



IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL DIVISION

IC19/12

KELFALA MARAH & ORS.

PLAINTIFF

AND

NATIONAL POWER AUTHORITY
NPA (EDSA & EGTC)

DEFENDANT

REPRESENTATION:

LEON JENKINS-JOHNSTON ESQ.

COUNSEL FOR THE JUDGMENT CREDITORS

TEJAN A.I. JAH ESQ.

COUNSEL FOR THE JUDGMENT DEBTORS

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT RULING DELIVERED
ON THE 26TH SEPTEMBER, 2017

- 1) The Applicants applied to this Court by a Notice of Motion dated the 24th day of July, 2017 seeking the following Orders:
- 2) That the Court Orders dated 11th and 14th July, 2017 and all subsequent proceedings thereto be set aside ex debito Justitiae on the following grounds:-
 1. That the Orders contravened Section 77 (b) of the National Electricity Act, 2011 in that, Judgment against the former National Power Authority cannot be enforced against the Electricity and Distribution Supply Authority (EDSA) and Electricity Generation and Transmission Company (EGTC) nor its liabilities and/or debts charged on the Accounts of EDSA and EGTC.
3. Any other(s) that this Court may deem fit and just.
4. That the costs of this application shall be costs in the cause.

BACKGROUND

1. By Order of this Honourable Court dated the 27th day of January, 2017, Judgment was entered against the Defendant, therein, the National Power Authority.
 2. On the 11th July, 2017 Counsel for the Judgment creditors applied to this court for a Garnishee Order Nisi and that the said Judgment be enforced against EDSA and EGTC, the successor institutions of the National Power Authority. The applications were granted.

The Present Application

3. The present application came up for hearing on the 27th July, 2017. Before the hearing of the said application, Leon Jenkins Johnston, Esq. Counsel for the Respondent raised two preliminary objections to wit:-

i. That the matter before this Court had been concluded and the Garnishees discharged

11. That the Applicant had added the EDSA and EGTC without following the correct procedure.

4. In reply to the objections, Mr. T.A. Jah for the Applicants argued that the matter still subsisted as the motion before the Court was to set aside the various Orders granted in the Garnishee proceedings.

5. Secondly, as regards the procedure used in adding EDSA and EGTC, Mr. Jah submitted that the Garnishee Proceedings had made them parties to the action. In any event, he applied under Order 2 Rule 2 (1) of the High Court Rules, 2007 and Order 18 Rule 6 (1) for EDSA and EGTC to be added to parties.

6. This Court noted the preliminary objections but however ruled that because the application bordered on public interest issues, the objections were overruled.

The Court granted the application for EDSA and EGTC to be added as parties.

SUBMISSIONS OF COUNSEL

Counsel for the Applicant

9. Mr. T.A. Jah for the Applicants relied on his affidavit sworn to on the 24th July, 2017 together with the exhibits attached thereto. The crux of his argument was that by virtue of Section 77 (b) of the National Electricity Act, 2011, the liabilities of National Power Authority could not be charged or attached to the accounts of EDSA and EGTC.

Counsel for the Respondent

10. Mr. Jenkins-Johnston in his short response submitted that the Section cited by his colleague referred to the assets and liabilities of Bo-Kenema Power Services (BKPS). It therefore did not touch and concern the Order of this Court dated the 11th July, 2017.
11. Mr. Jah in his reply informed the Court that there was in existence bank accounts for the purpose of settling the obligations to previous employees of NPA and related matters. He promised to provide the Court with the relevant information.
12. He finally referred the Court to Section 77 of the National Electricity Act, 2011.

ISSUES FOR DETERMINATION

12. The main issue for determination in this application is whether Section 77 (b) of the National Electricity Act, 2011 precludes EDSA and EGTC from liability to pay the end of service and other benefits to the former workers of the National Power Authority.
13. Though Counsel for the Applicants specifically referred to Section 77 (b), it would be more helpful if the both Sub-sections (a) and (b) are considered:
14. Section 77 provides as follows:-“Upon the commencement of this Act”
 - a) Employees of the National Power Authority and the Bo-Kenema Power Hydro Power System are transferred to the company or Authority”
 - b) Counsel is relying entirely on the fact that Sub-section (b) did not make any reference to the liabilities of National Power Authority. That may,

on the surface be correct, in the absence of the exercise of any scholarly aptitude.

15. What is a Judge to do in such a circumstance? As Denning .LJ (as he then was) puts it in SEAFORD COURT ESTATES LTD -V- ASHER (1949) 2 KB 481.

“... when a defect appears in a Legislation, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and the mischief which it was passed to remedy, and he must supplement the written word so as to give “the force of life” to the intention of the Legislature”. This is in essence the purposive approach to statutory interpretation which had been the cornerstone of English rules in that respect until it was expanded by the House of Lords in the leading case of PEPPER (INSPECTOR OF TAXES)-V- HART (1993) ALLER 42

16. Following the foregoing dictum of Denning LJ, the first stage of our determination of the issue in dispute here is to enquire into the purpose of the 2011 Act. The purpose of the Act was to unbundle the National Electricity into two entities - EDSA and EGTC. By virtue of Section 77 (a), the workers of NPA were to be transferred to either of the two entities. To my mind, employees for this purpose include former employees. The mere existence of this sub-section proves that it was never intended by Parliament that the former Employees of the National Power Authority were to be abandoned whilst the current workers are provided for. It would be illogical to reason that way.

17. The reason why Section 77 (b) only made reference to BKPS is simple to discern. Prior to the enactment of the 2011 Act, BKPS was an

independent entity with its own Board and Management. Parliament by expressly providing for them in the Act was merely recognising their prior status. It does not by any stretch of the imagination mean that it was absolving the successor entities to the NPA from their liabilities to their former employees. That responsibility is continuous.

18. Counsel for the Applicant submitted that there existed Accounts establishes held by the Ministry of Energy to outstanding obligations of NPA which he promised to provide but never did.

19. In the circumstance, the application fails with costs of Le30,000,000/00 to be borne by the Applicants to the Respondents to be paid out of the Applicant EDSA and EGTC Accounts held with the Sierra Leone Commercial Bank and or the Guaranty Trust Bank (SL) Limited.

Jenkins Johnston

I am applying that pursuant to your Ruling that costs awarded which have arisen out of these proceedings be paid out of the accounts of the Defendant/Applicants held at the Guaranty Trust Bank Account No.2013127272110 and Sierra Leone Commercial Bank (SL) Ltd Account No. 0030011184 54110227(collection Account) respectively.

Court: Application granted as these accounts were used during the Garnishee Proceedings.



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HON. MR. JUSTICE SENGU KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT

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