a absconding debtor.

20

Adjourned to Monday 28th October, 1966 for ruling.

N.E. Browne-Marke
20/10/66.

24th October
1966

Monday 24th
October, 1966. Before the Hon. Mr. Justice
N.E.B. Marke, P.J.

30

Ruling adjourned to 28th October, 1966.

N.E. Browne Marke
24/10/66.

Tuesday 25th
October, 1966.

Before the Hon. Mr.
Justice N.E.B.Marke, P.J.

In the
Supreme Court

Mr. E.J. M'Cormack,
Mr. Cyrus Rogers-Wright.

No.4

Proceedings
25th October
1966

Ruling read.

Adjourned to Thursday 27th October, 1966, for
defendant to appear before Court to show cause why
security should not be given pending disposal of the
action. Notice to be served.

10

N. E. Browne-Marke
25th October, 1966.

Thursday 27th
October, 1966.

Before the Hon. Mr.
Justice N.E.B.Marke, P.J.

27th October
1966

Mr. E.J.M'Cormack for Plaintiff.

Mr. Cyrus Rogers-Wright for Defendant.

Mr. Rogers-Wright informs Court that he sent telegram
to defendant but the period was short.

Adjourned to Wednesday 2nd November, 1966. Mr.
Rogers-Wright states he would endeavour.

20

No. 5

RULING ON MOTION FOR INTERIM ORDER
FOR ATTACHMENT

No.5

Ruling on
Motion for
Interim Order
for attach-
ment

24th October
1966

30

This is an application by motion made by Mr.
E.J.M'Cormack, Solicitor for the Plaintiff for an
interim order for attachment of all monies in the
Intra Bank, Koidu Branch, Kono District and also in
the Bank of West Africa Ltd., Koidu Branch, Kono
District, standing in the name of the defendant in
the action up to the value of the sum of Le.88,000
or £44,000, to be held by the said Banks until
further order of the Court. The application was
made ex parte.

Mr. Cyrus Rogers-Wright who was in Court,
informed me that he was appearing on behalf of the
defendant. He took a preliminary objection to the

In the
Supreme Court

No. 5

Ruling on
Motion for
Interim Order
for attach-
ment

24th October
1966

(continued)

application that it affected the property rights of the individual and therefore the defendant was entitled to be heard. He referred to section 4 of the Debtors Act, Cap. 24 which, he said, conferred jurisdiction on the Court and submitted that the affidavit of the Plaintiff did not say that the defendant had disposed of or removed this property from the territory.

Mr. M'Cormack in reply, said that under section 11 of the Act, the Court had power to make the interim order sought. Section 4 he argued concerned an absconding debtor. 10

Section 11 of the Act provides as follows:-

If the defendant in any action or suit for an amount or value of ten pounds or upwards, with the intent to obstruct or delay the execution of any judgment or decree that may be passed against him, is about to dispose of his property of any part thereof, or to remove any such property from the Western Area or provinces, the Plaintiff may apply to the Court, either at the time of the institution of the action or suit, or at any time thereafter until final judgment to call upon the defendant to furnish sufficient a security to satisfy or fulfil any judgment or decree that may be made against him in the action or suit, and, on his failing to give such security, to direct that any property movable or immovable belonging to the defendant shall be attached until the further order of the Court. 20

The above section of the Act makes it abundantly clear that this Court cannot make the interim order sought prior to calling upon the defendant to provide security to satisfy or fulfil any judgment and prior to being satisfied after making such investigation as may be necessary that the defendant is about to dispose of or remove his property with intent to delay or obstruct the execution of any judgment. 30

On the preliminary objection, I rule that this is a matter in which the defendant should be called upon to appear before the Court to show cause why he should not furnish security, failing which, his property would be attached. 40

N.E. Browne-Marke
24/10/66

To get defendant to appear before Court.

N.E. Browne-Marke
27/10/66

No. 6.
PROCEEDINGS

In the
Supreme Court

Wednesday 2nd
November, 1966.

Before the Hon.Mr.Justice
N.E.B.Marke, P.J.

No.6

Proceedings
2nd November
1966

Mr. E.J.M'Cormack for plaintiff.
Mr.Cyrus Rogers-Wright for defendant.

10 Mr. Rogers-Wright informs Court that he had reliable information that Defendant would be travelling to Freetown today 2nd November. Mr.M'Cormack had no objection to adjournment tomorrow 3rd November.

Adjourned to Thursday, 3rd November, 1966.

N.E.Browne-Marke.
2/11/66.

Thursday 3rd November, 1966 Before the Hon.Mr.Justice
N.E.Browne-Marke, P.J.

Mr. E.J.M'Cormack for plaintiff.
Mr.Cyrus Rogers-Wright for defendant.

20 Mr.M'Cormack states that case was adjourned for defendant to be present. That Mr.Rogers-Wright informed Court that notice on adjourned date was short and that he could not get at his client. The matter was therefore adjourned further. Motion read, and affidavit in support. Mr. Rogers-Wright in order that the matter may not be delayed any further I think and I so submit that the physical presence of the defendant can be dispensed with because it is unnecessary. Applicant asks for order which is default order. He said further that he had a preliminary objection. He quoted Sections 11 to 13. After I have made investigations. Mr.M'Cormack Application is ex parte under Section 11 of Debtors Act. Court made order that defendant should appear in Court for investigation. There has been three successive adjournments for defendant to be present. He has failed to be present. Mr.Rogers-Wright had said that he is entitled to represent defendant in Court as a legal practitioner. Motion dated 11th October and made returnable on 14th October on which latter date Mr. Rogers-Wright said he was representing defendant and took preliminary objection. Matter adjourned for ruling. Matter is now in Courts hands.

30

40

In the
Supreme Court

No. 7
RULING.

No. 7
Ruling
3rd November
1966

BY COURT: In view of the Courts ruling made on 24th October, 1966, and the fact that Mr. Cyrus Rogers-Wright who informed the Court that he would endeavour to contact the defendant to appear before the Court and the fact that such endeavour had not materialised on the adjourned date. I now order that the defendant be called upon to appear personally before this Court on Tuesday next the 15th November, 1966, in order to show cause why he should not furnish security in this action in compliance with the Debtors Act, Cap.27. 10

Mr. Rogers-Wright made an application for service on him by plaintiff's solicitor if motion and affidavit in support in view of Court Order.

BY COURT: In my view, Mr. Rogers-Wright is entitled to copies of the documents. In any case service of such documents would be in plaintiff's interest and will assist the Court on its investigations. 20

N.E.Browne-Marke
3/11/66

No. 8
Proceedings
15th November
1966

No. 8
PROCEEDINGS.

Tuesday 15th
November, 1966.

Before the Hon.Mr.Justice
N.E.B.Marke, P.J.

Mr. J.M'Cormack for Plaintiff
Mr.Cyrus Rogers-Wright for defendant

Adjourned to 29th November, 1966 for affidavit of service on defendant. 30

N. E. Browne-Marke
15/11/66.

No. 9

SUMMONS FOR FURTHER AND BETTER PARTICULARS

In the
Supreme Court

No.9

C.C. 322/66

1966

S. No. 32

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

ALAH SIDIKI

Plaintiff

and

NABIEU S. AMADU

Defendant

Summons for
Further and
Better
Particulars

21st November
1966

10 LET THE PLAINTIFF or his Solicitor attend a Judge in his Chambers at the Law Court Buildings, Westmoreland Street, Freetown on Tuesday the 29th day of November, 1966 at 8.45 o'clock in the forenoon to show cause why the Plaintiff should not within 10 days from the service of the Order to be made herein deliver further and better particulars of Paragraph 1 of the Statement of Claim and the Claim as follows:-

Under paragraph 1

(a) Describe the "piece of gem Stone" referred to in the Paragraph.

With regard to the Claim:-

20 (a) How and by what means did the Plaintiff ascertain that the value of the "piece of gem stone" is Le.88,000.

and why the Defendant should not have 10 days further time after the given and delivery of such particulars to file his defence herein.

AND TAKE NOTICE that the Defendant will use the affidavit of Cyrus Rogers-Wright, Sworn the 21st day of November, 1966.

Dated the 21st day of November, 1966.

To: The above-named Plaintiff or his Solicitor:-

30 E.J.McCormack, Esq.,
11, Regent Road,
Freetown.

This Summons is taken out by Cyrus Rogers-Wright of 18 Bathurst Street Freetown, Solicitor for the Defendant herein.

In the
Supreme Court

No. 10

AFFIDAVIT IN SUPPORT OF NO. 9 WITH EXHIBIT

No. 10

Affidavit in
support of
No. 9 with
Exhibit
22nd November
1966

C.C. 322/66

1966

S. No. 32

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:-

AIAH SIDIKI

Plaintiff

and

NABIEU S. AMADU

Defendant

I CYRUS ROGERS-WRIGHT, Barrister-at-Law of 18
Bathurst Street, Freetown make oath and say as
follows:-

10

1. I am the Solicitor for the Defendant herein.

2. The Writ of Summons herein was issued on the
12th of October, 1966. On the 4th of November, 1966,
I addressed a letter to the Plaintiff's Solicitor
asking for further and better particulars of his
claim and to date I have received no reply. Copy of
the letter is hereunto annexed and marked "A".

3. I make this affidavit in support of my applica-
tion for further and better particulars.

(Sgd) C. Rogers-Wright.

20

SWORN at Freetown the 22nd day
of November, 1966 at 9.30 o'clock
in the forenoon

BEFORE ME
A. Nithianandan
COMMISSIONER FOR OATHS.

THIS Affidavit is filed on behalf of the Defendant
herein.

13.

"A"

18 Bathurst Street,
4th November, 1966.

In the
Supreme Court

No. 10

Affidavit in
support of
No. 9 with
Exhibit

22nd November
1966

(continued)

Dear Sir,

Aiah Sidiki vs. Nabieu S. Amadu
CC.322/66

Reference your statement of Claim in the matter
I shall be obliged if you will let me have the
following further particulars of your claim:-

- 10 1. With regard to Paragraph 1.
- (a) Describe the "piece of gem stone" referred
to in the paragraph.
2. With regard to the Claim:-
- (a) How and by what means did the Plaintiff
ascertain that the value of the "piece of gem stone"
is Le. 88,000.

I shall be obliged if you will let me have your
reply at your earliest convenience and in any event
not later than Monday the 7th inst.

20 Yours faithfully,
(SGD) Cyrus Rogers-Wright

E.J.E.McCormack, Esq.,
11 Regent Road,
Freetown.

This is the paper-writing hereunto annexed and marked
"A" referred to in the affidavit of Cyrus Rogers-
Wright, Sworn the 22nd day of November, 1966.

A. Nithianandan.

Commissioner for Oaths.

In the
Supreme Court

No. 11
PROCEEDINGS.

No. 11
Proceedings
29th November
1966

Tuesday 29th
November, 1966

Before the Hon. Mr. Justice
R. W. Beoku-Betts, P.J.

Neither applicant nor respondent present at
8.52 a.m.

Therefore struck out.

R. W. Beoku-Betts.

30th November
1966

Wednesday, 30th
November, 1966.

Before the Hon. Mr. Justice
N.E. Browne-Marke, P.J.

10

Mr. E. J. M' Cormack for plaintiff/Applicant.
Mr. Cyrus Rogers-Wright for defendant respondent
(absent).

Mr. M' Cormack said defendant was to appear before this
Court to show cause why he should not give security
to abide decision of Court.

Affidavit of service to the effect that defendant was
served on 23rd November, 1966. No appearance of
defendants.

BY COURT: Bench warrant to issue against defendant
returnable 5th December, 1966.

20

N. E. Browne-Marke
30/11/66

5th December
1966

5.12.66

Defendant present in Court.

Bench warrant rescinded.

N. Massally, J.

1st December
1966

Thursday 1st
December, 1966

Before the Hon. Mr. Justice
N.E. Browne-Marke, P.J.

5th December
1966

Monday 5th
December, 1966.

Before the Hon. Mr. Justice
A.J. Massally, P.J.

30

Mr. M' Cormack for Plaintiff
Mr. Cyrus Rogers-Wright for defendant.

Mr. Cyrus Rogers-Wright, asks Court to cross examine
the Plaintiff on his affidavit. Order 27, Rule 29 -
Notice to be served. I ask for adjournment.

No. 12
ORDER

In the
Supreme Court

C.C. 322/66

1966

S. No. 32

No. 12

Order

5th December
1966

IN THE SUPREME COURT OF SIERRA LEONE

(Civil Jurisdiction)

BETWEEN

AIAH SIDIKI

Plaintiff

Vs.

NABIEU S. AMADU

alias NABIEU MUSA

Defendant

alias AIAH NABIEU

10

IN COURT

BEFORE MR. JUSTICE A.J. MASSALLY.

MONDAY, THE 5th DAY OF DECEMBER, 1966

UPON application made to the Court by or on behalf of the Plaintiff herein dated the 11th day of October, 1966 AND UPON READING the affidavit of Aiah Sidiki in support thereof, sworn the 12th day of October, 1966 and filed herein AND UPON HEARING what was said by Counsel on both sides IT IS ORDERED that the Defendant herein DO NOT REMOVE his money deposited with THE INTRA BANK (S/L.) LTD., Koidu Branch, Kono District, or THE BANK OF WEST AFRICA LIMITED, (NOW the Standard Bank of West Africa Ltd.), Koidu Branch, Kono District, UNTIL this case is heard and determined by the Court.

20

(SGD) A. Nithianandan.

Master and Registrar.



In the
Supreme Court

No. 13
PROCEEDINGS.

No. 13
Proceedings
30th November
1966

CC.322/66

IN THE SUPREME COURT OF SIERRA LEONE

Aiah Sidiki Plaintiff

Nabieu S. Amadu Defendant,

Mr. E.J.McCormack for Plaintiff

Mr. Cyrus Rogers-Wright for Defendant.

Wednesday, 30th November, 1966 Before the Hon. Mr. Justice N.E. Browne-Marke, P.J.

10

Mr.E.J.McCormack for Plaintiff/Applicant.

Mr.Cyrus Rogers-Wright for Defendant/Respondent

(absent).

Mr. McCormack said Defendant was to appear before this Court to show cause why he should not give security to abide decision of Court, affidavit of service to the effect that defendant was served on 23rd November, 1966.

No appearance of Defendant. By Court Bench Warrant to issue against Defendant returnable 5th December, 1966. 20

(Sgd.) Justice N.E.Browne-
Marke.
30/11/66

5th December
1966

5th December, 1966,

Defendant present in Court

Bench Warrant rescinded.

(Sgd) A.J.Massally, J.

Original Received

(Sgd) ?

No. 14
DEFENCE

In the
Supreme Court

C.C.322/66

1966

S. No. 32

No. 14

Defence

6th December
1966

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:-

AIAH SIDIKI

PLAINTIFF

AND

NABIEU S. AMADU

DEFENDANT

DEFENCE

10 The Defendant in answer to the Statement of Claim
herein say:-

1. That he did not receive from the Plaintiff nor did the Plaintiff entrust to him "piece of gem stone" or any other article, stone or thing on or about the 11th February, 1966 or any other date.

20 2. The Defendant denies following the denial in paragraph 1 above, that the Plaintiff demanded the said "piece of gem stone" or any other article or thing from him and denied further that he at any time refused to deliver up any gem stone or any other article to the Plaintiff.

3. The Defendant says further that the Plaintiff was his ward living with him and that sometime in later February, 1966 he suddenly left the Defendant's house and thereafter has not ceased to molest the Defendant with considerable Court actions.

4. Save as specifically admitted the Defendant denies each and every allegation of fact contained in the Statement of Claim herein.

(SGD) C. Rogers-Wright.
Counsel.

30 DELIVERED and FILED this 6th day of December, 1966 by
Cyrus Rogers-Wright of 18 Bathurst Street, Freetown,
Solicitor for Defendant, Pursuant to the Rules of
the Supreme Court.

In the
Supreme Court

No. 15

REPLY

No. 15

C.C. 322/66

1966

S. No. 32

Reply

12th December
1966

IN THE SUPREME COURT OF SIERRA LEONE.

(Civil Jurisdiction)

Between: ALIAH SIDIKI Plaintiff

Vs

 NABIEU S. AMADU
 alias NABIEU MUSA Defendant
 alias ALIAH NABIEU

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REPLY

The Plaintiff joins issue with the Defendant on his DEFENCE herein.

(SGD) E. J. McCormack
Plaintiff's Solicitor.

Delivered and Filed the 12th day of December, 1966 by Edward Jackson McCormack of No. 11, Regent Road, Freetown Solicitor for the Plaintiff.

No. 16
Proceedings
18th January
1967

No. 16
PROCEEDINGS.

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Mr. M'Cormack. The application is a motion for an interim Injunction or Security. Affidavit filed. No affidavit in opposition filed (my aff. 12th October, 1966). Served on 24/10/66). Rule in Smith Sewelym. You can raise at the trial. Interlocutory Order is an urgent matter. In order to satisfy you that there is a need for such an order.

Mr. Wright replies.

Motion is bad. Order sought does not comply with Act (Motion Read) no amendment read. Court should not grant relief not asked for. Secondly, no

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Court to allow order made useless. Banks not made parties therefore cannot be bound by Court Order. (Point 1).

No evidence that defendant is about to dispose or remove out of jurisdiction. I ref. to para. 4 of affidavit of plaintiff sworn on 12th October, 1966 reads. Does not fulfil requirements of an affidavit of the Act. Para. 5 is in terms affidavit.

Mr. M'Cormack.

10 Person holding the property should not be made a party. We have passed the stage of asking interim Injunction on the Bank.

Court rules to put Plaintiff in the box and ask him about the order about to be made against him Plaintiff in the witness box. Plaintiff will be asked by Court. Mr. Wright states he had to present evidence to show. Court or judge not against. Court to hear only evidence presented by the parties.

Nabieu S. Amadu

20 I am a defendant in case in Court. I have money in Intra Bank. Order Court.

I order Plaintiff not to remove his money deposited with the Intra Bank (S.L. Ltd.) or Bank of West Africa until this case is heard and determined.

N. Massally
J.

Wednesday, 18th
January, 1967.

Before the Hon. Mr. Justice
Percy R. Davies, Ag. P.J.

In the
Supreme Court

No. 16
Proceedings
18th January
1967

(continued)

In the
Supreme Court

M'Cormack opens case: Detention - Wrongful
conversion: - Damages;

Plaintiff's
Evidence

No. 17

ALAH SIDIKI

No. 17

Aiah Sidiki
Examination

18th January
1967

P.W.1: ALAH SIDIKI: S.S. Koran: Krio: Live at Sinnah Town Road: know defendant: I had a transaction with defendant. I gave defendant a Gem stone. It was after Idul Fitri (i.e. about February). I am related to the defendant. That was the reason I gave defendant the gem stone. I was staying with defendant as a ward. I gave the defendant the Gem Stone for safe-keeping. I found the Gem Stone on the road. I asked him to return the gem stone and he told me to wait a while. I waited. Defendant, one day, told me he had sold the gem stone of £44,000 (Le 88,000). Defendant showed me the money (Le 88,000). I have shown you this money said the Defendant, because you brought the stone to me. He further said, "I shall wait for your brother who brought you to me". My brother came but the defendant asked me to wait until the end of the month. I reported the matter to Chief Kamakende of Kono. Alhaji Borbor Sheriff took me to the Chief (Identified). Before Alhaji Borbor Sheriff took me to the Chief I told him that the defendant had detained my money. Alhaji Borbor and I went to the P.C. Kamakendo and I explained to the Chief what had happened. The Chief investigated the matter. The money or the Gem Stone has not been returned to me. I know P.C. Musa of Kamagondor Chiefdom. I reported the matter to him. He sent for the defendant. The Chief investigated the matter. The defendant has not returned the Gem Stone or the money to me. I have come to seek the aid of the Court so that the Defendant can return the gem stone or the money to me:

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Cross-
examination

Cross-examination

I gave you the Gem Stone at Idul Fitri last year. I gave you after 7 p.m. I am speaking the truth. I gave you a gem stone.

No re-examination

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No. 18
ALHJI BORBOR SHERIFF

In the
Supreme Court

Plaintiff's
Evidence

No. 18

Alhji Borbor
Sheriff

Examination
18th January
1967

10 P.W.2, ALHJI BORBOR SHERIFF S.S.Koran. English. Live
in Koidu Town. Chiefdom Councillor and Trader -
Gbense Chiefdom. Know Plaintiff. Plaintiff
reported a certain matter to me. Last year,
Plaintiff came to me one day at 2 p.m. He asked to
see the Paramount Chief. I asked him what he wanted
to see the Paramount Chief for and he said the matter
was about £44,000. I immediately took him to the
P.C. In my presence the P.C. asked him what was the
matter. He told P.C. I had a lump of diamond and
gave it to defendant, my relation. He said defendant
took the diamond and sold it at Kenema for £44,500.
He further said defendant took the money to Segbwoma
and deposited a portion in a Bank there and the
balance he brought to Koidu and deposited in one of the
Banks. Somebody escorted me to defendant's house and
I told defendant that the Paramount Chief wanted him.
20 We both returned to the P.C. Paramount Chief asked
defendant if he know Plaintiff and he said Yes.
Defendant said there was a transaction between himself
and the Plaintiff. He said "I have sold Plaintiff's
diamond and I have given him his own portion." I
did not see the diamond.

Cross-examination

Cross-
examination

The Plaintiff told me you deposited amounts in
Segbewema and Koidu respectively. I am speaking the
truth.

30 No re-examination

No. 19
KAIMAKIADE

No. 19
Kaimakiade
Examination

40 P.W.3 KAIMAKIADE: Paramount Chief, Gbense Chief,
Kono District, Sierra Leone. S.S. Koran: Kono. Know
Plaintiff. Know defendant. Plaintiff reported a
matter to me in February last year. One afternoon the
Plaintiff and P.W.2 came to me. Plaintiff reported to
me that he found a stone on the road and he gave it to
the defendant. The defendant kept the stone for 3
days and on the 4th day the defendant accompanied by

In the
Supreme Court

Plaintiff's
Evidence

No. 19

Kaimakiade
Examination

(continued)

the Plaintiff took the stone to Kenoma. Plaintiff said Defendant sold the stone £44,500. The Plaintiff said he was present when Defendant sold the stone for £44,500. Before they left Kenoma, Defendant gave Plaintiff £500. They passed Segbwema and deposited some money in the Bank there. When they arrived at Koidu Town, Defendant deposited some money in the Bank. The Defendant bought a vehicle for the Plaintiff. Plaintiff said Defendant bought a house for him at £600. Plaintiff said Defendant bought for himself a house at Tankoro for £3,900. Although the Defendant said he bought the vehicle for the Plaintiff yet the Defendant received all the "taking" of the vehicle. The Plaintiff said he told the Defendant that even though he said the vehicle was mine yet he Defendant was receiving the "takings". Defendant then told Plaintiff that the vehicle was not registered in the Plaintiff's name but in Defendant's younger brother's name. In the presence of the Defendant, the Plaintiff narrated his story. The Defendant said the Plaintiff's story was true. Defendant said, "I bought a house for Plaintiff at Sinnah Road for £600". Defendant admitted depositing a certain amount at Segbwema and Koidu Town respectively. Defendant admitted getting the Gem Stone from the Plaintiff. Defendant refused to tell me how much he deposited at Segbwema and at Koidu Town. Defendant said he was working at S.L.S.T. and he had been there for 20 years. I advised Defendant to pay the money to the Plaintiff but the Defendant said he would go and consult. The Plaintiff again reported the matter to me that Defendant had done nothing and so he, Plaintiff was going to refer the matter to P.C. at Kamiondoh.

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Cross-
examination

Cross-examination: You admitted to me that Plaintiff gave you a gem stone. It was a gem stone and you sold it. It is not for me to say whether you had a licence. When I investigated the matter you never said you knew nothing about it. I never suggested you should bring the money so that we can share it.

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No re-examination

No. 20
KEKURA LOYD

In the
Supreme Court

Plaintiff's
Evidence

No. 20

Kekura Loyd
Examination

10 P.W.4. KEKURA LOYD MUSA.S.S. Bible. English. Paramount Chief. KAMIENDO, MAFINDO Chiefdom. I know Plaintiff. I know Defendant. I decided a dispute between Plaintiff and Defendant. Dispute was about a heavy sum £44,000. In June, 1966, I received a letter from the Plaintiff asking me to come down urgently. Plaintiff is my nephew. The letter said, "Defendant had deprived him of £44,000." I came to Koidu on the 7th June, 1966. On the 8th June, I went to Chief Kamakiade to pay courtesy visit. I put the complaint of the Plaintiff to Chief Kaimakiade. The Chief sent for P.W.2. In the presence of P.W.2 Chief Kaimakiade said the complaint had reached him. Chief Kaimakiade told me the Defendant had admitted. Chief Kaimakade said as both Plaintiff and Defendant were my subjects, I should intervene. I went to Defendant's house with Plaintiff and Defendant

20 admitted there was a dispute between Plaintiff and Defendant involving the sum of £44,000. There were lots of people present including Sorie Musa, S.K. Foday. We did not arrive at anything because Defendant said he was not prepared to give anything to Plaintiff because of his (Plaintiff's) conduct in referring the matter to big men like me and P.C. Kaimakiade.

30 Cross-examination: The dispute I attempted to settle between Plaintiff and Defendant involved a gem stone. You told me that because the Plaintiff had reported the matter to big men you were not going to pay anything to him.

Cross-
examination

No re-examination.

CLOSE OF PLAINTIFF'S CASE

In the
Supreme Court

No. 21
NABIEU SAHR AMADU

Defendant's
Evidence

No. 21

Nabieu Sahr
Amadu

Examination

D.W.1. NABIEU SAHR AMADU alias Nabieu Musa alias Aiah Nabieu S.S. Koran. Kono. Live at Hill Station, Koidu Town, Kono District. Drag Line Driver, S.L.S.T. The Plaintiff has made false allegation against me. I had a vehicle which the Plaintiff claimed. Chief Musa, Plaintiff, and Salu Musa conspired to claim my vehicle. One day my driver told me Plaintiff had arrested my vehicle. My driver was Siaka. I went to the Police and told them I owned the vehicle. The Police asked me whether it was my name written on the vehicle and I told them it was the name of my son. I told the Police my son's name was SIDIKI. The Officer-in-Charge looked out and saw the Plaintiff at the side of the vehicle. I told him the Plaintiff was not my son. I told the O.C. that I did not inscribe my name on the vehicle because I was working for S.L.S.T. This was the reason I put my son's name. I further told the O.C. that if S.L.S.T. saw my name on the vehicle they would sack me. The Plaintiff has claimed the vehicle. The Plaintiff never gave a gem stone. When Chief Kaimakiade said I admitted receiving a gem stone from the Plaintiff he was not speaking the truth. When Chief Musa said I admitted receiving the gem stone from the Plaintiff but because of Plaintiff's conduct in reporting the matter to big men, I was not going to pay Plaintiff anything, he was not speaking the truth. Chief Musa lied because he wanted to assist the Plaintiff, his nephew. I told Chief Kaimakiade I had no business transaction with Plaintiff. Chief Kaimakiade said it is true I had such large amount I should share it with him. I told Chief Kaimakiade it was not true I had such a large amount of money.

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Cross-
examination

Cross-examination

I have spoken the truth. The vehicle I spoke about is registered in the name of my son SIDIKI. My son's name is registered with the Police (SIDIKI identified. He states that witness is his brother). I never told P.C. Kaimakiade I bought a vehicle for the Plaintiff. I never told P.C. Kaimakiade I bought a house for the Plaintiff. Why must I buy a house for the Plaintiff. I never told P.C. Kaimakiade I gave £500 to Plaintiff. Why must I give Plaintiff £500. I never gave Plaintiff anything. There

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is no transaction between us. P.W.2 lied when he said I told him I received the gem stone. All have lied. I did not sell any gem stone at Kenema. I have money in Koidu Bank but not at Segbwema Bank. I know that there is a Court Order ordering the Intra Bank Koidu and B.W.A. (Standard Bank of West Africa), Koidu to stop payment to me. Plaintiff witnesses have conspired to get my money from me.

No re-examination:

In the
Supreme Court

Defendant's
Evidence

No. 21

Nabieu Sahr
Amadu

Cross-
examination

(continued)

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No. 22
SAHR JOSIAH

D.W.2 SAHR JOSIAH: S.S.Koran: Kono. I live at Koidu Town. Motor Apprentice. I knew the plaintiff. I know Defendant. One day defendant asked me to accompany him to the Chief who had sent for him. We went to the P.C. Kaimakiade and we met him outside. We went into the house. Chief asked Defendant whether there was any money transaction between him and Plaintiff and Defendant said "No." Defendant and I left the Chief.

No. 22

Sahr Josiah
Examination

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No. 23
AIAH SIDIKI

D.W.3. AIAH SIDIKI S.S. Koran. Kono. Live in Koidu Town. Farmer. My father was Aiah Sidiki and he died when I was young. I know the Defendant. He is my elder brother. We live in the same house. Sometime last year P.C. Kaimakiade sent P.W.2 to call the Defendant. I was present when P.W.2 arrived. I went with Defendant to the Chief. Sahr Josiah (D.W.2) we can all go to the Chief. When we went to the Chief we met the Chief in his room. We went into the Chief's room. Sahr Josiah also went to the room. The Chief told Defendant that Plaintiff had complained that he Defendant had deprived him of £44,000. Defendant said he hadn't any business with Plaintiff. The P.C. said if it was true Defendant had the money, he should share it with him. Defendant said it was not true. We then left the Paramount Chief.

No. 23

Aiah Sidiki
Examination

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Cross-examination: We were three who went to the Chief viz: Myself, Defendant and D.W.2. I am also call BOCKARI.

Cross-
examination

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CLOSE OF CASE OF DEFENCE

In the
Supreme Court

No. 24
Proceedings
18th January
1967

No. 24
PROCEEDINGS

Defendant addressed Court: Plaintiff has made a false allegation. His witnesses have conspired against me.

Mr. M'Cormack addresses Court: Misc. Provs. Act. Cap. 19 Sec. 4 Conversion dealing in manner inconsistent with rights of owner.

FOULDES V. WILLOUGHBY - 8 M. & W. Reports P.501.
Conversion - wrongful interference and c.

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Adjourned for Judgment

Percy Davies Ag.J.

18/1/67.

No. 25

Order

19th January
1967

No. 25

ORDER

C.C.322/66.

1966

S. No. 32.

IN THE SUPREME COURT OF SIERRA LEONE.

BETWEEN: AIAH SIDIKI Plaintiff
 and
 NABIEU S. AMADU)
 Alias NABIEU MUSA) Defendant
 alias AIAH NABIEU) 20

BEFORE MR. JUSTICE PERCY R. DAVIES, Ag. J.,

THURSDAY the 19th DAY OF JANUARY, 1967.

This Action coming on for hearing before the Court sitting at Sefadu, in the Eastern Province of Sierra Leone, on the 18th day of January, 1967 and this day in the presence of the parties and Counsel for the plaintiff, (defendant not represented by Counsel at the trial) UPON READING the pleadings filed in this

matter AND UPON HEARING the evidence of the parties herein and their witnesses taken on their oral examination at the trial AND UPON HEARING what was said by the defendant and Counsel for and on behalf of the defendant and Counsel for and on behalf of the plaintiff IT IS ORDERED AND ADJUDGED that the Plaintiff do have a return to him by the defendant the piece of gem stone or the sum of Le 88,000 the value thereof IT IS FURTHER ORDERED and ADJUDGED that the defendant pay to the plaintiff as DAMAGES for its conversion or wrongful detention, interest on the sum of Le 88,000 at the rate of 1½% (one and a half per cent) for the period between the date of this judgment and the date when the cause of action arose (i.e. from 15th February, 1966 to 19th January, 1967) IT IS ALSO ORDERED and ADJUDGED that the plaintiff do have the costs of this Action such costs to be taxed.

By the Court

(Sgd) O. M. Golley

MASTER AND REGISTRAR.

In the
Supreme Court

No.25

Order

19th January
1967

(continued)

No.26

JUDGMENT

No.26

Judgment

10th February
1967

Aiah Sidiki

Plaintiff

vs.

Nabieu S. Amadu)
 alias Nabieu Musa)
 alias Aiah Nabieu)

Defendant

E.J. M'Cormack for Plaintiff

Defendant in person.

JUDGMENT

At Koidu, Kono

Before I left Freetown to hold sessions in Koidu in the Kono District in the State of Sierra Leone, Mr. Cyrus Rogers-Wright approached me in chambers and requested that this case be fixed for hearing at

In the
Supreme Court

No. 26

Judgment

10th February
1967

(continued)

Koidu on the 17th January, 1967. I agreed. Mr. Rogers-Wright accordingly wrote the Master and Registrar of the Supreme Court stating that he had contacted me and that we had agreed for the case to be tried on 17th January at Koidu two hours after the arrival of the plane at Yengema Air Ship.

On the arrival of the plane, Mr M'Cormack, Counsel for the Plaintiff, with his usual courtesy and gentlemanliness, announced in my Chambers at Koidu his arrival. Mr. Rogers-Wright did not turn up. With the consent of Mr. M'Cormack, I fixed the hearing of the case for the 18th January hoping Mr. Rogers-Wright would arrive by the second plane on the 17th January. Meanwhile the criminal Court which was in session was adjourned to 12.30 p.m. on Wednesday the 18th January. On the 18 January, Mr. Rogers-Wright still did not turn up and the Registrar received no communication from him. The trial of the case was accordingly started and the Defendant conducted his own defence.

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The Plaintiff's claim is that on or about the 11th February, 1966, the plaintiff entrusted to the Defendant, in the presence of witness, a piece of gem stone, the property of the Plaintiff, for safe keeping. On or about the 15th February, 1966, the Plaintiff verbally demanded the said gem stone of the Defendant, in the presence of witnesses, but the Defendant refused to deliver it up to the Plaintiff and thereby converted the same to his own use, and wrongfully deprived the Plaintiff of the same. The Plaintiff therefore claims the return of the gem stone or the sum of Le 88,000 (£44,000) the value thereof and damages for its conversion or wrongful detention.

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In his defence the Defendant denies receiving from the Plaintiff or that the Plaintiff entrusted to him any piece of gem stone or any other article, stone or thing on or about the 11th February, 1966, or any other date. He further denies that the Plaintiff demanded the said gem stone or any other article to him. The Defendant says further that the Plaintiff was his ward living with him and that sometime in late February, 1966, he suddenly left Defendant's house and thereafter has not ceased to molest the Defendant with considerable Court actions.

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The Plaintiff in his evidence stated that after Idul Fitri 1966, being the ward of the Defendant, he

In the
Supreme Court

No. 26

Judgment

10th February
1967

(continued)

entrusted to him (Defendant) a gem stone which he (Plaintiff) had found on the road for safe keeping. The Plaintiff asked the Defendant to return the gem stone but he (Defendant) requested him to wait awhile. The Plaintiff waited for some time without results when one day the Defendant informed him that he had sold the gem stone for the sum of £44,000 or Le. 88,000. The Plaintiff testified that the Defendant showed him the money saying "I have shown you this money because you brought the gem stone to me". The Defendant then requested the Plaintiff to wait for the arrival of his (Plaintiff's) brother who brought Plaintiff to him (Defendant) when he would hand over the money to Plaintiff. The Plaintiff's brother arrived and all the Defendant did was to ask Plaintiff to wait until the end of the month when he would hand him the money. In disgust, the Plaintiff had to report the matter to Paramount Chief Kamakeinde of Kono who investigated the matter.

20 Chief Kamakeinde testified that the Plaintiff reported to him that he found a gem stone on the road which he handed to Defendant for safe keeping. The Defendant kept the stone for 3 days and on the 4th day the Defendant accompanied by Plaintiff took the stone to Kenema where the Defendant sold the stone. The Chief further stated that the Plaintiff reported that before they left Kenema, the Defendant gave him (Plaintiff) the sum of £500 or Le. 1,000. They passed through Segbwema where the Defendant deposited some money in the Bank there. When they arrived at 30 Koidu Town, the Defendant deposited some more money at the Bank there.

The Defendant bought a vehicle for the Plaintiff and also a house for which the Defendant paid £600 or Le. 1200. The Defendant bought for himself a house at Tankoro for £3,900 or Le. 7,800. The Chief further stated that the Plaintiff reported that although the Defendant said he bought the vehicle for the plaintiff yet all the "earnings" of the vehicle were received by the Defendant. The Defendant told 40 Plaintiff that the vehicle was not registered in Plaintiff's name but rather in the name of the Defendant's brother. The Chief further testified that the Plaintiff's story was told to him in the presence of the Defendant and that the Defendant said the Plaintiff's story was true. He said the Defendant admitted selling the stone, giving the Plaintiff Le. 1000 purchasing a house at Sinnah Road

In the
Supreme Court

No. 26

Judgment

10th February
1967

(continued)

for the Plaintiff for Le. 1200. He said the Defendant admitted depositing amount at Segbwema and Koidu Town respectively. Defendant, however, refused to tell the Chief what amounts he had deposited. The Chief said he finally advised the Defendant to pay the money over to the Plaintiff but he (Defendant) said he would consider the matter. So the Defendant did not pay the money to the Plaintiff, the Plaintiff decided to report the matter to his uncle P.C. Musa of Kamiends.

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P.C. Musa said he received a letter from his nephew, the Plaintiff, asking him to come to Koidu Town urgently. In consequence of the complaint made to him by the Plaintiff, he, P.C. Musa contacted P.C. Kamakeinde of Gbense who told him he had himself investigated the matter and advised the Defendant. P.C. Musa then went to the house of Defendant together with Plaintiff in the presence of several persons including Sorie Musa, and S.K. Foday. The Defendant admitted there was a dispute between the Plaintiff and himself involving the sum of Le. 88,000. He (Defendant) said he was not prepared to give anything to Plaintiff because of Plaintiff's conduct in reporting the matter to big men, both P.C. Musa and P.C. Kamakeinde.

20

The Defendant gave evidence and receiving any gem stone from Plaintiff. He said the witnesses of the Plaintiff had lied to the Court and that they had all conspired to deprive him of his money. He denied buying a vehicle or house for the Plaintiff or giving the Plaintiff Le. 1000. He said P.C. Kamakendo lied. In fact he said he denied all knowledge of the transaction to the P.C. He said P.C. Musa lied because he wanted to assist his nephew the Plaintiff.

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It is curious to observe that the vehicle already referred to is registered in the name of Sidiki but the Defendant said the Sidiki was not the Plaintiff but his son. Sidiki gave evidence and said that he was the brother of the Defendant and not the son. It came out in cross-examination that this Sidiki is known in Kono not as Sidiki but as BOCKARI.

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One Sahr Josiah also gave evidence for the Defence. He said he went with Defendant to P.C. Kamakiende when the latter sent for the Defendant. He said they met the Chief outside his house and in his compound. The Chief on the other hand said when the

Defendant went to him he met him in his room. In fact the Defendant was invited to his room by Alhaji Borbor Sheriff, a Chiefdom Councillor.

In the
Supreme Court

No. 26

Judgment

10th February
1967

I have come to the conclusion that the Defendant and his two witnesses have told a congeries of lies. I believe that the two witnesses of the Defendant were never at the Chief's house at all. They have been called to bolster up the case of the Defendant.

(continued)

10 I believe the story of the Plaintiff and his witnesses. I am satisfied that the Defendant received the gem stone of the Plaintiff and converted it to his own use (FOULDERS v. WILLOUGHBY - 8 M. & W. Reports P. 501). Having so found, it is clear that there must be judgment for the Plaintiff. I therefore give judgment for the Plaintiff for the return by the Defendant of the gem stone or the sum of Le. 88,000 the value thereof.

20 As regards damages for its conversion or wrongful detention, I order that the Defendant pay to the Plaintiff interest on the sum of Le. 88,000 at the rate of 1% for the period between the date when the cause of action arose and the date of this judgment. I award costs to the Plaintiff to be taxed.

(Sgd.) Percy R. Davies.
Ag. J.

No. 27

PROCEEDINGS

No. 27

Proceedings

10th February
1967

Friday 10th
February, 1967.

Before the Hon. Mr. Justice
P. R. Davies.

M'Cormack for Judgment Creditor.

30 Taju Deen for Judgment Debtor

Barlatt for Garnishee - Standard Bank of B.W. Ltd.,
Koidu Branch.

U. Coker for Intra Bank Ltd., Koidu Branch.

M'Cormack: This is an application under an order nisi

In the
Supreme Court

No. 27

Proceedings

10th February
1967

(continued)

made on 27th January, 1967. Order served on Garnishee and on Judgment Debtor. Application for an order that Garnishee forthwith pay into Court all monies they have in their hands for and on behalf of the Judgment Debtor sufficient to satisfy the amount of the judgment herein (Le.88,000 plus interest) in accordance with O.33 r. 1, 2 & 3 of Local Rules.

- Barlatt: Judgment Debtor has a Savings Bank a/c with us: Condition that person holding account appear personally and producing Pass Book. Hubs. 3rd Ed. Vol.11 P.174. 329. Bagley v. Winsome (National Provincial Bank Ltd. - Garnishee) 1952 1 A.E.R. P.637. Paget Law of Banking 6th Ed. P.109 at 128. 10
- Coker: I agree entirely with Mr. Barlatt. 1954 White Book.
- M'Cormack: O.52 r. 3 Local Rules. O.XXXIII r.1.2.3. Local Rules. P. 811 White Book 1957. - Sec. 14 Fixed Deposit P.814 Item 20 (Last notes). 20

Adjourned to Monday,
13/2/67.

No. 28

Order re
Garnishee

13th February
1967

No. 28

ORDER RE GARNISHEE

- E. J. McCormack for Judgment Creditor
Mr. O. Taju Deen for Judgment Debtor
A. H. Barlatt for Garnishee - Standard Bank of B.W.A.Ltd., Koidu Branch. 30
V. Coker for Garnishee - Intra Bank Ltd., Koidu Branch.

DECISION

This is an application by the Judgment Creditor for an Order that the Garnishee forthwith pay into Court all monies they have in their hands for and on behalf of the Judgment Debtor Sufficient to satisfy the amount of the Judgment herein i.e. Le 88,000 plus interest in accordance with Order XXXIII Rs. 1, 2 and 3 of the

Local Rules of the Supreme Court.

In the
Supreme Court

No. 28

Order re
Garnishee

13th February
1967

(continued)

10 Mr. Barlatt for Standard Bank of B.W.A.Ltd. informed the Court that the Judgment Debtor had a saving Deposit Account with the Bank but argued that it was on condition that any person holding Saving Account with the Bank Pass Book. Unless this condition is fulfilled, the amount could not be released. In support of his contention he cited Paget Law of Banking Law of Banking 6th Edn. at p.128. Dtals. 3rd Ed. Vol II pages 174 & 329 and Bagley v. Winsome (National Provincial Bank Ltd.) 1952 I A.E.R. at P. 637.

Mr. U. Coker for Intra Bank Ltd. concurred in the arguments of Mr. Barlatt.

Order LII r. 3 of our Local Rules provides:-

20 "Where no other provision is made by these rules the procedure, practice and forms in force in the High Court of Justice in England on the 1st day of January, 1957, so far as can be conveniently applied, shall be in force in the Supreme Court."

I now have to find out what was the practice in England on the 1st day of January, 1957.

What is the test whether a debt is attachable? That it is owing by the Garnishee, and that it is a debt of which the Judgment Debtor can enforce payment if he desire to do so. It is essential that the relation of creditor and debtor should exist between the Judgment Debtor and the Garnishee.

40 If the Judgment Debtor could sue the Garnishee for the amount and recover it, it is plain that there would be an attachable debt. There must be money due to the Judgment Debtor. Of course, a Garnishee Order cannot accelerate the time for payment of debt. Where the debt is not due there is nothing to be attached. Money standing to the credit of the Judgment Debtor at his Bank is attachable. A demand for payment is necessary to render a credit balance on a current account attachable, but service of a Garnishee Order Nisi on the Bank constitutes such a demand. A sum standing to the credit of a person in a deposit account in Bank is deemed to be a sum due and accruing to that person and to be attachable accordingly.

In the
Supreme Court

No. 28

Order re
Garnishee

13th February
1967

(continued)

Even money which will become payable by the Garnishee when a Bill of Exchange matures is attachable, the order suspending execution until maturity and restraining the judgment Debtor by injunction from declining with the bill in the interval (The Annual Practice 1957 at P. 813).

I am satisfied that the practice in England on the 1st January, 1957, was to attach both Current and Deposit Accounts.

The application is granted and I order that the Garnishee i.e. Standard Bank of B.W.A.Ltd.(Koidu Branch forthwith pay into Court all monies they have in their hands for and on behalf of the Judgment Debtor sufficient to satisfy the amount of the Judgment herein, i.e. Le. 88,000 plus interest. 10

Percy Davies, Ag. J.
13th February, 1967.

No. 29

Order granting
stay of
execution

16th February
1967

No. 29

ORDER GRANTING STAY OF EXECUTION

IN THE SUPREME COURT OF SIERRA LEONE 20

BETWEEN: AIAH SIDIKI PLAINTIFF/RESPONDENT
AND
NABIEU S. AMADU DEFENDANT/APPELLANT

THURSDAY THE 16th DAY OF FEBRUARY, 1967.

BEFORE THE HON. PERCY RICHMOND DAVIES, ACTING
PUISNE JUDGE.

UPON READING the affidavits filed herein, and
UPON HEARING what was alleged by Counsel on both
sides;

IT IS ORDERED as follows: 30

"I grant stay of Execution on the following
conditions:

1. That the amount of Le. 30,000 now lying in the
credit of the Appellant be paid by Intra Bank (Koidu

Branch) into Court to the credit of this action and there to remain until the determination of this appeal or until further order.

In the
Supreme Court

No. 29

Order granting
stay of
execution

16th February
1967

(continued)

2. That all sums at present lying to the credit of Appellant in all banks be paid into Court to the credit of this action and there to remain until the determination of appeal or further order.

3. That the appellant be restrained from disposing of any real property belonging to him in Sierra Leone until the determination of this appeal.

10

4. Costs of this application to Respondent

5. The Master and Registrar to take necessary action on 1 and 2."

BY THE COURT

(Sgd.) O. M. Golley

MASTER and REGISTRAR.

No. 30

NOTICE OF APPEAL

In the Court
of Appeal

No. 30

Notice of
Appeal

16th February
1967

IN THE SIERRA LEONE COURT OF APPEAL

20

BETWEEN: AIAH SIDIKI PLAINTIFF/RESPONDENT

AND

NABIEU S. AMADU
Alias NABIEU MUSA
Alias ALAH NABIEU DEFENDANT/APPELLANT

NOTICE OF APPEAL

30

TAKE NOTICE that the Defendant/Appellant being dissatisfied with the decision more particularly stated in Paragraph 2 of the Supreme Court, contained in the judgment of Mr. Percy Richmond Davies, Acting Puisne Judge dated the 19th January, 1967 doth hereby appeal to the Sierra Leone Court of Appeal upon the grounds set out in Paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

In the Court
of Appeal

No. 30

Notice of
Appeal

16th February
1967

(continued)

AND the Defendant/Appellant further states that the names and addresses of the persons directly affected by the Appeal are those set out in Paragraph 5.

2. Part of the decision of the Lower Court complained of:

The Whole decision

3. Ground of Appeal:

- (1) That having regard to the policy of the Courts settled by wrong authority, namely, that no Plaintiff can seek the aid of the Court where he confesses his own wrong doing and to the further doctrine that the Defendant's condition is better than the Plaintiff where their positions reveal wrong doing, the Learned Trial Judge was wrong in law generally in entering Judgment for the Plaintiff herein. 10
- (2) That having regard to the Provisions of Section 2, 67 and 68 of the Minerals Act. Cap.196 of the Laws of Sierre Leone and to the fact that there was no evidence excepting the Plaintiff in accordance with the provisions of Section 67, the Learned Trial Judge's Judgment is manifestly against the law of the Land. 20
- (3) That the judgment of the Court is unreasonable and cannot be supported having regard to the evidence.
- (4) Relief sought from the Court Appeal:
- (1) That the Judgment below be set aside.
- (2) That judgment be entered for the Appellant.
- (3) That the costs below and the costs of this Appeal be the Appellant. 30
- (4) And such further order as may be just.
- (5) Persons directly affected by the Appeal:
- (1) Aiah Sidiki, Koidu Town,
Sefadu or
7, Martin Street Freetown.
- (2) Nabieiu S. Amadu, Alias Nabieiu Musa,
Alias Aiah Nabieiu, 5, Hill Station,
Koidu Town, Gbense Chiefdom,
Kono District. 40

Dated the 16th day of February, 1967.

(Sgd.) C.Rogers-Wright
for M. O. Taju-Deen
Solicitor for the Appellant.

No. 31
NOTICE OF PRELIMINARY OBJECTION BY PLAINTIFF/
RESPONDENT

In the Court
of Appeal

No. 31

Notice of
Preliminary
Objection by
Plaintiff/
Respondent

23rd March
1967

IN THE SIERRA LEONE COURT OF APPEAL.
NOTICE OF PRELIMINARY OBJECTION.
(Rule 21(1))

Civil Appeal 3/1967.

Between:-

AIAH SIDIKI - Plaintiff/Respondent

Vs.

NABIEU S. AMADU - Defendant/Appellant

10

TAKE NOTICE that the Respondent herein named intends, at the hearing of this Appeal, to rely upon the following preliminary objection notice whereof is hereby given to you, viz:-

That the Appellant is estopped from raising on Appeal points not raised by him in the Court below.

20

AND TAKE NOTICE that the Grounds of the said objection are as follows:-

1. That the Appellant by his Grounds of Appeal herein, has raised issues which were not pleaded and arguments not raised in the Court below.

Dated this 23rd day of March, 1967.

(Sgd.) E. J. McCormack.

Solicitor for the Plaintiff/
Respondent.

30

To:- The Registrar,
Sierra Leone Court of Appeal,
Roxy Building,
Walpole Street,
Freetown.

The Above-named Appellant, his Solicitor or Agent:-

M. O. Taju-Deen, Esq.,
Solicitor,
42, Westmoreland Street, Freetown.

In the Court
of Appeal

No. 32
PROCEEDINGS

No. 32
Proceedings
29th March
1967

IN THE COURT OF APPEAL FOR SIERRA LEONE

(Wednesday, 29th March, 1967)

Coram:- Hon. Sir Samuel Bankole Jones - President.
Hon. Mr. Justice G.F.Dove-Edwin - Justice
of Appeal
Hon. Mr. Justice J.B.Marcus-Jones - Justice
of Appeal.

Civ.App. 3/67 - Nabieu S. Amadu - Def/Appellant 10

v.

Aiah Sidiki - Pl./Respondent.

Cyrus Rogers-Wright for Appellant.

McCormack for Pl/Respondent.

Cyrus Rogers-Wright - What McCormack has seemed or may be purporting to be a preliminary objection is not one in accordance with the Rules - See: Rule 21(1).

My preliminary objection is not an objection to the hearing of the appeal - objection as to the forum.

Appeal is properly before Court. 20

McCormack - I do not object to appeal being heard. I object to grounds of appeal now filed being heard.

Court:- Application overruled.

Cyrus Rogers-Wright:-

Grounds (1) & (2) - These points were never argued before Judge. Refers - (1) p.468 of Vol.30 of 3rd Ed. of Halsburys Laws of England - p.468 - para. 884. The Court of Appeal will not normally allow a point not raised in the Court below to be raised for the first time in the Court of Appeal. I apply that this Court ought to allow argument of the points. 30

(1) See Order 58 Rule 3 White Book - Appeal shall be

by way of re-hearing. Special circumstances apply in this case - e.g.

In the Court
of Appeal

(1) Appellant was not represented by Counsel at the trial.

No. 32

Proceedings

(2) The point of law about to be argued was in fact however accidentally sufficiently brought to the attention of the Judge under ~~xxx~~tion.. - p. 22 - 37 -

29th March
1967

"It was not for me to say whether you had a licence."

(continued)

10 (3) Summons for particulars ought to have indicated to the Judge that the question of law would arise. See p. 11 -

Refers to Scott v. Browne & Ors. - 1892 - 2 Q.B.D. 725. The question as to whether illegality should be pleaded - see p.728 -

"No Court ought to enforce an illegal Contract.... if illegality is brought to the notice of the Court." Refers to P. 730.

20 See Misa v. Cursie - 1876 - 1 A.C. - 554. Court can entertain a new point of law.

Refer Cap. 196 - Secs. 67 & 68. sec. 2 defines what a mineral is.

Judge should have believed the Plaintiff's witness and at this point he should have stopped case.

Browns Legal Maxim - p.578 - 8th Ed.
Holman v. Johnson Comp. - 343 - See. Brow
See Bow Makers Ltd. - 1945 - 1 K.B.D.

v.
Barnet Instrument Ltd. - p. 65 at 72.

30 See Chettiar v. Chettiar - 1962 A.C. 294 P.C..

Yim v. Sam - 1962 - A.C. 304.

Adjourned to 30.3.67.

McCormack:- The defence of illegality should have been specifically pleaded and not having been pleaded this Court should not entertain the argument.

30th March
1967

In the Court
of Appeal

No. 32

Proceedings

30th March
1967

(continued)

Refers - Order 16 Rule XI - Same as Order 19
Rule 15 of White Book and Notes therein.

Refers - Tiger and Anor. v. Bardays Bank Ltd.
1952 - W.M. p. 38 at page 39.

Refers Bow Makers case - Comments on. See
exception to rule - Which Chattel is prohibited by
law. Civil Court bound by pleadings. Dellamere
Case - 1 South Leading Cases - 12th Ed. - p.396.

The Mineral that operates only criminally.
It is not for Civil Court to inquire into the
illegality of the possession. The Civil Court is
not to inquire into how Defendant came into
possession, even though there is a law which
prohibits possession in certain circumstances. Only
the Criminal Court is competent to inquire into
this.

10

(2) Refers Order 58 - Rule 9 - p. 1260 of White
Book, 1957 Ed. - Notes.

Tasmania's Case - 1890 - 15 A.C.223 - (H.L.) at 225.

Rogers-Wright:- Refers to 14 W.A.C. (Selected
Judgments). Commissioner of Lands v. Winifred
Arah at p. 510.

20

Adjourned for consideration and decision.

(Sgd.) S. B. Jones.

No. 33
JUDGMENT

In the Court
of Appeal

Civ.App.3/67.

No. 33

Judgment

5th May 1967

IN THE COURT OF APPEAL FOR SIERRA LEONE

General Sittings held at Freetown in the
Western Area of the Sovereign State of Sierra
Leone.

CORAM:- The Hon. Sir Samuel Bankole Jones -
President.
10 The Hon. Mr. Justice G.F. Dove-Edwin -
Justice of Appeal.
The Hon. Mr. Justice J.B.Marcus-Jones -
Justice of Appeal

BETWEEN:-

NABIEU S. AMADU
alias NABIEU MUSA
alias AIAH NABIEU - DEFENDANT/APPELLANT

AND

AIAH SIDIKI - PLAINTIFF/RESPONDENT.

20 Cyrus Rogers-Wright, Esq., for Defendant/Appellant.

E.J.McCormack, Esq., for Plaintiff/Respondent.

Judgment delivered on the 5th day of May, 1967

MARCUS-JONES: J. A.:- This is an appeal by the
defendant Nabieu S. Amadu alias Nabieu Musa, alias
Aiah Nabieu from a judgment of Davies, J. dated 10th
February 1967 which awarded the plaintiff Aiah Nabieu
the return of a gem stone to wit a diamond or its
value of Le.88,000.00.

The facts may be briefly stated as follows:-

30 Both parties live in Kono in the Diamond Area of
Sierra Leone. Plaintiff/Respondent said he was the
ward of the appellant. Plaintiff found a diamond
stone on the road in Kono and gave it to the
defendant for safe keeping. Later defendant told

In the Court
of Appeal

No. 33

Judgment

5th May 1967

(continued)

plaintiff he had sold the diamond stone for Le. 88,000.00 and despite several requests defendant failed to pay over the proceeds of sale to plaintiff. I do not propose to go any further into the facts except to say that I accept the Learned Judge's finding of fact that plaintiff gave the diamond stone to defendant who subsequently sold it for Le. 88,000.00 and failed to pay over the proceeds of sale to the plaintiff.

The appeal has come to this court on the question of illegality which has been raised for the first time on appeal. Two questions fall to be considered - 1 - whether this court can entertain the point now taken and - 2 - if so whether the illegality is of such a nature as to deprive the plaintiff of the fruits of his judgment having regard to the maxim ex turpi cause non oritur actio. This maxim founded in good sense expresses a clear and well recognised principle which is not confined to indictable offences only, and no court ought to enforce an illegal transaction or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court and if the person invoking its aid is himself implicated in the illegality.

Mr. McCormack's contention that the appellant is estopped from raising the question of illegality before this court since it had not been pleaded nor raised in the court below, appears to me to be of no force and effect. Although, whenever a Statute is relied on as a bar to an action it must be pleaded, however the court will itself take notice of an illegality if it appears from evidence brought before it even though the defendant has not pleaded the illegality.

Although an objection that a transaction is immoral or illegal as between the plaintiff and the defendant sounds at all times very ill in the mouth of the defendant, yet it is not for his sake that the objection is ever allowed. It is founded on the general principles of public policy which gives the defendant an advantage by accident so to speak, contrary to the real justice as between him and the plaintiff. No court will lend its aid to a man who founds his cause upon an illegal act. The court will itself however take notice of the illegality of

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the transaction on which the plaintiff is suing if it appears from the fact of the contract or the evidence brought before it by either party although defendant has not pleaded the illegality.

In the Court
of Appeal

No. 33

Judgment

5th May 1967

(continued)

10 Mr. McCormack endeavoured to equate this case with that of Armory v. Delamiris - 1 Smith's Leading cases P. 393 and stated that plaintiff respondent was entitled to possession of the diamond stone as a finder until dispossessed. This argument in my view is untenable. There is clear and unequivocal evidence that the gem stone was a diamond stone such as could be dealt with only by licence. And if from the plaintiff's own evidence or otherwise the cause of action appears to arise ex turpi causa or the transgression of a positive law of the land, then the plaintiff respondent has no right to be assisted and where both are at fault potior est conditio defendentis.

20 In Taylor v. Chester 1869 - 4 L.R. - Q.B.309 the plaintiff deposited with the defendant the half of a £50 Bank Note by way of pledge to secure the payment of money due from the plaintiff to the defendant. The debt was contracted for wine and suppers supplied to the plaintiff by the defendant, in a brothel kept by her, to be there consumed in a debauch. The plaintiff having brought an action to recover the half note, it was held that the maxim in pari delicto est conditio defendentis applied and that as the plaintiff could not recover without showing the true character of the deposit, and that being on an illegal consideration to which he was himself a party he was precluded from obtaining the assistance of the law to recover it back.

30

No distinction appears to me necessary to be drawn between illegality arising in cases of contract and those arising in cases of Tort. In either case, if the plaintiff can prove his case without any reference to any illegality, or if this cannot be evinced from the evidence he will succeed.

40 At this stage it is relevant to refer to the Mineral Ordinance of Sierra Leone Cap. 196. In the Ordinance or Act, Minerals have been defined and include which is a precious stone. Section 67 prohibits the possession of any mineral except upon certain conditions. Section 67 reads:-

In the Court
of Appeal

No. 33

Judgment

5th May 1967

(continued)

"No person shall possess any mineral unless he is the lessee of a mining lease or the holder of a mining right, exclusive prospecting licence or a prospecting right or of a licence granted under section 71 or the duly authorised employee of such lease or holder."

Section 31(1) vests the property in and control of all minerals in Sierra Leone in the Crown and reads:-

"The entire property in and control of all mineral and mineral oils, in under or upon any lands in Sierra Leone and of all rivers, streams and watercourses throughout Sierra Leone is hereby declared to reside in the Crown save in so far as such control may in any case have been limited by any express grant made by the Crown before the commencement of this Ordinance: 10

(2) Except as in this Ordinance provided no person shall prospect or mine on any lands in Sierra Leone or divert or impound water for the purpose of mining operations." 20

Neither the defendant nor the plaintiff is licensed to mine, purchase or deal in diamonds. The defendant is engaged as a Drag Line Driver for the S.L.S.T., a Mining Company in Kono in the Diamond Area of Sierra Leone. In so far as the plaintiff is concerned there is no evidence that he is in any employment.

It is an incontrovertible fact that when the plaintiff respondent found this piece of diamond he had no right in law to keep it and when he handed it over to the appellant respondent he also, had no right to keep nay more sell it. Possession was and still is vested in the Crown and their dealing with the diamond without a lawful right to do so was plainly illegal. 30

The true test for determining whether or not the plaintiff respondent and appellant defendant were in pari delicto is by considering whether the plaintiff could make out his case otherwise than through the medium and by the aid of the illegal transaction to which he was himself a party. The evidence points clearly to an illegal transaction and as this was obvious to the trial Judge it was open to 40

him to have taken the point despite the fact that it was not pleaded.

I reach the conclusion that the plaintiff could not have given evidence without disclosing the illegal nature of the transaction.

This is amply supplied by the evidence and consequently the plaintiff is not entitled to the fruits of his judgment. And were the proceedings reversed and the appellant found himself in the shoes of the plaintiff, he too could not have succeeded, and it follows he cannot benefit from this judgment.

Reverting to the provision of the Mineral Act, possession of the diamond is still vested in the Crown and it remains so until the Crown is divested of it.

The learned trial Judge found as a fact that the appellant did in fact convert the diamond into cash which is now lying to his credit in the Intra Bank and Standard Bank of West Africa in Koidu. He has also found that the amount of £44,000 or Le.88,000 represents the sum of money into which it has been converted. Possession having vested in the Crown by the Act, it follows that the Crown is entitled to follow the Diamond in its converted form.

The appeal succeeds, but the appellant is not entitled to keep the proceeds arising from the sale and for which a stop order has been obtained. I would therefore order that the sum of Le.88,000.00 standing in the account of the defendant appellant at the Standard Bank of West Africa, Koidu and Intra Bank, Koidu be paid to the Crown.

(Sgd.) J.B.Marcus-Jones Justice of Appeal

(Sgd.) S.B. Jones President

(Sgd.) G.F.Dove-Edwin Justice of Appeal.

In the Court
of Appeal

No. 33

Judgment

5th May 1967

(continued)

In the Court
of Appeal

No. 34

ORDER

No. 34

Order

5th May 1967

IN THE COURT OF APPEAL FOR SIERRA LEONE

CERTIFICATE OF THE ORDER OF THE COURT

(L.S.)

C.C.322/66.....Motion
Civ.App.3/67.....Appeal No.
Nabieu S. Amadu.....Appellant.
Aiah Sidiki.....Respondent

10

(Sgd.) S. B. Jones.

PRESIDENT.

THIS APPEAL coming on for hearing on the 29th and 30th days of March, 1967 and on the 5th day of May, 1967 before their Lordships Sir Samuel Bankole Jones - President Mr. Justice G.F.Dove-Edwin - Justice of Appeal and Mr. Justice J.B.Marcus-Jones - Justice of Appeal - in the presence of Cyrus Rogers-Wright, Esquire - Counsel for the Appellant and E.J. McCormack, Esquire - Counsel for the Respondent:

20

I HEREBY CERTIFY that an Order was made as follows:-

COURT:-"Appeal is allowed but Appellant is not entitled to keep proceeds of sale. It is therefore ordered that the sum of Le.88,000.00c.now standing in the Account of the Defendant/Appellant at the Standard Bank of West Africa, Koidu and Intra Bank, Koidu be paid to the Crown.

There will be no order as to Costs."

30

Given under my hand and the Seal of the Court this 5th day of May, 1967.

(Sgd.) A. Nithianandan.

REGISTRAR -
COURT OF APPEAL FOR SIERRA LEONE

No. 35

NOTICE OF MOTION ON BEHALF OF NABIEU S. AMADU

In the Court
of Appeal

No. 35

Civ. App. 1/67.

IN THE SIERRA LEONE COURT OF APPEAL

BETWEEN. NABIEU S. AMADU
alias NABIEU MUSA
alias AIAH NABIEU - APPELLANT

AND

AIAH SIDIKI - RESPONDENT

Notice of
Motion on
behalf of
Nabieu S.
Amadu

2nd June 1967

10 TAKE NOTICE that this Honourable Court will be
moved on Tuesday the 6th day of June, 1967 at 9
o'clock in the forenoon or so soon thereafter as
Counsel may be heard by Cyrus Rogers-Wright of
Counsel on behalf of the Appellant herein for an
Order that Pursuant to Section 4 of the Appeal to
the Privy Council in Council leave be granted to the
Appellant to appeal from the judgment of the Court of
Appeal dated the 5th day of May, 1967 and for a
20 further Order that pending the determination of the
Appeal by the Privy Council and subject to such terms
for the due prosecution of the appeal as shall be
imposed the Order of the Court of Appeal, namely, that
sums of money be paid to the Crown be stayed and
that the Order of Mr. Justice Percy Richmond Davies
dated the 16th day of February, 1967 do replace the
said Order of the Court of Appeal.

AT THE HEARING the Applicant will use the affidavit
of Cyrus Rogers-Wright filed herein.

AND that the costs hereof be costs in the Cause.

30 Dated the 2nd day of June, 1967.

(Sgd.) Cyrus Rogers-Wright,
Solicitor for the Appellant.

The Registrar,
Court of Appeal,
Freetown.



In the Court
of Appeal

No. 36

ORDER GRANTING CONDITIONAL LEAVE TO NABIEU
S. AMADU TO APPEAL TO HER MAJESTY IN
COUNCIL.

No. 36

IN THE COURT OF APPEAL FOR SIERRA LEONE

CERTIFICATE OF THE ORDER OF THE COURT

Order granting
Conditional
Leave to
Nabieu S.
Amadu to
Appeal to Her
Majesty in
Council

(L.S.)

C.C.322/66.....Motion
Civ.App.3/67.....Appeal No.
Nabieu S.Amadu.....Applicant.
Aiah Sidiki.....Respondent.

10

6th June 1967

(Sgd.) S. B. Jones.

PRESIDENT.

THIS MOTION coming on for hearing on the 6th day of June, 1967 - before their Lordships Sir Samuel Bankole Jones - President - Mr. Justice J.B.Marcus-Jones - Justice of Appeal and Mr. Justice R.B.Marke - Acting Justice of Appeal - in the presence of Cyrus Rogers-Wright, Esquire - Counsel for the Applicant and E.J.McCormack, Esquire - Counsel for the Respondent:

20

I HEREBY CERTIFY that an Order was made as follows:-

"Leave is granted on the following conditions:

- (1) That within 10 days from date hereof the Appellant provides one Surety to be approved by the Registrar of this Court to enter into a bond together with the Appellant himself in the sum of Le.1000. for the due prosecution of the appeal and to abide the Costs of the appeal.
- (2) That final leave be applied for within 28 days of the date of this Order. 30
- (3) That the Costs of this application be Costs in the cause.
- (4) Stay of execution of the Order of the Court of Appeal of 5th May, 1967 pending the decision of the Privy Council."

Given under my hand and the Seal of the Court this 6th day of June, 1967.

(Sgd.) A. Nithianandan
REGISTRAR

COURT OF APPEAL FOR SIERRA LEONE

40

No. 37

NOTICE OF MOTION ON BEHALF OF AIAH SIDIKI.

In the Court
of Appeal

No. 37

Civ.App. 3/67.

IN THE SIERRA LEONE COURT OF APPEAL.

Notice of
Motion on
behalf of
Aiah Sidiki
14th June 1967

Between AIAH SIDIKI - Plaintiff/Applicant
and
NABIEU S. AMADU
alias NABIEU MUSA
alias AIAH NABIEU - Defendant/Respondent

10 TAKE NOTICE that this Honourable Court will be
moved on Tuesday the 20th day of June 1967 at ten
o'clock in the forenoon or so soon thereafter as
Counsel can be heard by Edward Jackson McCormack of
Counsel on behalf of the Plaintiff/Applicant on an
application on the part of the Plaintiff/Applicant
herein for an ORDER that the Plaintiff/Applicant be
granted leave to appeal to Her Majesty in Council;
that this Honourable Court do fix the Conditions of
Appeal including the amount as security for Costs and
20 for a further Order that for the reason appearing in
the affidavit of Edward Jackson McCormack sworn the
14th day of June 1967 and filed herein, all execution
and further proceedings upon the Judgment dated the
5th day of May 1967 delivered by this Honourable Court
herein be STAYED pending the determination of the
appeal herein by Her Majesty in Council.

AND TAKE NOTICE that at the hearing of this
application Counsel will use the affidavit of Edward
Jackson McCormack sworn and filed herein.

30 DATED the 14th day of June, 1967.

(Sgd.) E. J. McCormack
Plaintiff's Solicitor.

To: The Registrar of the Court of Appeal
and
The Master and Registrar, Supreme Court
and
The above named Defendant/Respondent
and his solicitor
Cyrus Rogers-Wright Esq., Massa Chambers,
40 18, Bathurst Street, Freetown.

This Notice is issued by Edward Jackson McCormack of
No. 11, Regent Road, Freetown, Solicitor for the
Plaintiff/Applicant.

In the Court
of Appeal

No. 38

AFFIDAVIT IN SUPPORT OF NO. 36

No. 38

Affidavit in
support of
No. 36

Civ.App. 3/67

THE SIERRA LEONE COURT OF APPEAL

14th June 1967

Between AIAH SIDIKI Plaintiff/Applicant

AND

NABIEU S. AMADU
alias NABIEU MUSA
alias AIAH NABIEU Defendant/Respondent

I Edward Jackson McCormack of No. 11, Regent Road, Freetown, Barrister at law and Solicitor of the Supreme Court of Sierra Leone make oath and say as follows:- 10

1. I am Solicitor for the Plaintiff/Applicant herein having the conduct of this matter.
2. Judgment was on the 5th day of May 1967 given by the Court of Appeal in favour of the Defendant/Respondent herein but Ordered that the sum of Le.88000.00c the subject matter of the appeal be paid to the crown. 20
3. My Client is aggrieved by the said Judgment of the Court of Appeal, and desires to appeal to Her Majesty in Council
4. An appeal lies from the decision of the Court of Appeal to Her Majesty in Council as of right at the instance of the Plaintiff/Applicant in as much as the said Court of Appeal Judgment is a final decision in civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the value of One thousand leones (Le. 1000.00c) 30
5. The value of the matter in dispute on the appeal to Her Majesty in Council herein is Le.88,000.00c.
6. I am informed and I verily believe that the INTRA BANK Koidu Branch, has neglected or refused to pay into Court the sum of money now standing to the credit of the Defendant/Respondent in the said Bank; and that the said Defendant/Respondent

is currently making an application to the Court below EX PARTE to withdraw from Court the sum of money already paid into Court by the STANDARD BANK OF WEST AFRICA LTD., to the credit of the matter.

In the Court of Appeal

No. 38

Affidavit in support of No. 36

14th June 1967

7. I make this affidavit in support of an application for an Order for -

1. Leave to Appeal to Her Majesty in Council herein.

10 2. The Conditions of Appeal to be settled.

3. Stay of Execution pending the determination of the appeal by Her Majesty in Council.

4. A Mandatory Order that the INTRA BANK do forthwith pay into Court all sums of money now standing to the credit of the account of the Defendant/Respondent in the said BANK not exceeding the sum of Le.88,000.00c.

(Sgd.) E. J. McCormack

20 SWORN by the above named deponent at Freetown, this 14th day of June, 1967 at 10.10 o'clock in the fore noon, Before me,

(Sgd.) G. A. Coker

A Commissioner for Oaths.

This affidavit is filed on behalf of the Plaintiff/Applicant.

In the Court
of Appeal

No. 39

ORDER GRANTING CONDITIONAL LEAVE TO AIAH
SIDIKI TO APPEAL TO HER MAJESTY IN COUNCIL

No. 39

Order granting
Conditional
Leave to Aiah
Sidiki to
Appeal to Her
Majesty in
Council

IN THE COURT OF APPEAL FOR SIERRA LEONE
CERTIFICATE OF THE ORDER OF THE COURT

20th June 1967

(L.S.) C.C.322/66.....Motion.
Civ.App. 3/67.....Appeal No.
Aiah Sidiki.....Applicant.
Nabieu S.Amadu.....Respondent.

(Sgd.) S. B. Jones.
PRESIDENT.

10

THIS MOTION coming on for hearing on the 20th day of June, 1967 - before their Lordships Sir Samuel Bankole Jones - President - Mr. Justice E.F. Luke - Acting Justice of Appeal and Mr. Justice R.B.Marke - Acting Justice of Appeal - in the presence of E.J. McCormack, Esquire - Counsel for the Applicant and Cyrus Rogers-Wright, Esquire - Counsel for the Respondent:

I HEREBY CERTIFY THAT an Order was made as follows:-

20

"The application is granted on the same terms as the Order granting leave to appeal in this same case to the Respondent on the 6th June, 1967."

Given under my hand and the Seal of the Court this 20th day of June, 1967.

(Sgd.) A. Nithianandan

REGISTRAR -

COURT OF APPEAL FOR SIERRA LEONE

30

No. 40
NOTICE OF MOTION ON BEHALF OF NABIEU
S. AMADU

In the Court
of Appeal

IN THE COURT OF APPEAL FOR SIERRA LEONE

No. 40
Notice of
Motion on
behalf of
Nabieu Amadu
5th July 1967

BETWEEN: Nabieu S. Amadu - Defendant/Appellant
alias Nabieu Musa
alias Aiah Nabieu

AND

Aiah Sidiki - Plaintiff/Respondent

10 TAKE NOTICE that this Honourable Court will be
moved on Wednesday the 12th day of July, 1967 at 9
o'clock in the forenoon or so soon thereafter as
Counsel may be heard by Cyrus Rogers-Wright, Esq. of
Counsel on behalf of the Appellant-Applicant herein
for an Order (a) that the Appellant be granted final
leave to appeal to the Privy Council notwithstanding
that he has not strictly complied with the order of
the Court of Appeal dated the 6th June, 1967, and
20 (b) for an Order that the amount of Le. 1,447 now
lying to the credit of this action be paid out to the
Appellant-Applicant or to his order.

AT THE HEARING the Appellant-Applicant will use
the affidavit of Cyrus Rogers-Wright filed herewith.

AND that the costs hereof be costs in the Cause.

Dated the 5th day of July 1967.

Cyrus Rogers-Wright

Solicitor for the Defendant/Appellant

TO: The Registrar,
Court of Appeal, Freetown.

and

E.J. McCormack, Esq.,
11 Regent Road, Freetown.

Solicitor for the Plaintiff/Respondent

In the Court
of Appeal

No. 41
AFFIDAVIT IN SUPPORT OF NO. 39

No. 41
Affidavit in
support of
No. 39
5th July 1967

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN: Nabieiu S. Amadu
alias Nabieiu Musa
alias Aiah Nabieiu Defendant/Appellant
and
Aiah Sidiki Plaintiff/Respondent

I, CYRUS ROGERS-WRIGHT, Barrister-at-Law of 18
Bathurst Street, Freetown make Oath and say as follows: 10

1. I am the Solicitor for the Appellant-Applicant herein. The Appellant has obtained leave to appeal against the decision of the Court of Appeal dated the 5th May, 1967. He has now fulfilled his conditions of appeal and I am at present under instructions to file the necessary Motion to obtain final leave.

2. By Order of the Supreme Court dated the 16th February, 1967 Mr. Justice Percy Davies ordered among other things that sums of money lying to the credit of the Appellant-Applicant herein be paid into Court to the credit of this action. The paperwriting hereunto annexed and marked "A" is a copy of the said order. 20

3. On the 5th May, 1967 the Court of Appeal allowed the appeal of the Appellant-Applicant against the judgment of Mr. Justice Percy Davies referred to and ordered that the "sum of Le.88,000 now standing in the account of the Defendant/Appellant at the Standard Bank of West Africa, Koidu and Intra Bank, Koidu be paid to the Crown." The paperwriting hereunto annexed and marked "B" is a copy of the certificate of the order of the Court of Appeal. 30

4. On the 6th June, 1967 the Appellant/Applicant applied for leave to appeal to the Privy Council and in their order granting leave the Court of Appeal ordered stay of execution of their order of the 5th May, 1967. The paperwriting hereunto annexed and marked "C" is a copy of the certificate of the Court of Appeal. 40

5. Pursuant to the order of Mr. Justice Percy Davies which has now been set aside by the Court of Appeal the Standard Bank of West Africa paid into Court the sum of Le.1,447 which was the amount lying to the credit of the Appellant-Applicant at the Standard Bank of West Africa. The amount standing to the credit of the Appellant-Applicant is I am informed and verily believe not an amount affected by the transactions between the Plaintiff and the Defendant and constitutes bona fides savings of the applicant and this amount had been saved long before the date material to this action.

In the Court
of Appeal

No. 41

Affidavit in
support of
No. 39

5th July 1967

(continued

6. That the Appellant-Applicant apart from the amount of Le.30,000 now lying to his credit in Intra Bank has no other means and would be quite unable to pursue his appeal unless the amount of Le.1,447 now lying to the credit of this action be released to him.

7. That as order of the Court of Appeal dated the 5th May, 1967 referred to the proceeds of the transaction litigated between the Plaintiff and the Defendant the amount of Le.1,447 is not affected by the said order and for the reasons set out above I make this affidavit in support of an application that the said amount be paid out to the Appellant-Applicant or to his order.

8. On Tuesday the 13th June, 1967 the Appellant-Applicant made application for this sum of money to be paid out to him in the Supreme Court. That it was ordered by Mr. Justice Singer Betts that the matter was now pending before the Court of Appeal and as the Court of Appeal has made an order concerning the matter it would be more convenient if application can be made to the Court of Appeal.

9. That pursuant to the order of the Court of Appeal dated the 6th June, 1967 the Appellant-Applicant has filed the Bond ordered in the said order and now makes application for final leave to appeal.

SWORN at Freetown the 5th
day of July, 1967 at 10.05 (Sgd.) Cyrus Rogers-
o'clock in the forenoon. Wright

BEFORE ME
(Sgd.) G. A. Coker
COMMISSIONER FOR OATHS

This affidavit is filed on behalf of the Defendant-Appellant herein.

In the Court
of Appeal

No. 42

ORDER GRANTING FINAL LEAVE TO NABIEU S. AMADU
TO APPEAL TO HER MAJESTY IN COUNCIL

No. 42

Order granting
Final Leave
to Nabieu S.
Amadu to
Appeal to Her
Majesty in
Council
12th July 1967

IN THE COURT OF APPEAL FOR SIERRA LEONE
CERTIFICATE OF THE ORDER OF THE COURT

(L.S.)

C.C. 322/66.....Motion.
Civ.App. 3/67.....Appeal No.
Nabieu S. Amadu.....Appellant
Aiah Sidiki.....Respondent.

(Sgd.) S. B. Jones.
PRESIDENT.

10

THIS MOTION coming on for hearing on the 12th day of July, 1967 - before their Lordships Sir Samuel Bankole Jones - President - Mr. Justice E.F. Luke - Acting Justice of Appeal and Mr. Justice R.B. Marke - Acting Justice of Appeal in the presence of Cyrus Rogers-Wright, Esquire for the Appellant and E.J. McCormack, Esquire for the Respondent:

I HEREBY CERTIFY that an Order was made as follows:-

20

"(a) Final leave to appeal to Privy Council granted.

(b) Order prayed for refused."

Given under my hand and the Seal of the Court this 12th day of July, 1967.

(Sgd.) A. Nithianandan.

REGISTRAR
COURT OF APPEAL FOR SIERRA LEONE.



No. 43

ORDER GRANTING FINAL LEAVE TO AIAH SIDIKI TO
APPEAL TO HER MAJESTY IN COUNCIL

In the Court
of Appeal

No. 43

IN THE COURT OF APPEAL FOR SIERRA LEONE
CERTIFICATE OF THE ORDER OF THE COURT

Order granting
Final Leave
to Aiah
Sidiki to
Appeal to Her
Majesty in
Council

(L.S.)

C.C.322/66.....Motion.
Civ.App.3/67.....Appeal No.
Aiah Sidiki.....Appellant
Nabieu S. Amadu....Respondent

11th August
1967

10 (Sgd.) E. F. Luke.

AG. PRESIDENT.

THIS MOTION coming on for hearing on the 11th day of August, 1967 - before their Lordships Mr. Justice E. F. Luke - Acting President - Mr. Justice Banja Tejan-Sie - Chief Justice and Mr. Justice R.B. Marke - Acting Justice of Appeal - in the presence of E. J. McCormack, Esquire - Counsel for the Appellant and Cyrus Rogers-Wright, Esquire - Counsel for the Respondent:

20 I HEREBY CERTIFY that an Order was made as follows:-

"Application for final leave granted."

Given under my hand and the Seal of the Court this 11th day of August, 1967.

(Sgd.) A. Nithianandan.

REGISTRAR -
COURT OF APPEAL FOR SIERRA LEONE.

ON APPEAL FROM THE COURT OF APPEAL FOR SIERRA LEONE

B E T W E E N

NABIEU S. AMADU (Defendant) Appellant

- and -

AIAH SIDIKI (Plaintiff) Respondent

AND BETWEEN

AIAH SIDIKI (Plaintiff) Appellant

- and -

NABIEU S. AMADU (Defendant) Respondent

(Consolidated Appeals)

R E C O R D O F P R O C E E D I N G S

~~W.S.~~ WILSON & ~~CO.~~ *FREEMAN*
6, Westminster Palace Gardens,
London,
S.W.1

Solicitors for Nabieu S. Amadu

HOWLETT & CLARKE, CREE & CO.,
13, Gray's Inn Square,
London,
W.C. 1R 5JU

Solicitors for Aiah Sidiki