

C.C./19 2019 F. NO.

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

SIERRA LEONE
(TO WIT)

BETWEEN:

AIAH FENGAI AND 73 OTHERS 1ST PLAINTIFFS
3 RENNER STREET, (NO: 9)
KOIDU CITY

MARGINALISED AFFECTED PROPERTY OWNERS 2ND PLAINTIFF
(LG)
9 GBENSE NGUMBU STREET
TANKORO
KOIDU CITY

AND

OCTEA LTD	1 st DEFENDANT
THE MANAGING DIRECTOR OCTEA LIMITED	2 nd DEFENDANT
OCTEA DIAMOND LTD	3 rd DEFENDANT
THE MANAGING DIRECTOR OCTEA DIAMOND LIMITED	4 th DEFENDANT
OCTEA MINING LIMITED	5 th DEFENDANT
THE MANAGING DIRECTOR OCTEA MINING LIMITED	6 th DEFENDANT
OCTEA SERVICES LIMITED	7 th DEFENDANT
THE MANAGING DIRECTOR OCTEA SERVICES LIMITED	8 th DEFENDANT
OCTEA FOUNDATION LIMITED	9 th DEFENDANT
THE MANAGING DIRECTOR OCTEA FOUNDATION LIMITED	10 th DEFENDANT
KOIDU LIMITED	11 th DEFENDANT
THE MANAGING DIRECTOR KOIDU LIMITED	12 th DEFENDANT

ALL OF 84 WILKINGSON ROAD FREETOWN, SIERRA LEONE

By His Excellency the President of the Republic, Supreme Head of State, Grand Commander of the Order of the Republic, Commander-in-Chief of the Armed Forces, Fountain Head of Unity, Honour, Freedom and Justice.

TO: OCTEA LIMITED, THE MANAGING DIRECTOR OCTEA LIMITED, OCTEA DIAMOND LTD, THE MANAGING DIRECTOR OCTEA DIAMOND LIMITED, OCTEA MINING LIMITED, THE MANAGING DIRECTOR OCTEA MINING LIMITED, OCTEA SERVICES LIMITED, THE MANAGING DIRECTOR OCTEA SERVICES LIMITED, OCTEA FOUNDATION LIMITED, THE MANAGING DIRECTOR OCTEA FOUNDATION LIMITED, KOIDU LIMITED, THE MANAGING DIRECTOR KOIDU LIMITED

WE command you that within 14 days after service of the Writ on you, exclusive of the day of such service, you do cause an appearance to be entered for you in the High Court of Sierra Leone in an Action at the suit of AIAH FENGAI and 73 and others and THE MARGINALISED AFFECTED PROPERTY OWNERS (MAPO) LG , and take notice that in default of your so doing the Plaintiffs may proceed herein and judgment may be given in your absence.

WITNESS the Honorable **MR. JUSTICE DESMOND BABATUNDE EDWARDS**, Chief Justice of the Republic of Sierra Leone, on the day of in the Year of our Lord, 2019.

MASTER AND REGISTRAR

N.S

This Writ is to be served within twelve calendar months, from the date thereon, or if renewed, within six calendar months from the date of such renewal, inclusive of the day of such date, and not afterwards. The Defendant may appear hereto by entering an Appearance either personally or by a Solicitor at the master's office, High Court of Sierra Leone Kenema District Registry .

A Defendant appearing personally may, if he desires, enter his appearance by post and appropriate forms may be obtained by sending a postal order for Le300.00 with an addressed envelope, foolscap size, to the Master and Registrar, High Court Kenema District Registry.

If the Defendant enters an appearance, he must also deliver a Defence within ten (10) days from the last day of the time limited for appearance unless such time is extended by the Court or a judge; otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for judgment.

STATEMENT OF CLAIM

This is a class action claim for damages and declaratory and other forms of relief. The Plaintiffs' claims against the Defendants jointly and/or severally are for the following:

1. General Damages
2. Special Damages
3. Damages for unlawful deprivation of property
4. Damages for extreme emotional distress
5. Compensatory damages for breach of contract, in particular the Community Development Agreement (CDA) and other Resettlement Agreements
6. A Declaration that the Defendants have failed to comply with Section 38(1) of the Mines and Minerals Act 2009 Act No. 12 of 2009.
7. Enforcement of Section 38(1) of the Mines and Minerals Act, in particular with respect to resettlement and forced acquisition of land
8. A Declaration that the Defendants have failed to comply with Terms and Conditions of their Environmental Impact Assessment License.
9. Specific Performance of Article 3 of the Community Development Agreement (CDA 2017)
10. Specific Performance of Clause 15.13 of the Mining Lease Agreement of 2010
11. Abatement of the nuisance, in particular the emission of dust, toxic fumes, and loud noises that impinge on Plaintiffs' enjoyment of their property.
12. Damages for Nuisance suffered by the Plaintiffs.
13. An Order requiring the 11th Defendant to provide an accounting of its compliance with Section 15.13 of the Mining Lease Agreement 2010 and article 3 (i) of the Community Development Agreement (CDA 2017)
14. Interest pursuant to Section 4 (1) of the Law Reform (Miscellaneous Provisions) Cap 19 of the Laws of Sierra Leone 1960 till date of Judgment.
15. Any further or other Order(s) as this Honourable Court may deem fit and just.
16. Costs

PARTICULARS OF CLAIM

1. That at all material times the 1st Plaintiffs are a class composed of current members of the Marginalised Affected Property Owners, a company Limited by Guarantee organised under the Laws of Sierra Leone. They are all individuals living in Tankoro or Gbense Chiefdoms, Kono District, in the Eastern Province of the Republic of Sierra Leone, who have suffered any or all of the following damages as a result of the Defendants' Mining Activities:
 - i. Degradation or destruction of land;
 - ii. Damage to or destruction of homes, other structures, and other property;
 - iii. Loss of livelihoods and sources of income;
 - iv. Invasion of noxious fumes and dust, as well as noise pollution, causing health problems and emotional distress; and
 - v. Loss of cultural and religious sites.
2. The 2nd Plaintiff is and was at all material time a Company Limited by Guarantee, Registered in Sierra Leone with the object to promote Access to Justice, Remedy and Reparation for its members, the 1st Plaintiffs.

3. The 1st, 3rd, 5th, 7th, 9th & 11th Defendants are a group of Mining Companies engaged in Mining Activities in the Tankoro and Gbense Chiefdoms respectively in Kono District in the Eastern Province of the Republic of Sierra Leone.
4. That the 2nd, 4th, 6th, 8th, 10th & 12th Defendants are Managing Directors of the 1st, 3rd, 5th, 7th, 9th & 11th Defendants respectively.
5. In 2003, the 11th Defendant, on behalf of the 1st, 3rd, 5th, 7th, and 9th Defendants or their predecessors, entered into a Mining Lease Agreement with the Government of Sierra Leone that was revised, amended and updated in 2010.
6. The said Mining Lease Agreement granted the Defendants Mineral Rights over the concession areas of Tankoro and Gbense Chiefdoms respectively, within which the members of the Plaintiff Class reside and own properties.
7. The 1st Defendant has at all material times (and jointly with the 5th Defendant, since 2011) been the owner of all mining assets including the Koidu Kimberlite Project in Koidu operated by the 11th & 12th Defendants.
8. The 1st, 3rd, 5th, 7th, 9th, and 11th defendants are all under common control and are operated as a joint enterprise, by their parent company, BSG Resources Ltd., and the operations complained of in this Statement are personally directed by the 2nd, 4th, 6th, 8th, 10th, and 12th Defendants, respectively.
9. The 1st and 5th Defendants – Octea Ltd. and Octea Mining Ltd., respectively – control the financial decisions of the 11th Defendant – their subsidiary, Koidu Ltd. – and are directly involved in the resettlement of affected communities in Tankoro and Gbense Chiefdoms of Kono District.
10. The Koidu Kimberlite Project produces many severe impacts on the land and settlements in its immediate vicinity, including:
 - i. Frequent blasting with powerful explosives, which interrupts people’s lives by dangerously shaking houses, creates loud noise that produces serious disturbances to the emotional and physical wellbeing of people living in nearby homes, causes rubble and dust to rain down on the nearby area, and cracks walls and foundations of structures in the immediate vicinity;
 - ii. Dumping of stones and rubble, which engulfs local residents’ farmland;
 - iii. Transportation of mining materials by heavy trucks, which kicks up dust that is inhaled by locals and affects their skin and respiratory systems;
 - iv. Dumping and emission of toxic mine waste and effluent, which reduces the fertility of the surrounding lands and pollutes their sources of water;
 - v. Disturbance of the water table, decreasing the fertility of the surrounding lands and reducing availability of water for farming and household use.
11. Knowing that the people living in the areas surrounding the mine would suffer some or all of these impacts, the 11th & 12th Defendants knew that they would be required to create a program to resettle the affected population pursuant to Sierra Leone Law. In furtherance of the fulfilment of this obligation, it produced 2 Resettlement Action Plan Documents (RAP) – an Original RAP in 2003 and an Upgraded RAP in 2012.

12. On May 13, 2017, the 11th & 12th defendants entered into the latest of a series of Community Development Agreements (CDAs) with representatives of Tankoro and Gbense Chiefdoms for the benefit of the people of the two Chiefdoms. According to this Agreement – and, on information and belief, all the previous CDAs, the 11th & 12th defendants are required to follow Sierra Leone law and International Standards with respect to all its mining activities.
13. According to the said RAP and the International Standards that the Defendants are required to follow pursuant to the Mining Lease Agreement, the CDA, and Sierra Leone law, the persons in zones that were likely to be affected by the mining operations were to be resettled on appropriate land with adequate structures and facilities before mining activity started to affect their lives. In reality, few – if any – people in the affected zones were resettled beforehand.
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 and injuries described *supra* paragraph 10.
15. That the Resettlement Site designated by the Defendants is very far from the markets and other public facilities to which the 1st Plaintiffs have been accustomed, and many of them do not yet have new homes in the Resettlement Site. As a result, many members of the Plaintiff Class have never been relocated and remain in their old homes. These people continue to be subjected every day to the harms described *supra* paragraph 10.
16. That some members of the Plaintiff's Class were in fact resettled after the Defendants' Mining Activities had already begun to affect their lives. However, the Plaintiffs suffered further economic and emotional injury as a result of the Defendants' conduct of the Resettlement Process.
17. That the 11th & 12th Defendant offered some members of the Plaintiff Class compensation for the crops and economic trees they would lose upon resettlement. The 11th & 12th Defendants failed, refused and /or neglected to enumerate or assess the actual market value of these crops and economic trees; they simply offered a lump sum that was invariably much less than the actual value. Some members of the Plaintiff Class often accepted this offer because they believed they had no choice; others resisted and, in the end, were forced to move without any crop compensation at all.
18. That the 11th & 12th Defendants have built houses at the Resettlement Site for some of the members of the Plaintiff Class. The Defendants did not, however, build houses that were commensurate to those that the Plaintiffs had previously enjoyed. In many cases, the resettlement houses are smaller and made of inferior materials to the plaintiffs' original houses. Moreover, some of the Plaintiffs had multiple houses or other buildings in their original settlement, but the Defendants only built one house for them at the Relocation Site. Furthermore, some Plaintiffs have been resettled closer to the Defendants' Mine Site.
19. Many of the members of the Plaintiff Class (particularly women and children) have suffered serious economic dislocation, with clear negative impact to their physical and mental health and their financial position. For example, as the Mine's 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 injury to their bodies.

20. That other women of the Plaintiff class whose farmland and productive swamps were either covered by rubble or contaminated by Mining Activities have been forced to abandon agriculture. Many of them are now reduced to scavenging stones from the defendants' rubble pile and breaking them into gravel with hand-tools for sale to construction crews. This work is physically and emotionally debilitating.
21. As a result of these impacts, the members of the Plaintiff Class have suffered in the following ways:
- i. Physical pain and suffering
 - ii. Extreme emotional distress and psychological harm
 - iii. Loss of income from farming and animal rearing
 - iv. Loss of income from economic trees and crops
 - v. Loss of rental income from letting out of rooms in their homes to tenants
 - vi. Loss of access to ritual, religious, and ancestral sites
 - vii. Nuisance/interference with enjoyment of property
 - viii. Medical costs
22. That pursuant to the current CDA of 2017 and all previous CDAs, a Community Development Agreement Fund was to be created, which would be financed by “funds provided in pursuance of the mining lease agreement signed between the mineral right holder and the Government of Sierra Leone.” This provision refers to the obligation of the 11th defendant stipulated in the Mining Lease Agreement to pay an amount equal to 0.25% of revenues annually (“Stipulated Amount”) for development of its primary host communities – i.e. Tankoro and Gbense Chiefdoms.
23. As far as the members of the Plaintiff Class are aware, however, the Stipulated Amount has rarely – if ever – been paid into the Community Development Agreement Fund. As a result, Mining Revenues are not contributing to local development as envisaged in the CDA.

PARTICULARS OF EMOTIONAL DISTRESS

Each member of the Plaintiff Class suffers extreme emotional distress as a result of the Defendants' Mining Activities. This said distress arises in any or all of the following contexts:

- i. Inability to take care of family members and relatives caused by the loss of rents usually derived from rent of their properties, and deprivation of property and livelihoods.
- ii. The persistent uncertainty of continuing to live near the mine, knowing that the defendants may come at any moment to take their home and lands and, therefore, being unsure of whether to maintain, repair, or improve their property.
- iii. Constant apprehension or fear resulting from earth tremors caused by the Defendants' underground Kimberlite blasting operations, which disrupt their lives and shake their houses.
- iv. Debilitating and chronic respiratory and skin disorders, elevated stress, and hypertension as a result of constant exposure to dust and noxious fumes.

- v. Mental anguish and cultural dislocation as a result of loss of access to traditional cultural and religious sites, including grave sites, bondo bush, poro bush, and other sites associated with ancestors.

PARTICULARS OF NUISANCE

The defendants' mining operations continually produce substances and effects that interfere severely with the ability of members of the Plaintiff Class to enjoy their own property. In particular:

- i. The frequent blasting creates loud noises that disturb daily life inside the homes in the affected areas. The blasting also produces strong vibrations that crack the walls and foundations of homes.
- ii. The removal and deposition of mining rubble and the movement of heavy trucks with mining materials and equipment to and from the mine create dust that settles on the homes and property of people within the affected area, causing respiratory and skin disorders.
- iii. Toxic substances within the mining rubble and/or released as effluent leach onto the plaintiffs' land and into the waters on and under their lands, reducing the fertility of the land and poisoning their water sources.

PARTICULARS OF SPECIAL DAMAGES

Individual plaintiffs will adduce at trial evidence of the following special damages:

- i. Loss of rental income
- ii. Loss of valuable property, such as crops and economic trees
- iii. Loss of income from other sources, such as animal rearing
- iv. Difference in value between original houses and resettlement houses
- v. Value of unreplaced structures
- vi. Medical costs

WHEREFORE, THE PLAINTIFFS CLAIM IS FOR THE FOLLOWING

1. General Damages
2. Special Damages
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16. Costs

C O U N S E L

This Writ was issued by C & J PARTNERS whose address for Service is NO. 1 Jalloh Terrace, Makeni-Kabala Highway Panlap, Makeni, Solicitors for and on behalf of the Plaintiffs herein.

**LIST OF CLASS PLAINTIFFS WHO ARE MEMBERS OF THE
MARGINALIZED AFFECTED PROPERTY OWNERS (MAPO) LG**

NO	NAME	ADRESS	SIGNATURE
1	SAYOH LAHAI	4 KEISTER STREET	
2	FATMATA SHERIFF	11 JABBA LANE	
3	SAHR KAINGBANJA	13 JABBA STREET	
4	AZU CHUKU	6 JABBA STREET	
5	SAHR ALLIEU	2 JABBA STREET	
6	TAMBA SUNDU	1 JABBA STREET	
7	BASHIRU CONTEH	11 JABBA STREET	
8	BETTY LAMIN	9 JABBA STREET	
9	ABU KAMARA	25 SUNSUYAMA STREET	
10	KOMBA JIMISSA	FULLAH TOWN	
11	SAHR MOMOH	RENNER STREET	
12	KADIJATU SESAY	FULLAH TOWN	
13	FODAY FOFANAH	10 JABBA LANE	
14	AMIDU FOFANAH	17 JABBA STREET	
15	KUMBA SUMMER	SUNSUYAMA STREET	
16	ABUBAKARR KAMARA	SUNSUYAMA STREET	
17	HANNAH LEBBIE	12 SUNSUYAMA STREET	
18	FANTA KAMARA	SUNSUYAMA STREET	
19	GALLEH JALLOH	24 SUNSUYAMA STREET	

20	SIA MORSERAY	2 KEISTER STREET	
21	TAMBA KEISTER	3 KEISTER STREET	
22	IBRAHIM FILLIE	1 KEISTER STREET	
23	BONDU MOIGUWA	24 RENNER STREET	
24	TAMBA NICOL	RENNER STREET	
25	REBECCA ALLIEU	6 YOKA STREET	
26	YEI JOHNNY	RENNER STREET	
27	POSSEH KAMARA	RENNER STREET	
28	FATU MUNYA SANNOH	4 YOKA STREET	
29	TAMBA ALLIEU	6 YOKA STREET	
30	MOHAMED SHUR	RENNER STREET	

NO	NAME	ADRESS	SIGNATURE
31	SIA MOIQUE	JABBA STREET	
32	SAIDU BAH	8 JABBA STREET	
33	ISATA SHERIFF	NO 9 AREA	
34	AIAH BOCKARIE	YOKA STREET	
35	PAUL S. MUSA	RENNER STREET	
36	AIAH MORSERAY	SUNSEYAMA STREET	
37	MARIE JALLOH	1 SUNSEYAMA STREET	

38	KADIJATU BAH	KONO BOY SAQUEE STREET	
39	SAIDU BAH	8 JABBA STREET	
40	MOHAMED TUNKARA	JABBA LANE	
41	MOHAMED JALLOH	RENNER STREET	
42	YIE BOIMA	5 JABBA LANE	
43	MOHAMED BARRIE	RENNER STREET	
44	AMIDU SESAY	JABBA STREET	
45	FINDA MORIBA	25 B RENNER STREET	
46	SIA KOMBA	12 JABBA STREET	
47	SIA BIOMA	JABBA STREET	
48	JENEBA JALLOH	8 JABBA LANE	
49	SAHR BRIMA BENDU	C-93 RESETTLEMENT VILLAGE	
50	FATMATA BARRIE	KONO BOY SAQUEE STREET	
51	ADAMA BONA	26 SUNSEYAMA STREET	
52	HASSAN KOROMA	3 JABBA STREET	
53	RACHEL BARRIE	D-21 RESETTLEMENT VILLAGE	
54	MARIAMA SESAY	TRIPOLI RESETTLEMET	
55	TAMBA MANGA	1 YOKA STREET	
56	ADAMA MANSARAY	25 SUNSEYAMA STREET	
57	IDRISSA SANKOH	17 JABBA STREET	
58	FINDA BRIMA	TRIPOLI RESETTLEMET	
59	ALHAJI SANNOH	4 YOKA STREET	

60	EMMANUEL MUSA	RENNER STREET	
61	SAHR KABBA	4 JABBA STREET	
62	JOHN KAMARA	YOKA STREET	
63	RICHARD MORIBA	RENNER STREET	
64	ALHAJI YARROH JALLOH	25 RENNER STREET	
65	TAMBA BOIMA	25 SUNSEYAMA STREET	
66	ISATU BARRIE	SUNSEYA STREET	
67	KOMBA ALLIEU	KAMA NEW SITE	
68	FINDA KABBA	23 SUNSEYA STREET	
69	HAJA BINTU KAMANDA	21 SUNSEYAMA STREET	
70	KADIATU CAREW	27 KONO BOY SAQUEE STREET	
71	KOMBA GBORIE	30 RENNER STREET	
72	SAHR MADINDA	17 JABBA STREET	
73	FANTA KAMARA	9 SUNSEYAMA STREET	

C O U N S E L

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KOIDU LIMITED 11TH DEFENDANT
THE MANAGING DIRECTOR KOIDU LIMITED 12TH DEFENDANT

ALL OF 84 WILKINGSON ROAD FREETOWN, SIERRA LEONE

This writ was served by _____ on
On the _____ day of _____ The defendant
Dated this _____ day of _____ 2019
Address _____ 2019
Signed _____

WRIT OF SUMMONS

C & J PARTNERS
1 JALLOH TERRACE
MAKENI- KABALA HIGHWAY, MAKENI.