



# CROWN CHAMBERS



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**LIT VOL (136)  
DIRECTOR OF COPYRIGHT  
N.C.A.C.  
NATIONAL MESUEM  
BANJUL**

**28<sup>th</sup> June, 2016**

Dear Sir,

**IN HE HIGH COURT OF THE GAMBIA**

**CIVIL SUIT NO: HC/415/057/AO**

**BETWEEN:**

**PATIENCE SONKO GODWIN.....PLAINTIFF**

**AND**

**LAWRENCE JAH.....1<sup>ST</sup> DEFENDANT**

**MICHEAL GOBA.....2<sup>ND</sup> DEFENDANT**

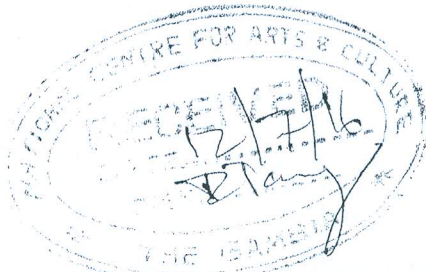
**MAC COLLIER.....3<sup>RD</sup> DEFENDANT**

Forwarded herewith is the judgement of the High Court in favour of Mrs. Patience Sonko Godwin, on whose behalf I write this letter.

Grateful for your kind attention.

Yours Sincerely,

**BORRY S. TOURAY (Esq.)**



IN THE SUPERIOR COURTS OF THE GAMBIA



IN THE HIGH COURT OF THE GAMBIA

CIVIL SUIT NO: HC/415/057/AO

BETWEEN

PATIENCE SONKO GODWIN

PLAINTIFF

AND

LAWRENCE JAH

1<sup>ST</sup> DEFENDANT

MICHEAL GOBA

2<sup>ND</sup> DEFENDANT

MAC COLLIER

3<sup>RD</sup> DEFENDANT

THURSDAY 9<sup>TH</sup> OF JUNE 2016

BEFORE HON JUSTICE KUMBA SILLAH-CAMARA

Plaintiff...present

1<sup>st</sup> defendant...present

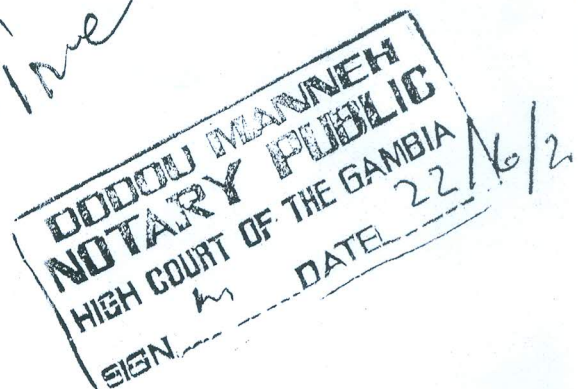
3<sup>rd</sup> defendant...present

Mr Borry Touray for the plaintiff...present

RULING

The Applicant commenced this application by a motion on notice dated the 2<sup>ND</sup> day March 2016 and filed on the same date praying the court for the following order for an order entering judgment in favour of the plaintiff and

*CERTIFIED True*





for the cost of this application and for further order and other orders as this court deems fit to make in the circumstances..

This application is supported by a 7 paragraph affidavit filed on the 2<sup>nd</sup> of March 2016, sworn to by one Alhagie Mballow.

In opposing the application the 1<sup>st</sup> respondent and the 3<sup>rd</sup> respondent did not file any affidavit in opposition.

The applicant filed his brief of argument in respect of the motion for judgment. Thereafter, the 1<sup>st</sup> respondent argued on points of law and filed a brief on the 17<sup>th</sup> of May 2016.

Counsel for the 1<sup>st</sup> respondent raised the same issue of being allowed to cross examine the plaintiff's witnesses which this court had already determined. The Court is functus officio. The ruling was delivered in March 2016.

It should be noted that *once a issue or issues have been raised and determined by the court between the litigating parties, the court becomes functus officio to either direct or allow the parties to re-open the same issues before it for re-litigation. See IN RE SWIRE (1885), 30 CH. D. 239 (C. A.).*

I therefore hold that the Court is functus officio regarding the issue of calling witnesses.

I shall now proceed with the motion for judgment.

After carefully going through the statement of claim, affidavit of witness statement

Both parties filed their briefs of argument on the motion.

The issue for determination is whether the court should enter judgment in favour of the applicant?

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It is clear from Order 23 Rule 14(5) of the High Court Amendment 2013 Rules that:

*Upon an application on notice, the Court shall proceed to determine the case on the basis of the plaintiff's statement of claim, affidavits of witness statements and documents filed with the writ of summons, and the judgment shall be a judgment on the merits.*

Therefore, based on the foregoing provision it is clear that once an application is filed on notice is the court SHALL that is the court must deal with it. On the issue of cross examination raised by the 1<sup>st</sup> respondent in his brief, under the High Court Practice Direction 2013 paragraph 1(3) allows a party who did not file a defence to cross examine the witness of the other party but it states: 'Every party or witness who provides an affidavit of evidence MAY be cross examined by the opposing party. In effect cross examining the witness is not a must. Moreover, the practice direction is a guide to the rules it does not override the rules.

The court has discretion in very complex cases to allow the opposing party to cross examine the witnesses presented by the plaintiff. The opposing party who wants to cross examine the plaintiff's witness should apply to the court to do so before the plaintiff files an application for judgment, because once the application is filed the Court is obliged to deal with it. No such application was brought before the court. Therefore, the issue of cross examining the plaintiff's witness is a forgone issue and cannot be allowed at this stage.

### JUDGMENT

Furthermore, it should be noted that the fact that the applicants applied for judgment, does not mean that the court will automatically grant the application for judgment. The court will look at the statement of claim, the affidavit of witness statements and documents filed to see whether the applicant has proved its case on the balance of probabilities. See *OUSMAN*

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**BALDEH & ANOR & MOMODOU TIJAN JALLOW (2002-2008) 2 GLR 284.**

*It held that civil cases are decided on a preponderance of probabilities and the onus of adducing evidence is on the person who would fail if such evidence were not produced. The nature of proof in a given case is dictated by the particular circumstances of the available evidence.*

It should be noted that the defendants were not denied fair hearing because they were served with the originating processes and were given the opportunity to defend the suit but they failed to do so within the time stipulated by the rules. The defendants had 30 days from the date of service to file their defence but they failed to do so. The defendants even had an opportunity within the 30 days from the date of service to file an application for extension of time and they failed to do so. Therefore, the defendants cannot turn round and now say that they were denied fair hearing when in fact they failed to utilise the opportunity given to them by the rules to put up their defences.

I will therefore determine this case by looking at the statement of claim, the affidavit of witness statement and the documents filed to determine whether the plaintiffs have proved their case.

The claim is;

1. for a perpetual injunction restraining the defendants either by themselves, their servants, agent, privies howsoever from printing, publishing, circulating, distributing, and selling the pamphlets/books
    - a) History of The Gambia made simple
    - b) Mastering Gambia History with Ease
    - c) Topic in Gambia History with model Questions and Answers
  2. For an order impounding all the copies of the said pamphlets/books; entitled;
    - a) History of The Gambia made simple
    - b) Mastering Gambia History with Ease
-



- c) Topic in Gambia History with model Questions and Answers
3. Damages against the defendants jointly and severally for infringing the copy rights of the plaintiff in respect of the plaintiff's book entitle (a) "The Ethnic Groups of The Gambia" estimated in the sum of D1, 000, 000 covering the periods.
  4. Damages against the defendants jointly and severally for infringing the plaintiff's copyrights in respect of her book entitle "Social And Political Structures"
  5. Damages against the defendants jointly and severally for infringing the plaintiff's copyrights in respect of her book entitle "Leaders of The Senegambia" estimated in the sum of one million dalasis covering a period of ten years.
  6. Damages against the defendants jointly and severally for infringing the plaintiff's copyrights in respect of her book entitle "Development of Local Industries" estimated in the sum of one million dalasis covering a period of ten years.
  7. Damages against the defendants jointly and severally for infringing the plaintiff's copyrights in respect of her book entitle "Trade In The Senegambia" 2<sup>nd</sup> Edition "estimated in the sum of one million dalasis covering a period of ten years.
  8. Damages for the cost of instituting action which is 10% of the claim herein.
  9. For an order directed at the National Centre for Arts And Culture and the Ministry of Basic And Secondary Education to retrieve the defendant's books/pamphlets from circulation for their eventual destruction.
  10. Interests and cost.

A perpetual injunction is based on final determination of the rights of the parties and it is intended to prevent permanently infringement of those rights and obviate the necessity of bringing an action after action in respect of every such infringement. A perpetual injunction is grantable only after trial, when

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the applicant has duly established his right. See *STEEVES DAIRY LIMITED V TWIN CITY CO-OPERATIVE MILK PRODUCERS ASSOCIATION* (1926) 1 D. L. R. 130, Justice MACDONALD OF THE BRITISH COLUMBIA SUPREME COURT HELD THAT:

*"Where a plaintiff has established his legal right and the fact of its violation he is in general entitled as of course to a perpetual injunction to prevent the recurrence of the wrong, unless there be something special in the circumstances of the case."*

In the instant case according to the affidavit of witness statement of the plaintiff and the exhibits PSG 1A TO PSG 25 are deemed adopted it is clear that the plaintiff is a researcher see PSG 7. The plaintiff published some books which are exhibit PSG 9-13. It is indeed proved that the plaintiff's works were used by the 1<sup>st</sup> and 3<sup>rd</sup> defendants without proper acknowledgment and referencing of the author. There is proof that the plaintiff did apply to register the above mentioned publication of her works but this was done since 2005/2006 and there are filing certificates. However, there is no certificate of registration. Although copyright may be recognised in any completed work without formal registration. Copyright protects only the original expression of ideas and not the underlying ideas themselves.

There is no doubt that the plaintiff is the author of exhibits PSG9-13. See section 17(1) of the Copyright ACT CAP 95:02 which states that:

*"An individual whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the pseudonym of the work..."*

These averments in the affidavit of witness statement of the plaintiff was not denied therefore it is admitted, see *FIRST INTERNATIONAL BANK LTD & GAMBIA SHIPPING AGENCY LTD* (2002-2008) 2 GLR 208.

Damages are usually awarded as a consequence of the act of infringement. See section 52 of the Copyright Act. However the statement of claim does not



particularise the damages. Therefore it is not clear in each of the published items what exactly was infringed. The Court cannot speculate on it. Therefore, I refuse to grant the claim for damages.

The plaintiff's case succeeds in prayer 1 and, 2. However, the claims for damages fails. I shall award nominal damages which means that the plaintiff had negative anything like real damage and that there is an infraction of a legal right which, though it gives her no right to any real damages at all, yet it gives her a right to the verdict or judgment because her legal right has been infringed. For the claim directed at the National Centre for Arts and Culture and Ministry of Basic And Secondary Education it fails because the court cannot make an order against a person who is not a party to the case. I hold that judgment is granted in favour of the plaintiff against the 1<sup>st</sup> and 3<sup>rd</sup> defendant.

IT IS HEREBY ORDERED THAT;

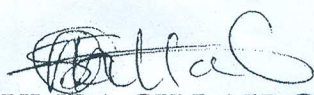
1. A perpetual injunction is granted to the plaintiff restraining the defendants either by themselves, their servants, agent, privies howsoever, from printing, publishing, circulating, distributing, selling the pamphlets/books
  - a) History of The Gambia made simple
  - b) Mastering Gambia History with Ease
  - c) Topic in Gambia History with model Questions and Answers
2. I hereby impound all the copies of the said pamphlets/books; entitled;
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  - c) Topic in Gambia History with model Questions and Answers

AGAINST the 1<sup>st</sup> and 3<sup>rd</sup> defendants.

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1. I award D50, 000 nominal damages against the 1<sup>st</sup> and 3<sup>rd</sup> defendants EACH in favour of the plaintiff.
2. Costs of D40, 000 is awarded to the plaintiff against the defendants.



HON JUSTICE KUMBA SILLAH-CAMARA

JUDGE

09/06/16