

C.C.1

C. C/118/2012

2012

G.

NO.3

**IN THE HIGH COURT OF SIERRA LEONE**  
**(COMMERCIAL AND ADMIRALTY DIVISION)**

BETWEEN:

HELMUT F. GIESA - Plaintiff/Respondent  
SPUR ROAD  
FREETOWN

AND

ASSAD R. WATFA - Defendant/ Applicant  
PROPRIETOR  
55 FREETOWN ROAD  
LUMLEY  
FREETOWN

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**NOTICE OF EX PARTE MOTION**

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*BMT Law Chambers*  
BMT LAW CHAMBERS

35 LIVERPOOL STREET

FREETOWN

*DEFENDANT/APPLICANT'S SOLICITORS*

HFG 2404 Received: 24. May 2013

C. C.118/2012

2012

G.

NO.3

IN THE HIGH COURT OF SIERRA LEONE  
(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN :

HELMUT F. GIESA  
SPUR ROAD  
FREETOWN

- Plaintiff/Respondent

AND

ASSAD R. WATFA  
PROPRIETOR  
55 FREETOWN ROAD  
LUMLEY  
FREETOWN

- Defendant/ Applicant

NOTICE OF EX PARTE MOTION

12 APR 2013

**TAKE NOTICE** that this Honorable Court sitting at Law Court's Building, Siaka Stevens Street, Freetown will move on the Day of 2013 at 9'Oclock in the forenoon or so soon thereafter as Counsel may be heard on an application on behalf of the Defendant for the following orders:

1. Leave to file a defence and Counter claim to the Writ of Summon filed by the Plaintiff and dated 15<sup>th</sup> June 2012.
2. Cost in Cause.
3. Any further order(s) that this Honorable Court may deem fit and Just.

**AND TAKE NOTICE FURTHER** that at the hearing of this application it is intended to use the affidavit of Drucil E. Taylor sworn to on the 12<sup>th</sup> day of April 2013, together with exhibits attached thereto and filed therein.

Dated the 12<sup>th</sup> day of April 2013

BMT LAW CHAMBERS

BMT Law Chambers  
Defendant/ Applicant Solicitor

TO:

1. THE MASTER AND REGISTRAR  
HIGH COURT  
FREETOWN
2. TANNER LEGAL ADVISORY  
BOCKARIE CHAMBERS  
RED LION BUILDING  
65 SIAKA STEVENS STREET  
FREETOWN

IN THE HIGH COURT OF SIERRA LEONE  
(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN:

HELMUT F. GIESA - Plaintiff/Respondent  
SPUR ROAD  
FREETOWN

AND

ASSAD R. WATFA - Defendant/ Applicant  
PROPRIETOR  
55 FREETOWN ROAD  
LUMLEY  
FREETOWN

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AFFIDAVIT

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*BMT LAW CHAMBERS*  
BMT LAW CHAMBERS  
35 LIVERPOOL STREET  
FREETOWN

DEFENDANT/APPLICANT'S SOLICITORS

Affidavit #2

HFG2404 Received: 24. May 13

C. C.118/12

2012

G.

NO.3

IN THE HIGH COURT OF SIERRA LEONE  
(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN :

HELMUT F. GIESA  
SPUR ROAD  
FREETOWN

- Plaintiff/Respondent

AND

ASSAD R. WATFA  
PROPRIETOR  
55 FREETOWN ROAD  
LUMLEY  
FREETOWN

- Defendant/ Applicant

AFFIDAVIT

I **DRUCIL E. TAYLOR** of 63, Campbell Street Freetown, In the Western Area of the Republic Of Sierra Leone, Barrister and Solicitor of the High Court of Sierra Leone do make oath and say as follows:

1. That I am a Barrister and Solicitor at BMT Law Chambers and I am duly authorized to make this affidavit. Insofar as the content of this affidavit is within my knowledge, it is true and insofar as it is not within my personal knowledge it is true to the best of my knowledge, information and belief.
2. By a letter dated 10<sup>th</sup> May, 2012, the Defendant/Applicant proposed a payment plan to the Plaintiff/Respondent in order to pay the sum of \$103,000 an equivalent of the Seventy Seven Thousand Euros loaned to the Defendant/Applicant. A copy of the said letter is attached hereto and marked "DET 1".
3. That a writ dated 15<sup>th</sup> June 2012 was filed to which the Defendant filed an Appearance on the 27<sup>th</sup> June 2012. A copy of the said Memorandum of Appearance is now attached and marked "DET 2".
4. The Defendant did not file a defence as both parties had made a concrete plan to settle the matter and step had been taken to effect the payment plan even before the aforementioned Writ was filed.
5. Pursuant to payment plan in the aforementioned letter the Respondent/Defendant made five sets of payment, to wit:

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similar

Note Affidavit in Opposition dated 03.04.2013 Received: 13. May 2013

- 29<sup>th</sup> June 2012 - \$25,000
- 6<sup>th</sup> August - \$15,000
- 7<sup>th</sup> September 2012 - \$10,000
- 10<sup>th</sup> October 2012 - \$10,000
- 5<sup>th</sup> December 2012 - \$10,000

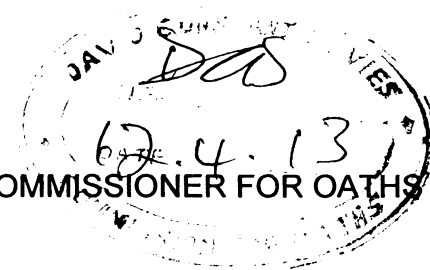
The sum total of these payments is \$70,000 with an outstanding \$33,000 (Thirty Three Thousand United States Dollars) Copies of the receipts to these payments are attached hereto and marked as "DET 3".

6. The Defendant/Applicant had initially paid the Plaintiff/Respondent the Sum of \$20,650 in interest to the amount loaned from the same Plaintiff/Applicant in two installments; the first being the sum of \$10,350 for which a receipt dated the 28th March 2012 was issued and the 2<sup>nd</sup> Installment being the Sum of \$10,300 paid on the 21<sup>st</sup> December 2011. Copies of the aforementioned payment receipts are attached hereto and marked "DET 4".
7. The exchange rate for Euros to Dollars is \$1.2944998701 to \$1.00000000. Consequently, when calculated the €77,000 amounted to \$99676.49. as per the exchange rate as at 20<sup>th</sup> March 2013.
8. The outstanding amount was due to be paid by the 31<sup>st</sup> of December 2012 but the Plaintiff/Applicant is a tenant of the Defendant/ Respondent property of 55 Freetown Road, Lumley with a two year lease expiring in December of the same 2012.
9. I am informed by the same Defendant/Applicant and I verily believe that, upon inspection of the aforementioned property, he realized that the Plaintiff/Respondent had not kept his property in tenantable repairs and made repeated calls to the Plaintiff/ applicant to do so before he hands over the property and leaves the country for good.
10. I am also informed by the said Defendant/Applicant and verily believe that the Plaintiff/Respondent left the Country, leaving the property, the premises of which the Defendant/Applicant is the Landlord together with it fixtures, electrical appliances and the furniture that came with the lease in a complete state of ruin. A copy of Photos of the state in which the Plaintiff/Applicant left the property is attached hereto and marked "DET 5".
11. I am informed by the Defendant/Applicant and I verily believe that he has spent about \$15,000 (Fifteen Thousand United States Dollars) in refurbishing the said property and fixtures attached thereto by way of buying building materials, house hold appliances. Copies of receipt and delivery note and invoices are attached hereto and marked as "DET 6".

12. I am also informed by the said Defendant/ Applicant and I verily believe that refurbishment is still ongoing and that the workmanship for all the repairs and construction is set estimated at Le 6,650,000 (Six Million, Six Hundred and Fifty Thousand Leones).
13. The Defendant/Applicant in this matter was optimistic that he would pay the entire amount outstanding in accordance with the payment plan submitted to the Plaintiff and the matter will be concluded. But before he could make the last outstanding payment of \$ 33,000, the Plaintiff/Respondent moved out of the Defendant/ Applicant's property, leaving it in a state of ruin and disrepair that has cost him a fortune to put in a tenatable state.
14. That the Defendant/Applicant has a good defence and counter-claim against the Plaintiff. A Copy of the draft defence and counter-claim is attached and marked as "DET 7".
15. That the Defendant/Applicant cannot recover his cost incurred to repair the damage to his property caused by the Plaintiff/Respondent because he now resides in a country unknown to him and is ordinarily resident in another jurisdiction, recovering cost incurred will be virtually impossible and very protracted, unless leave to file a defence and counter claim in this regard is granted
16. I make this affidavit in support of the application herein.

  
 .....  
 DEPONENT

SWORN TO AT LAW COURTS BUILDING  
 SIAKA STEVENS STREET FREETOWN  
 THIS 12<sup>th</sup> DAY OF April 2013

BEFORE ME  
  
 COMMISSIONER FOR OATHS

This affidavit was filed by BMT Law Chambers of 35 Liverpool Street, Freetown, for and on behalf of the Defendant/Applicant.

HFG2404 received: 24.05.2013

C. C.118/ 12

2012

G.

NO.3

IN THE HIGH COURT OF SIERRA LEONE  
(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN :

HELMUT F. GIESA - Plaintiff  
SPUR ROAD  
FREETOWN

AND

ASSAD R. WATFA - Defendant  
PROPRIETOR  
55 FREETOWN ROAD  
LUMLEY  
Freetown

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**DEFENCE AND COUNTER CLAIM**

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**BMT LAW CHAMBERS**  
35 LIVERPOOL STREET  
FREETOWN

DEFENDANT'S SOLICITORS

*Tanner Legal Advisory Red Lion  
Building B.S. Sirika Stevens Street  
Freetown*

**IN THE HIGH COURT OF SIERRA LEONE**  
**(COMMERCIAL AND ADMIRALTY DIVISION)**

BETWEEN :

HELMUT F. GIESA  
SPUR ROAD  
FREETOWN

-

**Plaintiff**

AND

ASSAD R. WATFA  
PROPRIETOR  
55 FREETOWN ROAD  
LUMLEY  
Freetown

-

**Defendant**

**DEFENCE AND COUNTER-CLAIM**

1. The Defendant admits paragraphs 1-4 of the statement of claim of the plaintiff.
2. That the goods for which the Defendant took the loan from the Plaintiff arrived late as they were intended to meet the December peak period.
3. The Defendant denies that the Defendant failed to repay the Plaintiff and avers that the defendant had already paid the Plaintiff interest for the amount loaned in the sum of \$20,650 (Twenty Thousand, Six Hundred and Fifty United States Dollars) even before the first payment plan was sent to the Plaintiff. Both parties were trying to work out a payment plan.
4. By a letter dated 10<sup>th</sup> May, 2012, the Defendant proposed a payment plan to the Plaintiff in order to pay the sum of \$103,000 an equivalent of the Seventy Seven Thousand Euros loaned to the Defendant.
5. Pursuant to payment plan in the aforementioned letter, the Defendant made five sets of payment, to wit:



- 29<sup>th</sup> June 2012 - \$25,000
- 6<sup>th</sup> August - \$15,000
- 7<sup>th</sup> September 2012 - \$10,000
- 10<sup>th</sup> October 2012 - \$10,000
- 5<sup>th</sup> December 2012 - \$10,000

The sum total of these payments is \$70,000 with an outstanding \$33,000 (Thirty Three Thousand United States Dollars).

6. The exchange rate for Euros to Dollars is \$1.2944998701 to \$1.00000000. Consequently, when calculated the €77,000 amounted to \$99676.49. as per the exchange rate as at 20<sup>th</sup> March 2013.
7. The Defendant had just one outstanding payment which was due at the end of December 2012 of \$33,000 (Thirty Three Thousand United States Dollars).

#### **COUNTER-CLAIM**

8. The outstanding amount was due to be paid by the 31<sup>st</sup> of December 2012 but the Plaintiff is a tenant of the Defendant property of 55 Freetown Road, Lumley with a two year lease expiring in December of the same 2012.
9. The Defendant realized, upon inspection of the aforementioned property, that the Plaintiff had not kept his property in tenantable repairs and made repeated calls to the Plaintiff to do so before he hands over the property and leaves the country for good.
10. The Plaintiff left the Country, leaving the property, the premises of which the Defendant is the Landlord together with it fixtures, electrical appliances and the furniture that came with the lease in a complete state of ruin.
11. The Defendant has spent over \$15,000 (Fifteen Thousand United States Dollars) in refurbishment the said property and fixtures attached thereto by way of buying building materials, house hold appliances.

12. Refurbishing is still ongoing and that the workmanship for all the repairs and construction is estimated at Le 6,650,000 (Six Million, Six Hundred and Fifty Thousand Euros).

13. That the Defendant cannot recover his cost incurred to repair the damaged to his property caused by the Plaintiff because he now resides and is ordinarily resident in another country which the Defendant has no way of knowing.

14. The Defendant has suffered loss as a result of the condition in which the Plaintiff left his property and would therefore seek to set off his expenses from the plaintiff's claim.

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Basis

1 www.aid21.de/WCL/



Defence + Counter claim

\* 2. www.aid21.de/watfa/