Civ. App 73/23 ~~47/2014~~

IN THE COURT OF APPEAL- SIERRA LEONE

AIAH FENGAI & 73 OTHERS & MARGINALISED AFFECTED PROPERTY OWNERS - APPELLANTS

VS.

OCTEA LIMITED, THE MANAGER OCTEA LIMITED ET AL - RESPONDENT

Coram:

Reginald Sydney Fynn JA

Counsel:

C M B Jalloh Esq with him D. Fofannah for the Appellants
Drucil E. Taylor Esq for the Respondent

RULING DATED 29th February 2024

Fynn JA

Background

1. The Respondent/Appellants in this matter had filed several writs against the Applicant/Respondent in the High Court. These writs were consolidated into one action. The reasons which led to that consolidation are not important for the current purposes.
2. After the consolidation the writ of summons and all subsequent proceedings were struck out by the High Court on 27th October 2022. The High Court had upheld submissions that the court lacked the jurisdiction to hear the matter.
3. Not being satisfied with the High Court's decision and believing that the same was an interlocutory decision, the Plaintiffs, now Respondents/Appellants approached the court for leave to appeal against that decision. The Defendants, now Applicant/Respondent objected to the application being heard submitting that the decision striking out the writs was in fact a final decision.
4. The Court overruled the objection and proceeded to hear the application and then granted the plaintiffs, now appellants, leave to appeal as requested. The

appellant then filed the present notice of appeal which is dated 22nd November 2023.

5. The court gave directions for the hearing of the Appeal on 16th January 2024; the applicants were not in court. The applicants on receiving the directions have filed the present motion requesting that the directions be stayed and that the appeal should not be heard as the same being an appeal against a final judgment had been filed out of time. The applicants argue that a final judgment can be appealed against as of right and need no application for leave as was applied for by these appellants.

Submissions

6. In his submissions Taylor Esq. urges that the appellants are out of time and that they have filed the appeal without first seeking an extension of time within which to appeal. He submits that the time limits set by Rule 11 are clear; three months for a final judgment and these can only be extended by the court. He argued that the appellants cannot approach the court without an order extending the time within which they should appeal. Counsel cited *Precious Minerals Mining Co (unreported)* and other cases.
7. Counsel for the Applicant/Respondent made further submissions highlighting why he considers the decision appealed against as being a final decision. He argued that the decision now appealed against is a final decision because its effect is such that the appellant's right to bring the action was prematurely brought to an end by that decision. After the decision counsel submits, that the plaintiffs, now appellants are left with nothing whatsoever in that matter. The decision he submits cannot therefore be anything but a final decision which must be appealed against within three months.
8. In opposition Jalloh Esq. submits that he cannot be out of time as the ruling seeking leave was delivered on 9th November 2023 and his application was made 22nd November 2023. This cannot be out of time. He submits considering he has only fourteen days in which to appeal against an interlocutory decision from the date on which the decision on the application for leave was given.
9. Counsel for the Respondent/Appellant submitted further the decision appealed against did not extinguish the plaintiffs' claim. He submits that being merely technical in nature the decision did not resolve the issues between the parties. He cited several cases to support his propositions and I have reviewed them.

10. Referring the court to Rule 29 of the Court of Appeal Rules, counsel contends that the issue of whether the decision now impugned was interlocutory or final had been decided below and according to Rule 29 such a determination must be final and cannot be reopened for further resolution before the court of appeal.

11. In his answer , Taylor Esq Counsel for the Respondent/Applicant urged the court that a literal reading of Rule 29 would lead to an absurdity causing a lower court to decide against the existing body of law on how to decide when a decision is interlocutory. He argues that this will undermine the much respected principle of *stare decisis.* He argues also that the LTJ in his refusal orders gave no reasons for refusing the preliminary objection.

12. Taylor Esq. cited several cases to support his position that courts are discouraged from giving decisions without an evaluation of the facts and the issues. Amongst these was *Sesay v. Bashoon* SC Civ. App No 6/2005, where the Court opined:

> *"It has been said on several occasions that it is not enough for a trial court to simply recount the evidence and come to conclusions abruptly"*

Counsel was insistent that R29 could not have contemplated non-reasoning. Asserting that a situation where there is no reasoning cannot lead to a decision.

Deliberations

13. A Notice of Appeal has been filed. Directions have been given. The contention is that Notice of Appeal ought not to have been filed as the time for filing had long past. According to Mr. Taylor that time is three months since the striking out ruling was given on 27th October 2022. If Mr. Taylor is correct then there was no need for the application for leave to apply which was filed on 2nd day of November 2022. The application for leave was filed promptly and on time by the applicants that is if they were correct that the order which they were seeking leave to appeal was in fact an interlocutory order.

14. Before the application for leave to appeal was moved Mr. Taylor raised a preliminary objection. The objection was to the effect that the court lacked jurisdiction to hear the application for leave to appeal as the order was an interlocutory order. The court upon overruling this preliminary objection proceeded to grant the applicant leave to appeal. That leave to appeal provided the vehicle by which the appellant filed the present Notice of Appeal.

15. The question that most urgently confronts the court is whether when the Learned Trial Judge overruled the objection and granted leave to appeal did he also decide the question on whether the order being appealed against was interlocutory or not. If he did decide that question it cannot be raised again as Rule 29 provides as follows:

> *"Where any doubt arises as to whether any judgment or order is final or interlocutory, the question* ***may be determined summarily by the court below or by the court*** *and any such determination by the court below shall notwithstanding the provisions of Rule 64, be deemed to be final and binding on all parties for the purposes of determining the time within which such an appeal may be brought"*

16. It is for situations like this one that this rule was crafted. Disputes abound on the question of whether an order is interlocutory or not. Rule 29 provides a management tool to avoid the dispute. It gives the court the opportunity to decide the matter. The court below gets the first opportunity to determine the issue. The rule provides that once this issue is determined by that court it is determined for all time as far as the issue relates to the question of time within which to appeal is concerned.

17. In the present situation the court first overruled an objection that the motion for leave should not be heard because the judgment was final. The court then went on to grant leave to appeal. Did any of these orders amount to a decision that the impugned order was interlocutory and not final? Does the failure to give reasons by the Judge make his decision any less effective for the purposes of Rule 29?

18. Taylor Esq. has provided authorities to support the proposition that a decision which does not give reasons is a non-decision. I have to observe though that none of the cited decisions relate to a situation where a court has been directed by statute to make a summary disposition of an issue as is the case in the present situation. Also that the cited decisions all relate to the disposal of a case without a proper evaluation of the evidence leading to findings which will then inform the judgment. The expectations in the summary disposition of a case need not be the same as when summarily disposing of an issue for procedural purposes.

19. It is my opinion that the use of the word *"summarily"* in Rule 29 is not merely chanced and without an intended effect. The rule could have read ***"the question may be determined by the court below or by the court"*** but that is not how it reads, it reads instead that *"the question may be* ***determined summarily*** *by the court below or by the court"*.

20. The effect conveyed is that the court is at liberty to pronounce an abbreviated decision. The court in my opinion needs not be bothered when giving this shortened form of a decision to follow the normal pathways that usually lead up to a decision. When giving a decision "summarily" and in this context the court can also be swift and unhindered; peremptory.

21. I have taken the liberty of looking up the word "summarily" and its root "summary" in the dictionary and the following are some of the definitions I found:

> *"Summary; dispense with details, without the customary formalities"* (see The Concise Oxford Dictionary 8th Edition)
>
> *"Summary; short, concise, immediate, peremptory, off-hand"*
>
> *"Summarily: without ceremony or delay, short or concise"* (see West's Law &Commercial Dictionary)
>
> *"Summary: Describing proceedings conducted in a simplified or abbreviated manner...does not need extended or elaborate treatment" (see* Random House Webster's Dictionary of Law)

22. An online web tool gave this definition for "Deciding Summarily" *"means making a decision suddenly without discussion or without going through a legal process"* The same tool says *"deciding summarily involves making swift decisions without lengthy deliberations or formalities"* (Cambridge Dictionary).

23. Recurring in the definitions of *"summarily"* which I have mentioned are the ideas of being sudden, short and without recourse to the normal way of doing things. This in my opinion is the scope that Rule 29 of our rules provides the court with. The result is that the court in determining *any doubt which may arise as to whether any judgment or order is final or interlocutory,* ***may do so swiftly without any lengthy deliberations or formalities.***

24. I am further encouraged in this opinion by the finality accorded a decision made under this rule. Evaluations and reasons for decisions provide much insight into the deciders thinking and will aid the parties in their appreciation of the decision. However and maybe more importantly they will provide also the material on which any future appeal will be anchored. Rule 29 takes away completely any possibility of the latter.

25. Any decision of the Judge that is governed by R 29 is final and there is no room for appeal. There being no room to appeal the decision it would follow necessarily that the absence of reasoning leading to the decision cannot in itself be a reason that robs the decision of its efficacy.

26. Did the Judge in the present case make a decision on whether the impugned orders are interlocutory or final? I have to conclude that when a Judge overrules an objection that he cannot hear an application to grant leave to appeal because the appeal is as of right against a final order he must necessarily be saying the order/decision is in fact interlocutory. I fail to see what else he would be saying in that ruling. When the same Judge goes on to grant leave to appeal it becomes clearer that he must be saying the impugned order is Interlocutory.

27. There's no room for him to be saying otherwise. I do not think any Judge will grant leave to appeal when in fact he is ruling that the appeal is as of right. Whilst there is no doubt that a Judge could be much clearer in his pronouncement than the Judge in this instance has been, the legal professionals who receive and later interact with these rulings must similarly be expected to be more discerning so as to spot the obvious, even in the absence of the exact words: *"the impugned decision is Interlocutory"*

28. A final submission of importance that requires attention is Mr. Taylor's submission that *stare decisis* is in danger, if Rule 29 is interpreted literally. This assertion cannot be further from the truth. Respect for and the application of the body of law that provides guidance on when a decision is final and when interlocutory will not be eroded by the present interpretation at all. The Rule

when read carefully only excludes debate on the question when the court below has already summarily decided the question.

29. Where there has been no pronouncement prior and then the question arises for the very first time for decision then it would be necessary to have resort to the body of law relating to that question. Likewise if the distinction final or interlocutory is raised but not in the context of computing time within which to appeal, the body of law that has been developed around the subject would certainly become acutely relevant.

30. In the present circumstance however and for the reasons which I have mentioned I hold that the court below has decided that the impugned order against which the Notice of Appeal has been filed is in fact an Interlocutory order which needed leave to appeal before it was filed which leave was granted thereby facilitating its safe arrival in our court.

31. There is no need therefore, for me to explore that question again as Rule 29 forbids me. I therefore order as follows:
    a. This application is refused.
    b. The Notice of Appeal herein was filed within the time limited for same
    c. The directions already given are adjusted and restored to wit:
        i. The parties shall file the synopsis of their submissions within these timelines after first having amended the records on or before 10th March 2024;
            1. The appellants no later than 20th March 2024
            2. The respondent no later than 10th April 2024
    d. Oral submissions will be received on 16th April 2024
    e. Costs of this application are awarded to the Appellant to be taxed if not agreed.

29/2/2024

Reginald Sydney Fynn JA.....