CIV/APP 46/2012

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN

MILICENT LEWIS OJUMU (Nee Hamilton-Hazeley)

Dr PAUL CHIY

CLASS LEGAL - APPELLANTS

AND

THE GENERAL LEGAL COUNCIL

THE CORPORATE AFFAIRS COMMISSION - RESPONDENTS

CORAM:

The Hon Mrs Justice Nyawo Matturi-Jones JSC
The Hon Mr Justice Desmond Babatunde Edwards JA
The Honourable Mr Justice A. Sesay JA

Ibrahim Sorie Yillah of Tejan-Cole, Yillah and Bangura for the Appellants

Yada Hashim Williams of Yada Williams Associates for the Respondents

Judgement Delivered this 29th Day of March 2017

APPEAL

1.By Notice of Appeal dated the 18th of July 2012 the Appellant herein appealed to this Honourable Court against the Judgement of the Hon Mrs. Justice A. Showers JA, as she then was dated 24th May 2012 sitting as a High Court Judge on grounds as set out in paragraph 3 of the said Notice of Appeal. There were initially 9 grounds of Appeal. These grounds were filed by E. E C Shears Moses but later amended by Serry Kamal and Co Solicitors to include four further grounds on the 18th of October 2012 and most recently after change of Solicitors to the current Solicitors Tejan-Cole, Yillah and Bangura, were reduced to just 4 grounds. This court will not bother to record in this Judgment the previous grounds of Appeal and will naturally concentrate on the current grounds of Appeal. These are as follows:

GROUND 1

That the learned Trial Judge erred in law and fact when she tried and concluded this matter by way of Civil proceedings when the Legal Practitioners Act No 15 of 2000 under which the proceedings were instituted provides that the conduct complained of in the plaintiff's Originating Summons, that is, unqualified persons holding themselves out as capable of offering legal services in Sierra Leone shall only be tried by way of Criminal proceedings.

Ground 2.

That the learned Trial Judge erred in law and fact when she a) relied extensively on evidence obtained from the internet without authentication from the author of the said internet evidence to support her findings that the appellants had held themselves out as capable or qualified to offer services as barristers and solicitors in Sierra Leone and b) on this basis wrongly entered judgment against the Appellants in particular the second Appellant when the respondents did not submit in writing or orally that the second Appellant was listed in any of these public directories independently, or along with the 1st and 3rd Appellants.

Ground 3.

That the Learned Trial Judge erred in law when she gave a wide interpretation to the term legal consultants and held that the Legal Practitioners Act No 15 of 2000 as it is currently drafted applies to legal consultants.

Ground 4

4. That the Judgement is against the weight of the evidence.

The Background

2. On the 26th of September 2011, the Respondents herein therein plaintiffs had instituted action against the Appellants herein therein the defendants through Originating Summons praying for several declarations and injunctions against the 1st-3rd defendants now Appellants to the effect that they were offering and representing themselves to be capable of offering legal services in Sierra Leone. Following the hearing and determination of the Action, the

High Court presided by Hon Mrs Justice Adeliza Showers JA as she then was gave Judgment in favour of the plaintiff granting all the orders prayed for as follows:

1. A declaration that the 1st, 2nd and 3rd defendants are not eligible to practice law in Sierra Leone or to serve as legal consultants in regard to any client resident in or out of Sierra Leone in respect of work to be done in Sierra Leone.
2. A declaration that the 1st, 2nd and 3rd defendants cannot act in consonance, collaboration or partnership with any legal practitioner registered to practice law in Sierra Leone in regard to legal work or consultancies in Sierra Leone
3. A declaration that the 3rd defendant cannot hold itself out as being eligible to perform legal services / work and /or legal consultancies in Sierra Leone
4. A declaration that it is illegal for the 1st, 2nd and 3rd defendants to enter into any fee splitting arrangements with any legal practitioner in Sierra Leone in respect of legal work done or to be done in Sierra Leone .
5. A perpetual injunction restraining the 1st , 2nd and 3rd defendants from holding themselves out as **being eligible to practise law in Sierra Leone** or **to carry out legal consultancies or legal work / services** in Sierra Leone.
6. A mandatory injunction compelling the 3rd defendant to remove from its memorandum of association, website letter heads, flyers or any other adverts any words or phrases tending or purporting to represent that the 3rd defendant **is capable of offering legal consultancies** or **legal services / work** in Sierra Leone.
7. A mandatory injunction compelling the 4th defendant to remove from the Memorandum of Association of the 3rd defendant any word or phrases tending or purporting to represent that the 3rd defendant is capable of offering legal consultancies or legal services / work in Sierra Leone
8. A mandatory injunction compelling the 3rd defendant to remove from its name the word legal which has a tendency to represent that the 3rd defendant is capable of offering legal consultancies or performing legal services/ work in Sierra Leone.
9. A mandatory injunction compelling the 4th defendant to remove from the name of the 3rd defendant the word legal which has a tendency to represent that the 3rd defendant is capable of offering legal consultancies or performing legal services / work in Sierra Leone.
10. That the costs of this action be paid by the 1st , 2nd and 3rd defendants jointly and severally to be taxed if not agreed

3. It is against the totality of this judgment and orders that the Appellants had filed this Appeal on the grounds supra asking that it be set aside/ overturned and judgment entered for the Appellants. It behoves this court to address the grounds seriatim.

Ground 1

4. On ground one, the Appellants' counsel Mr Ibrahim Sorie Yillah argued that the section that criminalises practice by an unqualified person in Sierra Leone, to wit, Section 21 of the Legal Practitioners Act No 15 of 2000 (hereinafter referred to as the LPA) only provided for the act of unqualified persons holding themselves as capable of offering legal services as a legal practitioner/ Barrister and solicitor to be punished by criminal action and has never ever provided that punishment for any violation or infringement of the law to be via civil proceedings ; and that this being the case, with respect to this action for which the plaintiff brought action via an Originating Summons, the civil proceedings brought by the plaintiff now respondent was ***ab initio*** flawed.

5. Secondly, even if, assuming without conceding that the action could have been brought by civil action instead of criminal action then it cannot and should never had been brought through Originating Summons for 2 reasons, viz, i) that the issue at hand, to wit, unqualified person offering himself or herself as capable of offering legal services, as alledged, touches and concerns fraud for which by Order 5(2) (b) of the High Court Rules CI No 8 of 2007, any action of this nature, ought to and should have been commenced through a writ of summons and nothing else; the same, not having been so brought, the action was in this way also flawed *ab initio*; ii) that because the action as commenced did not concern the interpretation of a document the same ought not to have been commenced through originating summons.

6.The respondents' counsel's reply was to refer to section 4(1) &(2) of the LPA and its amendments which provided that the 1st Respondent/plaintiff was not only the governing authority for the conduct of the legal profession in Sierra Leone but also equipped by virtue of section 2(1) and (2) of same with the *locus standi* to institute the said proceedings through the power to sue and or performing all such acts as a body corporate may by law perform including and not limited to asserting and performing legal right or performing functions through judicial processes to enforce its mandate and obligations under the said Act .

7. Secondly, he argued "Nowhere in the LPA is it provided that the respondent can only bring criminal action in performing its mandate and obligations specified in the Act as the

Appellants' Counsel would want this court to believe. That further, while they cannot deny that section 21 criminalises actions of unqualified persons holding themselves out as capable of offering legal services or legal consultancies in Sierra Leone, this does not in any way stop the respondent from instituting civil proceedings as they have done through originating summons claiming the several reliefs in respect of unlawful practice by unqualified persons arguing that the criminal action came under the specific powers of the General Legal Council, the 1st Plaintiff now 1st respondent, and this does not exclude the respondent's general powers which is equally embedded in the said LPA under Sections 2(1) and (2) and 4(1) and (2) thereof. He referred to the Appellants' submission that where a conduct is criminalised you cannot bring civil action as they have done, as not only untenable, but invalid paying reference to the case **LAW SOCIETY OF ENGLAND V SHAH(2014) EWHC 4382 CH** where the solicitors' regulatory authority claimed and was granted an injunction against the defendant to prohibit him, whether directly or through others acting on his behalf, from amongst other things holding himself out as solicitor, undertaking any reserved legal activities through anybody authorised by the Solicitors Registration Authority, or being employed by or remunerated by, or managing or controlling the practice of , a solicitor or anybody regulated by the Law Society. The question that the court addressed was whether the Solicitors Regulation Authority, since the practice by unqualified persons was a criminal offence (section 20 of the Solicitors Act 1974), can also seek injunctive reliefs against the defendant and the Court held that they can.

8. This court has studied the synopsis and listened to the arguments by both counsels. It is clear to this court that the action as brought before it was by and through an Originating Summons and never by criminal action. Was this a wrong procedure disrobing the court of any jurisdiction to hear and determine the case of the alledged unqualified practice of persons in Sierra Leone under civil procedure? It would seem to us however that there should not be much complaints as we are receiving now. The reason is that firstly, without more, we do agree with the Respondents' counsel that the kind of objection being raised now were of the nature that ought to have been brought long before now and not now when the horse has bolted. Also it serves no purpose to argue that criminal action ought to have been brought when the criminal action itself has a penalty that would end up stigmatizing the appellants if found guilty. Not wanting to be accused of making a short thrift of this ground and the issues raised therewith we are inclined to consider the submissions fully in the context in which it was laid before this Honorable Court. While it cannot be denied that it is Section 21 that

criminalises action by unqualified persons was this the only option open to the respondents in terms of action against a person(s) allegedly offering themselves as capable of practising as a legal practitioner contrary to the LPA? Section 2(1) and (2) of the LPA No 15 of 2000 provides as follows

> ***"2 (1) there is hereby established a body to be known as the General Legal Council.***
>
> ***2(2) The Council shall be a body corporate with perpetual succession and a common seal and capable of suing and be sued in its corporate name .....and capable subject to this Act of performing all such acts as bodies corporate may by law perform"***

9. The effect of this provision it would seem to us is that this section not only establishes the General Legal Council as a body corporate but tells us what it can and cannot do in its widest term and that it can sue and be sued in its corporate name and perform such acts as judicial persons can perform. These clearly would include injunctions and declarations as was done in this case. In **BLACK'S LAW DICTIONARY 5TH EDITION** sue is defined as '' to institute a law suit against another person. These words clearly as submitted by counsel for the respondent connote capacity to institute actions, suits or any civil proceedings against any person. The respondents being a creature of statute and a judicial person it is equipped with such powers to sue and can be sued by judicial/legal persons which it did against 1st, , 2nd and 3rd defendants .

10.Civil action can be brought in 1 of 4 ways viz, by writ of summons, originating notice of motion , originating summons or by petition. See Oder 5 of High Court Rules CI No 8 2007. It is the argument by counsel for the Appellants that, if at all, it must have been brought through civil proceedings, then it ought to have been brought by a writ of summons and nothing else, as "Offering yourself as being capable of performing as a legal practitioner when you are an unqualified person tantamounted to fraud, to wit, a claim based on fraud which can only be brought through writ of summons. As against this, the respondents counsel says such an argument is misconceived as throughout the proceedings no issue of fraud was alledged/raised directly or indirectly nor does holding out as being capable of performing legal services / consultancies in any way impute fraud. The aforesaid argument begs the issue of what constitutes fraud. Under **BLACKS ONLINE DICTIONARY 2ND EDITION,** Fraud is defined as ***"consisting of some deceitful practice or wilful device resorted to with***

intent to deprive another of his right or in some manner to do him injury. As distinguished from negligence it is always positive and intentional see the case of **MAHER V HIBERNIAN CO 67 NY 292 and MOORE V CRAWFORD 130 US 1229 SUP CT 447 32L ED.878.** In the **ADVANCED LEARNER'S DICTIONARY NEW 8TH EDITION @PAGE 595** Fraud is defined as ***"a person who pretends to have qualities, abilities etc that they do not really have in order to cheat other people".*** From the above definitions there cannot be much gainsaying that the case against the appellants concerns and involves fraud in the allegation against them of offering themselves as being capable of performing legal services and legal consultancies when they are said to be unqualified persons pursuant to the provisions of the LPA. Thus it is true that the action ought to have been brought by writ of summons, which was certainly not the case, it being brought through originating summons. The only problem is that, it not having been so brought, it is rather too late in the day to bring this as a ground of Appeal. This is so because it not having been so brought was an irregularity pursuant to **Order 2 Rule 1(1) of the HCR 2007.**

Order 2 rule 1 of the High Court Rules CI No 8 of 2007 provides as follows:

"Where in the beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings there has, by reason of anything done or left undone been a failure to comply with the requirements of these Rules whether in respect of time, place, manner , form or content or in any other respect , the failure shall be treated as an irregularity and shall not nullify the proceedings , any steps taken in the proceedings or any document, judgment or order therein."

11. Being an irregularity it could be set aside pursuant to Order 2 Rule 1(2) of the HCR 2007 . But for it to be set aside an application must be made to the court pursuant to Order 2 Rule 2 . Order 2 Rule 2 (1) provides that

"An application to set aside for irregularity any proceeding, any step taken in any proceeding or any document judgment or order therein <u>shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity</u>".

12. There are 2 grounds for setting aside an irregularity here viz i) unless the application is made within a reasonable time or 2) made before the party applying has taken any fresh step after becoming aware of the irregularity. On both ambits the Appellants' case fails. On the

first ambit, the case of **REYNOLDS V COLEMAN (1887) 36 CH.D 453CA** is a case in point where it was held that it was too late after a year to set aside service out of the jurisdiction. Here is too late to set aside an Originating Summons on the ground that a writ of summons should have been filed after Appeal on a case lost in the High Court brought through Originating Summons. Worse still, on the 2nd ambit, the appellants should have become aware of this irregularity or would be deemed to have become aware of the irregularity from the very beginning but yet still chose to take fresh step by filing an affidavit in opposition sworn to on the 24thof February 2012 to the action through originating summons. They therefore, long before this appeal, waived any right to bring an objection regarding the action being brought by originating summons instead of writ of summons which would have been most appropriate in the circumstances. Against such scenario it becomes ill conceived to say the application must have been brought through writ of summons as a ground of appeal. See the cases of **BOYLE V SACKER (1888) 39CH.D249. CA AND FRY V MOORE (1889) 23 QBD395 CA** where it was held that steps taken with knowledge of an irregularity either with a view to defending the case on its merits would be taken as fresh steps and would waive irregularities in the institution or service of the proceedings.

13. On the other hand, can it be doubted that the sole or principal question at issue in these proceedings is on the one hand dealing with an enactment pursuant to Order 5 rule (3) where an originating summons must be deployed and further still, is one dealing with the construction that could be made of an enactment - the Legal Practitioners' Act and that there is no inherent restriction pursuant to order 5(4) of the High Court Rules to have so brought the action through origination summons

14. The Appellants' counsel sought to distinguish this case from the Shah Case as follows i) that the claimant was the Law Society of England and Wales and not the Solicitors Regulatory Body as is the case with General Legal Council; that there is no distinction in the LPA reference to reserved legal activity vis a vis legal activities and that Mr Shah unlike the 1st and 2nd Appellants herein had already been convicted. These distinctions are immaterial in so far as this case is concerned and therefore bear no relevance here. But, even if, the Shah case was inapplicable this however does not make the respondents submissions less forcefully. There might have been no need to refer to and embellish his arguments through the Shah Case. What this court sees is a general power to sue and a specific power to bring criminal action. The respondents' solicitor did not adopt both or both together which would

have been grossly wrong but rather chose one option for which the threshold of prove was less than the other. We cannot begrudge the General Legal Council this right. It is there to safeguard this noble profession. The appeal on this ground therefore fails and we would so hold.

Ground 2

15.On GROUND 2, the Appellants' counsel submitted that the learned Trial Judge erred in law when she concluded that the Appellants held themselves out as capable of offering services as legal practitioners in Sierra Leone by relying extensively and exclusively on evidence obtained from the internet without authentication from first hand source preferably the author of the said internet, and that secondly, by relying on evidence obtained from the internet without authentication, the learned Trial Judge erred in law and in fact by placing excessive weight on the said internet evidence in reaching her findings that the Appellants violated the said Legal Practitioners' Act and thirdly, the same internet evidence was used to ground culpability for the 2nd plaintiff whose name assuming the internet evidence to have been used was never in fact mentioned.

16.The Respondent's Counsel's reply to this submission and argument was that it was not only internet printouts that grounded this conclusion by the Learned Trial Judge but other non-internet evidence which he noted as exhibit B, letter from the 1st Appellant dated 17th August 2011 pages 10-12; exhibit C, Letter from the Board of Directors and the 3rd Appellant dated 9th September 2011 pages 14-16 of the records and exhibit D, Memorandum of Association of the 3rd Appellant pages 18- 23 of the records and the Appellants' affidavit in opposition sworn to on the 24th of February 2012 paragraphs 1, 7 and 19 – are portions thereof which I will quote as follows:

paragraph 1 - "I have been working as a legal consultant since 2003 including to the Government of Sierra Leone and as Managing Director of Class Legal Ltd since 2006"

Paragraph 7- "I have been Legal Consultant to both Government of Sierra Leone and private as well as Donor Agencies in Sierra Leone."

Paragraph 19 - "Class Legal Limited has for the past 5 years been recognised for its quality of service to clients. It is therefore referenced in a number of international directories but this is through no intervention of the company."

17.On exhibit C, the Respondents' counsel noted that the chairman of the Board said to the chairman of the 1st respondent, "Class Legal Limited is a consultancy firm offering a range of services. It is a one stop service provider offering corporate businesses…….including legal service."

18.In short the respondents' counsel was saying look it was not only the internet printouts but both internet and non-internet printouts that led to the conclusion by the learned trial Judge. He further argued that the appellants never contested the admissibility of the online publications, or objected to them and that, in fact, the 1st Appellant *did confirm knowledge of the online publications in her affidavit in opposition paragraph 19.* He submitted further that the listing or inclusion was not by accident. He referred to pages 52-54 240-256 of the records-Guide to submissions for listing in Chambers and Partners at pages 244, 245; 42-48 of the records of appeal noting that these must have been deliberately imputed.

Courts Consideration on these issues

19.The conclusion this court is able to come to is that the respondent counsel is saying by the very statements in the Appellants' affidavit in opposition sworn to on the 24th of February 2012 inclusive of paragraphs 1,7 and 19; exhibits B, C, D of the affidavit in support of the action sworn to on the 26th of September 2011 and 30th of January 2012 as well as the internet printouts courtesy of his affidavit in support supra and the affidavit in reply sworn to on the 2nd of March 2012 , these showed that the appellants indeed were unqualified persons to practice law or act as legal practitioners and secondly, that they were putting themselves out (wilfully or falsely pretending) to be legal practitioners in circumstances or the facts /evidence which showed that they were not to hold themselves out as capable of offering legal services and consultancies, hence the reason why the learned trial judge had no alternative but to grant all the orders prayed for. On the above premise, it becomes necessary to outline the facts that were held to constitute the appellants being held to be unqualified. These were as stated above viz, exhibit B, letter from the 1st Appellant dated 17th August 2011 pages 10-12 ; exhibit C, Letter from the Board of Directors and the 3rd Appellant dated 9th September 2011, pages 14-16 of the records and exhibit D, Memorandum of Association of the 3rd Appellant, pages 18- 23 of the records and the Appellants affidavit in opposition paragraphs 1, 7 and paragraph 19 supra. On exhibit D, the Memorandum and Articles of Association there is the issue that class legal was offering legal services and the fact that a company cannot practice law in Sierra Leone. Heavy weather too was made of exhibit I

which is a copy of the complimentary card of the 2nd defendant which more or less compounded his culpability as alledged.

20.Turning to the internet clippings/ printouts these were as follows: Exhibits J & K are copies of printouts culled from the website of Chambers and Partners, a directory of solicitors and law firms universally; exhibit J is also a print out under the rubric Chambers Research; exhibit K is a section dealing with Sierra Leone -3 law firms were mentioned inclusive Class Legal; Exhibit L is a print out from a website HG.Org, another legal directory where class legal is mentioned among 13 law firms in Sierra Leone ; exhibit P is the procedure stipulated by Chambers and Partners that have to be followed by law firms listed in their directory ; exhibit O – is a page of law firms listed in Chambers and Partners of law firms in Sierra Leone as previously exhibited as exhibit K ; exhibit R is the procedure stipulated in HG. Org Legal Directory; Exhibit S is a law firm listing registration form; exhibit Q is a document where "Class Legal Solicitors a firm of practising barristers and solicitors and as registered by the registrar General Legal Council as distinct from Class Legal, the 3rd Appellant herein is listed as a Law firm in Sierra Leone .

21. In her affidavit in opposition sworn to on the 24th of February 2012, reacting to these allegations 1st and 3rd Appellant through the 1st Appellant's affidavit said:

"Class Legal Limited has for the past 5 years been recognised for its quality of service to clients. It is therefore referenced in a number of international directories but this is through no intervention of the company contrary to the assertion of Mr Yada Hashim Williams in his affidavit of 30th January 2012. The company is not aware of its listing in the Sierra Leone.org Website and has NOT found / submitted its name among websites of solicitors and solicitors firms in the Sierra Leone.org Website. The firm's only local advertisement is in the Yellow Pages Sierra Leone in which it is clearly listed amongst Consultancy firms and internationally, in the Corporate International Magazine where it is also profiled as a successful consultancy".

22. These should be considered express denial of the internet printouts having to deal with the appellants or being created by the appellants. More on this later. Regarding these internet printouts, the appellants' counsel say they were not authenticated while at the same time extensively and exclusively relied upon to prove that the appellants as unqualified persons held themselves out as capable of offering legal services and consultancies in Sierra Leone.

23.Against the aforesaid setting or background, it behoves this court to determine whether the learned trial judge relied extensively and exclusively on evidence obtained from the internet without authentication from first hand source preferably the author of the said internet as alledged to ground her conclusion that the appellants held themselves out as capable of offering services as legal practitioners in Sierra Leone, and if, the same were true, whether by such reliance on evidence obtained from the internet without authentication, the learned Trial Judge did not err in law and/or in fact by placing excessive weight on the said internet evidence in reaching her findings that the Appellants violated the said LPA. In addressing this second ground of appeal which is triple-facetted/ triple –faced we may want to consider whether the circumstances were such that the learned trial judge could not have ruled otherwise. This being the case, the first issue for consideration is who is an unqualified person under the LPA.

24. An unqualified person is defined in Section 1 - the Interpretation section as "A person not enrolled under Section 16 of the LPA". Section 21 of the LPA does not only criminalise actions by unqualified persons but amplifies who an unqualified person is. It not only amplifies Section 9 thereof which provides "subject to this Act no body shall engage in the practice of law in Sierra Leone unless he has been admitted and enrolled as a legal practitioner under this Act" but gives us the limits of an unqualified person. It provides thus:

An unqualified person who

- ***a) Practices and acts as a legal practitioner: or***
- ***b) Wilfully and falsely pretends to be or takes or uses any name, title, addition, or description implying that he is duly qualified to practice or act as a legal practitioner, or that he is recognised by law as so qualified,***

commits an offence and is liable on conviction to a fine not exceeding one million leones or to a term of imprisonment not exceeding one year or to both such fine and imprisonment"

25. The purport of all this is that if you are an unqualified person you cannot practice law in Sierra Leone or be a legal practitioner. It implies you have not been admitted to the law school, not passed the law school exams in Sierra Leone and have not been admitted and enrolled after Law School in the Rolls of Court established by section 16 of the LPA. This then begs the converse who then is the person qualified to practice Law in Sierra Leone or

who is a legal practitioner? The LPA in the interpretation section says legal practitioner means "**any person admitted and enrolled to practice law in Sierra Leone as Barrister and solicitor"**. Again emphasis you must be admitted and enrolled in the Rolls of Court before you become the legal practitioner /barrister and solicitor.

26. Under Section 18 of the Legal Practitioners Act a full explanation of a legal practitioners entitlement / ownership role or status emerges and or is espoused thus :

"Every person whose name is entered in the ROLL OF COURT under section 16 shall

- ***a) Subject to section 19 and to any law precluding him from appearing in any court, tribunal or proceedings be entitled to practise in any court of law or any other tribunal or legal proceedings or matter where his services are required whether as barrister or solicitor or both as barrister and solicitor***
- ***b) Subject to section 19, be entitled to sue and recover his fees charged and dis bursements for services rendered as a legal practitioner and***
- ***c) Have status as an officer of the court "***

27. From the definition of an unqualified person and the definition of a legal practitioner or practice of law in the country and from the facts or evidence as gleaned, it is clear to all and sundry, that the Appellants are not only unqualified persons, but also not legal practitioners within the context of the LPA. They did not in any way produce documents to show that they are in the Rolls of Court established pursuant to section 16 of the LPA. But this has never been their argument. The Appellants, it would seem to us, accept that they are not legal practitioners and that they could not practice law in Sierra Leone in that context. This is as far as it goes. It would however be wrong to assume that the issue stops as that. The issue before this court and which was before the court below goes beyond that. Since the Plaintiffs' now Respondents' case is that these unqualified persons, the appellants held themselves out as capable of offering legal service or consultancies in Sierra Leone, it was necessary in order to ground civil responsibility or culpability to prove whether from the evidence as adduced before the court as shown by these records the appellants did anything of the nature which they as unqualified persons should not do. The main issue then for determination thus becomes whether by those acts complained of by the plaintiffs now respondent against the appellants and as documented herein the appellants acted as legal practitioners contrary to the LPA or did hold themselves out as being so qualified.

28. The learned trial Judge's answer to this is that the appellants did practice or hold themselves out as being capable of offering legal services or consultancies contrary to the Act as clearly shown by the internet printouts. For the respondents, it was not just the internet printouts but the other evidence as detailed supra. For the Appellants, however, from their arguments there is no evidence of that before this court as those internet evidence relied upon were not admissible and/or authenticated before being used meaning that they did not prove anything to warrant the conclusion the learned Judge came up to leading to the several orders granted associated therewith.

Was the Internet/Electronic Evidence Admissible?

29. It is the view of this court that the plaintiff now respondent placed heavy reliance on and did make a heavy weather of the Electronic evidence more than anything else to ground the belief and assertion that the Appellants falsely held out as a legal practitioner. Whilst there were other evidence these constituted the peat and marrow, the graven of the respondent's case. This evidence you can see in the several pages of the records and paragraphs of this Judgment highlighted supra. These documents were electronically generated internet print outs.

30. The first hurdle is whether or not they were admissible. Under our Evidence Documentary Act Cap 26 of the Laws of Sierra Leone they perhaps could be admitted under the rubric of being statements. But this is as far as it goes. They unlike other statements or declarations were internet printouts. Being internet printouts there is no direct law on the subject in Sierra Leone. But we note that in other common law jurisdictions like ours there are laws including common law on the use and admissibility of such internet printouts. Those judgments therefore provide guidance on the subject and become of persuasive authority subject to the restriction that we do not have such Statutes operational in other Common Law jurisdictions as part of our laws in Sierra Leone. Be that as it may, in the case of **JACK LORRAINE , BEVERLY MACK V MARKEL AMERICAN INSURANCE COMPANY 2010** it was held that relevance is the first thing to be established for any potential piece of evidence including an electronic document; once relevance has been established, the next step is to establish the authenticity of the document in question. In another case **UNITED STATES V JACKSON 2008 F.3D 633 AT 638 7TH CIRCUIT 2000 i**t was held that evidence taken from the Internet lacked authentication where the proponent was unable to show that the information had been posted by the organisation to which she

attributed it. However the testimony of the author of the internet content, the person who placed such content on the internet would be sufficient to authenticate the content. There have been also a plethora of authorities on the admissibility and authentication of internet printouts in court proceedings in other jurisdiction. But these all cannot be totally applicable here as they have their source from statutes which we in this Country do not have. Be that as it may one thing though is certain from those authorities. According to these authorities the main problem with internet electronic evidence is not its possession, for instance, we can see clearly what has been stated or printed out through courtesy of the plaintiffs now respondent's counsel but it is it's admissibility on the one hand, and its authentication on the other hand, that provide contentious issues. Since we in Sierra Leone admit statements and internet evidence being statements we cannot despite its technical nature say internet evidence is inadmissible. Those authorities are all of persuasive authority subject to the limitation hitherto spoken of. This notwithstanding, the main challenge to admissibility of internet evidence is the rule against hearsay. Hearsay is a statement or document being tendered by somebody who is not the maker of the document and the object or purpose of which is to establish the truth of what is contained in the document.

31. With statutes in other jurisdiction the rule against hearsay has undergone a great deal of relaxation over time with various statutory exceptions. However hearsay under the Sierra Leone Common Law has remained intact. Hearsay under the Common Law is "a statement proffered to the court to prove the truth of the matter asserted in the statement. Under **PHIPSON'S ON EVIDENCE 11TH EDITION CHAP 15 HEARSAY IN CIVIL AND CRIMINAL PROCEEDINGS UNDR THE RUBRIC –THE RULE AT COMMON LAW – APPLICATION OF THE RULE PARA 638** the learned author quoting the Court in **SUBRAMANIAM V PUBLIC PROSECUTOR 1956 1 WLR 965,969** noted that the position was summarised in this way ***"Evidence of a statement made to by a person who himself is not called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made"*** Was the internet evidence proffered as an internet evidence to prove that a document existed as for instance when an email is forwarded to prove correspondence between x and y or perhaps an offer was received/made on a particular day; or was it proffered as truth of what was stated therein