Misc. App 116/2017 A. No.16

IN THE HIGH COURT OF SIERRA LEONE

General Civil Division

DR. IBRAHIM ABDALLAH - PLAINTIFF

Vs.

THE UNIVERSITY OF SIERRA LEONE - DEFENDANT

Emmanuel S. Abdulai for the Plaintiff
Elvis Kargbo for the Defendant

RULING DELIVERED ON ……JUNE 2018

Reginald Sydney Fynn JA

1. Dr. Ibrahim Abdallah the plaintiff in this matter is a University lecturer who contests the termination of his employment by the University of Sierra Leone (USL) the Defendant. The plaintiff has filed an Originating Notice of Motion dated 2nd March 2017 by which he seeks among other things "An order quashing the decision of the University of Sierra Leone dated 14th July 2016". However before the plaintiff could move the court, the defendant raised a preliminary objection in a Notice of Motion dated 10th April 2017.
2. In his Notice of Motion dated 10th April 2017 the defendant requests the court to set aside the Originating Motion dated 2nd March 2017 for the following alleged irregularities:
    a. That the action brought by the plaintiff/respondent is contrary to the provisions of order 52 Rule 3 sub rule 1 of the High Court Rules 2007
    b. That the said action is also contrary to the provisions of Order 52 Rule 5 sub-rule 9 of the High Court Rules of 2007
    c. That the action instituted by the Plaintiff/Respondent herein is in breach of Statutory provisions under the University Act 2005 section 30(4) of the said act.
    d. That the action is also contrary to orders 5 Rule 2(c) and Rule 4 sub Rule 2(a) of the High Court Rules 2007
    e. That the court lacks the capacity to hear and determine the application
3. The affidavit in support of the motion is sworn to by Elvis Kargbo who recounts the various filings by the parties since the action commenced. He also states that the plaintiff is an employee of the University of Sierra Leone and that based on the plaintiffs conduct his services with the University were terminated. The affiant deposes that the University Court is not a Court of law but an administrative body.

He states that there are strict processes which a senior staff member should follow but which he alleges have not been followed by this applicant. He alleges that the originating process and all the steps taken therein are therefore improper and without the support of the law.

4. The affidavit has three (3) exhibits. These are:
    a. EK 1 which is the Originating Notice of Motion by which the action was commenced
    b. EK 2 is the appearance and notice of appearance file on behalf of the defendant
    c. EK3 is a document present to the Court of the University of Sierra Leone on Wednesday 13th July 2016 together with the letter of termination which it occasioned.
5. The plaintiff in answer to the preliminary objection has filed an affidavit in opposition which is dated 19th June 2017 and sworn to by himself. After recounting the processes filed herein, the plaintiff narrates that before instituting the proceedings he first approached the Chancellor of the University by two letters invoking the Chancellors powers to review actions of the University Court. He is yet to receive a reply. He asserts that he is within time to commence this action. He also deposes to his belief that he has not contravened any of the various orders of the High Court Rules alleged by the defendant. The plaintiff also exhibits various letters he had written to the university authorities reports and draft reports relating to the investigation of his case and other material which will certainly prove useful when the substantive motion comes up for consideration.

Order 52 Rs 3 (1) & 5(9) High Court Rules 2007

6. The defendant alleges that the Originating summons have been filed contrary to O52 Rs 3(1) & 5(9). The first of these rules ie 3(1) provides for the time within which an aggrieved party may bring an action to court for judicial review. The rule provides that "the application shall be made not later than three months of the occurrence of the event giving grounds for making the application". In the present case the question is when does time begin to run? The simple answer would usually have been "when the event complained of occurred".
7. In this case this answer is not so strait forward. The defendant recognises that the processes which should be followed by the aggrieved staff member are strict. These processes in Section 30(4) of the University Act gives the aggrieved staff the opportunity to appeal to the Chancellor. Whilst the aggrieved staff is not compelled to use this path it is his right to resort to it if he chooses so to do, which option has been exercised in the present case.
8. Whilst he awaits the pleasure of the Chancellor of the University should time begin to run under O 52 R 3(1)? No provision stops time from running but it is my opinion that if time continues to run the aggrieved person's opportunity to exhaust the processes made available to him for the purposes of an appeal against a decision of the University Court are thereby undermined. This is exemplified in the present circumstances where despite the long wait a decision has not come from the

Chancellor. How can that wait, which was occasioned by an entitlement granted by a statutory provision now be used as a sword against the plaintiff?

9. It is my opinion that an interpretation which brings about such a result will be absurd. Whilst we await rules which will avoid such a clash in the processes, I consider it just to hold that as long as the appeal to the Chancellor under S.30(4) of the University Act remains pending, the time to bring an action for the judicial review of the Court of the University will not run out. Even if it were the said appeal is sufficient grounds to deem said time enlarged.
10. I now direct my attention to Rule 5(9) of the same order ie to say O52. Counsel's reliance on this rule is vague. This rule primarily gives direction as to whom should be served when an Originating Notice of Motion is taken out. If counsel for the defendant's assertion that the University Court is not a court of law but an administrative court (which issue is not in dispute) is meant to make a point that the process is wrong then I must point out; that this rule O52R5 (9) is not the which governs the question of which process is used to commence an action for judicial review. That would be O52 R4(1) which provides:

    "An application for judicial review shall be made to the Court by Originating Notice of Motion"
11. O52R5 (9) on the other hand directs clearly that where an application for review relates to the quashing of a decision made by a court or is brought to compel an officer of the court to do something then that Originating Notice of Motion must also be served on the Master of the court. Certainly and without a doubt the whole of this reference is to a court of law and I have, and not for want of trying, been unable to fathom what relevance if any this rule could possibly have to the present proceedings. The Court of the University is not a court of law and this is not contended. This rule has not been contravened at all, and it bears no relevance to these proceedings and I so hold.

University Act 2005 section 30(4)

12. The University Act 2005 gives the aggrieved staff member the option to appeal to the Chancellor if he or she is dissatisfied with a decision of the Court of the University. I have read the section in question and I note that whilst this option is available it is not mandatory. The word "may" is employed and it appears to me that in the context an employee has a discretion as to whether he should ignite this process which creates a layer for him to further proffer a defence to the issues raised against him. This seems to me a purely technical matter relating to a choice of possible remedies or procedures to address a perceived wrong.
13. The following passage from the White Book on the history of Judicial review is instructive on this matter and I have been guided by it;

    "the former prerogative remedies …were replaced by new and comprehensive public law remedy of 'judicial review'. It created a ***uniform flexible and comprehensive*** *code of procedure for the exercise by the High Court of its supervisory jurisdiction over the proceedings and decisions of inferior courts,*

tribunals, or other persons or bodies which perform public duties and functions"

14. The old and difficult processes by which judicial review was formerly accessed have been replaced by friendlier and far more flexible rules. Any attempts to return to those inflexible and procedurally rigid paths must be stoutly discouraged. The passage continues:

    "…it eliminated procedural technicalities relating to the machinery of administrative law mainly ***by removing the procedural differences between the remedies which an applicant was formerly required to select as most appropriate to his case****"*

15. This ground of the objection attempts to return to those days when *"….procedural constraints led to technical injustice"*. It is my opinion that a lecturer who appeals to the Chancellor and finds that the Chancellor's reply is slow in coming should not remain trapped in that option. I am persuaded that the delayed response from the Chancellor may cause significant hardship on a lecturer who has been dismissed and whose only source of livelihood has been caught off. Such a state of hardship is disclosed in the plaintiff's affidavit in opposition. I do not consider exercising other legally available remedies such as the present application a contravention of S. 30(4) of the University Act 2005 which in any event is but a discretionary process, and I so hold.

Order 5 Rs 2(c) and 4(2)(a) High Court Rules 2007

16. The defendant also alleges that there has been a contravention of Order 5 Rs 2(c) and 4(2)(a) High Court Rules 2007 for which reason also the application in his submission must be struck out.
17. In this ground the defendant claims that the process which has been employed is the wrong process by which an application such as this one can be brought. I refer to and adopt my comments on the previous ground. The general intention and objective of the rules relating to Judicial Review aims at making the process as painless and accessible as possible. Additionally however I must note that the rules referred to in order 5 set off with an exception. The former *begins "…. subject to any enactment* ***or these rules by which any proceedings are expressly required to be begun otherwise than by writ…."*** When this is read in juxtaposition with O52 (4)(1) already quoted above which reads:

    "*"An application for judicial review shall be made to the Court by Originating Notice of Motion"*

    ….there can be no doubt that it is under this, the latter rule that an action for judicial review should be properly commenced.

18. In the abundance of caution I must add that I consider the request to review the decision of an administrative body such as the Court of the University a resort to judicial review as provided for by law and practice in this jurisdiction.

Conclusion

19. From the foregoing considerations it becomes apparent that the various grounds on which this objection was taken have been found lacking in merit. I will overrule the objections and dismiss entirely the defendant's application to strike out the motion herein.

The application to strike out the Originating Notice of Motion is refused. Costs in the cause

Reginald Sydney Fynn JA…….