

CC:

M

2019

NO:

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

Sierra Leone
(TO WIT)

BETWEEN:

TAMBA SUPER MABAY
14 JABBA STREET,
KOIDU CITY

PLAINTIFF

AND

OCTEA LIMITED	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 OF SIERRA LEONE 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 OCTEASERVICES LIMITED, OCTEA FOUNDATION LIMITED, THE MANAGING DIRECTOR OCTEAFOUNDATION LIMITED, KOIDU LIMITED, THE MANAGING DIRECTORKOIDU 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 **TAMBA SUPER MABAY**. And take notice that in default of your so doing the Plaintiff 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, 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.

STATEMENTS OF CLAIM

The Plaintiff's Claim against the Defendants jointly and/or severally is 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 the Plaintiff is and was at all material times a resident and fee simple owner of 2 Town Lots of land situated at No. 14 Jabba Street, Tankoro Chiefdom, Koidu Town, Kono District in the Eastern Province of the Republic of Sierra Leone.
2. That the Plaintiff is and was at all material times the fee simple owner of 3 homes located on the said property.
3. That 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 Plaintiff resides and owns 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 – Ocea Ltd. and Ocea 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 Plaintiff and her property.
11. That the 11th Defendant frequently detonates powerful explosives. These explosions have caused dust and particles to fall on Plaintiff's home. They have shaken and cracked the walls of his houses. And they leave the Plaintiff in a prolonged state of anxiety, as the company can detonate explosives at any time during the day or night.
12. That the area where Plaintiff lives is now largely deserted and is no longer a commercially vibrant area. He no longer carries on his daily activities (teaching and preparing private pupils for External Examination) because many people have deserted the area and relocated to safe places within the town.
13. That the Plaintiff was previously able to rent out 6 rooms to tenants, but can no longer do so because nobody wants to live so close to the mine site, in a zone that is so frequently shaken by explosions.
14. 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.
15. 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.
16. 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.

17. That Representatives of the 11th Defendant visited Plaintiff in 2010 to assess his crop and property. The aforesaid Defendants further promised the Plaintiff that if he was relocated, scholarships would be provided for his siblings and would be relocated shortly within 1 year 6 months but uptill now that has not been done.
18. After the property assessment and crop valuation, the Plaintiff was given a voucher pursuant to which he was eventually paid a total sum of Le 7,000,000 an amount that is considerably lower than the value of his crops and economic trees.
19. That the Defendants never contacted Plaintiff or attempted to relocate him after several frantic efforts made by him. He continues to live in his compound – which has been damaged by the Defendants’ explosions and he remains terrorized by the explosions and is no longer able to make an adequate income.
20. As a result of these impacts, the Plaintiff has suffered in the following ways:
 - a. Extreme emotional distress and psychological harm
 - b. Loss of income from farming
 - c. Loss of income from economic trees
 - d. Loss of rental income from letting out of rooms in their homes to tenants
 - e. Nuisance/interference with enjoyment of property
 - f. Breach of contract

PARTICULARS OF SPECIAL DAMAGES

1. Plaintiff’s loss of rental income at Le 16,200,000 (Le 25,000 x 12 months x 6=rooms x 9 years)
2. Plaintiff’s loss of income from economic trees at Le 6, 400,000 (yearly) x 20 years= Le 29,200,000
 - a. 4 Mango Trees = (Le 100,000 per year x 4 trees x 20 years,
=Le 8,000,000
 - b. 4 Orange trees=Le 50,000 per year x 4 trees x 10 years
= 2,000,000
 - c. 4 Palm trees=Le 20,000 per year x 4 trees x 10 years
= Le 800,000
 - d. 2 Pea tree=Le 40,000 per year x 4 trees x 10 years
= Le 1,600,000
 - e. 2 Sweet Sharp tree=Le 20,000 per year x 4 trees x 15 years
=Le 1,200,000

(Less Le 7,000,000 compensation received)

PARTICULARS OF EMOTIONAL DISTRESS

1. Plaintiff lives in a constant state of nervous tension and psychological torture from the knowledge that the Defendants could come at any moment and force him to leave his land and property. He is unable to move forward because there is no suitable resettlement home prepared for him, and he also cannot maintain, repair, or improve his current home and land because he knows that his residency there is only temporary. This state of uncertainty has destroyed his community and peace of mind.
2. Plaintiff is subjected to constant apprehension or fear resulting from earth tremors caused by the Defendants' underground Kimberlite blasting operations, which come without warning and can happen at any time during the day or night.

WHEREFORE THE PLAINTIFF CLAIMS:

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

.....
COUNSEL

This writ is issued by C&J Partners whose address for service is No. 1Jalloh Terrace, Makeni-Kabala Highway, Panlap for and on behalf of the Plaintiff herein.

CC: M 2019 NO :
IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

Sierra Leone
 (TO WIT)

BETWEEN:

TAMBA SUPER MABAY 14 JABBA STREET, KOIDU CITY	PLAINTIFF
AND	
OCTEA LIMITED	1 st DEFENDANT
THE MANAGING DIRECTOR OCTEA LIMITED	2 nd DEFENDANT
OCTEAD 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

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

 WRIT OF SUMMONS

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