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CIV. APP. 35/2012

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

ERIK AIAH JABBA
ALFRED ROGERS

- APPELLANTS

AND

BAI SAMA SANKOH
WILLIAM A.B. TUCKER
KENEI K.J. FOMOLU
MINIRU A.Y. KOROMA

- RESPONDENTS

CORAM:

HON. MR. JUSTICE P.O. HAMILTON J.S.C.

HON. MRS. JUSTICE A. SHOWERS J.A.

HON. MRS. JUSTICE V.M. SOLOMON J.A.

SOLICITORS

C.F. MARGAI ESQ. FOR THE APPELLANTS

M.P. FOFANAH ESQ. FOR THE RESPONDENTS

JUDGMENT DELIVERED THIS 20th DAY OF SEPTEMBER, 2012

HAMILTON J.S.C.

This is an Appeal against the Ruling delivered by Hon. Mr. Justice Abdulai H. Charm J. dated 21st March, 2012.

A brief background in relation to this Appeal is needed in order to properly determine this appeal.

By a Petition dated 22nd September, 2011 the Petitioner (herein after referred to as "the Respondents") petitioned the Respondents (hereinafter referred to as "the Appellants") in the High Court to interpret the Constitution of the People's Movement for Democratic Change Party (P.M.D.C.) as stated in paragraph 3 of the said Petition amongst others. This Petition was accompanied by a joint affidavit signed by the respondents on 22nd September, 2011 as well as a notice dated 22nd September, 2011 requiring the Appellants to enter an appearance and for which appearance was entered on behalf of the Appellants on 10th October, 2011.

By a Notice of Motion dated 11th October, 2011 together with supporting affidavit and exhibits the Appellants herein applied to the Court for the setting aside of the petition and service thereof for gross irregularity.

By Notice of Motion dated 13th November, 2011 the Respondents applied for an interim injunction.

On 14th November, 2011 the Respondents filed a joint affidavit with exhibits justifying their paid up membership to the party. On 17th October, 2011 the Respondents filed a joint affidavit correcting a perceived error contained in an earlier affidavit of 22nd September, 2011.

On 18th November, 2011 a ruling was delivered on the motion to set aside the petition and service thereof. Answer by the Appellants to the petition dated 22nd September, 2011 was filed dated 20th November, 2011. An affidavit in opposition on behalf of the Appellants sworn to by Robert Baoma Kowa on 18th January, 2012 opposing the motion dated 13th October, 2011 which motion was for the injunction.

A joint affidavit of the Respondents sworn to on 19th January, 2012 in reply to that sworn to by Robert Baoma Kowa on 18th January, 2012 was filed. A Notice of Motion on behalf of the Appellants dated 24th January, 2012 was filed with supporting affidavit and exhibits applying to the Court to strike out the petition as being premature and an abuse of the due process of law for non compliance with the doctrine of exhaustion. A Ruling dated 21st March, 2012 was delivered and it is against this Ruling that the Appellants have now appealed to this Court on the following grounds:

GROUND ONE

His Lordship imported extraneous and extrinsic evidence into the proceedings thereby blurring his judicial vision in delivering a considered Ruling, hence the erroneous conclusion reached.

PARTICULARS

"The application is supported by two affidavits both deposed and... And I so direct" (P.4 Parg.2 of Ruling).

GROUND TWO

His Lordship without Legal justification, departed from the guidelines in the interpretation of Section 6 of the Political Parties Act. No.3 of 2002 when dealing with such matters, as contained in the Supreme Court Judgments: S.C. No.2/2005 Samuel Hinga Norman AND Dr. Sama S. Banya & Ors. (P.266-347) S. Ct. Judgments/Rulings 2002-2005 AND SC. No.3/2005 – Samuel Hinga Norman AND S.L.P.P. etc. (P.36-77) reported in S.C. Judgs/Rulings 2006; and instead held that the matter before him was distinguishable, without indicating how.

PARTICULARS

- a. *"Counsel for the petitioners argues that the Samuel Hinga Norman case the Respondent's Counsel relied on was on Section 27(1) of the Political Parties Act and I so hold. I have maintained that Section 6 of the Political Parties Act is not in mandatory terms and thus failure to have recourse to the commission does not affect the petitioners locus standi" (P.12 Para.1).*
- b. *Given the above, "it can be safely said that this case is distinguishable from the Samuel Hinga Norman case and I am therefore not bound by the decision in that case" (P.12 Parag.2).*

GROUND THREE

- His Lordship without the petitioners seeking an Order of injunction against the People's Movement for Democratic Change (P.M.D.C.) Party, not a party to the proceedings, in his *Order two* (2) slammed an injunction on the party from holding further elections and/or National Conference until the petition is determined.

PARTICULARS

"That no further elections and/or National Conference of the People's Movement for Democratic Change (PMDC) Party should take place or be held until the hearing and determination of this Action".

GROUND FOUR

His Lordship dismissal of the application to strike out the petition is most unreasonable, devoid of any judicial reasoning save that it was froth with prejudice of a political nature.

GROUND FIVE

His Lordship's granting of an injunction at this stage, is not only a reversal of an earlier position held by him that, if at the end of the proceedings he were to uphold the Petitioners' petition, then the appropriate Orders would be made, but to say the least, his granting of the injunction which is a 'U' turn is an attempt to pre-empt the outcome of the petition.

GROUND SIX

His Lordship's Ruling in its totality cannot be supported by the facts then before him.

GROUND 1

Counsel for the Appellants in dealing with this ground of appeal submitted that His Lordship wrongly assumed that the notice of motion dated 24th January, 2012 was supported by two affidavits that of 24th January, 2012 and 20th January, 2011 and that the supplemental affidavit preceded that of 24th January 2012 which is not the case since there exists no affidavit in opposition sworn to on 24th January, 2012.

Learned Counsel for the Respondents in reply in his synopsis states that whilst it is true that there was no supplemental affidavit to the motion of 24th January, 2012 but submitted that the affidavit exhibited as RBK¹⁻⁵ and marked supplemental affidavit sworn to on 20th January, 2012 which is exhibited in the supporting affidavit of Robert Baoma Kowa sworn to on 24th January, 2012 was close only in time to the main affidavit of 20th January, 2012 that it could be easily mistaken as a supplemental affidavit filed in support of the main affidavit.

Although Learned Counsel conceded this error he submitted that the error or oversight did not in any way interfere with the Learned Judge's ruling nor did it blur his vision as to what was fair and just in the circumstances of the case. Counsel further submitted that the Learned Judge thinking that the said affidavit and its exhibits were filed supplemental to the affidavit of the 24th January, 2012 did amend the defect *su moto* in order to have it read in line with the date of the main affidavit supporting the motion to read 24th January, 2012 not 20th January relying on *Order 31 Rule 4 of the High Court Rules, 2007*. Counsel further submitted that reference by the Learned Trial Judge to an affidavit in opposition sworn to on the 24th January, 2012 could be a reasonable mistaken reference to the main supporting affidavit of Robert Baoma Kowa sworn to on the 24th January, 2012. He finally submitted that all these erroneous references were only made *obita dicta* and were not part of the ratio *decidendi*.

Although from the analysis of the Learned Judge it demonstrated that there were two affidavits in support of the motion of 24th January, 2012 which gives rise to this appeal it is clear that there was only one affidavit in support of the motion to which the Respondents did concede and considering *Order 31 Rule 4 of the High Court Rules 2007* to which the Learned Judge did refer in his ruling cures the mistake or defect that might have arisen.

In my opinion the reference in the Learned Judge's ruling to an affidavit in opposition sworn to 24th January, 2012 relates to the main supporting affidavit sworn to on 24th January, 2012 by R.B. Kowa as the affidavit of 24th January, 2012 is not an affidavit in opposition but the affidavit in support of the motion. This variance does not in any way affect the Ruling of the Learned Judge. This ground therefore fails and is accordingly dismissed.

GROUND 2

°This ground of appeal is the pivot or gravamen of this appeal. Counsel for the Appellants submitted that the Petitioners/Respondents should have recourse to the internal settlement of the issues based on Article IV (3g) of the PMDC Constitution and if dissatisfied should then refer to the PPRC pursuant to Section 6 of the *Political Parties Act 2002* before resorting to the Courts and failure to do so is an infraction of the doctrine of exhaustion. Nowhere in the petition nor in the supporting affidavit is it stated that Article IV (3g) of the PMDC Constitution was used nor is there a decision nor is it stated anywhere that the respondents took their grievances to the PPRC under *Section 6 of the Act* and a decision given.

Counsel further submitted that rather Exh. H¹⁻³ was attached to their joint affidavit sworn to on 13th November, 2011 especially Exh. H¹ a letter from PPRC dated 4th October 2011 intended to create an impression that the respondents did resort to the PPRC pursuant to *Section 6 of the Political Parties Act, 2002*. However, Counsel submitted that Exh. H¹ has no nexus with the petitioners and even if it was there was nothing before the Court that PPRC had gone into the protest and a decision given that would have created the way leading to the filing of the petition in court.

Counsel for the Respondents in his synopsis submitted that even though the Learned Judge clearly stated why the Supreme Court in the Samuel Hinga Norman case as well as Section 6 of the Political Parties Act, 2002 were distinguishable and inapplicable to the present case. He submitted that Counsel for the Appellants ignored the reasons proffered and chose to attack the personality of the Learned Judge in the affidavit of R.B. Kowa sworn to on the 26th March, 2012.

Learned Counsel for the Respondents further submitted that the Learned Judge did further note that Article IV (3g) of the PMDC Constitution provides for internal settlement of disputes with the establishment of the Disciplinary Committee and that apart from the National Council which is in existence the Appellants did not prove that there exist channels which the Respondents failed to exhaust before coming to the Court. In this regard the Learned Judge at Pages 335-336 of the records said:

"Article IV (3g) of the People's Movement for Democratic Change Party Constitution as quoted above provides for internal settlement of disputes whether between members or between the party and members, according to the Rules and Regulations of the Party Constitution. The Rules and Regulations of the Party in particular Rule 5 makes provision for the establishment of a disciplinary committee and provides as follows:

(a) In the case of the Disciplinary Committee, there shall be a right of appeal from the Regional Disciplinary Committee to the National Disciplinary Committee.

(b) In the case of suspension or expulsion a further right of appeal exists to the National Counsel.

(c) Where the expulsion is recommended, such expulsion shall be sanctioned by the conference after review.

Except for the National Council which is in existence, there is no evidence before me that there is in existence a National disciplinary

Committee to which any suspended or expelled member must first seek recourse to before further appealing to the National Council.

A party which alleges that another party has failed to exhaust local remedies must as a matter of fact show that organs/channels for the exhausting local remedies exist and that other party failed to exhaust those local remedies. That is what the Respondents have failed to prove to this Court; that channels for redress exist which the Petitioners failed to exhaust before evoking the jurisdiction of the Court. It is not enough to say that the People's Movement for Democratic Change (PMDC) Party Constitution and its Rules and Regulations make provision for the establishment of the organs through which an aggrieved member must exhaust local remedies; the organs must be in existence at the time a party is alleged to have failed to exhaust local remedies. In the absence of evidence of the existence of such internal organs for addressing grievances, the Court cannot hold that the Petitioners failed to exhaust local remedies".

The above quoted dictum of the Learned Judge clearly demonstrates in my humble opinion that there is the internal process within the PMDC which ought to have been in place and with clear evidence that the Respondents failed to exhaust the internal remedies before proceeding further. There is no evidence to prove that the Respondents herein failed to exhaust local remedies.

Counsel for the Respondents submitted that *Section 6(d) of the Political Parties Act, 2002* begins with "When approached by the person or persons concerned" creates a discretion for aggrieved persons or parties to either approach the PPRC to

mediate on the disputes amongst its leadership or elects not to approach it at all. Learned Counsel went on to submit that Exh. H¹ which did request the PMDC leadership to put a hold on proposed elections of the party to which Counsel for the Appellants in answer to the Petition did aver that the Respondents urged this Hon. Court to dismiss the petition as being frivolous, vexatious and an abuse of the judicial process as the Petitioners should have first referred their grievances if at all, to the PPRC by virtue of the powers vested in it by the Act and not invoking the jurisdiction of this Hon. Court in which the Appellants had taken the view that the Respondent were mandatorily bound to have first commenced their complaint with the PPRC.

Counsel finally submitted that the Learned judge submitted that the Learned Judge did hold rightly that the aggrieved parties were not bound to approach the PPRC to mediate in the disputes especially so when the 1st Petitioner who is Acting Chairman of the Party was never suspended.

The Learned Judge in distinguishing the Samuel Hinga Norman's case from this present case said at Page 337 of the records lines 3-11:

"Counsel for the Petitioner argued that the Samuel Hinga Norman's case the Respondent's Counsel relied on was Section 27(1) of the Political Parties Act and I so hold. I have maintained that Section 6 of the Political parties Act is not mandatory terms and thus failure to have recourse to the Commission does not affect the Petitioners locus standi. Given the above it can safely be said that this case is distinguishable from the Samuel Hinga Norman case....."

The Learned Judge did in his ruling clearly distinguish the case of Samuel Hinga Norman and did state clearly *Section 27(1) of the Political Parties Act 2002* was what was relied on in that case. This ground of appeal therefore fails.

GROUND 3, 4, 5 AND 6

Counsel for the Appellants in arguing these four grounds together submitted that the PMDC was not a party to the Petition and that the motion for injunction filed on the 13th October, 2012 was lucid as to the order sought and those to be affected. Counsel further submitted that PMDC cannot by any stretch of imagination be an agent of the Respondents rather if anything at all it should be the converse. Learned Counsel finally submitted that the Learned Judge was palpably wrong to have pronounced an injunction on the PMDC.

Counsel for the Respondents in his synopsis submitted that this ground is a misapplication and misreading of the Ruling of the Learned Judge since in granting the injunction that no further election and or National Conference of the PMDC should take place pending the determination of the action, the Learned Judge firstly found and held that there were triable issues to be tried judicially and secondly whether damages are an alternative to the granting of the injunction.

Learned Counsel further submitted that the injunction granted is not against the PMDC Party but against the conduct of individuals in the Party who are using the Party to further their unconstitutional, illegal and undemocratic objectives. He further submitted that the only way to stop such persons including the respondents and their agents is to grant the injunction in order that they do not proceed to hold a flawed and illegal party conference or convention.

The Learned Judge in treating the injunction at Pages 300-301 of the records said:

"Let me state here and then that, interlocutory injunctions are equitable remedies which the Court has discretion to grant or not to grant, depending on the prevailing circumstances. In exercising its discretion, the Court is guided by certain principles which are laid down in the celebrated case of American Cyanamid Co. V. Ethicon (1975) 1 All E.R. 504. In an application for interlocutory injunction the first consideration is whether the matter discloses any triable issues. In answering whether there are triable issues in this case, I will refer to my ruling of 18th November, 2011 where I held that the Petitioners have locus standi to bring this petition. And that being the case, I hold that there are triable issues which the Court ought to determine. Having answered the first question, I now turn to the question of damages; whether damages would be adequate compensation for the injury suffered by the grant of an injunction. Different cases must be treated differently. In this instance I note that the issue at stake is authority/and or influence. I hold that the grant of injunction will not affect the Respondents as much as the refusal will affect the Petitioners. Following the above the balance of convenience lies in granting the injunction prayed for".

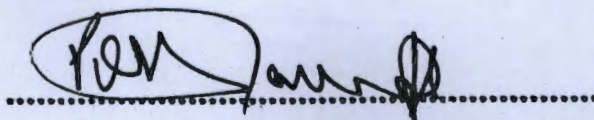
The above quoted dictum of the learned Judge in my humble opinion is right and I do agree with him.

It is clear from the Petition that the Petitioners did challenge and petitioned the holding of illegal Regional, District and Constituency Party elections which would eventually lead to a National Conference which will in the end elect executive officers of the Party. The injunction granted was aimed at serving the interest of justice in stopping officials of the Party to proceed to a National Conference in

which the delegates whose election had already been petitioned and impugned could in the end vote for a National Leader and various other top party officials which in the end would have been illegal.

In my humble opinion the injunction granted was not against the party *per se* but rather against the conduct of individuals in the party whose acts and conducts are being used in the furtherance of their unconstitutional, illegal and undemocratic acts as members/officials of the Party. The injunction is therefore intended to temporarily put a hold on the activities of the Appellants, their agents and supporters from proceeding to hold flawed and illegal party conference or Convention. It is clear from the petition that the Appellants and the Respondents are sued in various capacities within the People's Movement for Democratic Change (PMDC) Party and in no other capacity therefore the injunction is in relation to the various capacities in the Party. Therefore the Orders made by the Learned Judge as contained in *Orders 1 and 2* are correct and as a result this ground of appeal fails and is dismissed.

It is clear from all what have been said earlier, this appeal lacks merit and is accordingly dismissed with cost to the Respondents such cost to be taxed if not agreed.

A handwritten signature in black ink, appearing to read 'P.O. Hamilton', is written over a horizontal dotted line.

HON. MR. JUSTICE P.O. HAMILTON J.S.C

I AGREE:.....*A. Showers*.....

HON. MRS. JUSTICE A. SHOWERS J.A.

I AGREE:.....*M. Blau*.....

HON. MRS. JUSTICE V.M. SOLOMON J.A.