

Civ. App 9/2022

IN THE COURT OF APPEAL OF SIERRA LEONE

Sierra Leone Commercial Bank

Siaka Stevens Street

Freetown

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Defendant/ Applicant

AND

Justin Kenneh

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Plaintiff/Respondent

PRESIDING;

THE HON MR. JUSTICE REGINALD SYDNEY FYNN JA (SITTING ALONE)

Counsel;

W. Nicol Esq. for the Defendant/Applicant

S. Possah Sesay Esq. for the Plaintiff / Respondent

RULING delivered on 5th July 2022

FYNN JA

1. I have read the motion paper and the affidavit in support. I have read the affidavit in opposition too sworn to by Sylvester Possah Sesay Esq of counsel for the respondent. I have also had the benefit of the helpful submissions from counsel on either side, together with supporting authorities from the applicant.
2. The applicant urges the court that very weighty questions of law are at stake to wit; the scope and tenor of the Limitation Act of 1961 with respect to the facts and circumstances of the case. Considering that the court below has in its ruling already decided the issue of the impact of the Limitation Act on the case, counsel submits that it is important that the Court of Appeal corrects the issue at once rather than wait until after a drawn out trial. The applicant submits that the issue of the Limitation Act which they have already raised is so germane to their case

below that it is almost certain that an appeal on that issue will surely lie after the trial.

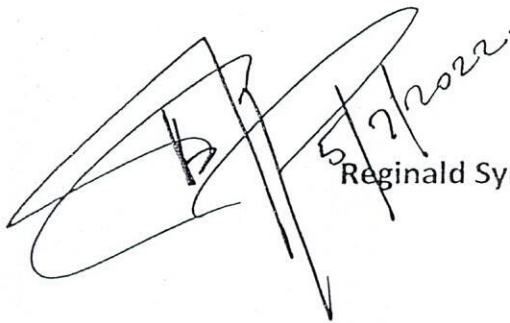
3. The applicant submits that it is wise therefore for the Court of Appeal to immediately provide guidance on the issue and make continuing below if necessary a more worthwhile endeavour.
4. The Respondent on his part following on as stated in his affidavit in opposition submits little more than that the application is a waste of time. I have already mentioned verbally in court that I do not agree that the application is a waste of time.
5. I consider the question of the applicability of the Limitation Act in a case in which there has been a discontinuance of a previous action and the commencement of a new one long after the original occurrence of the facts which gave rise to the claim, much more than a waste of time. I have looked at the claim and note that it's a monetary claim. It is surely not a waste of time to question how but for the help of a revivor such a claim can succeed.
6. Also I note that another ground of appeal suggests that The Learned Trial Judge (LTJ) relied on the provisions and application of a Foreign Statute in coming to the conclusion that the Limitation Act of 1961 is not applicable in this case. This second ground; if the allegations in it are true, does also, prima facie disclose a strong ground upon which leave should be granted. I have asked myself as I did in *Margai v. Seray- Wurie*

"Would it not be a complete waste of precious judicial time if after a full blown trial it is found by the court below that it lacked jurisdiction to hear the case? Or worse still after a full blown trial, it is found on appeal by this court that the court below lacked jurisdiction to hear this case? I take the view that it is safer to settle the question now. The present proposed appeal gives this court the opportunity to lay the applicant's question to rest one way or the other and it is my opinion that it is just and prudent that the opportunity should be taken. This in my opinion provides further good and sufficient reason for the appeal and I so hold.

7. In this case I wonder whether finding out now whether the LTJ has erred in his Interpretation of the Limitation Act and its application will not save significantly Judicial time and resources than waiting to find out later. I wonder if the interests of Justice would not be best served if the question is resolved earlier than later.

8. In my opinion it will be best to answer these questions and now. In keeping with that reasoning I will grant the application wholly and order as follows:

- i. The Applicant is granted leave to file the proposed grounds of appeal herein
- ii. The matter in the High Court between the parties herein and before the Hon Justice Michael Mami is hereby stayed until this Court direct otherwise.
- iii. No order as to Costs

A handwritten signature in black ink, appearing to be 'R. Sydney Fynn', is written over the printed name. To the right of the signature, the date '5/7/2022' is written in a similar cursive style.

Reginald Sydney Fynn JA