Misc. App 4/2017 No.5

IN THE COURT OF APPEAL SIERRA LEONE

BETTY MANSARAY & 16 OTHERS - APPLICANT/DEFENDANT

Vs.

MARIE KAMARA-WILLIAMS & ANOTHER - RESPONDENT/PLAINTIFF

RULING DELIVERED ON ……JUNE 2018

Reginald Sydney Fynn JA

Background

1. The applicant has filed this motion asking for a stay of the proceedings below as well as leave to appeal to this court against an order of the court below in which the Hon. Justice Allan B. Halloway JA refused an application to decide a matter pending before him on a point of law and without recourse to a full blown trial. A request to the Judge for leave to appeal was met with a similarly unfavourable outcome.
2. Rule 10 of the Court of Appeal Rules 1985 provides for the enlargement of time within which leave to appeal may be sought and it also provides for the granting of such leave. An application for enlargement of time for an application to grant leave to appeal and indeed an application for leave to appeal the rule dictates must be

   > *"...supported by an affidavit setting forth good and sufficient reasons for the application and by proposed grounds of appeal which show good cause."*

3. The applicants and the respondents have both filed affidavits and supplemental affidavits. These affidavits narrate many facts and are not in short supply of exhibits on either side. I have read all the affidavits and I have also perused the exhibits. I have concluded that all the facts sworn to and the documents exhibited whilst they can provide me with a significant grasp of what is at stake in the action below they are not all material if at all to the question of granting leave to appeal. I will refer to portions of the affidavits if that becomes necessary at all.
4. The grounds of appeal exhibited disclose five (5) grounds which can be grouped into three (3) heads namely: the refusal to decide a point of law, delay in delivering a ruling and alleged bias. I will now mention each of these heads briefly to assess good cause.

Refusal to decide a point of law

5. Order 17 provides jurisdiction for a court at its discretion to decide a case on a point of law without going through a full blown trial. Before a court takes on the task of

making such a determination, on a point of law, the court has to make a preliminary decision. The court must first satisfy itself that i) the question is suitable for determination without a full trial and ii) that once the point raised is determined the entire cause or matter will thereby be determined. It would appear therefore that the court need not always accept an invitation from counsel to determine a matter on a point of law raised. It seems to me that a court can decline the application to determine a point of law raised. The court can so decline where in the courts opinion one or both of the already mentioned situations is present ie where it appears to the court that it would be more suitable in the particular instance for that question to be answered after a full trial or if the court is of the view that even if it were to determine the question raised the subject of the litigation will not be fully disposed of.

6. O17 R2 provides directions as to the avenues open to the court when it determines the point of law raised. Once the court has determined the point of law raised the matter comes to an end. It comes to an end with a dismissal of the "cause or matter or other such order or judgment as (the court) thinks fit". However that is where the matter must end.
7. O17 R2 only comes into motion when the court has satisfied itself that the question before it is one suitable for determination under O17 and has proceeded to decide the question so raised. Where however the court has declined proceeding to answer the question of law which has been raised then O17 R2 cannot be said to be in operation at all. It is only ignited after the court has consented to determine the question of law raised.
8. Is a Judge, faced with an O17 application compelled to dispose of the case on a point of law? The language in which the order is presented seems to leave this matter in the court's discretion entirely. The word "may" does suggest so and it is reinforced by the phrase "where it appears to the court". The end result is that the court "may" only decide a question of law "where it appears to the court" that a set of circumstances exist. Even if the set of circumstances prescribed do exist the court still has an overriding discretion and "may" agree to decide the point of law. This suggests also that the court may choose not to decide the said question of law raised.
9. Where the two limbs have been satisfied ie to say in the eyes of the court a question of law can be answered without a full trial and that that question of law if determined will bring to an end the matter it now becomes open to the court to proceed to decide that matter by determining the question of law raised but only if the court chooses so to do. A court may decide in a particular case that despite the necessary conditions for deciding a question of law being present that it would rather hear the full trial. Such a decision in my opinion is well within the discretion of the court even though issues relating to the economy of judicial time would suggest otherwise. It cannot be denied that a judge in a particular case may have reasons why to his mind it is prudent and just to have a full trial. The rule provides enough space for such an outcome.

10. Where a court declines to determine a question of law raised it does not thereby necessarily prejudice the outcome of the substantive matter. What it does however is to postpone the decision on that legal question till after a full blown trial but it does not answer nor suggest an answer to the legal question raised. That question stays on for determination together with any other issues at the end of the trial. Other than the time and possibly cost of the trial the person who seeks a premature determination of the suit on a question of law will not have had his rights under the law especially as they relate to the case prejudiced at all.
11. I have also considered the many facts which have been narrated in the affidavits. These are facts which have not been admitted. In fact in many instances these are hotly disputed facts. A determination on the point of law may not be suitable where there are facts in dispute. To what will the law be applied? Where the decision of a question of law will still leave factual issues unanswered a case may not be suitable for disposal on a point of law. This passage from the whit book is very persuasive in this regard*;*

    "….where the issues of fact are inter woven with the legal issues raised it will be undesirable for the court to split the legal and factual determination fro to do so would in effect be to give legal rulings ***in vacuo*** *or on an hypothetical ruling which the court will not do"* (para 14A/1-2/5{1995 Ed})
12. It is also worthy of note that O17 (3)(b) provides for a scenario where the parties may agree and approach the court for a determination of a case on a point of law and without a full blown trial. The way this rule has been applied underscores the discretion a Judge has in this matter in the most elucidating way. The White Book puts it this way:

    "It should however be stressed that even if the parties consent the court must still be satisfied about the suitability and finality of determining the question of law or construction without a full trial" (para 14A/1-2/5{1995 Ed} pg 181)

Judge's Alleged Bias

13. The applicant has also raised an issue of possible bias, levelled at the Judge below. Such an allegation is grave indeed. It is one that must never be made lightly. Counsel who makes it is under an immediate obligation and in the same breath to provide in the least plausible evidence which might tend to support this grave allegation. In the present case the allegation is backed with nothing but a similarly thrifty statement that the Judge is of the same ethnic group as a party to the action.
14. It is my opinion that in a multi-ethnic society like ours, shared ethnicity will be present in many a case; lawyer with client, judge with litigant or judge with counsel or in one of any of a myriad possible permutations. I cannot accept that, this, without more in and of itself can be a true base of a claim of bias on the part of a Judge. It is my conclusion therefore that because of the gravity of the allegation the issue requires a mention. However the paucity of its substance requires that it gets nothing more.

Delay in Delivering Judgment

15. The effect of a delay in delivering judgement or doing so after the constitutionally prescribed period remains unsettled in our jurisdiction. Judges are certainly under a legal obligation to deliver judgments and rulings within the constitutionally stipulated period. There are no two ways about this obligation and every effort must be made to act within its compass and no attempt should be made to veil the fact of its existence. It cannot be denied however that the effect of a failure to so act has not to date ever devalued or undermined any judgment or ruling which had arrived late.
16. I do not therefore; consider that a Judge's delay can be a proper ground on which an interlocutory decision will be overturned. This of course remains untested. The rules and the whole of the processes guiding the administration of justice it must be remembered are intended to aid the access and achievement of just outcomes. I have not been able to comprehend how an act which leaves the dispute between the parties unresolved could possibly be said to be aiding the cause of justice.
17. I will reiterate that the present analysis is done merely to gauge and estimate the applicant's ground of appeal and its prospects for success. These do not appear meritorious at all. The outcome appears to me obvious.

Conclusion

18. The trial below is still pending. The interests of the parties remain intact, unchanged the same as they were before the case commenced. The Judge's refusal complained about, his alleged bias, and the other matters raised in the proposed notice of appeal have ample space in the trial if true to blossom and become apparent. The applicant will by then after judgement still have the opportunity to appeal on these and other grounds if he so desires. At this stage of the proceedings nothing affecting the interests of the parties has really been decided. I will therefore do nothing to further impede the progress of the trial below.

In the circumstances I am unable to grant the orders prayed for. Leave to Appeal is refused. The application is wholly refused with costs to the respondents, such costs to be taxed if not agreed.

Reginald Sydney Fynn JA…….