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IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

FODAY MOMOH GULAMA - APPELLANTS  
NATIONAL ELECTORAL COMMISSION

AND

SAMUEL NAGATEY GULAMA  
J.B. TOMAH-KPANGA VIA - RESPONDENTS  
MRS. DORIS FARMAH

CORAM:

HON. JUSTICE P.O. HAMILTON - JSC  
HON. V.M. SOLOMON - JA  
HON. JUSTICE A.H. CHARM - J

SOLICITORS

N.D. Tejan-Cole Esq. for the Appellants

Elvis Kargbo Esq. for the Respondents

JUDGMENT DELIVERED ON THE 22<sup>nd</sup> DAY OF November, 2012

HAMILTON - JSC

This is an Appeal against two Rulings and one Judgment dated 4<sup>th</sup> February, 2010, 23<sup>rd</sup> March, 2010 and 6<sup>th</sup> July, 2010 respectively all delivered by Hon. Justice S.A. Ademosu (deceased).

This Appeal involves an election petition dated 27<sup>th</sup> January, 2010 instituted against the Appellant. A motion for an injunction was filed on 29<sup>th</sup> January, 2010 for which an interim injunction was granted on 4<sup>th</sup> February, 2010. On

27<sup>th</sup> February, 2010 an appearance was filed together with an affidavit sworn to on 24<sup>th</sup> March, 2010.

On 24<sup>th</sup> March, 2010 a supplemental affidavit was sworn which contained an undertaking in respect of damages if the petition fails. On 6<sup>th</sup> July, 2010 an injunction was granted as contained in the Ruling/Judgment dated 6<sup>th</sup> July, 2010. Pursuant to this ruling leave was sought to appeal to the Court of Appeal which leave was granted on 20<sup>th</sup> August, 2012.

It is against this brief background that the Appellant filed a notice of appeal dated 30<sup>th</sup> August, 2010 on the following grounds:-

1. That the absence of a seal in a Petition on the face of the Petition and its absence is fatal and cannot be cured under *Order 2 of the High Court Rules 2007*. The provision is mandatory and the subsection is a deeming one.
2. The supplementary affidavit sworn to by the Petitioners contains a note of the wrong person on whose behalf it is filed and is incurable. Furthermore, the said affidavit was used as a substitute for an undertaking required on an application in respect of an injunction for damages that a person may offer as a result of the grant of the application.
3. It is submitted that the undertaking is a pre-condition to the making of the Order and in the present case the Order was made on the 4<sup>th</sup> February, 2010 and the application on 23<sup>rd</sup> March, 2010.



4. The Court erred when it said the undertaking should remain in force until the final determination of the Petition. What was in force was an interim injunction which has lapsed. The present interlocutory is irregular and a misdirection.

I shall consider ground 1 separately and grounds 2, 3 and 4 together.

### GROUND 1

Counsel for the Appellant submitted that every Petition issued out of the Master's Office shall be sealed by the Master and Registrar and being sealed shall be deemed to have been issued and the Petition of the Respondent dated 27<sup>th</sup> January, 2010 is not sealed and this makes the infraction fatal.

On the absence of the seal the Learned Trial Judge at Page 52 lines 7 to 17 of the records said:

*"Another important issue raised by Mr. Tejan-Cole is that the Petition was not sealed and therefore is not properly before this Court. He submitted that if it was not sealed it does not issue from the Registry Office. He relied on Order 6(7)(1) of the High Court Rules 2007 and Order 8 Rule 4(4) but the appropriate Order is Order 8 Rule (8)(4) as regards a Petition. This is a correct statement of the law it requires no further authority but Mr. Kargbo maintained that the Petition was signed and sealed by the Master and Registrar. He referred to the copy in the file. As I stated earlier, I know for a fact that the original file in this matter disappeared mysteriously and it was after its disappearance had been reported to the Hon. Chief Justice before the*

*matter could continue. In these circumstances, I cannot see how the Registry Office which seal Notice of Appearance filed and served could fail to seal a Petition to which the Appearance related”.*

Counsel then submitted that the language of the sub-rule is mandatory and it commences with the word “every” which means such singular and without exception. Therefore every copy of the Petition ought to be sealed.

Learned Counsel finally submitted that the omission is incurable and cannot be saved by *Order 2 Rule 1 of the High Court Rules, 2007* which requires a Judge to exercise his discretion in case of irregularities consisting of failure to comply with the High Court Rules and not intended to remedy failure of a mere fundamental kind.

Counsel for the Respondent in his reply submitted that the application was for an injunction and nothing to do with whether the Petition was sealed or not. He contends that it was sealed before the original file got mission and the respondents were present in Court and none of them raised any objection as to whether it was signed or sealed.

*Order 9 Rule 2(2) provides:*

*“Every Petition shall be issued out of the Master’s Office or District Registry and shall be sealed by the Master or District Registrar and upon its being sealed then be deemed to be issued”. (Emphasis added)*



In my humble opinion, it is mandatory that the Petition must be sealed and only when it is so sealed can it be deemed to have been issued. Where the Petition is not so sealed as in this present appeal the provision contained in *Order 9 Rule 2(2)* is clear that such Petition is deemed not to be issued, In this appeal therefore I do hold that since the petition is not sealed it is fatal. This ground therefore succeeds.

#### **GROUND 2, 3 AND 4**

Counsel for the Appellant in arguing these three (3) grounds dealing with a supplemental affidavit and an undertaking in respect of an interim injunction. The supplemental affidavit was sworn to on 24<sup>th</sup> March, 2010 and filed the following day but was filed erroneously on behalf of the Defendant/Respondent. Counsel submitted that an objection was taken pursuant to *Order 39 Rule 9(2) of the High Court Rules, 2007* but the Learned Trial Judge invoked *Order 31 Rule 4* regarding the use of defective affidavits and the affidavit was also an undertaking as to Damages in respect of the Notice of Motion dated 29<sup>th</sup> January, 2010 for interim and interlocutory injunctions.

Learned Counsel submitted that on 4<sup>th</sup> February, 2010 the Learned Trial Judge ordered both injunctions and service of the Petition on the 1<sup>st</sup> Respondent and the National Electoral Commission and on 23<sup>rd</sup> March, 2010 the interim injunction of 4<sup>th</sup> February, 2010 was extended and on the same day the undertaking for damages was filed. Counsel finally submitted that the Learned Trial Judge without an application voluntarily converted the interim injunction to an interlocutory injunction.

Counsel for the Respondent in his argument on grounds 2, 3 and 4 submitted that the Learned Trial Judge was right to allow the use of the supplemental affidavit pursuant to *Order 31 Rule 4 of the High Court Rules, 2007*. Counsel submitted that an undertaking is a precondition to the making of the Order of 5<sup>th</sup> February, 2010 and the application on 23<sup>rd</sup> May, 2011. Counsel further submitted that the Order of 4<sup>th</sup> February, 2010 was an interim Order to last until the adjourned date when the application would be heard inter partes and the undertaking was made pursuant to *Order 35 Rule 9*. Counsel further submitted that the interim injunction which was pronounced to be interlocutory was made pending the determination of the Petition.

Learned Counsel finally submitted that the injunction application was never argued as to whether it should be granted or not.

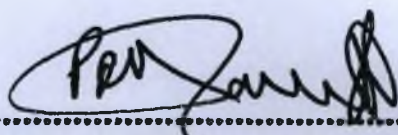
The Learned Trial Judge at Page 53 lines 4 to 7 of the said records said:


*"In this regard, I have not seen any fundamental defect that can take this Petition outside the umbrella of Order 2 of the High Court Rules of 2007. The result is that I rule that this Petition should go to trial after seven days or any other day agreed by both sides. The Order for interlocutory injunction remains in force until the final determination of the Petition".*


The Learned Trial Judge without an application converted the interim injunction into an interlocutory injunction which should remain in force until the determination of the petition. This is in contrast to the interim injunction granted on 25<sup>th</sup> March, 2010. The Petition therefore ought to be dismissed and is accordingly dismissed.



In the final result therefore the appeal is upheld with cost to Appellant of  
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HON. JUSTICE P.O. HAMILTON - JSC

I AGREE:   
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HON. JUSTICE V.M. SOLOMON - JA

I AGREE:   
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HON. JUSTICE A.H. CHARM - J