

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

ABDULAI MOIJUEH - APPELLANTS
FRANK ANTHONY
MRS ROGERS

AND

ABU SMART - RESPONDENT
THE PESSIMA FAMILY

COUNSEL:

E E C SHEARS-MOSES ESQ for the Appellants
A M BANGURAH ESQ for the Respondent

CORAM:

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF THE
SUPREME COURT

THE HONOURABLE MR JUSTICE E E ROBERTS, JUSTICE OF THE SUPREME
COURT

THE HONOURABLE MS JUSTICE V M SOLOMON, JUSTICE OF THE
SUPREME COURT

JUDGMENT DELIVERED THE *12* DAY OF MARCH, 2015.

THE APPEAL

1. This is an appeal brought by way of Notice of Appeal filed on 7 January, 2011 by the Appellants herein against the Order of KONOYIMA, J made and delivered on 19 October, 2010 in the High Court sitting at Bo. There are 3 Grounds of Appeal:
 - i. The Learned Judge erred in Law in ordering that a matter pending in the District Appeals Court be transferred to the High Court.
 - ii. The Learned Judge erred in ordering the transfer from the District Appeals Court of Bo to High Court of the Bo District Registry (Sic) of a matter which the Plaintiff/Respondent claimed in both their Notice of Motion and their affidavit in support was presided over by Magistrate Steven Conteh there being no such

Magistrate presiding over the District Appeals Court at Bo at the material time.

- iii. The Learned Judge misapplied the provisions of Section 10 of the Courts' Act, 1965.
2. The Appellants pray that the Ruling of the Learned Judge, and all subsequent proceedings consequent upon the same, be set aside and that a Ruling in favour of the Appellants be entered by this Court. And also, that the Respondents bear the Costs of this Appeal.

BACKGROUND

3. The Record - pages 1&2 - shows that on 5 March, 2007 the Respondent herein applied to the District Appeals Court, Bo, by way of Notice of Motion, for three matters to be transferred from the Kakua Local Court, Bo, to the District Appeals Court for hearing and determination. The matters were those between Abu Smart as Plaintiff and Abdul Moijueh as Defendant; between Abu Smart as Plaintiff and Frank Anthony as Defendant; and between Abu Smart as Plaintiff and Mrs Rogers as Defendant. The Respondent also asked that if the Order for transfer be made, that the three actions be consolidated.
4. The reasons for the Application are to be found in the supporting affidavit of the Respondent, deposed and sworn to that same day - pages 4&5. Reference is made in paragraph 5 of the affidavit, to the 'dual capacity' of the District Appeal Court though it is not quite clear what this means. But in paragraph 6 thereof, the deponent deposed that: *"There are complex legal issues involved in these matters that in my opinion can only be competently handled by legally trained minds and with expertise...."* The Record does not show whether and when if at all, an Order for transfer was made in 2007, but at page 8 et seq, we find minutes of the proceedings in the District Appeal Court presided over by His Worship M. Stevens esq., Magistrate. At the top of page 8, the minutes of the proceedings on 22 April, 2010 read: *"...Counsel for the Respondents is not opposed to the application for a transfer. The Bench: the Motion of (sic) transfer is granted by this court. Case adjourned to 4th May, 2010 for hearing."* On the same page in the Record, it appears, the hearing before Mr Stevens actually commenced on 18 May, 2010 and witnesses were taken on that day and intermittently, on subsequent days unto 5 October, 2010. On that day, Counsel for the Respondent, was not in Court. It appears he had sent a letter to the Court dated 1st

October, 2010 stating that he would not be able to attend Court on 5th October as he would be travelling to Freetown on Sunday 3rd October, and expected to return to Bo on Wednesday 6th October. Reading the minutes at the bottom of page 15 of the Record, it is quite apparent that the Learned Presiding Magistrate was most annoyed at Counsel's absence and the request for an adjournment. He was not prepared to grant the adjournment. He therefore proceeded to hear the surveyor witness for the Respondent as he was present in Court. Mr J Cole, Counsel for the Appellant then applied that the Respondent's case be closed as his Counsel had been the cause of the protracted nature of the proceedings. The Learned Magistrate granted the Application - page 16 - and closed Respondent's case. He adjourned the hearing to 19 October, 2010 for addresses.

RESPONDENT'S MOTION OF 12 OCTOBER, 2010

5. By Notice of Motion dated 12 October, 2010 the Respondent through his Solicitor Mr A M Bangurah, applied by way of Notice of Motion to the Local Appeals Division of the High Court, Bo for, inter alia, the following Orders: An interim stay of the proceedings in the District Appeal Court, Bo; that the consolidated matter pending before in that Court, be transferred to the Local Appeals Division of the High Court sitting at Bo for "*...a continuation of its hearing and determination*"; that the order(s) of the District Appeal Court, Bo made by His Worship "Steven Conteh" on 5th October, 2010 in the said matter, be set aside.
6. Mr Shears-Moses has made much play of the error in the last mentioned Order prayed for, in that it referred to Mr Steven Conteh, now deceased, as the Presiding Magistrate, instead of Mr M. Stevens who was the Presiding Magistrate. The error was even canvassed as a ground of appeal. It was an obvious error which could have been corrected at the hearing of the Application, and we do not think it merits the consideration of this Court as a proper and/or important ground of appeal. It deceived no one; nor, did it prejudice the Appellants in any way whatsoever.
7. The Application was supported by the affidavit of the Respondent himself, deposed and sworn to on 12th October, 2010. He deposed to the perceived prejudice and bias of His Worship, Mr Stevens. He said, among other things, that at that 5th October hearing, he, an illiterate man, had been forced to cross-examine an expert witness, and had been told he

must call his other witnesses who were not available that day. He had not himself testified as to the facts, yet still, the Learned Magistrate had declared his case closed.

APPELLANT'S AFFIDAVIT IN OPPOSITION

8. The 1st Appellant deposed and swore to an affidavit in opposition on 15 October, 2010. He deposed that the Respondent had been guilty of excessive delay in the way he had prosecuted his claim. The Respondent had ulterior and mercenary motives in causing the unnecessary delays in the hearings. In his view, the Learned Magistrate had bent backwards on several occasions to accommodate the Respondent's Counsel.

HEARING BEFORE KONOYIMA, J

9. The Respondent's Motion first came up for hearing before KONOYIMA, J on 15 October, 2010 page 100. Counsel on both sides were present. An interim stay of the proceedings before the Learned Magistrate was Ordered and the hearing adjourned to 19 October, the same day the Learned Magistrate had adjourned the hearing before him. Counsel on both sides were heard in argument by the Learned Judge that same day. At the end of the hearing, he gave his Ruling. He referred to Section 10 of the Courts' Act, 1965 and Section 134 of the Constitution of Sierra Leone, 1991. Section 10 of the Courts' Act states: *"The High Court may of its own motion or on the application of the presiding magistrate or of any party to the proceedings on cause shown transfer - (a) any matter pending before the Magistrate's Court in its civil jurisdiction to the High Court or to another Magistrate's Court for hearing and determination there...."* Section 134 of the Constitution states: *The High Court shall have supervisory jurisdiction over all inferior and traditional Courts in Sierra Leone..... and in the exercise of its supervisory jurisdiction shall have power to issue such directions, writs and orders....as it may consider appropriate for the purpose of enforcing or securing the enforcement of its supervisory powers.*
10. The Learned Presiding Judge Ordered as follows: That the matter between the Appellants and the Respondent be transferred to the High Court for *"for the continuation and final determination"*; that all the records of the proceedings in the Magistrate's Court be prepared and filed/lodged at the High Court, Bo within fourteen days from the date of

this Order by the plaintiff/applicant; that the costs of this application be costs in the cause.

11. We have dealt with this issue of a transfer to the High Court of a matter which arose in a Local Court in another appeal in which Judgment should also be delivered to day. That is Civil Appeal 42/2011 - EDWARD GARNEM v FANNAH JAWARA. There, we have said at paragraph 8 *"However, the High Court Rules, 2007 which came into force in 2007 now permit a Declaration and Injunctive relief to be granted an Applicant for Judicial Review, in addition to the prerogative Orders. An application for Judicial Review is now the method by which the supervisory jurisdiction of the High Court could be invoked. But the question still remains whether the High Court was right in transferring to itself for hearing and determination, an action which had commenced in the Local Court, and which had not been determined in that Court, on an Application made to it to exercise its supervisory power over the District Appeals Court. The application was not also, an appeal. We would not condone the practice, but we are of the view that since the High Court's interference or intervention in the dispute was invoked by the Appellant, on apparently solid grounds - bias on the part of the part of the Chairman of the District Appeals Court - he cannot now complain that the High Court was wrong to have paid heed to his grievance, and to have given him a fair hearing. We say further, that if an appeal had been brought against the Order for a transfer at that stage, we may have given some serious consideration to the same. But, the Appellant acquiesced and participated actively in the trial. This appeal is not about the power of the High Court to have a civil action transferred to it. It is about how the Learned Presiding Judge arrived at his judgment."* We think it is pertinent to observe that Mr A M Bangurah was Counsel for the Appellant in that appeal. It seems to us that Mr Bangurah is prone to resort to the "transfer" mechanism whenever a disagreement arises between himself and the presiding Magistrate.
12. In that appeal also, we pointed out that before the High Court could invest itself with jurisdiction to hear and determine a matter which originated in a Local Court, it would have to pay heed to the restraining provisions of Section 21(a) of the Courts' Act, 1965 which states: *"Nothing in this Act shall be deemed to invest the High Court with jurisdiction in regard to - (a) any action or original proceedings - (i) to determine the title to land situated in the Provinces other than title to a*

leasehold granted under the Provinces Land Act." However, in the instant appeal, the Court below had not got to the stage of deciding whether the action concerned the determination of title to land in the Provinces, before this appeal was brought.

13. We have cited Section 10 of the Courts' Act, 1965 above. According to the provisions of Section 21(a) of that Act, an action involving the determination of title to land in the Provinces cannot be heard in the High Court. If it cannot be heard in the High Court, it means it cannot be transferred to that Court for hearing and determination. The Local Courts' Act, 1963 as amended by Acts Nos. 29 of 1965, 28 of 1966, and 19 of 1974, provides for the jurisdiction of Local Courts. Sub-Section 14(2) of the principal Act empowers a District Appeals Court to order a transfer of an action pending in a Local Court to itself, among others. A similar provision does not exist as regards the High Court. A case which originates in a Local Court can be taken to the High Court on appeal from the decision of a District Appeal Court - see Sub-Section 31(1)(a) of the Act. But as we said in the *GARNEM v JAWARA* appeal, if both sides acquiesce in a trial being transferred to and being conducted in the High Court, it will be wrong for the losing party to come to this Court to plead that it had been wrong for the High Court to try the action in the first place.
14. Having reviewed the circumstances surrounding this appeal, we are of the view that the Learned Presiding Judge should have, in the exercise of his supervisory powers, remitted this matter to the District Appeal Court for a continuation of the hearing with a direction that the Respondent's case be re-opened, and that he be allowed to testify, and to call additional witnesses, if he so wished, in that Court. In the exercise of his supervisory powers, he could also have directed that the Learned Presiding Magistrate, refrain from making comments whether in admiration of one Counsel, or, derogatory of another.
15. In the result, we would allow the Appellants' appeal. The Order of the Court is as follows:
 - i. The Order of the Honourable Mr Justice A D Konoyima, High Court Judge, made in the High Court sitting in Bo on the 19th day of October, 2010 transferring the action *ABU SMART (Plaintiff) v ABDULAI MOIJUEH, FRANK ANTHONY and MRS ROGERS (Defendants)* pending in the District Appeal Court, Bo to the said High Court sitting in Bo, is hereby set aside.

- ii. This Honourable Court Orders that the said matter be remitted to the District Appeal Court, Bo for a continuation of the hearing, and if that is impracticable, for the trial of the action to be commenced de novo.
- iii. The Appellants shall ^{pay} the Costs of this appeal. *ph*

ph
THE HONOURABLE MR JUSTICE N C BROWNE-MARKE,
JUSTICE OF THE SUPREME COURT

EE Roberts
THE HONOURABLE MR JUSTICE E E ROBERTS,
JUSTICE OF THE SUPREME COURT

MS Solomon
THE HONOURABLE MS JUSTICE V M SOLOMON
JUSTICE OF THE SUPREME COURT