

IN THE COURT OF APPEAL - SIERRA LEONE

AIAH FENGAI & 73 OTHERS
APPELLANTS
& MARGINALISED AFFECTED PROPERTY OWNERS

VS.

OCTEA LIMITED, - RESPONDENTS
THE MANAGER OCTEA LIMITED ET AL

Coram:

Hon. Justice Reginald Sydney Fynn JA
Hon. Justice Sulaiman Ahmad Bah JA
Hon. Justice Amy Wright J

Counsel:

C M B Jalloh Esq with him D. Fofannah for the Appellants
Drucil E. Taylor Esq for the Respondent

JUDGMENT DATED 16th October 2025

Fynn JA

Background

1. We will repeat the background to this appeal as it was set out before in an earlier ruling dated 29th February 2024. *"The Respondents/Appellants in this matter had filed several writs against the Applicants/Respondents in the High Court. These writs were consolidated into one action. The reasons which led to that consolidation are not important for the current purposes.*
2. *After the consolidation the writ of summons and all subsequent proceedings were struck out by the High Court on 27th October 2022. The High Court had upheld submissions that the Court lacked the jurisdiction to hear the matter.*
3. *Not being satisfied with the High Court's decision and believing that the same was an interlocutory decision, the Plaintiffs, now Respondents/Appellants approached the Court for leave to appeal against that decision. The Defendants, now Applicant/Respondent objected to the application being*

heard submitting that the decision striking out the writs was in fact a final decision.

4. The Court overruled the objection and proceeded to hear the application and then granted the Plaintiffs, now Appellants, leave to appeal as requested. The Appellant then filed the present notice of appeal which is dated 22nd November 2023."
5. The appeal itself sets out some 13 grounds. We have found these to be somewhat 'convoluted' at worst and on occasion repetitive. They can be summarized in essence to be complaints with respect to the following issues:
 - a. That there were mis-directions in the judgment that led the learned trial Judge (LTJ) erroneously to conclude that the Appellants lacked capacity to sue. The alleged mis-directions were in relation to;
 - i. Non contractual causes of action
 - ii. Ignored exceptions to the doctrine of privity of contract
 - iii. Whether only state actors can enforce statutory obligations
 - b. That there was misdirection in the judgment with respect to the role of Paramount Chiefs and the effect of their role on personal claims if any that an individual member of the chieftdom may have or perceive to have
 - c. And whether any such individual claims perceived or real may be pursued under the procedures set out in the agreements
6. The Respondent in his answer has submitted that the Respondents case revolves around the following;
 - a. Firstly that the Appellants lack the required *locus standi* to bring the action
 - b. Secondly that the absence of privity of contract between the Plaintiffs and the Defendants excludes the Plaintiffs now Appellants from any cause of action and
 - c. Thirdly that even if they had capacity to sue, the Appellants first port of call must be a reference to the established grievance mechanisms
7. The Court had the benefit of written skeletal submissions and extensive *viva voce* arguments from both sides and we are grateful for Counsel's industry and for the authorities which they have made available and which we have read and would use as may be found necessary.

Grounds 1, 2 & 3- Locus Standi, Privity of Contract & Provincial Property

8. The Appellant submits that the LTJ was wrong firstly to have held that the Plaintiffs lack capacity to enforce the Mining Lease Agreement, enforce the provisions of the Mines and Minerals Act 2009, the Community Development Agreement and the Environmental Protection Agency Act of 2008 in the context of Universal public interest law as well as common law considerations relating to rights which may accrue where the individual private citizen has sustained actual injury.
9. Secondly the Appellant argues that a relationship of trust arises with respect to lands in the province between the Paramount Chiefs and the subjects such that the LTJ was wrong to have held that the Plaintiffs lacked capacity to enforce propriety rights over provincial lands pursuant to Capp 122 of the laws of Sierra Leone 1960 thereby ignoring the beneficial interests and rights of the Plaintiffs who are the subjects of the Paramount Chiefs.
10. The Respondents' answer to these issues is straightforward as already mentioned above. More extensively however counsel for the Respondent has referred us on *locus standi* to several cases many of them advancing the argument from a Public Law perspective. We have to note however that the first Plaintiff Aiah Fengai and the seventy-three others are individual Plaintiffs separate and distinct from The Marginalized Affected property Owners Association (MAPO). We have treated the case first as claims brought by private citizens.

Deliberations

11. We note the LTJs findings with respect to privity of contract. Those principles led his Lordship to conclude that the Appellants (Plaintiffs) were non-suited. However we have had to consider especially submissions directed at those claims in the writ of summons which appear to be founded in tort. These would include the following;
 - i) general damages,
 - ii) special damages,
 - iii) damages for unlawful deprivation of property
 - iv) damages for extreme emotional distress
 - v) Abatement of nuisance in particular the emission of dust, toxic fumes and loud noises that impinge on the Plaintiffs enjoyment of their property

vi) Damages suffered for nuisance suffered by the Plaintiffs

12. These claims appear to be specific to the Plaintiffs paragraphs 14 and 19 being examples that:

14. That the 1st Plaintiffs were not resettled before mining operations began in their areas and as a result they did in fact suffer the impacts described in paragraph 10 (*supra*)

19. Many of the members of the Plaintiff class (particularly women and children) have suffered economic dislocation, with clear negative impact to their physical and mental health and their financial position. For example as the Mines activities have caused wells to dry up, women must walk farther to fetch water by hand, thereby decreasing the time they have for economic activities and causing physical injuries to their bodies.

13. It is the Court's opinion that these Plaintiffs are not merely saying everybody ie the general public in the Chiefdom suffered from the defendant's activities. The writ of summons is on occasion specific to those whose names are listed as 1st Plaintiffs and to those who are members of the 2nd Plaintiff association.

14. We note that some of these claims are not necessarily predicated on any agreement or on any particular statute. We note that the Appellants are individual Kono residents, now part of a group of persons claiming like injuries, which they believe need to be remedied.

15. Our reading of the LTJ's ruling has not disclosed his attention to and consideration of those claims that fall outside the agreement or which are specific to injuries and wrongs allegedly suffered by the claimants be they emotional damage, nuisance or the impact on the claimants economic circumstances. The LTJ has not commented on the non-contractual nature of these claims, or at all.

16. As the LTJ summarized the issues leading to his assessment and analysis of the issues he had this to say:

"I have reflected on the case and the evidence before the Court at length. The issue for the Court to decide is whether the Plaintiffs lack jurisdiction to propriety rights for property on provincial lands as contained in Cap 122 of the laws of Sierra Leone"

The LTJ then proceeds to highlight the different agreements and statutes which he would assess to establish the Plaintiffs capacity to enforce.

17. The LTJ does not pause and avert his mind to the claims which are neither of a contractual nature nor dependent on proprietary rights; or which are not necessarily dependent on the ownership of the land itself. Such as the rights which will accrue to an occupier or a lessor. Having set the parameters of the task before him as quoted above the rest of the deliberations of the LTJ were hinged on questions of privity of contract and the application of the grievance procedures set out in the various agreements that he was concentrating on.
18. We have had to return to the basics, the historical development of the law of tort and the hardship in the law that the law of tort was developed to cure. We have asked ourselves; should a party find no respite when he has been injured by the activities of another? Should the absence of a previous relationship with the wrongdoer deny a party access to the Courts for the protection of person and property? It has long been established "*that where there's a wrong there must be a remedy*".
19. The LTJ has however in one swipe struck off the whole of the writ of summons relying as the basis of the striking off, the absence of privity. The LTJ found that the Plaintiffs in fact and in law have no privity of contract with the defendants. The LTJ also found that the Plaintiffs are also not owners of property. It is on these findings that he has based his conclusions. Even if this were well founded; we find that in the writ of summons there are also claims which can be sustained in the absence of privity and without the claimant having ownership of the land.
20. The LTJ it would appear did not take notice of these other categories of claims. The LTJ has not in our opinion given any or full considerations to these other matters as he ought to have done.

Right to property under customary Law

21. Another argument advanced by the Respondent has to do with the ownership of land in the provinces. The Respondent submits that under customary law the property vests either in the chiefs or on land owning families. The Respondent is correct in this regard. He urges that the Chiefs therefore would be the properly suited parties to bring any action should there be a violation of rights on these properties. Counsel has referred us to the respected author Dr. Ade Renner Thomas in his *Land Tenure in Sierra Leone: The Law Dualism and the Making of a Land Policy.*

22. Counsel submits that the learned author had acknowledged that there are some aspects of the relationship between the Paramount Chiefs and their subjects which is akin to trusteeship under English law. Counsel cautioned that principles of trusteeship should not be wholly exported to apply to provincial lands.
23. Counsel quotes Dr. Renner Thomas extensively in his filed synopsis. The thrust of those submissions would be found at page 14 of the synopsis as follows:
- "This notion that Chiefs owned communal lands was encouraged quite frequently during interviews, particularly those conducted in Kono Chiefdoms. What emerged from such attempt to give a precise interpretation to the term ownership.....was that it was not absolute and beneficial ownership, but one based on the concept similar to that of trust under English Law with the "trustee" himself in this case being one of the countless beneficiaries. However....the relationship with the trust concept must be limited. One basic difference between the two is the absence of strict liability to account on the part of the Chief as Trustee" (see page 197 Land Tenure In Sierra Leone, supra)*
24. Counsel makes the point well about the difference between English Trusts and ownership of provincial land in Sierra Leone. Dr. Renner-Thomas however had much more to write on the subject of *"The Nature of Interests in Land Held by the Paramount Chief"*. Counsel may have missed the point made by the learned author and supported by case law that whilst ownership may reside in the Chiefs or on a family; a person who has the permission to be on land in the provinces and who has developed such land has thereby acquired some possessory rights which can be protected by the law.
25. The learned Dr. Ade Renner-Thomas in the work recently cited gives the example of situations where a person built a house on provincial land and sold it. The Courts have repeatedly held that such a person can sell that house. The dictum of Durning JA in Jah v. Deen (1970-71)ALRSL 177 referenced there at page 196 is worth reproducing:
- "It is clear and settled native law customary law that a member of the tribe to whom land has been allocated has a right to sell or to pledge a house owned by him situated on such land and in my view there is no need to adduce evidence to prove such customary law even though it may be unwritten"*

26. The Supreme Court has similarly recognized the rights of the individual over property on provincial land and has granted damages in the case of Alhaji Foday Sawanneh v. Alhaji Murray Bayoh Civ.App 6/79 (Unreported). Commenting on that case at page 197 of his work Dr. Ade Renner-Thomas had this to say:

“Despite the refusal of the decree sought, it was clear that the Court was satisfied as to the validity of the contract for the sale of the house, thus impliedly recognizing the right of the Respondent under customary law to undertake such a transaction” page 197 Land Tenure In Sierra Leone, supra.

27. It should be noted that the latter case was about property in Kono just as is the case before us. Whilst the cases mentioned relate to selling of houses we use them to illustrate that individuals can acquire rights over property on land in the provinces. Such rights being independent of the Paramount Chief(s) or land owning families. This is especially the case where the individual has built a house and the rights relate to that house or its sale and we would add the enjoyment of the property too and all that that may include.

28. We have to note also that legislation passed by the Sierra Leone parliament in 2022 recognizes emphatically that there can be “private lands” in the provinces “vested in and owned by an individual” amongst other possible owners other than Chiefs and Land Owning Families (see the National Land Commission Act No. 19 of 2022). We are not here creating the concept that individuals can hold land and legal interests over land in the provinces. Individual holding is already prevalent and recognized by law. The present facts disclose such individuals attempting on their own to approach the Courts to protect those rights which they believe have been violated.

29. We have to note further that the Provinces Land Act Cap 122 has itself been wholly repealed by S.91 of the National Land Commission Act supra. (Counsel on either side did not address us on this).

30. Persuasive authority from our sister country in the sub region have also made a reinforcing impact on our mind. The proposition that Chiefs should not have a strict duty to account for the use of the land which they hold for and on behalf of themselves and their people does not sit easily on our mind. In this modern age and under the 1991 Constitution, accountability of those in leadership is a principle that is now globally respected. Monarchs are now seldom found to be absolute and their conduct comes under scrutiny regularly

the World over. It is our opinion that the attempts to make the right to sue or be sued, with respect to customary lands exclusive to the chiefs has lost its allure.

31. In Ghana where there is similarly family holding and vesting in the Chiefs and traditional rulers such as there is in Sierra Leone, the respected Jurist and author Justice Sir Dennis Adjei JA writes that Courts should now avoid terminating actions relying only on the lack of the standing of the person bringing the action. Where the property is in danger of being lost any of the beneficiaries may be competent to sue for the protection of the property. (see Land Law, Practice and Conveyancing (1) Ghana)

32. This opinion is adopted in Kwan vs Nyieni & Another (1959) GLR67 COA. In that case the Court of Appeal (Ghana) listed several situations in which persons other than those ordinarily recognized by customary law will be deemed to have the standing to sue in respect of customary land. One of the situations listed is:

"...where the family property is in danger of being lost and it is shown that the head either out of personal interest or otherwise will not make a move to preserve it"

33. In the present case we find that the Chiefs who hold the legal title to the land in the Kono have not sued. The Respondent will have us conclude that no other person should have the right to sue. We hold on the contrary, that the failure of the Chiefs to bring an action in respect of perceived infringements to the land should not in and of itself non-suit other members of the community who are also residents and actual occupiers of the land.

34. Being mindful of the recently mentioned legislative interventions and also that our Courts have for so long recognized the individual's property rights over provincial land owned by the Chief or the family, the Courts must by extension be ready to hear such a house owner when he alleges several infringements to those propriety rights which he is known to have a sellable interest over. We opine that to hold anything to the contrary will be absurd. This court holds therefore that until it is shown by evidence the extent of the individual's relationship and investment on the provincial land it would be premature to deny a person access to the Courts in order to seek remedies for alleged right violations.

In the alternative

35. Counsel for the Respondents' alternative argument found in paragraph 97 of the synopsis is noted. Counsel suggests that even if the Appellants had the necessary standing to bring a case in nuisance the Appellants would be estopped because they would be complaining of the very things which their Chiefs had agreed to. That in our opinion is something that the evidence must disclose. How far do the Chiefs bind the individuals? Should the individual remain communally bound even if they have received no or inadequate compensation for injuries which are specific to them? Can the individual have a claim separate and distinct from an identified group? These are all questions which spring to mind in the given circumstances. However neither the impugned judgment nor our present offering even begins to answer them even though they must undoubtedly be answered if justice should be done in this dispute.
36. We note also that in this alternative argument the Respondents submit that in any event the first port of call for the Appellants would have been the use of the grievance mechanisms. However submissions of the Appellant in this regard hotly contest the existence of the grievance mechanisms beyond the paper on which they are written. Whilst we do not have evidence of attempts by the Appellants to use these mechanisms before us we similarly do not have any evidence of situations in which they have been invoked and used successfully. In the face of the contradictory submissions relating to the grievance mechanisms this Court will defer the questions relating to those mechanisms being operational or not, to a process that would receive evidence and decide on whether this was a genuine option available to the Appellants and one which they ought to have first pursued before litigation.

Conclusion

37. Having found on the one hand that the writ of summons contains claims that can survive outside privity of contract and on the other that under customary law rights to land accrue to those to whom such land has been allocated or who may have developed such land with permission; we are to conclude that the Plaintiff /Appellants have the standing to bring this action. It is our opinion further that there is no need then for this Court to explore further any of the other grounds or issues raised in the appeal. The question of *locus standi* being a fundamental issue to the life of the action having being decided

- on in favour of the sustenance of the writ, it is compelling enough a finding that this appeal must succeed.
38. We note also that there are claims like those on which ground 8 is founded which allege the absence of compensation or the insufficiency of compensation. These are questions which for the answer to be just, it would first require more evidence. Evidence as to who may have received what amount or which amount would have satisfied which claim wrong or injury. Clearly there are beyond the legal questions the need for a fact based enquiry which may require more evidence than what is currently before us. Much testimony would be required; than this Court is equipped to handle, nor was this Court designed to embark on such extensive first instance enquiries.
39. It is a necessary consequence therefore that the writ must survive wholly and be tried below. There, a closer and more complete examination of the facts and the law central to the dispute will be made. Leading to a just outcome on the merits of the case. We opine that the mostly pure legal submissions which we have received cannot be sufficient for us to reach a conclusion on the merits of what appears to be a dispute characterized by a complex admixture of law and facts.

The Application for an Injunction

40. Whilst this Judgment was still pending the Appellants approached the Court with an "*urgent ex parte*" application (their words) dated 15th July 2025 praying inter alia for an injunction restraining the Respondents from moving the company's properties from the mine sites in the Kono District and possibly out of the country. The main thrust on which the request was anchored is that the Respondents are carting away their goods and property at night from their known places of business. The affidavit in support deposed to facts showing the Appellants are concerned that should this be allowed to happen, the Appellants will suffer hardship. Hardship in the sense that should they succeed in this appeal and later in the action, they will be left with an empty judgment with nothing to fall on. They would then have labored in vain as they allege that the Respondents are mainly a foreign based company, with its main holdings being abroad. The Appellant/Applicant submits that, the Respondents if not restrained will move all their assets and will then be if not beyond the reach of the Court, they will be very difficult to access.

41. We granted an interim injunction, we converted the application to an *inter partes* one and ordered that the Respondents be served with the motion papers. We also gave the Respondents the opportunity to file papers which they did in the form of an affidavit in opposition. The Court sat, hybrid, with two Justices joining virtually, whilst the Presiding and counsel were in Court. The Court heard arguments from counsel, extended the interim injunction and reserved ruling which is now incorporated in this judgment.
42. The Respondents have argued that the equipment being moved are equipment which they rented for purposes of their operations which are now at a standstill for various matters which are not before this Court. The Respondents argue that these being rented property and being idle at the moment (at the Kono/Koindu site) it would be business prudent for the rented equipment to be put to work in other locations or returned to their owners. The Respondents in answer to the injunction request have further submitted that the company is currently under the yoke of orders from various government establishments that deprive them of access to their assets and to their premises so they could not in fact move their equipment even if they wanted to.
43. The Court notes the general duty to avoid unnecessary costs and for a party to abate or mitigate its loss. The Court therefore will not fault the Respondent for allowing genuine third parties to retrieve their equipment from the dispute. That said the Court is equally acutely mindful of the danger of a victory being empty especially where the Court has found that the trial should be proceeded with.
44. Additionally the Court notes that the Respondents by their own admission are already, at the behest of government agencies (counsel mentioned the Anti-Corruption Commission amongst others), in a state akin to an injunction. Counsel submitted that the company is presently under "*care and maintenance*" as provided for in the Mines and Minerals Act 2022. The company thus has limited access to its resources and assets. The Court is therefore of the opinion that the injunction is appropriate and in consonance with the balance of convenience between the parties especially as it would introduce no further hardship on the Respondents. As the injunction will not be directed to the Ministry or any other government agencies the injunction should not affect them doing their duties as they may find necessary with respect to the company and its assets including moving the latter.

45. The principles which should guide a Court in its deliberation for the granting of an interlocutory injunction are found in the *American Cyanamid case*. This case has been frequently cited with approval in this jurisdiction, there is no need to restate it fully here, save to state that those principles can safely be relied upon in this matter. The Court is of the opinion that the balance of convenience tilts in favour of granting the injunction. The Court will tailor the injunction so that it will not affect adversely any property belonging to any third parties.

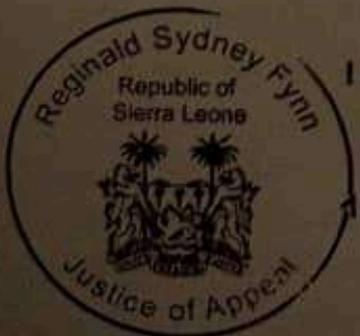
46. Relying on the foregoing deliberations and the reasons already stated; this Court now orders as follows

- a. That this appeal is allowed.
- b. That this case shall be returned to be tried below on the consolidated writ of summons herein.
- c. That the case file shall be returned to the Hon Chief Justice as his Lordship may wish to consider re-assigning the file below.
- d. That in the event the file is re-assigned the Trial Judge may wish to first consider a Pre-Trial Conference and directions.
- e. That an injunction is hereby granted restraining the Respondents from selling, disposing off or in any way alienating the assets of the company. This injunction shall remain in force as ordered, until the hearing and determination of the action except the LTJ orders otherwise.
- f. The Appellants shall give a bond that they shall jointly indemnify the Respondent for any loss that may be occasioned due to the granting of this injunction in the event that it turns out an injunction ought not to have been granted
- g. The cost of this appeal shall be borne by the Respondents same to be taxed if not agreed.

The appeal is allowed.

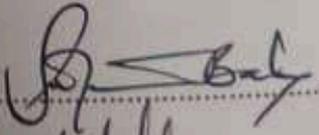


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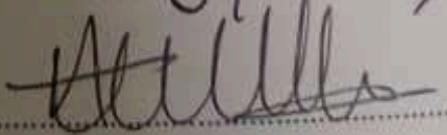
I agree

Sulaiman Ahmad Bah JA.....



I agree

Amy Wright J.....



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