Misc. App 2/95

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

MOJIBOLA BAL-ADAMS
(ADMINISTRATRIX OF THE ESTATE
OF ISHMAEL CHARLES PRATT) – APPELLANT/APPLICANT

AND

SIMAH KAMARA
(ADMINISTRATOR OF THE ESTATE
OF LAHAI KAMARA)
&
ALHAJI WURIE JALLOH – RESPONDENTS

CORAM:

HON MR JUSTICE M O ADOPHY - JA
HON MR JUSTICE G GELAGA KING - JA
HON MR JUSTICE A B TIMBO - JA

RULING DELIVERED ON THE 9th DAY OF FEBRUARY, 1995

G. GELAGA-KING J.A.: The Applicant, by Notice of Motion dated the 10th day of January, 1995, moved this Court for an order, inter alia, that the Appellant in the matter intitled *Civ/App 41/89* and the Plaintiff in the High Court action C.C.424/85 be given leave to amend the writ of summons dated 22nd June, 1985, in the manner underlined red in the copy of the writ of summons exhibited to the affidavit in support. The respondents opposed the application.

Counsel for the Applicant submited that purely in the light of the new evidence this Court allowed the respondents to adduce, it would be in the interest of justice to amend the writ of summons in the manner indicated to enable this Court, effectually and completely to adjudicate upon and settle all questions involved in this appeal generally. The respondents, on the other hand, submitted that to allow the amendment would be an injustice - that when this matter was instituted in the High Court the Applicant had no locus standi - that not even this amendment will cloak the Applicant with locus standi in the Court below - that the Applicant had divested the estate to the beneficiaries and that there is no evidence to show that the Applicant has a Power of Attorney to act on behalf of the co-beneficiaries.

It seems to me that the principal questions which arise for determination are whether this Court has power to grant the amendment sought; if it has, whether it is in the interest of justice to grant it. To answer the first question first, I shall refer to r.31 of this Court's rules, P.N. No 29 of 1985. That rule provides, inter alia, that this Court "may from time to time make any order necessary for determining the real question in controversy in the appeal.....and generally shall have as full jurisdiction over the whole proceedings as if the

proceedings had been instituted and prosecuted in the Court as a Court of first instance..." This Court, therefore, not only has its own appellate powers but has also all the powers of the High Court. There is a similar provision in the White Book of 1960, O.58 r.9. Under the rubric: *Amendment of trial and pleadings*, it is stated that "the Court of Appeal has an inherent power to order the record of the trial to be amended so as to comply with the facts proved and the decision given ...***and also to allow the pleadings to be amended.***" And under O. 24 r. 1 of the High Court Rules that Court and, a fortiori , this Court "may at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings in such manner and on such terms as may be just, and all such amendments ***shall be made as may be necessary*** for the purpose of determining the real questions in controversy between the parties." It is crystal clear to me, therefore, that this Court has abundant power to grant the amendment sought.

I now turn to the next question: whether it is in the interest of justice to grant the amendment. The guiding principle of cardinal importance here is to be found in O. 24 r. 1 of the H.C.R.(supra) that all such amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings. In this regard, I am guided by the erudite and elegant dictum of Bowen L.J., which I accept and adopt, in the case of Cropper v. Smith (1884) 26 Ch.D. 700 at 710,711: "I think it is a well established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes which they make in the conduct of their cases by deciding otherwise than in accordance with their rights. . . I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy and I do not regard such amendment as a matter of favour or grace. . . It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right." Much the same thing had been said by Bramwell L.J. in the earlier case of Tildesley v. Harper (1878) 10 Ch. D. 393 at 396: *"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide or that, by his blunder he had done some injury to his opponentwhich could not be compensated for by costs or otherwise."*

Counsel for the respondents stated quite frankly that he was not suggesting mala fides on the part of counsel for the applicant. It is my considered opinion that the several objections raised by the respondents are not matters of injustice but could be properly considered to be matters of defence. In my judgement, the amendments sought are necessary for the purpose of determining the real question of controversy between the parties and also having regard to the principle, interest reipublicae ut sit finis litium. They can clearly be made without injustice, the other side can be given leave to amend their defence, if they so desire, and the respondents can be compensated by costs.

I would accordingly make the following orders:-

1. That leave be granted to the Applicant to amend the writ of summons herein dated 22nd June, 1985, in the manner shown underlined red in the copy of the writ of summons exhibited to the affidavit in support.

2. That the amended writ be delivered and filed within 3 days of the date of this order.

3. That leave be granted to the respondents to deliver and file an amended defence, if they so desire, within 3 days of the service on them of the amended writ.

4. That the costs of and occassioned by the amendment be the respondents' in any event.

HON MR JUSTICE G GELAGA KING JA

HON MR JUSTICE M. O ADOPHY, J.A.

(Presiding)

HON MR JUSTICE A. B. TIMBO J.A.